

FINDINGS OF FACT

1. The Commissioner of the Tennessee Department of Commerce and Insurance (“Commissioner”) is responsible for the administration of the Act. The Division, pursuant to Tenn. Code Ann. § 48-1-115, is the lawful agent through which the Commissioner discharges this responsibility.

2. Tenn. Code Ann. § 48-1-116 establishes that the Commissioner may execute Orders as are necessary to carry out the Act when the Commissioner finds that the action is in the public interest, necessary for the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act.

3. Respondent Bieberitz is an individual with the last known address of 5757 Edgmon Road, Ooltewah, TN 37363.

4. Respondent Blue Sky is an unincorporated entity with the last known address of 5757 Edgmon Road, Ooltewah, TN 37363. Respondent Blue Sky is not currently, nor has it ever been, registered with the Tennessee Secretary of State’s office as a legal entity conducting business in the State of Tennessee.

5. Respondent TMB is an unincorporated entity with no known address. Respondent TMB is not currently, nor has it ever been, registered with the Tennessee Secretary of State’s office as a legal entity conducting business in the State of Tennessee.

6. Respondent Bieberitz is doing business as and under the names of Blue Sky Wealth Solutions and TMB Group (aka TMB Consulting).

7. On or about January 8, 2024, the Division received a complaint regarding an alleged cryptocurrency scam operated by the Respondents.

8. The Division received copies of various emails sent to the complainant by the

Respondents regarding the offering of unregistered securities by the Respondents.

9. Respondent Bieberitz emailed investors on behalf of Respondent Blue Sky on or about December 4, 2023, advertising the “Flex Plan” which offered a “Huge Bonus 200% ROI offer” for deposits to a December 15th contract. Specifically, the communication claimed “For every deposit of any amount from \$100+ sent in from now until December 11, you will receive 200% Profit and airdropped Capital and ROI back to your personal wallet. (Payments made from January 15-17).”

10. On another occasion, Respondent Bieberitz solicited the complainant with a document requesting investor funds with a deadline of January 14, 2024, stating an entry level minimum of \$100 and “each deposit contract runs for 30 days with a potential 50% gain.”

11. Respondent TMB has an internet website under the link <https://www.tmbconsulting.biz>. Respondent TMB’s website offered personalized financial plans as well as assistance in managing assets to reduce financial risk. The website currently cannot be reached.

12. Respondent TMB’s website lists Respondent Bieberitz as a member of the Board of Advisors and that he has been “involved in the investing and consulting community for over 10 years.” Additionally, Respondent TMB’s website states “As consultants, the team has successfully connected over 400 clients to advantageous investing opportunities.” The website offers personalized financial plans “in addition to initial and ongoing investments” and assisting with managing assets and reducing financial risk and “safeguard dreams [...] protect assets they have worked so hard to accumulate”.

13. In or about November 2022, the State of California Department of Financial Protection and Innovation (“DFPI”) issued a Desist and Refrain Order against NovaTech Ltd. a/k/a

NovaTech, Ltd., NovaTech Advisors, LLC, NovaPay, LLC, and NovaTrading OÜ (collectively, “NovaTech”) for the selling of unregistered securities in the State of California and for making untrue statements of material fact and material omissions to investors and potential investors.

14. As part of its solicitation efforts, NovaTech rewarded investors by paying referral bonuses for inducing others to send money to NovaTech.

15. Respondent Bieberitz took advantage of NovaTech’s referral program and referred and/or sponsored twenty-eight (28) investors, mostly in the United States from June 10, 2022, to February 10, 2023.

16. On February 8, 2024, Behind MLM, an online fraud newsletter, profiled Bieberitz in an article and characterized him as a “serial promoter of Ponzi schemes.” The article states, “Circa 2020, Bieberitz was targeting vulnerable retirees” and provided a screenshot where he solicited seniors.

17. The Respondents are not and have never been registered with the Division as a broker-dealer, agent, investment adviser, or investment adviser representative.

18. None of the products offered by the Respondents, including but not limited to the “Flex Plan” have ever been registered with the Division as a security.

APPLICABLE LAW

19. Tenn. Code Ann. § 48-1-102(4) states in pertinent part:

“Broker-dealer” means any person engaged in the business of effecting transactions in securities for the account of others, or any person engaged in the business of buying or selling securities issued by one (1) or more other persons for such person's own account and as part of a regular business rather than in connection with such person's investment activities. “Broker-dealer” does not include:

- (A) Issuers, except to the extent provided in § 48-1-110(f);
- (B) An agent;
- (C) An institutional investor;
- (D) A person who has no place of business in this state and who is registered as a broker-dealer with the securities and exchange commission or the

Financial Industry Regulatory Authority (FINRA) or any successor regulatory entity if:

- (i) The person effects transactions in this state exclusively with or through:
 - (a) The issuers of the securities involved in the transactions;
 - (b) Other broker-dealers; or
 - (c) Institutional investors; or
- (ii) During any period of twelve (12) consecutive months, the person does not effect more than fifteen (15) transactions in securities from, in, or into this state (other than to persons specified in subdivision (4)(D)(i)); or
- (E) Such other persons not within the intent of this subdivision (4) as the commissioner may by rule exempt from this definition as not in the public interest and necessary for the protection of investors.

20. Tenn. Code Ann. § 48-1-102(3) states in pertinent part:

“Agent” means any individual, other than a broker-dealer, who represents a broker-dealer in effecting or attempting to effect purchases or sales of securities from, in, or into this state. A partner, officer, director, or manager of a broker-dealer, or a person occupying similar status or performing similar functions, is an agent only if such person otherwise comes within this definition or receives compensation specifically related to purchases or sales of securities from, in, or into this state. “Agent” does not include such other persons not within the intent of this subdivision (3) as the commissioner may, by rule, exempt from this definition as not in the public interest and necessary for the protection of investors;

21. Tenn. Code Ann. § 48-1-102(13) states in pertinent part:

“Investment adviser” means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, buying, or selling securities, or who for compensation and as a part of a regular business issues or promulgates analyses or reports concerning securities. “Investment adviser” includes a financial planner or other person who, as an integral component of other financially related services, provides investment advice to others for compensation as part of a business or who holds oneself out as providing investment advice to others for compensation. “Investment adviser” does not include:

- (A) A bank (unless it is acting as an investment adviser for a registered investment company), savings institution, or trust company;
- (B) A lawyer, accountant, engineer, or teacher whose performance of investment advisory services is solely incidental to the practice of such lawyer's, accountant's, engineer's, or teacher's profession;
- (C) A broker-dealer whose performance of investment advisory services is solely incidental to the conduct of such person's business as a broker-dealer and who receives no special compensation for such services;

- (D) A publisher of any bona fide newspaper, news magazine, or business or financial publication of general, regular, and paid circulation;
- (E) A person who has no place of business in this state if:
 - i. The person's only clients in this state are other investment advisers, broker-dealers, or institutional investors; or
 - ii. During any period of twelve (12) consecutive months, the person does not direct business communications into this state in any manner to more than five (5) clients (other than those specified in subdivision (13)(E)(i)), whether or not such person or any of the persons to whom the communications are directed are then present in this state; or
- (F) Such other persons not within the intent of this subdivision (13) as the commissioner may by rule exempt from this definition as not in the public interest and necessary for the protection of investors;

22. Tenn. Code Ann. § 48-1-102 (14) states, in pertinent part:

- (A) “Investment adviser representative” means any partner, officer, or director of (or person occupying a similar status or performing similar functions) an investment adviser, or other individual, except clerical or ministerial personnel, who is employed by or associated with an investment adviser and does any of the following:
 - i. Makes any recommendation or otherwise renders advice regarding securities;
 - ii. Manages accounts or portfolios of clients;
 - iii. Determines which recommendation or advice regarding securities should be given;
 - iv. Solicits, offers, or negotiates for sale of or sells investment advisory services;
 - v. Supervises employees who perform any such actions; or
 - vi. Provides investment advice or holds oneself out as providing investment advice;

23. Tenn. Code Ann. § 48-1-102 (20) (A) and (B) state in pertinent part:

- (A) “Sale” or “sell” includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value.
- (B) “Offer” or “offer to sell” includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value;

24. Tenn. Code Ann. § 48-1-102 (21) (A) states in pertinent part:

(21)(A) “Security” means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, a life settlement investment or any fractional or pooled interest in a life insurance policy or life settlement investment, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate,

preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; or, in general, any interest or instrument commonly known as a “security,” or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing;

25. Tenn. Code Ann. § 48-1-104 states, in pertinent part:

- (a) It is unlawful for any person to sell any security in this state unless:
 - (1) It is registered under this part;
 - (2) The security or transaction is exempted under § 48-1-103; or
 - (3) The security is a covered security.
- (b) The commissioner may, after notice and opportunity for a hearing under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, impose a civil penalty against any person found to be in violation of this section, or any rule or order adopted or issued under this section, in an amount not to exceed ten thousand dollars (\$10,000) per violation, or in an amount not to exceed twenty thousand dollars (\$20,000) per violation if an individual who is a designated adult is a victim.

26. Tenn. Code Ann. § 48-1-116(a) and (e)(2)(A) state in pertinent part:

- (a) The commissioner may from time to time make, promulgate, amend, and rescind such rules, forms, and orders as are necessary to carry out this part, including rules, forms, and orders governing registration statements, applications, reports, and filing fees, and defining any terms, whether or not used in this part, insofar as the definitions are not inconsistent with this part. For the purpose of rules and forms, the commissioner may classify securities, persons, and matters within the commissioner's jurisdiction, and prescribe different requirements for different classes
- ...
- (e)
 - (2) (A) Notice to the affected parties (which shall be prior notice unless the commissioner determines that prior notice would not be in the public interest and would be detrimental to the protection of investors)

27. Tenn. Code Ann. § 48-1-109(a) provides that:

- (a) It is unlawful for any person to transact business from, in, or into this state as a broker-dealer or agent unless such person is registered as a broker-dealer or agent under this part, except that:
- (1) A bank shall be exempt from registration as a broker-dealer to the extent its activities are excepted under either the definition of “broker” in § 3(a)(4)(B) of the Securities Exchange Act of 1934 (15 U.S.C. § 78c(a)(4)(B)), or the definition of “dealer” in § 3(a)(5)(C) of the Securities Exchange Act of 1934 (15 U.S.C. § 78c(a)(5)(C));
 - (2) A person who limits such person's activity as a broker-dealer to acting solely as a broker-dealer with regard to charitable gift annuities, as that term is defined by § 56-52-102, shall be exempt from registration as a broker-dealer;
 - (3) A person who limits such person's activity as an agent to acting solely as an agent on behalf of a person who is eligible for the exemption from broker-dealer registration in subdivision (a)(2) shall be exempt from registration as an agent.

28. Tenn. Code Ann. § 48-1-109(c) provides that:

- (c) It is unlawful for any person to transact business from, in, or into this state as an investment adviser or investment adviser representative unless:
- (1) The person is registered as an investment adviser or investment adviser representative under this part;
 - (2) The person is required to register as an investment adviser pursuant to § 203 of the Investment Advisers Act of 1940 (15 U.S.C. § 80b-3); provided, however, that an initial notice filing, consisting of any documents filed with the securities and exchange commission, a consent to service of process, and a nonrefundable fee of one hundred dollars (\$100) shall be filed with the commissioner or the commissioner's designee, with payment of any reasonable costs charged by the designee for processing such filings, ten (10) days prior to the person acting as an investment adviser; and a renewal notice filing containing such information as the commissioner by rule requires and a nonrefundable fee of one hundred dollars (\$100) shall be filed with the commissioner or the commissioner's designee, with payment of any reasonable costs charged by the designee for processing such filing for each successive year in which such person acts as such investment adviser; every notice filing of an investment adviser expires annually, unless timely renewed, on December 31 of each year; or
 - (3) The person's only clients in this state are insurance companies.

29. Tenn. Code Ann. § 48-1-109(e) provides that:

The commissioner may, after notice and an opportunity for a hearing under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, impose a civil penalty against any person found to be in violation of this section, or any rule or order adopted or issued under this section, in an amount not to exceed ten thousand dollars (\$10,000) per violation, or in an amount not to exceed twenty thousand dollars (\$20,000) per violation if an individual who is a designated adult is a victim.

25. Tenn. Code Ann. § 48-1-121 states:

(a) It is unlawful for any person, in connection with the offer, sale or purchase of any security in this state, 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 the light of the circumstances under which they are made, not misleading; or
- (3) Engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

...

(d) The commissioner may, after notice and opportunity for a hearing under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, impose a civil penalty against any person found to be in violation of this section, or any rule or order adopted or issued under this section, in an amount not to exceed ten thousand dollars (\$10,000) per violation, or in an amount not to exceed twenty thousand dollars (\$20,000) per violation if an individual who is a designated adult is a victim.

26. The Division is authorized to bring this action based on a finding by the Commissioner that the action is in the public interest, necessary for the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act. Tenn. Code Ann. § 48-1-116(b). In addition, the Commissioner may forgo prior notice of this Order of Cease and Desist upon a finding that prior notice is not in the public interest and would be detrimental to the protection of investors. Tenn. Code Ann. § 48-1-116(e)(2)(A).

CONCLUSIONS OF LAW

27. The Commissioner finds that the public safety and welfare imperatively requires this emergency action, and that it is necessary for the protection of Tennessee securities consumers, pursuant to Tenn. Code Ann. § 48-1-116(b). In addition, the Commissioner finds that prior notice to the Respondents of this Cease and Desist Order would not have been in the public interest and would have been detrimental to the protection of Tennessee securities consumers pursuant to Tenn. Code Ann. § 48-1-116(e)(2)(A).

A. The Respondents are engaging in investment adviser services while not registered as an investment adviser or an investment adviser representative.

28. The Findings of Fact demonstrate that the Respondents offered and/or are offering investment adviser services in and/or from Tennessee and the Respondents are not registered with the Division as an investment adviser or investment adviser representative as required under the Act.

29. The Respondents' actions of providing investment adviser services in Tennessee in violation of the Act creates an imperative risk of harm to consumers who would rely on Respondents as fiduciaries in providing financial advice. The Respondents' unlawful conduct in violation of Tenn. Code Ann. § 48-1-109(c) provides grounds under Tenn. Code Ann. §§ 48-1-116(a) and (e)(2)(A) for the immediate entry of an Order to Cease and Desist all securities activity.

30. The Respondents' unlawful conduct in violation of Tenn. Code Ann. § 48-1-109(c) provide grounds under Tenn. Code Ann. § 48-1-109(e) for the assessment of civil penalties.

B. The Respondents are engaging in activity as broker-dealers by effecting the sale of unregistered securities in Tennessee.

31. The Findings of Fact demonstrate that the Respondents facilitated the sale of securities in the State of Tennessee, thereby acting as a broker-dealer. The Respondents' acts in effecting the sale of securities through its website and by facilitating consumers to invest in Respondent Blue Sky and/or Respondent TMB show that the Respondents acted as a broker-dealer in Tennessee. Such securities sold were investment contracts as defined in Tenn. Code Ann. § 48-1-102(20)(A). An investment contract has the following characteristics:

- a. an offeree furnishes initial value to an offeror,
- b. a portion of this initial value is subjected to the risks of the enterprise,
- c. the furnishing of the initial value is induced by the offeror's promises or representations which give rise to a reasonable understanding that a valuable benefit of some kind, over and above the initial value, will accrue to the offeree as a result of the operation of the enterprise, and
- d. the offeree does not receive the right to exercise practical and actual control over the managerial decisions of the enterprise. *King v. Pope*, 91 S.W.3d 314, 316 (Tenn. 2002).

32. The promotion and solicitation of investment in Respondent Blue Sky and Respondent TMB qualifies as an investment contract, which is a security. These products were not registered within Tennessee, nor did they meet a registration exception to the security registration requirement. The Respondents' acts of effecting and attempting to affect the sale of such securities through its website links and emails constitute acting as a broker-dealer in effecting the sale of unregistered securities in Tennessee in violation of Tenn. Code Ann. §§ 48-1-104(a) and 48-1-109(a).

33. The Respondents' unlawful conduct in violation of Tenn. Code Ann. § 48-1-104(a) provides grounds under Tenn. Code Ann. §§ 48-1-116(a) and (e)(2)(A) for the immediate entry of an Order to Cease and Desist from engaging in any activity requiring registration by the Division without first obtaining registration for such activity.

34. The Respondents' unlawful conduct in violation of Tenn. Code Ann. §§ 48-1-104(a) and 48-1-109(a) provides grounds under Tenn. Code Ann. §§ 48-1-104(b) and 48-1-109(e) for the assessment of civil penalties.

C. The Respondents are using fraudulent, coercive and dishonest practices and making untrue statements of material facts and/or omitting material facts.

35. The Findings of Fact demonstrate that the Respondents were and/or are using fraudulent, coercive and dishonest practices and making untrue statements of material facts and/or omitting material facts by promoting the fraudulent securities in the State of Tennessee in violation of Tenn. Code Ann. § 48-1-121.

36. The Respondents' unlawful conduct in violation of Tenn. Code Ann. § 48-1-121 provides grounds under Tenn. Code Ann. §§ 48-1-116(a) and (e)(2)(A) for the immediate entry of an Order to Cease and Desist all securities activity.

37. The Respondents' unlawful conduct in violation of Tenn. Code Ann. § 48-1-121 provides grounds under Tenn. Code Ann. § 48-1-121(d) for the assessment of civil penalties.

ORDER

NOW, THEREFORE, in consideration of the foregoing, it is **ORDERED** that:

1. The Respondents **SHALL COMPLY** with the Act and all rules promulgated thereunder.
2. The Respondents shall **CEASE AND DESIST** from any further unregistered conduct as a broker-dealer, agent, an investment adviser, or investment adviser representative from or in the State of Tennessee.
3. The Respondents shall **CEASE AND DESIST** from the sale of any unregistered security from or in the State of Tennessee.
4. The Respondents shall **CEASE AND DESIST** from operating any fraudulent scheme from or in the State of Tennessee by way of any physical or digital means either directly or through any third party, including the use of websites, social media, or any other medium.
5. All persons or entities in any way assisting, aiding, or helping the Respondents in any of the aforementioned violations of the Act, including through the operation of any website, social media account, YouTube Channel, or any other medium shall **CEASE AND DESIST** all such activities in violation of the Act.
6. This Order to Cease and Desist is not intended to prohibit any lawful conduct in which the Respondents might be engaged.
7. Entry of this Order to Cease and Desist shall not in any way restrict the Division or the Commissioner from taking further action with respect to these or other possible violations of the Act, or any of the rules promulgated thereunder, by the Respondents.

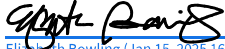
ENTERED this Jan 14, 2025, 2025



Carter Lawrence (Jan 17, 2025 07:41 CST)

Carter Lawrence, Commissioner

APPROVED FOR ENTRY:



Elizabeth H. Bowling (Jan 15, 2025 16:32 CST)

Elizabeth H. Bowling
Assistant Commissioner for Securities
Department of Commerce and Insurance



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of this Amended Ex Parte Order to Cease and Desist will be served upon the Respondents to the below enclosed address on the 21 day of January, 2025.

Tracking No. 7020 1810 0000 0920 4156

Travis Kip Bieberitz – individually
and doing business as TMB Group (aka TMB Consulting)
and doing business as Blue Sky Wealth Solutions
5757 Edgmon Rd
Ooltewah, TN 37363

Alex G. Corder

Alex G. Corder