

**STATE OF NORTH DAKOTA  
SECURITIES DEPARTMENT**

**SOUTH DAKOTA DIVISION OF  
INSURANCE DEPARTMENT OF  
LABOR AND REGULATION**

In the Matter of Fiduciary Investment Funds, )  
LLC, Fiduciary Investment Services, LLC, ) **CONSENT ORDER**  
and Mark G. Wagner, )  
Respondents. )

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The North Dakota Securities Commissioner (hereinafter “Commissioner”) and the Director of the South Dakota Division of Insurance (hereinafter “Director”) have advised the Respondents, Fiduciary Investment Funds, LLC, a North Dakota limited liability company, Fiduciary Investment Services, LLC, a North Dakota limited liability company, and Mark G. Wagner, that the Commissioner and the Director are prepared to commence formal action pursuant to Chapter 10-04 of the North Dakota Century Code and SDCL Ch. 47-31B and have determined as follows:

1. Respondent, Fiduciary Investment Funds, LLC, (hereinafter, “FIF”) is a North Dakota limited liability company operated and controlled by Respondent, Mark G. Wagner, (hereinafter, “Wagner”) as its sole and Managing Member, with its principal office at 2279 60<sup>th</sup> Avenue South, Fargo, North Dakota. FIF is not now and has never been registered as an issuer-dealer or broker-dealer with the North Dakota Securities Department or the South Dakota Division of Insurance.
2. Respondent, Fiduciary Investment Services, LLC, (hereinafter, “FIS”) is a North Dakota limited liability company operated and controlled by Respondent Wagner, as its sole and Managing Member, with its principal office at 2279 60<sup>th</sup> Avenue

South, Fargo, North Dakota. FIS is not now and has never been registered as an investment adviser with the North Dakota Securities Department or the South Dakota Division of Insurance.

3. Respondent Wagner is a resident of Fargo, North Dakota, who, for all times relevant to this matter, operated and controlled FIF and FIS, as each companies' sole and Managing Member. Respondent Wagner is not now and has never been registered as a securities agent or an investment adviser representative with the North Dakota Securities Department or the South Dakota Division of Insurance.
4. On or about October 7, 2019, Respondents FIF and Wagner engaged in the offer and sale of a blind pool investment issued by FIF to D.M and V.M., North Dakota residents, in Venturia, North Dakota. FIF and Wagner had discretion as to the re-investment of the investors' funds and FIF was ostensibly receiving investment advice and recommendations from FIS and Wagner for an advisory fee to FIS of one percent of the assets under management held by FIF on behalf of the investors. The advisory fee to FIS was in addition to any "transaction fees" or "custodial fees" charged to the investors by FIF. The securities transaction involved a total principal investment of \$100,000 and was to return 5% for a period of five years, renewable for another five years.
5. On or about October 10, 2019, Respondents FIF and Wagner utilized the \$100,000 investment of D.M. and V.M. to purchase a Promissory Note payable to FIF from Tralia Value Fund, LLC, in the principal amount of \$100,000 with interest at the rate of 5.75% per annum and a maturity of ten years. The interest rate "spread" of .75%

was payable quarterly to FIF, with the remaining 5% accruing, compounded annually, until maturity in 2029.

6. On or about October 15, 2019, Respondent FIS, through its Managing Member, Respondent Wagner, entered into a written Investment Adviser Agreement with D.M. and V.M. for the investment funds on deposit with FIF, titled "Discretionary Fiduciary Management Agreement", the terms of which are set forth therein.
7. On or about November 5, 2019, Respondents FIF and Wagner engaged in the offer and sale of a blind pool investment issued by FIF to T.R., a North Dakota resident, in St. John, North Dakota. FIF and Wagner had discretion as to the re-investment of the investor's funds and FIF was ostensibly receiving investment advice and recommendations from FIS and Wagner for an advisory fee to FIS of one percent of the assets under management held by FIF on behalf of the investor. The advisory fee to FIS was in addition to any "transaction fees" or "custodial fees" charged to the investor by FIF. The securities transaction involved a total principal investment of \$100,500 and was to return 5.5% interest per annum.
8. On or about November 5, 2019, Respondent FIS, through its Managing Member, Respondent Wagner, entered into a written Investment Adviser Agreement with T.R. for the investment funds on deposit with FIF, titled "Discretionary Fiduciary Management Agreement", the terms of which are set forth therein.
9. On or about November 15, 2019, Respondents FIF and Wagner utilized \$100,000 of the investment of T.R. to purchase a Promissory Note payable to FIF from Tralia Value Fund, LLC, in the principal amount of \$100,000 with interest at the rate of 6.5% per annum and a maturity of ten years. The interest rate "spread" of 1.0% was

payable quarterly to FIF, with the remaining 5.5% accruing, compounded annually, until maturity in 2029. The remaining \$500 of investor T.R.'s funds was retained by FIF as an "asset placement fee."

10. On or about November 29, 2019, Respondents FIF and Wagner engaged in the offer and sale of a blind pool investment issued by FIF to D.F., a North Dakota resident, in Flasher, North Dakota. FIF and Wagner had discretion as to the re-investment of the investor's funds and FIF was ostensibly receiving investment advice and recommendations from FIS and Wagner for an advisory fee to FIS of one percent of the assets under management held by FIF on behalf of the investor. The advisory fee to FIS was in addition to any "transaction fees" or "custodial fees" charged to the investor by FIF. The securities transaction involved a total principal investment of \$5,000 and was to return 5% interest per annum.
11. On or about November 29, 2019, Respondent FIS, through its Managing Member, Respondent Wagner, entered into a written Investment Adviser Agreement with D.F. for the investment funds on deposit with FIF, titled "Discretionary Fiduciary Management Agreement", the terms of which are set forth therein. D.F.'s investment of \$5,000 has not since been reinvested by FIF or Wagner.
12. On or about December 9, 2019, Respondents FIF and Wagner engaged in the offer and sale of a blind pool investment issued by FIF to V.B., a South Dakota resident, in Bristol, South Dakota. FIF and Wagner had discretion as to the re-investment of the investor's funds. The securities transaction involved a total principal investment of \$200,000 and was to return 5% interest per annum, payable quarterly, for a ten year period.

13. On or about December 26, 2019, Respondents FIF and Wagner utilized the \$200,000 investment of V.B. to purchase a Promissory Note payable to FIF from Tralia Value Fund, LLC, in the principal amount of \$200,000 with interest at the rate of 6.5% per annum and a maturity of ten years. The interest rate “spread” of 1.5% was payable quarterly to FIF, with the remaining 5% payable quarterly to be passed through to the investor V.B.
14. On or about December 19, 2019, Respondents FIF and Wagner engaged in the offer and sale of a blind pool investment issued by FIF to S.B., a South Dakota resident, in Pierpont, South Dakota. FIF and Wagner had discretion as to the re-investment of the investor’s funds. The securities transaction involved a total principal investment of \$50,000 and was to return 5% interest per annum for a ten year period.
15. On or about December 26, 2019, Respondents FIF and Wagner utilized \$49,500 of the investment of S.B. to purchase a Promissory Note payable to FIF from Tralia Value Fund, LLC, in the principal amount of \$49,500 with interest at the rate of 6.5% per annum and a maturity of ten years. The interest rate “spread” of 1.5% was payable quarterly to FIF, with the remaining 5% payable annually, unless deferred and compounded, to be passed through to the investor S.B. The remaining \$500 of investor S.B.’s funds was retained by FIF as an “asset placement fee.”
16. On or about January 2, 2020 (\$38,200) and January 14, 2020 (\$12,303), Respondents FIF and Wagner engaged in the offer and sale of a blind pool investment issued by FIF to M.S. and M.S., South Dakota residents, in Conde,

South Dakota. FIF and Wagner had discretion as to the re-investment of the investors' funds. The securities transaction involved a total principal investment of \$50,503 and was to return 5% interest per annum for a ten year period.

17. On or about January 27, 2020, Respondents FIF and Wagner utilized \$50,000 of the investment of M.S. and M.S. to purchase a Promissory Note payable to FIF from Tralia Value Fund, LLC, in the principal amount of \$50,000 with interest at the rate of 6.5% per annum and a maturity of ten years. The interest rate "spread" of 1.5% was payable quarterly to FIF, with the remaining 5% payable annually, unless deferred and compounded, to be passed through to the investors M.S. and M.S. The remaining \$503 of investors' funds was retained by FIF as an "asset placement fee."
18. On or about February 4, 2020, Respondents FIF and Wagner engaged in the offer and sale of a blind pool investment issued by FIF to R.C., a South Dakota resident, in Reville, South Dakota. FIF and Wagner had discretion as to the re-investment of the investor's funds. The securities transaction involved a total principal investment of \$15,000 and was to return 5% interest per annum for a ten year period. R.C.'s investment of \$15,000 has not since been reinvested by FIF or Wagner.
19. The investments issued by FIF, as described above, are "securities" as defined in N.D.C.C. § 10-04-02(19) and SDCL § 47-31B-102(28). N.D.C.C. § 10-04-04 and SDCL § 47-31B-301 require that securities offered for sale or sold in or from North Dakota and South Dakota by a North Dakota or South Dakota issuer be registered or exempt from registration.

20. The investments issued by FIF, as described above, have not been registered with the North Dakota Securities Department under N.D.C.C. §§ 10-04-07, 10-04-07.1, 10-04-08, or 10-04-08.1; are not exempt securities under N.D.C.C. § 10-04-05; and have not been offered for sale or sold in exempt transactions under N.D.C.C. § 10-04-06; and are not federal covered securities or have not properly filed as federal covered securities under N.D.C.C. § 10-04-08.4. The investments issued by FIF, as described above, have not been registered with the South Dakota Division of Insurance under SDCL §§ 47-31B-304 or 47-31B-306; are not exempt securities under SDCL § 47-31B-201; have not been offered for sale or sold in exempt transactions under SDCL § 47-31B-202; and are not federal covered securities or have not properly filed as federal covered securities under SDCL § 47-31B-302. The offers and sales of the subject investments were made in violation of N.D.C.C. § 10-04-04 and SDCL § 47-31B-301. Respondent FIF and Respondent Wagner each engaged in violations of N.D.C.C. § 10-04-04 and SDCL § 47-31B-301.
21. The investments issued by FIF, as described above, were conducted at a time when FIF was not registered as an issuer-dealer or broker-dealer with the North Dakota Securities Department or the South Dakota Division of Insurance. FIF engaged in violations of N.D.C.C. § 10-04-10(1) and SDCL § 47-31B-401.
22. Respondent Wagner was not registered as an agent with the North Dakota Securities Department or the South Dakota Division of Insurance at the times of these transactions. Wagner engaged in violations of N.D.C.C. § 10-04-10(2) and SDCL § 47-31B-402.

23. Respondent FIS, in holding out and entering into Investment Advisory contracts as described in paragraphs 6., 8., and 11., acted as an unregistered investment adviser and Respondent Wagner as an unregistered investment adviser representative in violation of N.D.C.C. § 10-04-10(3) and (5) and SDCL §§ 47-31B-403 and 47-31B-404.
24. Respondents willfully failed to disclose material facts when offering the investments including the following
- (a) despite the use of “Fiduciary Investment” in both company names, that neither company was registered to offer securities for sale or offer investment advice for a fee as a fiduciary, with any state or federal regulator;
  - (b) information about the assets and liabilities of Respondent FIF and any other information describing the means by which Respondents could provide investors with the promised liquidity in the event investors should require access to their principal and accrued interest prior to the maturity of FIF Fund re-investments;
  - (c) that a recommendation to a client that the client invest in a fixed investment product through a pass through entity owned by the adviser that diverted .75% to 1.5% of the return to the adviser or related entities was a conflict of interest and a breach of fiduciary duty; and
  - (d) that the investments offered by Respondent FIF were neither registered nor exempt from registration.

These failures to disclose were material omissions of fact, necessary to make the statements made in connection with the offerings, not misleading. The failure to

disclose material information in connection with the offer to sell any security in this state constitutes a fraudulent practice in violation of N.D.C.C. § 10-04-15(2) and SDCL § 47-31B-501.

25. Pursuant to N.D.C.C. § 10-04-16(1), the North Dakota Securities Commissioner has the authority to Order that a person Cease and Desist from violations of the Securities Act and to assess civil penalties in an amount not to exceed \$10,000 for each violation of the Securities Act. The violations described above are sufficient grounds for the Commissioner to assess civil penalties against the Respondents pursuant to N.D.C.C. § 10-04-16(1).
26. Pursuant to SDCL § 47-31B-604(a), the Director of the South Dakota Division of Insurance has the authority to Order that a person Cease and Desist from violation of the Securities Act and to assess civil penalties in an amount not to exceed \$10,000 for each violation of the Securities Act. The violations described above are sufficient grounds for the Director to assess civil penalties against the Respondents pursuant to SDCL § 47-31B-604(d.)
27. Respondents acknowledge their right to a hearing on this matter and waive this right to a hearing and to present arguments to the Commissioner and the Director.
28. Respondents agree to resolve this matter with the Commissioner and the Director by this Consent Order.
29. The following Order is necessary and appropriate in the public interest for the protection of investors.

North Dakota Orders:

**NOW, THEREFORE, IT IS ORDERED**, pursuant to N.D.C.C. § 10-04-16, that:

1. Respondent, Mark G. Wagner, shall immediately CEASE AND DESIST from any further violations of the Securities Act or rules, individually or through Fiduciary Investment Funds, LLC, Fiduciary Investment Services, LLC, or any of his other business entities, and from offering for sale or selling in North Dakota the subject securities, or any other securities however denominated, unless and until such securities have been registered with the Department or are exempt from registration under N.D.C.C. Chapter 10-04.
2. In any offering for sale or selling securities, or effecting transactions in securities in North Dakota, the Respondents will make full disclosure of all facts material to the investment so that the offer is not misleading.
3. Respondents Mark G. Wagner, Fiduciary Investment Funds, LLC, and Fiduciary Investment Services, LLC, jointly and severally, shall pay a civil penalty of \$7,500, made payable to the North Dakota Securities Department, upon entry of this Consent Order.
4. This Consent Order shall be effective upon signature of the Commissioner.

**IN TESTIMONY WHEREOF**, witness my hand and seal this 15<sup>th</sup> day of February, 2021.



  
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Karen J. Tyler, Securities Commissioner  
North Dakota Securities Department  
600 East Boulevard Ave.  
State Capitol – Fifth Floor  
Bismarck, ND 58505-0510  
(701) 328-2910

South Dakota Orders:

**NOW, THEREFORE, IT IS ORDERED**, based on the foregoing pursuant to SDCL § 47-31B-604, that:

1. Respondent, Mark G. Wagner, shall immediately CEASE AND DESIST from any further violations of the Securities Act or rules, individually or through Fiduciary Investment Funds, LLC, Fiduciary Investment Services, LLC, or any of his other business entities, and from offering for sale or selling in South Dakota the subject securities, or any other securities however denominated, unless and until such securities have been registered with the Division of Insurance or are exempt from registration under SDCL Ch. 47-31B.
2. In any offering for sale or selling securities, or effecting transactions in securities in South Dakota, the Respondents will make full disclosure of all facts material to the investment so that the offer is not misleading.
3. Respondents Mark G. Wagner, Fiduciary Investment Funds, LLC, and Fiduciary Investment Services, LLC, jointly and severally, shall pay a civil penalty of \$7,500, made payable to the South Dakota Division of Insurance, upon entry of this Consent Order.
4. This Consent Order shall be effective upon signature of the Director.

Dated at Pierre, South Dakota this 17<sup>th</sup> day of February, 2021.

  
Larry Deiter, Director  
South Dakota Division of Insurance

I have read and understand the terms of this Consent Order and the waiver of my due process rights and voluntarily enter into this Consent Order.

Dated this \_\_\_\_\_ day of ~~January, 2021.~~

*16<sup>th</sup> day FEB, 2021.*

  
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Mark G. Wagner

The undersigned, on behalf of Fiduciary Investment Funds, LLC, represents it understands the terms of this Consent Order and the waiver of its due process rights and voluntarily enters into this Consent Order.

Dated this \_\_\_\_\_ day of ~~January, 2021.~~

*16<sup>th</sup> day FEB, 2021*

  
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Mark G. Wagner, Managing Member

The undersigned, on behalf of Fiduciary Investment Services, LLC, represents it understands the terms of this Consent Order and the waiver of its due process rights and voluntarily enters into this Consent Order.

Dated this \_\_\_\_\_ day of ~~January, 2021.~~

*16<sup>th</sup> day of FEB, 2021*

  
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Mark G. Wagner, Managing Member