

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
CORPORATIONS, SECURITIES & COMMERCIAL LICENSING BUREAU

In the matter of:

Complaint No. 336687

Independence Capital Co., Inc.  
CRD# 24723

Respondent.

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Issued and entered  
this 23rd day of January, 2019

**STIPULATED CONSENT ORDER**

A. Relevant information and statutory provisions, under the Michigan Uniform Securities Act (2002) (the "Securities Act"), 2008 PA 551, MCL 451.2101 *et seq.*:

1. Independence Capital Co., Inc. ("Independence" CRD# 24723), is a Michigan-registered broker dealer and Michigan-registered investment adviser.
2. On November 15, 2018, the Director of the State of Michigan, Department of Licensing and Regulatory Affairs, Corporations, Securities & Commercial Licensing Bureau (the "Bureau") and the Director of the Bureau, who serves as Administrator of the Securities Act (the "Administrator"), issued a Notice and Order to Cease and Desist ("C&D") to Independence under MCL 451.2402(4) and MCL 451.2404(4). The C&D Order asserted that Independence violated the Securities Act by employing or associating with three unregistered agents and employing or associating with an unregistered investment adviser representative.
3. Based on the alleged violations of the Securities Act, the C&D Ordered, pursuant to section 604 of the Securities Act, MCL 451.2604, that:
  - a. Independence shall immediately CEASE AND DESIST from employing or associating with unregistered agents and investment adviser representatives, contrary to the Securities Act; and
  - b. Pursuant to section 604(2) of the Securities Act, the Notice and Order to Cease and Desist was immediately effective.

4. The November 15, 2018 C&D Order further notified Independence that:
  - a. The Administrator, under section 604(4) of the Securities Act, MCL 451.2604(4), intended to impose a civil fine of \$20,000 against Independence;
  - b. Pursuant to section 508 of the Securities Act, MCL 451.2508, a person that willfully violates the Securities Act, or an order issued under the Securities Act, is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than \$500,000 for each violation, or both. An individual convicted of violating a rule or order under this act may be fined, but shall not be imprisoned, if the individual did not have knowledge of the rule or order; and
  - c. Pursuant to section 604 of the Securities Act, MCL 451.2604, Independence had 30 days after the date of service of the C&D Order to submit a written request to the Administrator asking that the matter be scheduled for a hearing and that if the Administrator receives a written request in a timely manner, the Administrator shall schedule a hearing within 15 days after receipt of the request.
5. On December 5, 2018, Independence, by its attorney Keith A. Savidge, submitted a written request to the Administrator requesting that this matter be set for hearing.
6. On December 18, 2018, Independence and the Bureau, through their respective attorneys, agreed to hold in abeyance a hearing on this matter in an attempt to resolve this matter through a stipulated consent order.
7. Independence is represented and has had the advice of legal counsel throughout the process of resolving the C&D Order through this Stipulated Consent Order.
8. Independence neither admits nor denies the allegations in the November 15, 2018 C&D Order and agrees to entry of this Stipulated Consent Order only for the purpose of resolving the C&D Order.

## B. STIPULATION

The Parties agree to resolve the C&D Order pursuant to the following terms and conditions:

1. Independence agrees to comply with the Securities Act in connection with all future conduct and activities, including but not limited to:
  - a. Ensuring that it does not employ or associate with an agent who transacts business in Michigan on behalf of Independence unless the agent is registered under the Securities Act or exempt from registration;
  - b. Ensuring that it does not employ or associate with an investment advisor representative who transacts business in Michigan on behalf of Independence unless the individual is registered under the Securities Act or is exempt from registration.
2. Independence agrees to pay the Bureau a reduced civil fine in the settlement amount of ten thousand dollars (\$10,000.00) (the "Reduced Civil Fine"). Independence agrees to pay the Reduced Civil Fine within sixty (60) days after the mailing date of this Stipulated Consent Order, once entered. The Reduced Civil Fine must be paid by cashier's check or money order made payable to the "State of Michigan," contain identifying information (name and "Complaint No. 336687"), and be mailed to the Bureau at the following address:

Corporations, Securities & Commercial Licensing Bureau  
Securities & Audit Division – Final Order Monitoring  
P.O. Box 30018  
Lansing, MI 48909

3. If any portion of the Reduced Civil Fine is overdue for at least six (6) months, the Administrator may refer it to the Michigan Department of Treasury for collection action against Independence. In addition, and consistent with Paragraph B.13 below, the Administrator reserves the right to take other available legal action to enforce payment of and collect the Reduced Civil Fine.
4. The Bureau will report and publish this Stipulated Consent Order according to its current policy, as follows:

This Stipulated Consent Order is a public record required to be published and made available to the public, consistent with section 11 of the Michigan Freedom of Information Act, MCL 15.241. The Department will publish this Stipulated Consent Order consistent with its current policy, whereby copies of orders issued under the Securities

Act are posted to the Department's website and a summary of order content is included in monthly disciplinary action reports separately published on the Department's website. Following entry of the attached Order, the Bureau will file a Form U6 with the Central Registration Depository reflecting the Parties' resolution of the C&D Order under this Stipulated Consent Order.

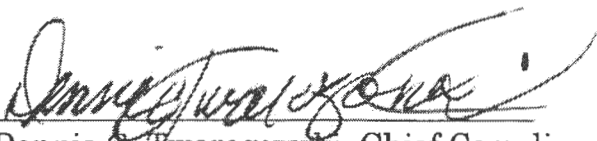
5. Notwithstanding the potential application of MCL 451.2412(9), this Stipulated Consent Order expressly preserves the Bureau's and Administrator's ability to rely on and assert, in any future proceeding under the Securities Act, all activities, conduct, and alleged Securities Act violations by Independence contained in or relating to the C&D Order.
6. Independence consents to entry of this Stipulated Consent Order and the Parties agree that this Stipulated Consent Order is automatically admissible in a proceeding to enforce its provisions or in any administrative proceeding under the Securities Act.
7. The Parties agree that this Stipulated Consent Order resolves only Independent's activities, conduct, and alleged Security Act violations contained in the C&D Order, and it does not address or resolve any other activities, conduct, or potential Securities Act violations engaged in by Independence or any other entity or person not expressly contained in the C&D Order or occurring after the date this Stipulated Consent Order is entered.
8. Independence agrees to cooperate with the Bureau and comply with any reasonable investigative demands made by the Bureau in the future for purposes of ensuring compliance with this Stipulated Consent Order or the Securities Act.
9. Independence acknowledges and agrees that: (a) the Administrator has jurisdiction and authority to enter this Stipulated Consent Order; (b) the Administrator may enter this Stipulated Consent Order without any further notice to Independence; and (c) upon entry of the Stipulated Consent Order, it is final and binding, and Independence waives any right to a hearing or appeal of this Stipulated Consent Order and the C&D Order under the Securities Act, the rules promulgated under the Securities Act or the predecessor Act, the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.201 et seq., or other applicable law.

10. The Parties understand and agree that this Stipulated Consent Order will be presented to the Administrator for her final approval. The Stipulated Consent Order becomes fully effective and binding upon entry by the Administrator in accordance with Paragraph B.9 above.
11. The Parties acknowledge and agree that this Stipulated Consent Order contains the entire understanding of the Parties and supersedes and forever terminates all prior and contemporaneous representations, promises, agreements, understandings, and negotiations, whether oral or written, with respect to its subject matter. The Parties further agree that this Stipulated Consent Order may only be amended, modified, or supplemented by a duly executed writing signed by each Party and approved by Order of the Administrator.
12. The Parties acknowledge and represent that: (a) each Party has read this Stipulated Consent Order in its entirety and fully understands all of its terms, conditions, ramifications, and consequences; (b) each Party unconditionally consents to the terms of this Stipulated Consent Order; (c) each Party has consulted with or had ample opportunity to consult with legal counsel of his or her choosing prior to executing this Stipulated Consent Order; (d) each Party has freely and voluntarily signed this Stipulated Consent Order; and (e) the consideration received by each Party as described in this Stipulated Consent Order is adequate.
13. The Parties acknowledge and agree that the Administrator retains the right to pursue any action or proceeding permitted by law to enforce the provisions of this Stipulated Consent Order.
14. The Parties agree that facsimile or electronically-transmitted signatures may be submitted in connection with this Stipulated Consent Order and are binding on that Party to the same extent as an original signature.
15. The Parties agree that, effective upon entry of the attached Order, the C&D Order and Independence's request for a hearing are both resolved without further action by the Parties.
16. The signatories to this Stipulated Consent Order represent and warrant that they have the legal capacity and authority to enter into this Stipulation on behalf of the named Parties and to bind the named Parties to the terms and conditions contained herein.

Through their signatures, the Bureau and Independence agree to comply with the above terms and conditions.

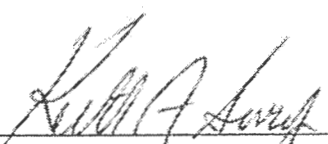
Dated: 1/3/2019

Signed:

  
Dennis C. Fwarogowski, Chief Compliance  
Officer, Independence Capital Co., Inc.

Acknowledged and Reviewed by:

Signed:

  
Keith A. Savidge (P81567)  
Attorney for Independence

Dated:

January 3, 2019

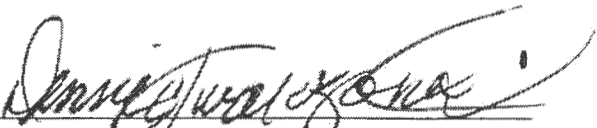
Approved by:

Dated: \_\_\_\_\_

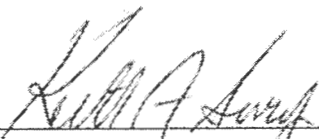
Signed:

\_\_\_\_\_  
Timothy L. Teague  
Securities & Audit Division Director  
Corporations, Securities & Commercial  
Licensing Bureau

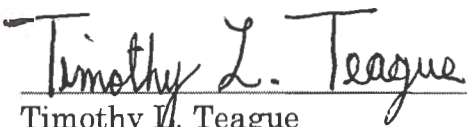
Through their signatures, the Bureau and Independence agree to comply with the above terms and conditions.

Dated: 1/3/2019 Signed:   
Dennis C. Pwarogowski, Chief Compliance  
Officer, Independence Capital Co., Inc.

Acknowledged and Reviewed by:

Signed:  Dated: January 3, 2019  
Keith A. Savidge (P81567)  
Attorney for Independence

Approved by:

Dated: 1.16.19 Signed:   
Timothy L. Teague  
Securities & Audit Division Director  
Corporations, Securities & Commercial  
Licensing Bureau

C. ORDER

NOW, THEREFORE, the Administrator ORDERS:

THAT THE TERMS AND CONDITIONS IN THE FOREGOING FULLY EXECUTED STIPULATED CONSENT AGREEMENT ARE INCORPORATED BY REFERENCE AND MADE BINDING AND EFFECTIVE THROUGH THIS CONSENT ORDER.



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Julia Dale  
Administrator and Director  
Corporations, Securities & Commercial Licensing Bureau

Dated: 1/22/19



STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
CORPORATIONS, SECURITIES & COMMERCIAL LICENSING BUREAU

In the Matter of:

Complaint No. 336687

Independence Capital Co., Inc.  
CRD#24723

Respondent.

\_\_\_\_\_ /  
This 15<sup>th</sup> day of November, 2018

Issued and entered

NOTICE AND ORDER TO CEASE AND DESIST

Julia Dale, the Director (“Administrator”) of the Corporations, Securities & Commercial Licensing Bureau (“Bureau”), pursuant to her statutory authority and responsibility to administer and enforce the Michigan Uniform Securities Act (2002), 2008 PA 551, as amended, MCL 451.2101 *et seq.* (“Securities Act”), hereby orders Independence Capital Co., Inc. (“Respondent”) to cease and desist from employing or associating with unregistered agents and unregistered investment adviser representatives, contrary to the Securities Act. Respondent is also notified of the opportunity to request a hearing in this matter.

**I. BACKGROUND**

**A. The Respondent**

1. Independence Capital Co., Inc. (CRD# 24723) is a Michigan-registered broker-dealer and investment adviser.

**B. Findings of Fact**

1. The Bureau investigated Respondent’s activities under the Securities Act in Michigan.
2. The investigation developed evidence that Respondent, in its capacity as a broker-dealer, employed or associated with the following unregistered agents:

- A. David Videtta (Exhibit 1 – David Videtta C&D Order);
  - B. Philip Norkus (Exhibit 2 – Philip Norkus C&D Order); and
  - C. Jeffery Bleim (Exhibit 3 – Jeffery Bleim C&D Order).
3. The investigation also developed evidence that Respondent, in its capacity as an investment adviser, employed or associated with an unregistered investment adviser representative, Brian Swinney. (Exhibit 4 – Brian Swinney C&D Order).

## **II. RELEVANT STATUTORY PROVISIONS**

1. Section 402(4) of the Securities Act, MCL 451.2402(4), states:

A broker-dealer, or an issuer engaged in offering, selling, or purchasing securities in this state, shall not employ or associate with an agent who transacts business in this state on behalf of broker-dealers or issuers unless the agent is registered under subsection (1) or exempt from registration under subsection (2).

2. Section 404(4) of the Securities Act, MCL 451.2404(4), states:

An investment adviser shall not employ or associate with an individual required to be registered under this act as an investment adviser representative who transacts business in this state on behalf of the investment adviser unless the individual is registered under section 404(1) or is exempt from registration under section 404(2).

3. Section 503(1) of the Securities Act, MCL 451.2503(1), states:

In a civil action or administrative proceeding under this act, a person claiming an exemption, exception, preemption, or exclusion has the burden to prove the applicability of the exemption, exception, preemption, or exclusion.

## **III. CONCLUSIONS OF LAW**

1. Respondent Independence Capital Co., Inc., a Michigan-registered broker-dealer, employed or associated with unregistered agents David Videtta, Philip Norkus, and Jeffery Bleim, in violation of section 402(4) of the Securities Act, MCL 451.2402(4).

2. Respondent Independence Capital Co, Inc., a Michigan-registered investment adviser, employed or associated with an unregistered investment adviser representative, Brian Swinney, in violation of section 404(4) of the Securities Act, MCL 451.2404(4).

#### **IV. ORDER**

IT IS THEREFORE ORDERED, pursuant to section 604 of the Securities Act, MCL 451.2604, that:

- A. Respondent shall immediately CEASE AND DESIST from employing or associating with unregistered agents and investment adviser representatives, contrary to the Securities Act.
- B. Pursuant to section 604(2) of the Securities Act, this Notice and Order to Cease and Desist is IMMEDIATELY EFFECTIVE.
- C. In her Final Order, the Administrator, under section 604(4) of the Securities Act, MCL 451.2604(4), intends to impose a civil fine of \$20,000.00 against Respondent.
- D. Pursuant to section 508 of the Securities Act, MCL 451.2508, a person that willfully violates the Securities Act, or an order issued under the Securities Act, is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than \$500,000.00 for each violation, or both. An individual convicted of violating a rule or order under this act may be fined, but shall not be imprisoned, if the individual did not have knowledge of the rule or order.

#### **V. NOTICE OF OPPORTUNITY FOR HEARING**

Section 604 of the Securities Act, MCL 451.2604, provides that Respondent has 30 days beginning with the first day after the date of service of this Notice and Order to Cease and Desist to submit a written request to the Administrator asking that this matter be scheduled for a hearing. If the Administrator receives a written request in a timely manner, the Administrator shall schedule a hearing within 15 days after receipt of the request. The written request for a hearing must be addressed to:

Corporations, Securities & Commercial Licensing Bureau  
Regulatory Compliance Division  
P.O. Box 30018  
Lansing, MI 48909

**VI. ORDER FINAL ABSENT HEARING REQUEST**

- A. Under section 604 of the Securities Act, MCL 451.2604, the Respondent's failure to submit a written request for a hearing to the Administrator within 30 days after the service date of this **NOTICE AND ORDER TO CEASE AND DESIST** shall result in this order becoming a **FINAL ORDER** by operation of law. The **FINAL ORDER** includes the imposition of the fines cited described in section IV.C., and the fine amounts set forth below will become due and payable to the Administrator within sixty (60) days after the date this order becomes final:

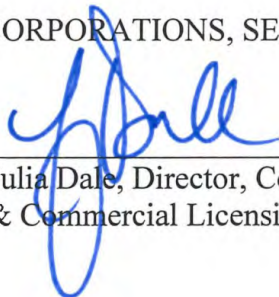
\$20,000.00 – Independence Capital Co., Inc., under section 604 of the Securities Act, MCL 451.2604.

- B. CIVIL FINE payments should be payable to the STATE OF MICHIGAN and contain identifying information (e.g., names and complaint numbers) and mailed to the following address:

Corporations, Securities & Commercial Licensing Bureau  
Final Order Monitoring  
P.O. Box 30018  
Lansing, MI 48909

- C. Failure to comply with the terms of this Order within the time frames specified may result in additional administrative penalties, including the summary suspension or continued suspension of all registrations held by Respondent under the Securities Act, the denial of any registration renewal, and/or the denial of any future applications for registration, until full compliance is made. Respondent may voluntarily surrender or withdraw a registration under the Securities Act; however, the surrender or withdrawal will not negate the summary suspension or continued suspension of the relevant registrations or any additional administrative proceedings if a violation of this Order or the Securities Act occurred.
- D. Failure to pay the civil fines within six (6) months after this Order becomes final may result in the referral of the civil fines to the Michigan Department of Treasury for collection action against Respondents.

CORPORATIONS, SECURITIES & COMMERCIAL LICENSING BUREAU

  
\_\_\_\_\_  
Julia Dale, Director, Corporations, Securities  
& Commercial Licensing Bureau

  
\_\_\_\_\_  
Date