

ADMINISTRATIVE PROCEEDING
BEFORE THE
SECURITIES COMMISSIONER OF MARYLAND

IN THE MATTER OF:

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TC & P TRADE
DBA HIGH CAPITAL

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Securities Division No. 2007-607

and

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DAVID BROOK,

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Respondents.

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**SUMMARY ORDER TO CEASE AND DESIST
AND ORDER TO SHOW CAUSE**

WHEREAS, the Securities Division of the Office of the Maryland Attorney General (“Division”), pursuant to the authority granted in section 11-701 of the Maryland Securities Act, Title 11, Corporations and Associations Article, Annotated Code of Maryland (2007 Repl. Vol.) (the “Securities Act” or “Act”), undertook an investigation into the securities-related activities of TC & P Trade, dba High Capital (“High Capital”) and David Brook (“Brook”) (collectively the “Respondents”); and

WHEREAS, on the basis of that investigation the Securities Commissioner (the “Commissioner”) has evidence that Respondents engaged and may continue to engage in an act or practice constituting a violation of the registration and antifraud provisions of the Securities Act and regulations; and

WHEREAS, the Commissioner has determined that immediate action against the Respondents is in the public interest;

NOW THEREFORE, pursuant to section 11-701.1(a) of the Securities Act and regulations under the Act, it is hereby:

ORDERED, that TC & P Trade and David Brook, their affiliates, officers, directors, employees, agents and anyone else involved in the offer or sale of investments in or through the Respondents, immediately cease and desist from soliciting investment in, offering or selling securities in the form of equity, fixed income, hedge and liquidity management products, and other investment funds in or from Maryland, and offering investment advice in or from Maryland, pending a hearing in this matter or until such time as the Commissioner modifies or rescinds this Order. Willful violation of this Order is punishable as a criminal offense under section 11-705 of the Securities Act by a fine not exceeding \$50,000 or imprisonment not exceeding three years, or both.

IT IS FURTHER **ORDERED** that each Respondent show cause why a final order should not be issued against him or it, ordering that Respondent to cease and desist violating the Securities Act, assessing that Respondent the statutory penalty of \$5,000 per violation of the Securities Act, and permanently barring that Respondent from engaging in the securities and investment advisory business in or from Maryland.

I. JURISDICTION

1. The Commissioner has jurisdiction in this proceeding pursuant to section 11-701.1 of the Securities Act.

II. RESPONDENTS

2. TC & P Trade, dba High Capital describes itself as an “international investment group operating on US and world stock markets under the name of High Capital.” Its European office and headquarters is at Borivojova 35, Prague 3, 13000 Czech Republic. As recently as

December 11, 2007, its sole U.S. office was in Baltimore, Maryland. It now appears that it has additional U.S. offices in Connecticut, Tennessee, Utah and New York. TC & P Trade is not licensed to do business in Maryland.

3. David Brook appears to be a control person for TC & P Trade, dba High Capital. He is described as High Capital's "head advisor" and supervises TC & P Trade's Maryland representative. He is based in the Czech Republic, but uses a Maryland telephone number with a 240 area code.

III. STATEMENT OF FACTS

On information and belief, the Commissioner alleges the following as the basis for this Order.

4. High Capital solicits investors through the internet. The website provides the telephone numbers for five U.S. offices where a potential investor can seek information about the programs, including application forms and bank account information for investment monies.

5. High Capital claims that it started its activity in 1993, focusing mainly on U.S. and European stock markets. According to the website, High Capital decided to go public in 2003 and now has more than 10,000 investors from 37 countries.

6. High Capital claims to have a team of investment professionals who manage various funds, using unique techniques of asset allocation and unique trading strategy that they have developed. It offers various investment products, including products that offer fixed income or variable income, stock day trading and "drawdown protection." High Capital helps "clients all over the world manage and move their financial assets. . . . Company management is aimed at becoming a leading global provider of investment management products and services" It provides

“[a]ssistance from professional financial consultants.”

7. The website promises “products with above average fixed rates of return” and “products that provide high returns with no loss possibility,” and “above-average returns without above-average risk.” All of the variable income programs are described as having “drawdown protection,” such that the “only risk investor undertakes is the risk of not receiving any profit” because losses are covered from the company’s insurance fund or by the trader. Brook has told one of his agents that High Capital’s investments in real estate have no chance of significant drawdown, so that “our investors can always get their money back in full.” Allegedly, returns are “tax deferred (no matter under which plan you are investing).”

8. In particular, High Capital has advertised its fixed return program as having four options. A one-year plan provides 10% per annum return; the three-year plan returns 18% per annum; the five-year plan returns 32% per annum; and the eight-year plan returns 35% per annum.

9. High Capital’s website sets out the past performance for several of its variable return programs and funds:

Program	2008	2007	2006	Assets Under Management
Stock Day Trading	.63%	136.39%	128.41%	\$3,049,946
Micro Cap Stocks	3.56%	61.89%	68.47%	\$842,132
Small Cap Stocks	2.7%	31.93%	34.62%	\$1,210,733
Mid Cap Stocks	.37%	34.14%	9.1%	\$1,931,389
Large Cap Stocks	11.71%	8.95%	13.29%	\$1,643,054

10. High Capital has not filed with the S.E.C. a registration statement or other reports for its funds and other programs. Thus, the performance figures provided above have not been subjected to regulatory oversight or review.

11. High Capital solicits new representatives to provide information to its U.S. customers.

It promises to pay its representatives a percent of customer's profit.

12. High Capital has made at least 30 offers from Maryland of its investment programs and funds to specific investors. At least one of the potential investors resides in Maryland.

13. High Capital's representatives in the United States have told a member of the Division that its programs and products are registered and have complied with all applicable regulatory requirements.

14. In December 2007, Brook told a member of the Division that High Capital did not have to put a disclaimer on its website because it was not offering securities from Maryland.

15. The website, however, later included a disclaimer that it does not contain an offer to sell or buy securities. The disclaimer does not comply with the requirements of an order issued by the Maryland Securities Commissioner on March 18, 1998, that excludes certain internet communications from the scope of the phrase "transacting business" for the purpose of determining whether a broker-dealer or agent and an investment adviser or investment adviser representative must be registered in Maryland.

16. High Capital has not informed investors that its investment programs and funds and its representatives are not registered or exempt from registration in Maryland. High Capital's offer of investment programs and funds also fails to state other material facts necessary in order to make the disclosure not misleading, such as relevant risk factors, current financial information, detailed uses of the proceeds, competition, and management experience and compensation, among other material disclosures.

17. The investments in High Capital's programs and funds that have been offered and sold by the Respondents are "securities" within the meaning of section 11-101 of the Securities Act.

18. The Division has no record of securities registration for an offering by or in the name of TC & P Trade, dba High Capital; nor has any claim of exemption or status as a federal-covered security been made with the Division with respect to any such offering.

19. TC & P Trade, dba High Capital is not registered in Maryland as a securities broker-dealer or as an investment adviser.

20. The persons that High Capital has working for it at its U.S. offices do not appear to be registered to offer and sell securities in Maryland. Mary Ford, who operates the Maryland office, is not a licensed securities agent.

21. David Brook is not registered in Maryland as a securities broker-dealer, a broker-dealer agent, an investment adviser or investment adviser representative.

COUNT I
(Offer and Sale of Unregistered Securities)

WHEREAS, section 11-501 of the Securities Act makes it unlawful for any person to offer or sell a security in this state unless the security is registered, is exempt from registration under the Act, or is a federal covered security; and

WHEREAS, the investments in programs and funds that TC & P Trade, dba High Capital have offered and sold are “securities” within the meaning of section 11-101 of the Securities Act; and

WHEREAS, there is no record of registration, a claim of exemption from registration, or qualification as a federal covered security filed with the Division by or on behalf of TC & P Trade, dba High Capital; and

WHEREAS, Respondents have offered and sold securities in violation of the registration requirements of section 11-501 of the Securities Act;

NOW, THEREFORE, IT IS HEREBY **ORDERED** that Respondents, their officers, directors, employees, agents and anyone else involved in the offer or sale of the TC & P Trade, dba High Capital securities, cease and desist from offering and selling unregistered securities in or from Maryland, pending a hearing in this matter or until such time as the Commissioner modifies or rescinds this Order. Willful violation of this Order could result in criminal penalties under section 11-705 of the Securities Act.

IT IS FURTHER **ORDERED** that Respondents show cause why a final order should not be issued against them, ordering Respondents to cease and desist from engaging in the offer and sale of securities in violation of section 11-501 of the Act, assessing Respondents the statutory penalty of \$5,000 per violation of section 11-501, and permanently barring Respondents from the securities and investment advisory business in Maryland.

COUNT II
(Unregistered Broker-Dealer and/or Agent)

WHEREAS, section 11-401 of the Securities Act makes it unlawful for any person to transact business in the offer and sale of securities in this state as a broker-dealer or broker-dealer agent, unless that person is registered as such pursuant to the Securities Act; and

WHEREAS, the investments in TC & P Trade, dba High Capital programs and funds that have been offered and sold by the Respondents are “securities” within the meaning of section 11-101 of the Securities Act; and

WHEREAS, the Securities Act defines “broker-dealer” to mean a person engaged in the business of effecting transactions in securities for the account of others or for his own account; and

WHEREAS, the Securities Act defines “agent” to mean an individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect the purchase or

sale of securities; and

WHEREAS, TC & P Trade, dba High Capital acted as a broker-dealer and engaged in effecting transactions in securities in this state; and

WHEREAS, Brook acted as a broker-dealer or agent of TC & P Trade, dba High Capital and engaged in effecting transactions in securities in the form of investments in stock funds and programs in this state; and

WHEREAS, TC & P Trade, dba High Capital is not registered with the Division as a broker-dealer to transact securities business within this state; and

WHEREAS, Brook is not registered with the Division as a broker-dealer or an agent to transact securities business within this state;

NOW, THEREFORE, IT IS HEREBY **ORDERED** that Respondents, their officers, directors, employees, agents and anyone else involved in the offer or sale of the TC & P Trade, dba High Capital securities, cease and desist from acting as an unregistered broker-dealer or agent in this state pending a hearing in this matter or until such time as the Commissioner modifies or rescinds this Order. Willful violation of this Order could result in criminal penalties under section 11-705 of the Securities Act.

IT IS FURTHER **ORDERED** that Respondents each show cause why a final order should not be issued against it, ordering Respondents to cease and desist from engaging in the offer and sale of securities or the offer of investment advice in violation of section 11-401 of the Act, assessing Respondents a statutory penalty of \$5,000 per violation of section 11-401, and permanently barring Respondents from the securities and investment advisory business in Maryland.

COUNT III

(Employment of an Unregistered Agent for Sale of Securities)

WHEREAS, the Securities Act defines “broker-dealer” to include a person engaged in the business of effecting transactions in securities for the account of others or for his own account; and

WHEREAS, the Securities Act defines “agent” to mean an individual other than a broker-dealer, including a partner, officer or director of an issuer, who represents a broker-dealer or issuer in effecting or attempting to effect the purchase or sale of securities; and

WHEREAS, the Securities Act defines “issuer” to be a person who issues or proposes to issue a security; and

WHEREAS, the investments in programs and funds that Respondents offered to investors are “securities” under the Act; and

WHEREAS, TC & P Trade, dba High Capital was an issuer or a broker-dealer in offering securities to the public via the internet and its representatives in Maryland or to Maryland residents; and

WHEREAS, the Securities Act makes it unlawful for any broker-dealer or issuer to employ in this state an agent for the offer or sale of securities unless the agent is registered pursuant to the Act; and

WHEREAS, Brook and Ford are employed by TC & P Trade, dba High Capital as its agents for the offer and sale of securities and have operated in Maryland, although they are not registered with the Division;

NOW, THEREFORE, IT IS HEREBY **ORDERED** that Respondents, their officers, directors, employees, agents and anyone else involved in the offer or sale of the TC & P Trade, dba High Capital securities, cease and desist from employing unregistered agents in connection with the

offer or sale of securities, in violation of section 11-402 of the Securities Act, pending a hearing in this matter or until such time as the Commissioner modifies or rescinds this Order. Willful violation of this Order could result in criminal penalties under section 11-705 of the Securities Act.

IT IS FURTHER **ORDERED** that Respondents show cause why a final order should not be issued against them, ordering them to cease and desist from employing unregistered agents in connection with the offer and sale of securities or the offer of investment advice in violation of section 11-402 of the Act, assessing Respondents a statutory penalty of \$5,000 per violation of section 11-402, and permanently barring Respondents from the securities and investment advisory business in Maryland.

COUNT IV

(Unregistered Investment Advisory Activity)

WHEREAS, section 11-101(h)(1)(i) of the Securities Act defines “investment adviser” to include a person who, for compensation, engages in the business of advising others as to the value of securities or as to the advisability of investing in, purchasing, or selling securities; and

WHEREAS, section 11-101(h)(1)(ii)(1) of the Securities Act further defines “investment adviser” to include a person who, for compensation, provides, or offers to provide, directly or indirectly, financial and investment counseling or advice, on a group or individual basis; and

WHEREAS, Section 11-401 of the Securities Act makes it unlawful for any person to transact business in this State as an investment adviser unless that person is registered as such; and

WHEREAS, Respondent TC & P Trade, dba High Capital transacted business as an investment adviser in this State by advising clients regarding securities and by providing financial and investment counseling or advice, for compensation; and

WHEREAS, Respondent TC & P Trade, dba High Capital is not registered with the Division

as an investment adviser, in violation of Section 11-401 of the Securities Act;

NOW, THEREFORE, IT IS HEREBY **ORDERED** that Respondent TC & P Trade, dba High Capital, its officers, directors, employees, agents and anyone else involved in the offer of investment advice in connection with TC & P Trade, dba High Capital securities, cease and desist from acting as an unregistered investment adviser in this state pending a hearing in this matter or until such time as the Commissioner modifies or rescinds this Order. Willful violation of this Order could result in criminal penalties under section 11-705 of the Securities Act.

IT IS FURTHER **ORDERED** that Respondent TC & P Trade, dba High Capital show cause why a final order should not be issued against it, ordering TC & P Trade, dba High Capital to cease and desist from offering investment advice in violation of section 11-401 of the Act, assessing it a statutory penalty of \$5,000 per violation of section 11-401, and permanently barring that Respondent from the securities and investment advisory business in Maryland.

COUNT V

(Material Misrepresentations or Omissions in Sale of Securities)

WHEREAS, section 11-301 of the Securities Act prohibits any person, in connection with the offer, sale or purchase of any security, directly or indirectly to: (1) employ any device, scheme or artifice to defraud; (2) make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading; or (3) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit on any person; and

WHEREAS, the investments in programs and funds offered or sold by TC & P Trade or High Capital are “securities” within the meaning of section 11-101 of the Securities Act; and

WHEREAS, in connection with the offer and sale of the TC & P Trade, dba High Capital

securities, the Respondents misrepresented material facts, including Respondents' representation that:

1. its programs and products are registered and have complied with all applicable regulatory requirements; and
2. High Capital did not have to put a disclaimer on its website because it was not offering securities from Maryland; and

WHEREAS, in connection with the offer and sale of the TC & P Trade, dba High Capital securities, Respondents omitted material facts that were necessary to make statements that were made not misleading, including failure to state:

1. that its investment programs and funds and its representatives are not registered or exempt from registration; and
2. such facts as relevant risk factors, current financial information, detailed uses of the proceeds, competition, and management experience and compensation;

NOW, THEREFORE, IT IS HEREBY **ORDERED** that Respondents, their officers, directors, employees, agents and anyone else involved in the offer or sale of the TC & P Trade or High Capital securities, cease and desist from engaging in misrepresentations and omissions in connection with the offer or sale of securities, in violation of section 11-301 of the Securities Act, pending a hearing in this matter or until such time as the Commissioner modifies or rescinds this Order. Willful violation of this Order could result in criminal penalties under section 11-705 of the Securities Act.

IT IS FURTHER **ORDERED** that Respondents show cause why a final order should not be issued against them, ordering Respondents to cease and desist from engaging in the offer and sale

of securities or the offer of investment advice in violation of section 11-301 of the Act, assessing them a statutory penalty of \$5,000 per violation of section 11-301, and permanently barring Respondents from the securities and investment advisory business in Maryland.

COUNT VI

(Fraud in Investment Advisory Activities; Dishonest and Unethical Practices)

WHEREAS, Section 11-302(a) of the Securities Act makes it unlawful for any person who acts as an investment adviser under Section 11-101(h) of the Securities Act to:

- (1) employ any device, scheme or artifice to defraud;
- (2) engage in any act, practice or course of business which operates or would operate as a fraud or deceit on the other person;
- (3) engage in dishonest or unethical practices as the Commissioner may define by rule;

WHEREAS, COMAR 02.02.05.03B provides that an investment adviser is a fiduciary and has a duty to act primarily for the benefit of its clients, and sets forth practices that are included among those prohibited as dishonest or unethical; and

WHEREAS, COMAR 02.02.05.03B(12) prohibits an investment adviser from guaranteeing a client that a certain or specific result will be achieved, for example, gain or no loss, as a result of the advice that will be rendered; and

WHEREAS, Respondent TC & P Trade, dba High Capital engaged in a dishonest or unethical practice by promising investors that its investment programs and funds provide “above average fixed rates of return;” “products that provide high returns with no loss possibility;” “unique techniques of asset allocation that can deliver above-average returns without above-average risk;” variable income programs such that the “only risk investor undertakes is the risk of not receiving any profit;” and real estate investments with no chance of significant drawdown, so that “our investor

can always get their money back in full;” and

WHEREAS, Respondent engaged in fraud in his investment advisory activities in violation of Section 11-302(a) of the Securities Act and COMAR .02.02.05.03;

NOW, THEREFORE, IT IS HEREBY **ORDERED** that Respondent TC & P Trade, dba High Capital, its officers, directors, employees, agents and anyone else involved in providing investment advice, cease and desist from engaging in fraud in connection with the offer of investment advice, in violation of section 11-302 of the Securities Act and COMAR .02.02.05.03, pending a hearing in this matter or until such time as the Commissioner modifies or rescinds this Order. Willful violation of this Order could result in criminal penalties under section 11-705 of the Securities Act.

IT IS FURTHER **ORDERED** that Respondent TC & P Trade, dba High Capital show cause why a final order should not be issued against it, ordering it to cease and desist from offering investment advice in violation of section 11-302 of the Act, assessing it a statutory penalty of \$5,000 per violation of section 11-302, and permanently barring TC & P Trade, dba High Capital from the securities and investment advisory business in Maryland.

**REQUIREMENT OF ANSWER AND
NOTICE OF OPPORTUNITY FOR HEARING**

_____ IT IS FURTHER **ORDERED**, pursuant to section 11-701.1 of the Securities Act and the Code of Maryland Regulations (“COMAR”) 02.02.06.06, that each Respondent shall file with the Securities Commissioner a written Answer to this Order within fifteen days of service of the Order. The Answer shall admit or deny each factual allegation in the Order and shall set forth affirmative defenses, if any. A Respondent without knowledge or information sufficient to form a belief as to the truth of an allegation shall so state.

The Answer also shall indicate whether the Respondent requests a hearing. A hearing will be scheduled in this matter if one is requested in writing. Failure by any Respondent to file a written request for a hearing in this matter shall be deemed a waiver by that Respondent of the right to such a hearing.

Failure of a Respondent to file an Answer or a request for a hearing shall result in entry of a final order directing that Respondent permanently to cease and desist from violation of the Securities Act, and imposing the sanctions sought in this Order.

SO ORDERED:

**Commissioner's signature
on file with original document**

MELANIE SENTER LUBIN
SECURITIES COMMISSIONER

February 25, 2008