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Attorney for Securities Department

BEFORE THE STATE AUDITOR;  
EX-OFFICIO COMMISSIONER OF SECURITIES AND INSURANCE  
HELENA, MONTANA

IN THE MATTER OF:	)	Case No.: I 10-16-06-241
	)	
NICHOLAS RICHARD CLADIS, individually and in	)	NOTICE OF PROPOSED AGENCY
his capacity as a registered securities salesperson and	)	DISCIPLINARY ACTION and
investment adviser representative,	)	OPPORTUNITY FOR HEARING
	)	
Respondent.	)	
	)	

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Staff of the Securities Department (Department) of the office of the State Auditor as Commissioner of Securities of the State of Montana (Commissioner), pursuant to the authority of the Securities Act of Montana, §§30-10-101, *et seq.*, MCA (2005), is proposing to the Commissioner that he take specific action against NICHOLAS RICHARD CLADIS, individually and in his capacity as a registered securities salesperson and investment adviser representative, for violations of the Montana Securities Act. The Commissioner has authority to take such action under the provisions of §§ 30-10-102, 30-10-107, 30-10-201, 30-10-301, 30-10-304, 30-10-305, and 30-10-309, (2005) MCA.

In particular, the Department's staff is recommending specific action against Nicholas Richard Cladis including imposition of appropriate fines and appropriate restitution, with interest, pursuant to the provisions of the Montana Securities Act.

Service of process is pursuant to §30-10-107 (8), (2005) MCA.

### REASONS FOR ACTION

There is probable cause to believe that the following facts, if true, justify and support such specific action.

### ALLEGATIONS

1. The time period relevant to this action is November 1, 2001 through October 31, 2006.
2. Nicholas Richard Cladis (Cladis) was registered as a securities salesperson and an investment advisor representative in the State of Montana from at least May 1976 through October 10, 2006. During this period Cladis worked for UBS/PaineWebber in its Billings, Montana branch office. UBS/Paine Webber is currently known as UBS Financial Services. On or about October 10, 2006, UBS Financial Services (UBS) terminated Cladis' employment as a securities salesperson and an investment advisor representative in Montana.
3. In April 2001 Cladis was the subject of a customer complaint while employed by UBS alleging unauthorized use of discretion in the customer's profit-sharing plan, unsuitable recommendations and misrepresentation. The customer alleged damages of \$550,000 and the matter was settled for \$75,000. In October 2001, Cladis was the subject of another customer complaint alleging breach of fiduciary duty, suitability, misrepresentation, fraud, negligence, failure to execute orders and alleged damages of \$200,000. This matter was settled for \$41,865. In November 2004 Cladis was the subject of a three-party complaint alleging negligence,

constructive fraud, fraudulent concealment, misrepresentations, breach of fiduciary duty, unsuitability, unauthorized trading with alleged damages of \$1,600,000. The matter was settled for \$272,000. In August 2006 Cladis was the subject of another complaint alleging breach of fiduciary duty, misrepresentation, negligence, fraud, excessive and unauthorized trading, and unsuitable recommendations with alleged damages of \$1,186,000. This matter is not resolved.

4. On or about October 9, 2006 Cladis disclosed to UBS that he paid margin calls for several of his customers in violation of UBS policy. UBS subsequently investigated Cladis' claims.

5. On at least eighteen (18) occasions Cladis deposited his own personal funds totaling at least \$252,680.51 into a customer account belonging to an individual the Department identifies herein as Customer 1. These funds were deposited into Customer 1's margin account to cover margin calls during the period January 2001 through March 2005. Cladis either deposited funds directly into Customer 1's margin account by personally purchasing a cashier's check identifying Customer 1 as the remitter or by giving Customer 1 Cladis' own personal check and, thereafter, Customer 1 would write a personal or business check to UBS to cover the margin call. Bank records indicate Customer 1 repaid Cladis \$30,000 for these personal payments toward losses in this margin account.

6. On at least twenty-one (21) occasions, Cladis deposited his own personal funds totaling at least \$140,300 into a customer account belonging to an individual the Department identifies herein as Customer 2. These funds were deposited into Customer 2's margin account to cover margin calls during the period February 2001 through October 2002. Cladis either deposited funds directly into Customer 2's margin account by personally purchasing a cashier's check identifying Customer 2 as the remitter or by giving Customer 2 Cladis' own personal

check and, thereafter, Customer 2 writing a personal check to UBS to cover the margin call. Bank records indicate Customer 2 repaid Cladis \$15,000 for these personal payments toward losses in this margin account.

7. On at least five (5) occasions Cladis deposited his own personal funds totaling approximately \$69,500 into a customer account belonging to an individual the Department identifies herein as Customer 3. These funds were deposited into Customer 3's margin account to cover margin calls in September 2001. Cladis purchased cashier's checks identifying Customer 3 as the remitter and deposited the checks into Customer 3's margin account. It does not appear Customer 3 has repaid Cladis for these personal payments toward losses in this margin account.

8. On at least six (6) occasions Cladis deposited his own personal funds totaling at least \$54,050 into a customer account belonging to an individual the Department identifies herein as Customer 4. These funds were deposited into Customer 4's margin account to cover margin calls in September 2001. Cladis purchased cashier's checks identifying Customer 4 as the remitter and deposited the checks into Customer 4's margin account. It does not appear Customer 4 has repaid Cladis for these personal payments toward losses in this margin account.

9. On or about February 26, 2002 Cladis borrowed \$45,000 from his UBS clients the Department identifies herein as Customers 5 and 6. The loan included an interest rate of 7% interest. On or about October 2, 2002 Cladis made one \$500 payment on the loan. To date, the loan has an outstanding principal balance due of \$45,500.

10. During the period August 2001 through May 2002, on at least five separate occasions, Cladis borrowed an aggregate total of \$415,000 from his UBS clients the Department identifies herein as Customers 7 and 8. From January 2003 through August 2006 Cladis has

repaid approximately \$370,300 on the loans. To date, the loan has an outstanding principal balance due of \$44,700.

11. On or about January 25, 2001 Cladis borrowed \$31,000 from his UBS client the Department identified herein as Customer 9. Cladis has made no payments on this loan.

12. On or about September 22, 2006 the Department sent a letter of request to UBS and to E-Docs USA, Inc. (E-Docs) regarding the offer and sale of securities of E-Docs to Montana customers. In its response dated September 25, 2006 UBS disclosed that it was unaware of any Montana investor purchasing or selling investments in E-Docs; it was unaware of any of its salespersons offering or selling investments in E-Docs; and it was unaware of any compensation paid to any of its salespersons offering or selling investments in E-Docs.

13. Cladis provided the Department with a letter dated September 25, 2006 indicated he and his wife invested in E-Docs in late 1999 or early 2000 and that the investment was solicited by Denis G. Colomb and Rick Orizotti, both principals of E-Docs. Cladis disclosed six Montana residents as other Montana investors who may have purchased E-Docs. Cladis stated that he did not know the date or amount of any such investments by these individuals. Cladis indicated what he "believed" to be their investment amounts in his response to the Department's inquiry. Included in this response, Cladis's attorney, David A. Zisser, stated that "Mr. Cladis did not engage in any solicitations [in E-Docs], and, therefore, did not rely on any exemptions under federal or Montana securities laws."

14. Cladis' former sales assistant, told the Department that both Cladis and Patrick Phillip Davison solicited investors to purchase E-Docs at the UBS Billings branch office. Further, Cladis' former assistant was aware that certain specific UBS customers had invested in

E-Docs. One of those UBS customers identified has also confirmed with the Department that the customer was solicited by Cladis to invest in E-Docs.

### CONCLUSIONS OF LAW

1. The Montana State Auditor is the Commissioner of Securities (Commissioner) pursuant to §§30-10-107 and 2-15-1901, MCA.

2. The Commissioner has jurisdiction over this matter pursuant to §§30-10-102, 30-10-107, 30-10-201, 30-10-301, 30-10-304, 30-10-305, and 30-10-309, MCA.

3. The administration of the Securities Act of Montana, §30-10-101, *et seq.*, MCA, and is under the supervision and control of the Securities Commissioner, pursuant to §30-10-107, MCA.

4. The Commissioner shall administer the Securities Department to protect investors, pursuant to §30-10-102, MCA.

5. Cladis was a Montana registered salesperson as defined at §30-10-103(20), MCA, and a registered investment adviser representative as defined at §30-10-103(12)(a), MCA, and was so registered pursuant to §30-10-201, MCA, during the time period from October 11, 2001 to October 10, 2006.

6. Cladis engaged in the unethical practice of lending money to Customers 1, 2, 3 and 4, as identified in the body of this complaint, when he deposited his personal funds into their accounts to cover margin calls or when he reimbursed his customers the amount of money due on margin calls in violation of §30-10-201(13)(g), MCA and ARM §6.10.126(2)(a).

7. Cladis engaged in the unethical practice of borrowing money from Customers 5, 6, 7, 8 and 9, as identified in the body of this complaint, when he borrowed money from them in violation of §30-10-201(13)(g), MCA and ARM 6.10.126(2)(a).

8. Cladis engaged in sharing directly or indirectly in profits or losses in the accounts of Customers 1, 2, 3 and 4, as identified in the body of this complaint, when he gave them collectively at least \$516,530.51 in funds to cover margin calls due market losses in violation of §30-10-201(13)(g), MCA and ARM §6.10.126(2)(d).

9. Cladis engaged in an act, practice or course of business that operated or would operate as a fraud or deceit when, on at least fifty (50) separate occasions during the time period January 2001 through March 2005 he paid the margin calls for at least four of his customers with his personal funds, in violation of §30-10-301(1)(c), MCA.

10. Cladis engaged in an act, practice or course of business that operated or would operate as a fraud or deceit when he borrowed from his customers 5, 6, 7, 8 and 9 a collective total of \$491,000 in violation of §30-10-301(1)(c), MCA.

11. Cladis violated §30-10-302, MCA when he failed to comply with a condition imposed by the Commissioner when he filed his written response to the Department's inquiry indicating he had not solicited any investors in E-Docs.

#### **RELIEF SOUGHT**

1. Order Cladis to pay restitution to the victims in this case, including 10% interest from the date of the wrong-doing, pursuant to § 30-10-309, MCA;

2. Order Cladis to pay fines not to exceed \$5,000 for each identifiable violation of § 30-10-301(1)(c), MCA, pursuant to § 30-10-305(3), MCA;

3. Order Cladis to pay fines not to exceed \$5,000 for each identifiable violation of § 30-10-201 (13) (g), MCA, and ARM § 6.10.126, pursuant to §30-10-305(3), MCA;

4. Order Cladis to pay a fine not to exceed \$5,000 for violating § 30-10-201, MCA, pursuant to § 30-10-201 (18), MCA;

5. Order Cladis to pay fines not to exceed \$5,000 for each identifiable violation of § 30-10-302, MCA, pursuant to § 30-10-305 (3), MCA; and

6. Any other such relief allowed by law or required by justice.

### **PUBLIC INTEREST**

For any and all of the reasons set forth above, it is in the public interest and will protect Montana investors to:

1. Issue a cease and desist order barring Cladis from further violations of the Act;

2. Order Cladis to pay administrative fines in an amount and upon such terms and conditions as supported by the evidence and determined at hearing of this matter;

3. Order Cladis to pay restitution to his Customers in an amount and upon such terms and conditions, including the statutory 10% per annum interest on the losses his Customers incurred, as supported by the evidence and determined at hearing of this matter; and

4. Take such other actions which may be in the public interest and necessary and appropriate for the protection of Montana investors.

### **STATEMENT OF RIGHTS**

You are entitled to a hearing to respond to this notice, present evidence and arguments on all issues involved in this case. You have a right to be represented by an attorney at any and all stages of this proceeding. You may demand a formal hearing before a hearing examiner appointed by the Commissioner pursuant to the Montana Administrative Procedure Act, §§2-4-601, *et seq.* MCA, including § 2-4-631, MCA. If you demand a hearing, you will be given notice of the time, place and the nature of the hearing.

If you want to contest the proposed action under the jurisdiction of the Commissioner, you must advise the Commissioner within fifteen (15) days of the date you receive this notice.

You must advise the Commissioner of your intent to contest the proposed action by writing to Roberta Cross Guns, Special Assistant Attorney General, State Auditor's Office, 840 Helena Avenue, Helena, Montana 59601. Your letter must clearly indicate whether you demand a hearing, or whether you waive formal proceedings and, if so, what informal proceedings you prefer for disposition of this case. Pursuant to §2-4-603(2), MCA, you may not request to proceed informally if the action could result in suspension, revocation or any other adverse action against a professional license. Should you request a hearing on the matters raised in this Notice, a hearing must be held within 45 days of the request, unless postponed by mutual consent of the parties, pursuant to § 33-1-701 (2), MCA.

Should you request a hearing, you have the right to be accompanied, represented, and advised by counsel. If the counsel you choose has not been admitted to practice law in the state of Montana, he or she must comply with the requirements of Application of American Smelting and Refining Co., (1973), 164 Mont. 139, 520 P.2d 103.

#### **CONTACT WITH SECURITIES COMMISSIONER'S OFFICE**

If you have questions or wish to discuss this matter, please contact Roberta Cross Guns, legal counsel for the State Auditor, at 840 Helena Avenue, Helena, MT, 59601, (406)-444-2040 or, within Montana, (800)-332-6148. If an attorney represents you, please make any contacts with this office through your attorney.

#### **POSSIBILITY OF DEFAULT**

Failure by Respondent to give notice or to advise of Respondent's demand for a hearing or informal procedure within fifteen (15) days, will result in the entry of a default order imposing the disciplinary sanctions against Respondent, without further notice to Respondent, pursuant to

§6.2.101, Administrative Rules of Montana and the Attorney General's Model Rule 10, ARM  
§1.3.214.

DATED this 4<sup>th</sup> day of December, 2006.

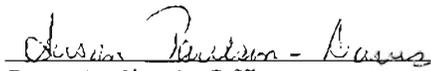
JOHN MORRISON  
State Auditor and ex-officio  
Commissioner of Securities

By: Roberta Cross Guns  
Roberta Cross Guns  
Special Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that I mailed a true and correct copy of the Notice of Proposed Agency Disciplinary Action and Opportunity for Hearing to the following person by depositing the same in the U.S. Mail on this 4th day of December, 2006.

Mark Parker  
Attorney at Law  
401 N. 31<sup>st</sup>, Suite 805  
Billings, MT 59101

  
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State Auditor's Office