

STATE OF OKLAHOMA  
DEPARTMENT OF SECURITIES  
THE FIRST NATIONAL CENTER  
120 N. ROBINSON, SUITE 860  
OKLAHOMA CITY, OKLAHOMA 73102



In the Matter of:

Rodney Larry Watkins, Jr. (CRD #3091936);  
Southeast Investments, N.C. Inc. (CRD #43035); and  
Frank H. Black (CRD #22451);

Respondents.

ODS File No. 12-058

**RESPONDENTS' MOTION TO  
COMPEL PRODUCTION OF DOCUMENTS**

Respondents move the Administrator to compel the Department to produce documents responsive to the Respondents' Requests Nos. 11, 12, and 13. A copy of the Department's Response to the Respondents' Request for Production of Documents (which also reproduces the requests themselves) is attached hereto as Exhibit "A." Respondents' argument in support of this motion follows.

**RESPONDENTS' REQUESTS AND THE DEPARTMENT'S OBJECTIONS**

Respondent has propounded the following requests for documents to that the Department has refused to produce:

Request No. 11. Your attention is directed to paragraph 1 at page 5 of the 3-29-12 Recommendation and to paragraph 3 thereof at page 6. Please produce documents sufficient to allow Respondents to determine all prior instances of the Department recommending revocation of a registered representative's license for "unethical practices" of the type listed in paragraph 3 at page 6.

Request No. 12. Documents sufficient to show all instances in the past 60 months in which the Department has recommended that sanctions be imposed against registered representatives who were alleged to have committed violations of the type that Watkins is alleged to have committed, including documents sufficient to show the race or ethnicity of all such registered representatives.

Request No. 13. Documents sufficient to show all instances in the past 60 months in which the Department has recommended revocation of a registered representative's license when no customer complaint about the representative had been submitted to the Department.

The Department objects to the first two requests on overbreadth and irrelevance grounds, but not based on 71 O.S. § 1-607. It objects to the third request, Request No. 13, on overbreadth and irrelevance grounds, but also on § 1-607 grounds. It is not clear to Respondents why § 1-607 applies in the third instance, but not in the first two. As discussed below, Respondents submit that § 1-607 does not apply at all.

The Department does not object to the quoted requests on the grounds that the requests are “burdensome and oppressive” or the like.<sup>1</sup> Meanwhile the Department has propounded broad requests to Respondents and third parties demanding all manner of documents -- the vast majority of which have little bearing on this proceeding -- resulting in the production of (i) almost 1,500 pages of documents from the two respondents and (ii) over 1,400 pages of documents from a third party, Southeast broker Lamar Guillory. (Mr. Guillory is not accused of anything).

#### THE EFFECT OF 71 O.S. § 1-706(b) AND THE OPEN RECORDS ACT

The Department has taken the position that it cannot agree to protective orders respecting documents produced *by* Respondents *to* the Department because the Department is shackled by

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<sup>1</sup> The Department’s actual production that purportedly responds to Respondents’ many requests, totaling 158 pages, consists largely of copies of documents supplied *to* them by Southeast.

the Open Records Act, 51 O.S. § 24A.1 *et seq.* Moreover, the Department maintains, documents produced *to* it by Respondents are “already protected” from disclosure by § 1-607(B)(4). But a request *to* the Department presents the obverse situation. Nothing in the Securities Act or the Open Records Act suggests that the Department cannot produce documents to a respondent under a protective order entered by the Administrator. Such an order would prohibit Respondents and their counsel (i) from disclosing the information provided, and (ii) from using the information for any purpose other than in this proceeding. The foregoing are the key elements of the “standard” protective order that state and federal courts *routinely* enter in civil litigation, most often with the consent of all parties.

Does § 1-607 in fact shield production of records held by the Department that are in a “litigation file?” If the drafters meant to mandate that result, they did not do so very clearly.<sup>2</sup> Subsection A makes clear that all of the documents under discussion here are “public records” except as provided in subsection B. Subsection B lists records that “are not available for public examination.” Respondents here, *and especially Mr. Watkins*, surely are not “members of the public” for § 1-607(b) purposes. They are litigants in an “individual proceeding” (the terminology employed in the Commission’s rules at §§ 660:2-9-1 *et seq.*) Mr. Watkins, for all intents and purposes, is being prosecuted for putatively serious offenses. He is threatened with permanent loss of his license and, as a result, the opportunity to make a living in his lifelong profession. The idea that Mr. Watkins, under these circumstances, is just one more “member of the public” is outrageous.

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<sup>2</sup> The “drafters” are, of course, folks who work for the National Conference of Commissioners on Uniform State Laws. The Oklahoma Securities Act is “substantially similar to the Uniform Act.” Hall and Ketelslager, *Oklahoma Comments on the Oklahoma Uniform Securities Act*, reproduced in Oklahoma Statutes Annotated, Cumulative Annual Pocket Part at 3 (West 2013).

Respondents respectfully submit that the Department ought not to be allowed to stonewall a licensee whose livelihood the Department threatens by employing an expansive reading of an *exception* to a duty to disclose documents. To do so calls into question the very fairness of these quasi-prosecutorial proceedings, i.e. whether these proceedings are consistent with constitutional due process. Under the Department's one-way street approach, the Government may serve all of the sweeping subpoenas it desires -- seeking all manner of personal and irrelevant information from the citizen-litigant and third parties everywhere<sup>3</sup> -- but all of the *Government's* documents are protected by an *exception to the public record laws*.

The Open Records Act dovetails with the provisions of 71 O.S. § 1-607 discussed in the preceding paragraph. It provides that “[a]ll records of public bodies and public officials shall be open to any person for inspection, copying, or mechanical reproduction.” 51 O.S. § 24A.5. Subsection “1” of the quoted statute lists exceptions to the “all records” mandate, which exceptions *do not include* “a record in a litigation file” or the other “public records” exceptions listed in § 1-607(B). In short, nothing in the Open Records Act or § 1-607 prohibits production of the documents Respondents have requested under an appropriate protective order fashioned by the Administrator.

#### FAIRNESS AND DUE PROCESS CONSIDERATIONS

Respondents refer to the charges against Watkins as “putatively” serious offenses because the charges themselves are, in Respondent’s view, so trumped up and overheated. Worse yet, the penalty that the Department seeks is disturbingly disproportionate to the so-called offense. The Commission is an agent of the Government and -- surely the Commission itself

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<sup>3</sup> Indeed, it has become apparent that the Department thinks the Commission has nationwide document subpoena power (i.e., a power exceeding that of any Oklahoma court *and* any federal district court). The Administrator has failed to disabuse the Department of this fundamental constitutional error by issuing such subpoenas.

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would agree -- it owes duties of fundamental fairness to all Oklahoma citizens. The Government ought especially, Respondents respectfully submit, to take seriously its duties of fairness to Oklahomans whose very livelihoods may be destroyed by he/she who wields the sledgehammer of governmental licensing power.

The nature of the charges against Mr. Watkins and the hammer-and-tong manner in which the Department is prosecuting those charges raise serious questions about the Department's motives, about its attention to the requirements of due process, and about its equal treatment of all Oklahomans over whom the Department has regulatory power. Respondent have simply asked the Department to produce records – under a protective order – from which Respondents (and perhaps the Commission itself) can satisfy themselves on these fundamental fairness issues. The requests on their face are narrow. In contrast to the Department's many blunderbuss requests for "all documents" that "relate to" some broad subject matter, Respondents have requested only "documents sufficient to allow Respondents to determine" or "documents sufficient to show" whether the Department has treated other regulated parties in a like manner.<sup>4</sup>

One of the Department's responses deserves particular attention. In response to the request "for documents sufficient to show the race or ethnicity of all such registered representatives [who were haled before the Commission on charges similar to those leveled against Watkins here]," the Department states that "no such documents exist that show race or ethnicity." Really? If that is true the Department might want to look into to the adequacy of its record-keeping and to its oversight of personnel who have duties imposed by the United States and Oklahoma Constitutions. *See, e.g., Jones v. State*, 170 Wash.2d 338, 242 P.3d 825

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<sup>4</sup> Again the Department has not suggested that the production requested is burdensome or the like. Instead it has hung its hat on overbreadth and relevance.

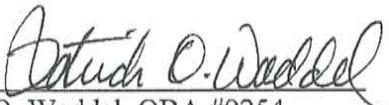
(2010)(reversing trial and intermediate appellate courts and holding that members of pharmacy licensing board -- and inspectors who worked for the board -- had duties to the plaintiff pharmacist under the Due Process Clause and under 42 U.S.C. § 1983).

CONCLUSION

Neither the Public Records Act nor the Securities Act protects the documents that are the subject of this motion. Those documents are discoverable for the reasons stated herein and the Department has tacitly conceded that their production is not burdensome or oppressive, The Administrator should order that the documents be produced under a protective order fashioned by the Administrator.

Respectfully submitted,

Dated: April 11, 2014

  
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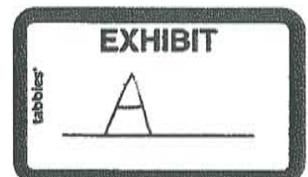
ODS File No. 12-058

**DEPARTMENT'S RESPONSE TO RESPONDENTS' FIRST REQUEST FOR  
PRODUCTION OF DOCUMENTS**

The Oklahoma Department of Securities ("Department") submits the following objections and responses to Respondents Rodney Larry Watkins, Jr.'s and Southeast Investments, N.C. Inc.'s First Request for Production of Documents to the Department of Securities, received on December 2, 2013 ("Document Requests").

**GENERAL OBJECTIONS**

1. The Department objects to the Document Requests to the extent they are overly broad, unduly burdensome, or not reasonably calculated to lead to discovery of admissible evidence.
2. The Department objects to the Document Requests to the extent that they seek information protected by the attorney-client privilege, work-product doctrine, deliberative process privilege, Section 1-607 of the Oklahoma Uniform Securities Act of 2004 (Act), Okla. Stat. tit. 71, §§ 1-101 through 1-701 (2011), or any other applicable privilege or protection.
3. The Department objects to the Document Requests to the extent Respondents attempt to impose obligations on the Department other than those imposed by the Act and the Rules of the Oklahoma Securities Commission and the Administrator of the Department of Securities (Rules).
4. The Department objects to the Document Requests to the extent Respondents require production of documents not in the Department's possession, custody, or control.
5. The Department responds to the Document Requests based upon information and documentation available as of the date hereof and reserves the right to supplement and amend its responses.



6. The Department reserves all objections as to the competence, relevance, materiality, admissibility, or privileged or protected status of any information provided in response to the Document Requests, unless the Department specifically states otherwise.

7. The Department's General Objections are incorporated into each of the following responses, shall be deemed continuing as to all requests, and are not waived by, nor in any way limited to, the following responses.

#### SPECIFIC OBJECTIONS AND RESPONSES

Request No. 1. Your entire investigative file relating to Watkins and/or Southeast, including without limitation all notes of all interviews with any potential witness in the Proceeding, including interviews of all Subject Customers.

Response to Request No. 1: The Department objects to Request No. 1 on the ground that it calls for the production of documents protected from disclosure by the work-product doctrine, the deliberative process privilege, and Section 1-607 of the Act. The Department further objects on the grounds that the request is overbroad, irrelevant, and not reasonably calculated to lead to admissible evidence. The Department is withholding responsive documents concerning investigations and/or proceedings not relating to the 3-26-13 Recommendation and responsive internal communications and notes. Subject to and without waiving the foregoing objections, the Department is producing the remaining responsive documents currently in its possession, custody or control.

Request No. 2. All documents that support, are in derogation of, or relate to, the allegations of paragraphs 11 through 21 *and* 23 through 24 of the 3-26-13 Recommendation that Watkins "solicited and effected" the transactions identified in those paragraphs "through his Primary Place of Business," as the capitalized phrase is used in the 3-26-13 Recommendation.

Response to Request No. 2: The Department is producing responsive documents currently in its possession, custody or control.

Request No. 3. All documents that relate to or bear upon the investigation of the facts set forth in paragraphs 11 through 24 of the 3-26-13 Recommendation, which documents were obtained or generated by you *prior to March 26, 2013.*

Response to Request No. 3: The Department objects to Request No. 3 on the ground that it calls for the production of documents protected from disclosure by the work-product doctrine, the deliberative process privilege, and Section 1-607 of the Act. Subject to and without waiving the foregoing objections, the Department is producing responsive documents currently in its possession, custody or control.

Request No. 4. All documents that reflect or bear upon the state of your knowledge, prior to March 26, 2013, of the residences, domiciles, and or citizenship of each of the Subject Customers.

Response to Request No. 4: The Department objects to Request No. 4 on the ground that it calls

for the production of documents protected from disclosure by the work-product doctrine, the deliberative process privilege, and Section 1-607 of the Act. The Department further objects on the grounds that it is overbroad, irrelevant, and not reasonably calculated to lead to admissible evidence.

Request No. 5. All documents that relate to or bear upon the investigation of the facts relating to the residences, domiciles, and or citizenship of each of the Subject Customers set forth in paragraphs 11 through 24 of the 3-26-13 Recommendation, which investigation you conducted *prior to March 26, 2013.*

Response to Request No. 5: The Department objects to Request No. 5 on the ground that it calls for the production of documents protected from disclosure by the work-product doctrine, the deliberative process privilege, and Section 1-607 of the Act. The Department is withholding responsive internal communications and notes. Subject to and without waiving the foregoing objections, the Department is producing the remaining responsive documents currently in its possession, custody or control.

Request No. 6. All documents that relate to the "internal investigation" referred to in paragraph 2 of the Recommendation.

Response to Request No. 6: The Department objects to Request No. 6 for vagueness. Neither the 3-29-12 Recommendation nor the 3-26-13 Recommendation contain the phrase "internal investigation." If the request relates to the internal investigation by AFS referenced in the 3-29-12 Recommendation, the Department objects to Request No. 6 on the grounds that it is irrelevant and not reasonably calculated to lead to admissible evidence.

Request No. 7. All documents that support, are in derogation of, or relate to, any contention that you make in connection with the Proceeding that Southeast was required to submit any Form BD to FINRA with regard to Watkins' office located at 9801 Royal Lane, Dallas, Texas.

Response to Request No. 7: No such documents exist.

Request No. 8. All documents that support, are in derogation of, or relate to, any contention that you make in connection with the Proceeding that Southeast was required to make any regulatory filing or disclosure of any kind with regard to Watkins' office located at 9801 Royal Lane, Dallas, Texas.

Response to Request No. 8: No such documents exist.

Request No. 9. All documents that support, are in derogation of, or relate to, any contention that you make in connection with the Proceeding that Southeast was required to submit any Form BD to FINRA with regard to Watkins' office located at 46 East 16<sup>th</sup> Street, Tulsa, Oklahoma.

Response to Request No. 9: No such documents exist.

Request No. 10. All documents that support, are in derogation of, or relate to, any contention that

you make in connection with the Proceeding that Southeast was required to make any regulatory filing or disclosure of any kind with regard to Watkins' office located at 46 East 16<sup>th</sup> Street, Tulsa, Oklahoma.

Response to Request No. 10: No such documents exist.

Request No. 11. Your attention is directed to paragraph 1 at page 5 of the 3-29-12 Recommendation and to paragraph 3 thereof at page 6. Please produce documents sufficient to allow Respondents to determine all prior instances of the Department recommending revocation of a registered representative's license for "unethical practices" of the type listed in paragraph 3 at page 6.

Response to Request No. 11: The Department objects to Request No. 11 on the grounds that it is overbroad, irrelevant, and not reasonably calculated to lead to admissible evidence.

Request No. 12. Documents sufficient to show all instances in the past 60 months in which the Department has recommended that sanctions be imposed against registered representatives who were alleged to have committed violations of the type that Watkins is alleged to have committed, including documents sufficient to show the race or ethnicity of all such registered representatives.

Response to Request No. 12: The Department objects to Request No. 12 on the grounds that it is overbroad, irrelevant, and not reasonably calculated to lead to admissible evidence. Subject to and without waiving the foregoing objections, no such documents exist that show race or ethnicity.

Request No. 13. Documents sufficient to show all instances in the past 60 months in which the Department has recommended revocation of a registered representative's license when no customer complaint about the representative had been submitted to the Department.

Response to Request No. 13: The Department objects to Request No. 13 on the grounds that it is overbroad, irrelevant, and not reasonably calculated to lead to admissible evidence. The Department further objects on the ground that it calls for the production of documents protected from disclosure by Section 1-607 of the Act.

Request No. 14. All documents that identify and/or set forth information of any kind regarding any witness who has knowledge of any matter relating to the Proceeding.

Response to Request No. 14: The Department is producing responsive documents currently in its possession, custody or control.

Request No. 15. All documents that you intend to offer as an exhibit at the hearing in the Proceeding.

Response to Request No. 15: These documents are not yet known and will be produced by the Department in accordance with the scheduling order.

Respectfully submitted,



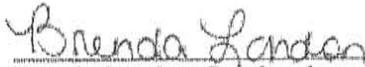
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#### CERTIFICATE OF MAILING

The undersigned hereby certifies that on the 17th day of December, 2013, a true and correct copy of the above and foregoing *Department's Response to Respondents' First Request for Production of Documents* was emailed and mailed with postage prepaid thereon, addressed to:

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