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2008 bd 14 AMII: 28 EFORE THE DIRECTOR OF THE DEPARTMENT OF FINANCE

OF THE STATE OF IDAHO

4 In the matter of: 5 6 Securities Bureau, 7 Complainant, 8 vs.

Docket No.: 2008-7-10 AGREEMENT AND ORDER

STATE OF IDAHO, Department of Finance,

PAUL HORTON SMITH, SR.,

Respondent

The Director of the Department of Finance ("Director") has instituted an investigation into the conduct of PAUL HORTON SMITH, SR. ("Respondent"). Pursuant to the investigation it appears to the Director that violations of the Idaho Uniform Securities Act (2004), Idaho Code 30-14-101 et seq. have occurred. The Director and Respondent have agreed to resolve this matter without a public hearing or other adjudication. Therefore, the Director deems it appropriate and in the public interest that this Agreement and Order be entered. The Respondent consents to the entry of this Agreement and Order.

I.

FINDINGS OF FACT

Respondent is a resident of California and is and was at all times since August 22, 1. 2007, a registered investment advisor representative, CRD# 2387799, of Brookstone Capital Management, LLC, ("Brookstone") IARD# 141413, a SEC registered investment advisor.

23 2. Respondent is and was at all times at least since July 11, 2007, the owner, 24 president, and chief compliance officer of EGATE, LLC ("EGATE"), IARD# 143317, an 25 investment advisor registered in California.

1 3. Respondent is and was at all times since February 8, 2008, also a registered 2 investment advisor representative of EGATE. On July 27, 2000, the Director issued a cease and desist order (the "Order") 3 4. against Respondent relating to a series of free seminars presented by Respondent in the state of 4 5 Idaho at which Respondent offered for sale three separate investments: viatical settlements, a 6 passive investment in a pay phone scheme involving a management company known as PAYSTAR, and a passive investment in a technology company called GTI. In the Order, the 7 8 Director found that: Respondent offered for sale securities that were not registered in the state 9 a. of Idaho in violation of Idaho Code §30-1416, 10 Respondent solicited securities clients at a time that he was not registered 11 b. 12 in violation of Idaho Code §30-1406, and Respondent offered securities for sale in a manner that violated the anti-13 c. 14 fraud provisions of the Idaho Code §30-1403(2). 15 5. Respondent was served with the Order by certified mail on July 28, 2000, and signed for the receipt of the Order on August 2, 2000. The Department received Respondent's 16 payment of the \$1,000 civil penalty on October 27th, 2000, with a cover letter signed by 17 Respondent. 18 On July 7, 2008, Brookstone filed a form U4 with the Department through the 19 6. CRD system to register Respondent in the state of Idaho as an investment advisor representative. 20 Respondent's form U4 contained several statements that were false or misleading 7. 21 in a material respect. These statements are summarized below. 22 On form U4, question 14(D)(1)(a) asks whether any state regulatory 23 a. agency has found that the applicant made a false statement or omission or been dishonest, 24 25 unfair or unethical. Respondent represented that he had not, when in fact Respondent is

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the subject of the Order finding that Respondent misrepresented material facts and omitted to disclose material facts in violation of the anti-fraud provisions of the Idaho Securities Act.

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b. On form U4, question 14(D)(1)(b) asks whether any state regulatory agency has ever found the applicant to have been involved in a violation of investmentrelated regulation(s) or statute(s). Respondent represented that he had not, when in fact Respondent is the subject of the Order finding that Respondent violated three sections of the Idaho Securities Act.

c. On form U4, question 14(D)(1)(d) asks whether any state regulatory agency has ever entered a order against the applicant in connection with an investment-related activity. Respondent represented that he had not, when in fact Respondent is the subject of the Order finding that Respondent violated of the Idaho Securities Act in connection with the offer of three separate investments.

d. On form U4, question 14(D)(2)(b) asks whether the applicant has ever been the subject to any final order of a state securities commission (or any agency or officer performing like functions), that constitutes a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct. Respondent represented that he had not, when in fact Respondent is the subject of the Order finding that Respondent violated the anti-fraud provisions of the Idaho Securities Act.

8. Respondent was aware of the Order at the time the form U4 was filed with the Department of Finance.

9. Respondent is responsible for the accuracy and truthfulness of the information and affirmations contained in his form U4.

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1	10. Respondent failed to provide true and accurate information to Brookstone
2	regarding his responses to the above referenced form U4 questions.
3	11. Respondent's own investment advisor firm, EGATE, in connection with
4	Respondent's registration as an investment advisor representative in California, made two form
5	U4 filings in the last 17 months through the Investment Adviser Registration Depository. The
6	first was filed by EGATE on March 7, 2007 and the second on February 6, 2008. Neither form
7	U4 contained any reference to the Order and contained the same false or misleading responses to
8	the above referenced questions.
9	II
10	CONCLUSIONS OF LAW
11	1. The Director has jurisdiction over this matter pursuant to the Idaho Uniform
12	Securities Act (2004).
13	2. The Director has the following grounds to deny Respondent's application for
14	registration under I.C. § 30-14-412(a) because Respondent:
15	a. (d)(1) filed an application for registration that was incomplete in a
16	material respect and contained a statement that was false or misleading,
17	b. (d)(2) willfully violated or failed to comply with this chapter within the
18	previous 10 years,
19	c. $(d)(5)(B)$ is the subject of an order issued by the Department after notice
20	and opportunity for hearing,
21	d. (d)(12) is the subject of a cease and desist order issued under the
22	securities laws of the state of Idaho, and
23	e. (d)(13) has engaged in dishonest or unethical practices in the securities or
24	investment business within the previous ten years.
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Respondent violated I.C. § 30-14-505 by making or causing to be made, in a
 record filed under chapter 14 of the Idaho Code, statements that are false or misleading in a
 material respect.

IV

REMEDIES

THEREFORE, on the basis of the Findings of Fact, Conclusions of Law, and Respondent's agreement to the entry of the agreement and order, the Director finds that the following remedies are appropriate and in the public interest:

9 1. Respondent agrees to permanently cease and desist from violating the Idaho
10 Uniform Securities Act (2004) and agrees to comply with the provisions of the Idaho Uniform
11 Securities Act (2004) and rules promulgated thereunder in the future.

12 2. Respondent agrees to withdraw his application for registration as an investment
13 advisor representative within ten (10) days of the date of this order.

Respondent agrees to not, now or in the future, provide any investment advice or
sell securities in or from Idaho unless registered as a securities broker-dealer, agent, investment
advisor, or investment advisor representative to the state of Idaho.

4. Respondent agrees not to apply for registration as a securities broker-dealer,
agent, investment advisor, or investment advisor representative to the state of Idaho for at least
ten (10) years from the date of this order.

5. Respondent agrees to pay a civil penalty in the amount of \$2,500 and
investigative costs in the amount of \$500. Payment shall be made payable to the order of the
"Idaho Department of Finance."

23 6. Respondent agrees that his failure to comply with this order will result in the
24 Director bringing further legal proceedings against him.

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