

STATE OF OKLAHOMA
DEPARTMENT OF SECURITIES
FIRST NATIONAL CENTER, SUITE 860
120 NORTH ROBINSON
OKLAHOMA CITY, OKLAHOMA 73102



In the Matter of:

Wilbanks Securities, Inc., CRD No. 40673,
Randall Lee Wilbanks, CRD No. 2675482, and
Aaron Bronelle Wilbanks, CRD No. 1983697,

Respondents.

File No. ODS 05-029

NOTICE OF SERVICE ON THE ADMINISTRATOR
AND
AFFIDAVIT OF COMPLIANCE

STATE OF OKLAHOMA)
) SS.
COUNTY OF OKLAHOMA)

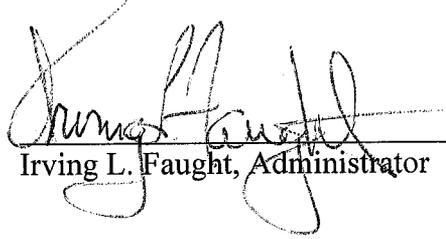
The undersigned affiant, of lawful age, being first duly sworn upon oath deposes and states:

1. That he is the Administrator of the Oklahoma Department of Securities (“Department”).
2. That a copy of the Notice of Opportunity for Hearing (“Notice”) with Enforcement Division Recommendation (“Recommendation”) attached was delivered to Affiant in the office of the Administrator of the Department (“Administrator”) pursuant to Section 1-611 of the Oklahoma Uniform Securities Act (“Act”), Okla. Stat. tit. 71, §§ 1-101 through 1-701 (Supp. 2003).
3. That the Administrator has received service of process on behalf of Respondents pursuant to Section 1-611 of the Act.
4. That a copy of the Notice, with the Recommendation attached, and a copy of this Notice of Service on the Administrator and Affidavit of Compliance are being sent this 7th day of August, 2006, by certified mail, return receipt requested, delivery restricted to addressee, to the last known address of Respondents, in compliance with Section 1-611 of the Act.
5. That this Affidavit of Compliance is declared filed of record as of the date set forth below in compliance with Section 1-611 of the Act.

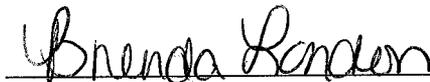
FURTHER AFFIANT SAYETH NOT.

Dated this 7th day of August, 2006.

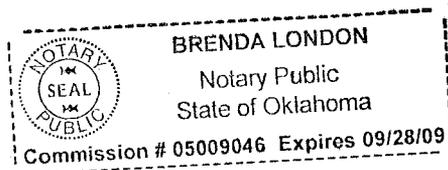
(SEAL)


Irving L. Faught, Administrator

Subscribed and sworn to before me this 7th day of August, 2006.


Notary Public

My Commission Expires:
My Commission No.:
SEAL



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NOTICE OF OPPORTUNITY FOR HEARING

1. Pursuant to the Oklahoma Uniform Securities Act of 2004 ("Act"), Okla. Stat. tit. 71, §§ 1-101 through 1-701 (Supp. 2003), and the Oklahoma Securities Act ("Predecessor Act"), Okla. Stat. tit. 71, §§ 1-413, 501, 701-703 (2001 and Supp. 2003), the Examinations Division of the Oklahoma Department of Securities ("Department") conducted an examination of Wilbanks Securities, Inc. ("Wilbanks Securities").

2. On the 4th day of August, 2006, the attached Enforcement Division Recommendation ("Recommendation") was left in the office of the Administrator.

3. Pursuant to Section 1-411 of the Act, the Administrator hereby gives notice to Respondents of their right to request a hearing to show why an order based on the Recommendation should not be issued.

4. The request for a hearing on the Recommendation must be received by the Administrator within fifteen (15) days after service of this Notice. Pursuant to Section 1-411 of the Act, failure to request a hearing as provided for herein shall result in the issuance of an order that:

(A) limits the registration of Aaron Wilbanks and Randy Wilbanks to broker-dealer agents and bars them from being registered as principals or acting in any supervisory capacity; and

(B) revokes the broker-dealer registration of Wilbanks Securities and requires the Firm to liquidate within ninety (90) days of an order by the Administrator.

5. The request for hearing shall be in writing and Respondents shall specifically admit or deny each allegation in said request as required by 660:2-9-2 of the Rules of the

Oklahoma Securities Commission and the Administrator of the Department of Securities ("Rules").

6. Upon receipt of a written request, pursuant to 660:2-9-2 of the Rules, a hearing on this Notice shall be set within ninety (90) days or a written order denying hearing shall be issued.

7. Notice of the date, time and location of the hearing shall be given to Respondents not less than forty-five (45) days in advance thereof pursuant to 660:2-9-2 of the Rules.

Witness my Hand and the Official Seal of the Oklahoma Department of Securities this 7th day of August, 2006.

(SEAL)



IRVING L. FAUGHT, ADMINISTRATOR OF THE
OKLAHOMA DEPARTMENT OF SECURITIES

CERTIFICATE OF MAILING

The undersigned hereby certifies that on the 7th day of August, 2006, a true and correct copy of the above and foregoing Notice of Opportunity for Hearing and attached Enforcement Division Recommendation was mailed by certified mail, return receipt requested, delivery restricted, with postage prepaid thereon, addressed to:

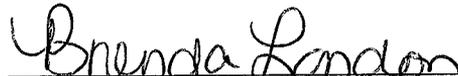
Wilbanks Securities, Inc.
4334 NW Expressway, Suite 222
Oklahoma City, OK 73116

Randall Wilbanks
9211 N. Council Road, #309
Oklahoma City, OK 73132

Aaron Wilbanks
10112 Donna Court
Oklahoma City, OK 73162

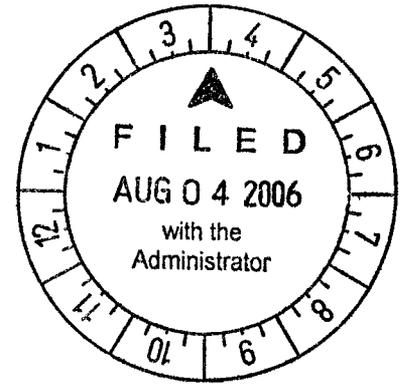
Randall Wilbanks
Wilbanks Securities, Inc.
4334 NW Expressway, Suite 222
Oklahoma City, OK 73116

Aaron Wilbanks
Wilbanks Securities, Inc.
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Brenda London, Paralegal

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ENFORCEMENT DIVISION RECOMMENDATION

Pursuant to the Oklahoma Uniform Securities Act of 2004 ("Act"), Okla. Stat. tit. 71, §§ 1-101 through 1-701 (Supp. 2003), and in conjunction with an investigation into the activities of Marsha Schubert ("Agent Schubert"), the Examinations Division ("Examinations Division") of the Oklahoma Department of Securities ("Department") conducted an examination of Wilbanks Securities, Inc. ("Wilbanks Securities" or "Firm") from May 10, 2005 to May 19, 2005 ("2005 Examination"). Based thereon, the following Findings of Fact, Authorities, and Conclusions of Law are submitted to the Administrator of the Oklahoma Department of Securities ("Administrator") in support of sanction(s) against Respondents.

Findings of Fact

1. Wilbanks Securities registered to transact business in the state of Oklahoma as a broker-dealer on July 2, 1996. Wilbanks Securities registered with the National Association of Securities Dealers, Inc. ("NASD") on August 7, 1996. The home office of Wilbanks Securities is located at 4334 Northwest Expressway in Oklahoma City, Oklahoma ("Main Office").
2. Aaron Bronelle Wilbanks ("Aaron Wilbanks") registered to transact business in this state as an agent of Wilbanks Securities on July 19, 1996. At all times material hereto, Aaron Wilbanks has been the Financial Operations Principal, Compliance Officer, President, Chief Executive Officer, and Chief Financial Officer of Wilbanks Securities.
3. Randall Lee Wilbanks (also known as, and hereinafter referred to as, "Randy Wilbanks") registered to transact business in this state as an agent of Wilbanks Securities on October 22, 1996. At all times material hereto, Randy Wilbanks has been the Chief Compliance Officer, Senior Registered Options Principal, Compliance Registered Options Principal, Registered Municipal Securities Principal, Anti-Money Laundering Compliance Officer, and Vice-President of Wilbanks Securities.

4. The Department conducted an examination of Wilbanks Securities in June 2001 ("2001 Examination"). At that time, Wilbanks had thirty-four (34) registered agents, one (1) Office of Supervisory Jurisdiction ("OSJ"), two (2) registered branch offices, and twenty-nine (29) non-branch offices ("NBOs"), in addition to the Main Office.

5. During the 2001 Examination, the Department cited the Firm for the following deficiencies:

a.) The supervision of agents operating out of the NBOs was primarily done by reviewing paperwork submitted by the NBOs to the OSJ or Main Office.

b.) None of the NBOs had ever had an onsite compliance examination by Randy Wilbanks or his designee.

c.) The Firm failed to prepare a purchase and sales blotter that reflected all of the business of the Firm.

d.) The Firm failed to review all correspondence, including electronic communications, of its registered agents.

6. As a result of the 2001 Examination, the Department sent the Firm a Memorandum of Examination explaining the Firm's deficiencies. The Firm responded with a letter stating its intention to remedy the deficiencies by doing, *inter alia*, the following: (a) using a purchase and sales blotter; (b) having all representatives sign a special acknowledgement stating that they are not sending e-mails or other electronic communications to clients unless the communications are pre-approved; (c) adding item 13 to their "Securities Activities Statement" thereby requiring the Firm's registered agents to state on an annual basis that they have submitted and will submit all customer communications and client sales materials to the Firm for review and prior approval and that they understand that email contact with clients is prohibited; and (d) doing more at compliance meetings to emphasize the fact that the Firm can inspect off-site offices at any time.

7. At the time of the 2005 Examination, Wilbanks Securities employed eighty-three (83) registered agents, sixteen (16) of which are qualified as General Securities Principals. Wilbanks Securities had, at the time of the 2005 Examination, four (4) OSJs, one (1) registered branch office, and approximately sixty-eight (68) NBOs, in addition to the Main Office.

Supervisory System

8. Under subsection (a) of NASD Rule 3010, Wilbanks Securities is required to establish and maintain a system to supervise the activities of its registered representatives and associated persons. Such system must be "reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable NASD Rules."

9. At the time of the 2005 Examination, Wilbanks Securities' organizational structure, or system of supervision, assigned an extraordinary amount of supervisory responsibility to Randy Wilbanks. His positions at the Firm included, among others, Chief Compliance Officer, Registered Options Principal, and Anti-Money Laundering Compliance Officer. In addition, Randy Wilbanks directly supervised a minimum of 70 (or 85%) of the Firm's registered agents.

10. During the 2005 Examination, the Department found numerous deficiencies in the Firm's supervision of its registered persons. These deficiencies are discussed below in paragraphs 12 through 50. Many of the deficiencies were the result of Randy Wilbanks' failure to adequately perform his supervisory responsibilities.

11. Wilbanks Securities' current supervisory system is inadequate to discover indicators of problematic conduct, or "red flags," that would alert management to potential wrongdoing. As such, the Firm's supervisory system is not reasonably designed to achieve compliance with NASD Rules and applicable securities laws and regulations.

Written Supervisory Procedures

12. Under subsection (b)(1) of NASD Rule 3010, Wilbanks Securities is required to establish, maintain, and enforce written procedures to supervise the types of business in which it engages and to supervise the activities of its registered representatives and associated persons. Like the supervisory system, these written procedures are required to be "reasonably designed to achieve compliance with applicable securities laws and regulations, and with the applicable Rules of [the NASD]."

13. NASD Notice to Members 99-45 states that "written supervisory procedures document the supervisory system that has been established to ensure that compliance guidelines are being followed and to prevent and detect prohibited practices."

14. Wilbanks Securities' written supervisory procedures are contained in its "Securities Supervisory Procedures for Compliance Officers & Registered Principals" ("*Supervisory Procedures*"). The Firm's written compliance procedures are contained in its "Securities Compliance Guidelines & Procedures for Registered Representatives" ("*Procedures for Registered Representatives*").

15. Subsection (d) of NASD Rule 3010 requires the Firm to establish written procedures for the review, by a registered principal, of its registered representatives' incoming and outgoing, written and electronic, correspondence with the public relating to the securities business of the Firm.

16. While there are procedures relating to outgoing written correspondence, neither the *Supervisory Procedures* nor the *Procedures for Registered Representatives* establish procedures to ensure that a registered principal of the Firm reviews the incoming written correspondence of representatives operating from NBOs.

17. During the 2005 Examination, an onsite visit was made by representatives of the Department to a NBO located at 13924 Quail Pointe Drive in Oklahoma City, Oklahoma ("Quail Pointe NBO"). Representatives in the Quail Pointe NBO received certain non-electronic and electronic communications that were not reviewed by a registered principal of the Firm.

18. The *Procedures for Registered Representatives* require that customer funds received in a Branch Office or a NBO be promptly forwarded (presumably to the Main Office or the transfer agent) and that checks received/forwarded blotter records be prepared, maintained, and promptly forwarded to the Main Office. SEC Rule 17a-3(a)(1) also requires that checks received/forwarded blotters be maintained.

19. The customer files at the Quail Point NBO indicate that customer checks are received at that location; however, the Quail Point NBO does not maintain a checks received/forwarded blotter to be forwarded to the Main Office. The Firm has failed to enforce its policies and applicable securities laws with respect to the receipt of customer funds.

20. The *Supervisory Procedures* do not address customer complaints. The *Procedures for Registered Representatives* require that all complaints, verbal and written, regarding securities products be immediately conveyed directly to a registered principal along with a summary of the circumstances. The *Procedures for Registered Representatives* state:

It is expected that a complaint be disclosed to a [registered principal of the Firm] within one (1) business day and that the summary of circumstances and any back-up documentation be supplied within three (3) business days. All customer complaints are to be handled with the highest priority in resolving them as soon as possible.

While there are written procedures instructing branch office managers how to handle customer complaints, there are not written procedures instructing registered principals in NBOs how to handle customer complaints other than to handle them with the "highest priority."

21. Frederick R. Cleaver ("Agent Cleaver"), an agent of the Firm in a NBO in the state of Delaware, received a customer complaint by M. and M. Hoyt, dated January 7, 2005. Randy Wilbanks and the Main Office were not informed of the complaint until April 2005. The complaint was not resolved until August 2005. See paragraph 44 subtitled "Frederick Cleaver."

22. The *Supervisory Procedures* state the following:

"Copies of paperwork on all securities transactions, applications, new account forms, disclosure forms, etc. must be submitted to the OSJ where files are maintained and the trades are documented. Randall Wilbanks, Aaron Wilbanks, or the Designated Supervisor review each piece of business that representatives submit to the OSJ after the initial sale has been made. . . . We review the stated investment objective and the investment mix on the new account form and make sure these are compatible. We review the application for the product, look at the home

address of the client and ensure that the representative is duly registered in the state of residence of the client when required.”

SEC Rule 17a-4 also requires the Firm to maintain documentation of products purchased, account statements, and confirmations.

23. During the 2005 Examination, the Department found that the Firm’s client files located at the Main Office do not contain the required documentation regarding variable annuities purchased by its customers. Specifically, the client files do not have copies of the variable annuity contracts or other documentation evidencing the product(s) purchased, customer account statements since the purchase, and customer confirmations evidencing the purchase or any subsequent withdrawals. See paragraph 49 subtitled “Charles Campbell.” The Firm has failed to enforce its written procedures regarding client file reviews and applicable securities laws regarding document retention.

24. Pursuant to subsection (a)(5) of NASD Rule 3010, Wilbanks Securities is required to establish and maintain a supervisory system that assigns each registered person, including registered principals, to an appropriately registered person who shall be responsible for supervising that person’s activities. NASD Notice to Member 99-45 states, “[T]his requirement recognizes the obvious fact that a supervisory system reasonably designed to achieve compliance with the applicable securities laws does not permit persons to supervise themselves.” NASD Rule 3012(a)(2) also requires the Firm to establish, maintain, and enforce written procedures that are reasonably designed to review and supervise the customer account activity conducted by the Firm’s registered principals.

25. At the time of the 2005 Examination, new account documents at the Main Office indicated that eight General Securities Principals review and approve new account forms for the clients they serve.

Supervision and Review of Non-Branch Locations

26. Under NASD Rule 3010(c)(1), Wilbanks Securities is required to inspect every non-branch location on a regular periodic schedule. In establishing the inspection schedule, the Firm must consider the nature and complexity of the office’s securities activities and the nature and extent of contact with customers. The Firm must set forth in its written supervisory and inspection procedures the schedule and an explanation regarding how it determined the frequency of the examination schedule. The Firm is also required to make a written report of each office inspection and retain such report for a minimum of three years or until the next inspection report is written if the Firm’s regular periodic schedule for NBOs is longer than a three-year cycle.

27. The *Supervisory Procedures* state, “Supervision of representatives operating out of non-branch business locations is primarily done by review of paperwork submitted to the OSJ. Wilbanks Securities reserves the right to make on-site inspections of any non-branch business locations, including homes if business activities warrant such inspections.”

28. At the time of the 2005 Examination, the Firm had conducted on-site examinations of only three (3) of its sixty-eight (68) NBOs. During the 2005 Examination, Randy Wilbanks was asked why the Firm does not conduct on-site examinations of its NBOs as required. Randy Wilbanks responded, "Why should we when we have duplicates of all their information here?"

29. The failure to do on-site inspections at NBOs was a deficiency cited by the Department during the 2001 Examination of the Firm. In response to the Department's identification of this deficiency, the Firm stated, in part, "We acknowledge the need to create the feeling among our representatives that we may inspect their office at any time. We will do more at our compliance meetings to emphasize this fact among our representatives and to randomly inspect more non-branch and in-home offices."

30. The Firm's written procedures do not establish a regular periodic schedule for the inspection of NBOs with an explanation regarding how the frequency of the examinations is determined. As such, the Firm's written procedures are not reasonably designed to achieve compliance with NASD Rules and applicable securities laws and regulations and are not in compliance with NASD Rule 3010.

31. Under NASD Rule 3010(g)(2)(A), the business cards of representatives operating from NBOs are required to contain the address and telephone number of the branch office or OSJ that directly supervises the NBO. In certain circumstances, the telephone number and address of the Main Office may be provided rather than that of the applicable supervisory branch office or OSJ.

32. During the 2005 Examination, the Department reviewed business cards for fifty-six (56) registered agents operating from NBOs. Twenty-four (24) of those business cards did not contain the address and telephone number of the branch office or OSJ that directly supervises the NBO or the telephone number and address of the Main Office.

33. NASD Rule 3010(a)(5) requires that each registered person be assigned to an appropriately registered person responsible for supervising that person's activities.

34. As of May 2005, a NBO located in Springdale, Arkansas ("Springdale NBO") was supervised by personnel in the Main Office. However, account documents obtained during the 2005 Examination indicate that William Nystrom, a registered General Securities Principal in the Springdale NBO, was approving account information for the clients of Robert Bandy, another registered agent in the Springdale NBO. At the time of the 2005 Examination, William Nystrom was a registered General Securities Principal; however, he was not designated by the Firm as the principal to supervise Robert Bandy's activities.

Electronic Communications

35. Pursuant to SEC Rule 17a-4(b)(4), the Firm is required to preserve the originals of all incoming and outgoing communications, including electronic communications, relating to its business. Additionally, NASD Rule 3010(d) requires the Firm to establish procedures to review

and retain incoming and outgoing written (i.e., non-electronic) and electronic correspondence with the public.

36. The Firm has not established supervisory procedures, or a system, for the review and retention of incoming and outgoing electronic communications.

37. Contrary to the prohibition against electronic communications with clients contained in the *Procedures for Registered Representatives*, Terrance Morgan, a registered agent of the Firm, corresponded with customers via email. Additionally, Wilbanks Securities has allowed its registered agents to distribute materials, stating their email addresses, to customers. Specifically, the Firm approved the business cards of twenty-three (23) registered agents containing the email addresses for the agents.

Special or Heightened Supervision

38. NASD Rule 3010 requires the Firm to establish, maintain, and enforce written procedures to supervise the activities of its registered representatives and associated persons that are reasonably designed to achieve compliance with NASD Rules and applicable securities laws and regulations. According to NASD Notice to Members 97-19 ("Notice 97-19"), ordinary supervisory procedures may not be sufficient to ensure compliance with the applicable laws, regulations, and rules by registered representatives who have a history of reported customer complaints, disciplinary actions, or arbitrations. In such a situation, the member should place such registered representatives under "special supervision" (also referred to as "heightened supervision").

39. According to Notice 97-19, once a registered representative has been identified for special supervision, the member should develop and implement procedures that address the sales practice concerns raised by the individual's history and that recognize the nature of the member's business and its size and structure. The member should designate an appropriate supervisor to oversee the registered representative's activities. It is also important that the member document, monitor, and enforce the terms of each special supervisory arrangement.

40. The Firm, through Randy Wilbanks, placed certain newly hired representatives on special supervision due to their disclosure histories or information obtained in background checks. The Firm's special supervision of the individuals discussed below in paragraphs 41 through 44 was not adequate.

41. Jason Jacobs

a.) On February 19, 2003, Wilbanks Securities hired Jason Jacobs ("Agent Jacobs"). Agent Jacobs operates out of a NBO in Edmond, Oklahoma, and conducts business under the name "4C Financial."

b.) On Agent Jacobs' background check report, Randy Wilbanks wrote "recommend special supervision for first year." This entry was a result of Jacobs' termination from American Express for failure to make appropriate disclosures on his Form U-4 relating to traffic offenses, drug possession, and bad checks.

c.) The majority of Agent Jacobs' accounts are discretionary accounts and as such require frequent reviews in order to detect and prevent unsuitable transactions, pursuant to NASD Rule 2510(c).

d.) At the time of the 2005 Examination, the Firm had never conducted an on-site inspection of Agent Jacobs' NBO. Additionally, there is no evidence that the Firm reviewed any of Agent Jacobs' customer accounts beyond the review of the daily transaction blotter submitted to the Main Office.

42. Dell R. Hughes

a.) On January 4, 2002, Wilbanks Securities hired Dell R. Hughes ("Agent Hughes") to operate from a NBO in Broken Arrow, Oklahoma. Randy Wilbanks attached a letter, dated January 23, 2002, and addressed "To Whom It May Concern," to Agent Hughes' file. The letter stated that due to Agent Hughes' extensive disclosure history, the Firm "felt obligated to put [Agent Hughes] under special supervision and will be monitoring his business activities very closely."

b.) Agent Hughes' disciplinary history includes a Letter of Acceptance, Waiver and Consent ("AWC") issued by the NASD and signed by Agent Hughes on December 15, 1997. The AWC resulted from a customer complaint alleging that Agent Hughes provided a document to a customer that contained misleading information in connection with the customer's purchase of a variable annuity. Agent Hughes was ordered to pay a \$5,000 fine, suspended for one week, and ordered to re-qualify as an Investment Company and Variable Contracts Products Representative by taking and passing the Series 6 examination. MetLife, Agent Hughes' employer at the time of the complaint, settled the matter with the customer for \$311,271.

c.) Agent Hughes received a second customer complaint in 1997 while employed by MetLife. This complaint stated that Agent Hughes made false statements and caused a customer to turn over monies to purchase a variable life insurance policy without the customer's consent. MetLife settled this matter for \$60,000.

d.) At the time of the 2005 Examination, the Firm had never conducted an on-site inspection of Agent Hughes' NBO.

43. Marsha Schubert

a.) On May 4, 2004, Wilbanks Securities hired Agent Schubert and placed her under special supervision. Agent Schubert was permitted to resign from her previous firm, AXA Advisors, LLC ("AXA"), while under internal review for using duplicate copies of an IRA distribution form without obtaining new client signatures. On May 16, 2004, Agent Schubert entered into an independent contractor agreement with Wilbanks Securities reflecting a ten percent (10%) reduced payout for the first year due to being placed under special supervision.

b.) Outside the scope of her relationship with the Firm, but during the time period in which she was employed by the Firm, Agent Schubert, doing business as "Schubert and Associates," operated as an unregistered broker-dealer. Agent Schubert received income from her activities while doing business as "Schubert and Associates."

c.) NASD Rule 3030 prohibits a registered agent from receiving compensation from an outside business activity unless the agent has given "prompt written notice" of the outside business activity to the agent's member firm. The registered agent must give such notice in the form required by the member firm. The *Procedures for Registered Representatives* requires that such written notice be given to the Firm through the agent's Form U-4.

d.) Question 13 of the Form U-4 states:

Are you currently engaged in any other business either as a proprietor, partner, officer, director, employee, trustee, agent or otherwise? (Please exclude non *investment-related* activity that is exclusively charitable, civic, religious or fraternal and is recognized as tax exempt.) If YES, please provide the following details: the name of the other business, whether the business is *investment-related*, the address of the other business, the nature of the other business, your position, title, or relationship with the other business, the start date of your relationship, the approximate number of hours/months you devote to the other business, the number of hours you devote to the other business during securities trading hours, and briefly describe your duties relating to the other business.

e.) Agent Schubert never reported "Schubert and Associates" as an outside business activity on her Form U-4. At the time of the 2005 Examination, there was not evidence that Agent Schubert provided any other written notice of "Schubert and Associates" to Wilbanks Securities.

f.) On May 4, 2004, Agent Schubert tendered a check in the amount of \$990 to Wilbanks Securities. The check was drawn on a bank account in the name of "Schubert and Associates" and was signed by Agent Schubert.

g.) During the 2005 Examination, the Department did not find any written evidence suggesting that the Firm ever addressed Agent Schubert's failure to report "Schubert and Associates" on her Form U-4 or took any other action with respect to "Schubert and Associates."

h.) On July 28, 2004, Randy Wilbanks emailed Agent Schubert regarding a cancelled trade. His email stated:

Please be advised that I cancelled a purchase of 600 shares of CHK for [K. Armer] after talking to him today about that purchase. He did not have enough \$ to cover the trade and he said that he wrote a \$4000 check payable to you (Marsha Schubert) that he dropped off at your office on Saturday, but he did not see you there at that time. I assume this was an error on his part and I told him to stop payment. He said he had not instructed you to purchase any particular securities in his account, but it sounded like he may have given you verbal discretionary authority, as he trusted your judgement. I saw that the trading in his account was marked as "unsolicited". Please note that discretionary option orders are not allowed unless approval has been given by me in advance and that a written instruction signed by the client is required for this. Discretionary trading without written approval by clients will get you in trouble real fast. I hope this is an isolated event. Please make this a priority to address upon your return.

i.) At the time of the 2005 Examination, there was no evidence that the Firm took any further action concerning the activity described in the above-referenced email until Agent Schubert was terminated from the Firm in October 2004. In particular, there is no evidence suggesting that the Firm took any action to determine why Customer Armer wrote a check payable to Agent Schubert.

j.) On August 26, 2004, Randy Wilbanks conducted an on-site examination of Agent Schubert's NBO. The "Wilbanks' Branch Office Examination Checklist" used by Randy Wilbanks shows notations by each of the categories reviewed. Under the category titled "General Sales Practice," Randy Wilbanks indicated that there was no email communication with clients. The fax transmittal form used by Agent Schubert, including in communications with Wilbanks Securities, states her email address. The form also reflects the name "Schubert Investments;" however, a notation on the examination checklist used by Randy Wilbanks indicates that Agent Schubert had no affiliated companies.

k.) Agent Schubert never reported "Schubert Investments" on her Form U-4. At the time of the 2005 Examination, the Department did not find any evidence suggesting that the Firm took any action with respect to "Schubert Investments."

l.) During the Department's investigation into the activities of Agent Schubert, the Department was informed by Agent Schubert that Randy Wilbanks instructed her to stop faxing the daily trade blotters and checks received/forwarded blotters to the Main Office because the paperwork was jamming the fax machine. Agent Schubert and her assistant informed the Department that account paperwork submitted via overnight mail to Wilbanks Securities was not processed for thirty (30) to forty-five (45) days. Agent Schubert stated that accounts were being frozen by Raymond James, the clearing firm for Wilbanks Securities, because of lack of paperwork. When Agent Schubert asked Wilbanks Securities about the matter, she discovered that Randy Wilbanks still had the paperwork on his desk. When asked about the on-site examination of her office by Randy Wilbanks, Agent Schubert confirmed that he had been there. Agent Schubert stated that Randy Wilbanks scheduled the visit about one week in advance and, as confirmed by her assistant, spent approximately one hour in her office. In preparation for Randy's on-site exam, Agent Schubert pulled the records that AXA normally reviewed during their on-site exams. According to Agent Schubert, Randy Wilbanks did not review those records but, instead, spent most of his time talking about automobiles.

m.) Despite Agent Schubert being on heightened supervision, Wilbanks Securities permitted Agent Schubert to hire, train, and "mentor" Justin Tarrant, a newly licensed agent.

n.) In or around August 2002, Justin Tarrant opened an account through Agent Schubert at AXA. On or around July 23, 2004, Justin Tarrant opened an account through Agent Schubert at Wilbanks Securities. On August 4, 2004, the funds in Justin Tarrant's AXA account, totaling approximately \$8,636, were transferred to his account at Wilbanks Securities. From July 23, 2004 until September 30, 2004, no other funds were deposited into Justin Tarrant's account at Wilbanks Securities. From August 4, 2004 until September 30, 2004, all funds in Justin Tarrant's account at Wilbanks Securities remained in a money market fund with no other trades being placed.

o.) During an interview for employment in September 2004, Justin Tarrant informed Aaron Wilbanks and Randy Wilbanks that he had made thousands of dollars as a result of Agent Schubert trading options on his behalf. Justin Tarrant indicated to Aaron Wilbanks and Randy Wilbanks that Agent Schubert had effected option transactions in his account at Wilbanks Securities. As the Senior Registered Options Principal and the Chief Compliance Officer, Randy Wilbanks knew, or had the ability to know, that no options transactions had been effected in Justin Tarrant's account at Wilbanks Securities. During the 2005 Examination, the Department did not find any evidence that the Firm, even with the knowledge

that Agent Schubert placed discretionary option orders on behalf of Customer Armer without required approval or written authorization, took any immediate action with respect to Justin Tarrant's statements regarding options trading.

p.) During its investigation into the activities of Agent Schubert, the Department asked Agent Schubert about the clause in her Independent Contractor Agreement regarding special supervision. Agent Schubert acknowledged that she was told by Randy Wilbanks that she was under special supervision; however, Randy Wilbanks never explained to Agent Schubert what that meant. Randy Wilbanks did inform Agent Schubert, however, that by her being "in Crescent [special supervision] would be hard to do."

q.) In October 2004, the Department filed a Petition for Permanent Injunction and Other Equitable Relief in the District Court of Logan County, State of Oklahoma, against Agent Schubert.

r.) Agent Schubert was "discharged" from Wilbanks Securities in October 2004, for "violations of securities laws, NASD Rules, and internal policies for accepting client checks written to Marsha Schubert and/or Schubert & Associates and alleged conversion of or misappropriation of these funds, alleged trading away in options accounts not disclosed to our Firm, and unauthorized discretionary trading in client accounts."

s.) In November 2004, the Administrator barred Agent Schubert from association with broker-dealers and investment advisers in any capacity.

t.) In September 2005, Agent Schubert was sentenced in the United States District Court of the Western District of Oklahoma to ten (10) years in prison for one count of money laundering.

u.) In September 2005, Agent Schubert was sentenced in the District Court of Logan County, State of Oklahoma, to twenty-five (25) years in prison on fourteen (14) counts of obtaining money by false pretenses.

44. Frederick Cleaver

a.) On May 16, 2002, Wilbanks Securities hired Agent Cleaver, located in an NBO in Georgetown, Delaware. Statements made by the Firm to the Pennsylvania Securities Commission in June 2002 and to the Maryland Division of Securities in July 2002 indicate that Agent Cleaver was subject to special supervision.

b.) In January 1999, Agent Cleaver was permitted to resign from Heather Agency, Inc., a broker-dealer, for alleged violations of the Delaware Securities Act. The allegations included the sale of unregistered securities in the nature of promissory notes, fraud, and unethical practices.

c.) In March 2003, the NASD required Agent Cleaver to attend a Compliance Conference for violations of NASD Rule 3030 (Outside Business Activities) and NASD Rule 3040 (Private Securities Transactions) that resulted from the sale of viatical products during Agent Cleaver's employment at Questar Capital from November 2000 until June 2002.

d.) On June 2, 2002, Wilbanks Securities entered into an agreement with the Pennsylvania Securities Commission agreeing to notify the agency of any complaints received from Pennsylvania clients regarding Agent Cleaver and of any action against or reprimand of Agent Cleaver by the Firm for any reason.

e.) In June 2002, the Maryland Division of Securities would not grant Agent Cleaver registration unless Agent Cleaver agreed to certain conditions of supervision. In a letter dated July 3, 2002, from Randy Wilbanks to the Maryland Division of Securities, the Firm agreed to comply with the required conditions. Randy Wilbanks stated that he would be responsible for Agent Cleaver's supervision "until Susan Shea became a registered principal" operating from the Georgetown office. Randy Wilbanks did not disclose to the Maryland Division of Securities that Susan Shea is Agent Cleaver's twenty-six year old daughter.

f.) Agent Cleaver's conditional registration with Maryland became effective on July 25, 2002. The conditions to Agent Cleaver's registration were effective for two (2) years and included, but were not limited to, the following:

(1) Randy Wilbanks or his successor in the Firm was responsible for supervision and/or monitoring of Agent Cleaver's transactions and conduct, that is: (a) daily review of order tickets; (b) analysis of all monthly statements for all of Agent Cleaver's accounts; (c) periodic discussions with a sampling of Agent Cleaver's current customers in order to ascertain any potential problems; (d) review of all profit and loss analyses for all of Agent Cleaver's accounts; and (e) review of all correspondence to and from Agent Cleaver and customers;

(2) Agent Cleaver could not maintain any discretionary trading accounts; and

(3) Agent Cleaver agreed to forward to the Maryland Division of Securities, within thirty (30) days of receipt, a copy if written, or a synopsis if verbal, of each customer complaint received from a Maryland resident.

g.) Susan Shea did not become registered as a principal until September 2002. There is no evidence of the Firm's compliance with any of the conditions to Agent Cleaver's registration in the state of Maryland between July and September of 2002.

h.) While Agent Cleaver was supposed to be under special supervision, Wilbanks Securities issued Agent Cleaver and Susan Shea a Letter of Caution dated October 1, 2003. The Letter of Caution resulted from a complaint received from C. Deneau, a Delaware resident, dated September 16, 2003, regarding Agent Cleaver's recommendation of mutual fund Class B shares with advisory fees.

i.) In January 2005, Agent Cleaver received a customer complaint from M. and M. Hoyt ("Hoyts"), Delaware residents. The Hoyts alleged that Agent Cleaver failed to manage their funds as requested by the Hoyts. Agent Cleaver advised the Hoyts to consolidate their funds that were located at several financial institutions into an investment recommended by him. The Hoyts requested that \$50,000 of the \$150,000 transferred to Agent Cleaver remain available in the event of a family emergency. Despite such request, all funds were used to purchase a variable annuity. On August 12, 2005, American Skandia, at the request of Wilbanks Securities, processed a cancellation of the annuity contract resulting in a charge back to the Firm of \$3,899.84 for market loss and commissions.

j.) In response to the Hoyts' complaint, Randy Wilbanks issued a Letter of Caution and Notice of Special Supervision to Agent Cleaver on May 27, 2005. According to the Letter of Caution, the Firm reimbursed the Hoyts for their tax penalty in the amount of \$1,568 in an attempt to settle the complaint.

k.) Agent Cleaver hosts an investment related call-in radio show on a bi-weekly basis. The standards relating to the content of public communications, contained in NASD Rule 2210, apply to all public appearances regardless of whether the presentation has been scripted or consists of unrehearsed remarks in response to a question. The *Procedures for Registered Representatives* require registered agents to submit an outline of the subject matter of a public speaking engagement to a registered principal for approval prior to the engagement. The *Supervisory Procedures* and the *Procedures for Registered Representatives* do not address the review or monitoring of the actual appearances. Accordingly, the Firm has failed to establish, maintain, and enforce a supervisory system or written procedures reasonably designed to ensure compliance with NASD Rule 2210.

l.) Despite Agent Cleaver's regulatory problems and "special supervision" status, at the time of the 2005 Examination, the Firm had conducted only one on-site inspection of Agent Cleaver's NBO. That inspection occurred in June 2004.

45. The Firm failed to place certain other registered representatives under special supervision even though the individuals' histories suggested that ordinary supervision would not be sufficient to ensure their compliance with applicable laws, regulations, and rules. Paragraphs 46 through 49 address such representatives.

46. Hoyt Bacon

a.) Hoyt Bacon ("Agent Bacon") was hired by Wilbanks Securities in August 1997 and discharged for violations of the Firm's internal policies in March 2003. Agent Bacon operated a NBO out of his home in Tulsa, Oklahoma.

b.) Agent Bacon was registered with American Express Financial Advisors, Inc. ("American Express") from October 1989 until August 1992. On July 30, 1996, American Express updated Agent Bacon's Form U-5 to reflect a pending civil lawsuit against Agent Bacon alleging that Agent Bacon borrowed \$25,000 from a client during his employment at American Express and failed to repay it. On July 7, 1999, American Express again updated Agent Bacon's Form U-5 to show that the civil lawsuit against Agent Bacon had been settled for \$28,432.31.

c.) Agent Bacon was registered with Investacorp, Inc., from January 1993 until August 1996. In or before February 1997, Randy Wilbanks contacted C. Knapp of Investacorp during the process of hiring another agent, Charles Campbell ("Agent Campbell"). Randy Wilbanks' notes from his conversation with C. Knapp state:

Problem with partner Hoyt Bacon who borrowed money from client and did not pay back? Not involved as far as they could tell, only his partner was involved with loan. Who was client? Can not say – confidentiality of client an issue. (would have to pull that info from Hoyt Bacon's file.)

d.) Even though the Firm had knowledge that Agent Bacon borrowed money from a client, which is prohibited by NASD Rules, the Firm hired Agent Bacon but did not place him on heightened supervision.

e.) From at least January 2000 until February 2003, Agent Bacon used letterhead for "Bacon & Bacon Infinity Financial Advisors, Inc." in communications with clients and entered into Investment Advisory Agreements on letterhead stating the same.

f.) In or about April 2003, Wilbanks Securities received a customer complaint alleging that Agent Bacon charged a \$1,500 to \$1,800 cash set-up fee to open an account.

g.) In March 2005, the NASD initiated a regulatory action against Agent Bacon based on activity that occurred during his employment at Wilbanks Securities. In such action, the NASD alleged that Agent Bacon violated NASD Rules 2110 and 3030 by engaging in outside business activities, for compensation, without written notice to his member firms; by filling out forms incorrectly stating that all of his advisory business was conducted through his firm and that all outside business activities had been disclosed to the firm; and by

entering into investment advisory agreements with a public customer through his member firm's affiliated registered investment adviser and also through an unregistered investment adviser and double billing the customer for investment advisory services. Without admitting or denying the allegations, Bacon consented to the entry of the findings. Bacon was fined \$5,000, censured, ordered to pay restitution in the amount of \$11,793.59 plus interest, and suspended from association with any NASD member firm in any capacity for one year, ending July 31, 2006.

h.) The Firm never placed Bacon on heightened supervision or conducted an on-site examination of Agent Bacon's NBO.

47. Scott Blackwell

a.) Scott Blackwell ("Agent Blackwell") was hired by the Firm in March 2002 and worked out of a branch office located at 5200 South Yale in Tulsa, Oklahoma ("Tulsa Branch Office"). Agent Blackwell's client files were reviewed during an examination of the Tulsa Branch Office by the NASD in 2003. The NASD alleged that two Mutual Fund Disclosure Forms were found in a client's file that appeared to be identical with the exception of the dates. The original form was dated May 20, 2002, and the other form was dated July 20, 2002. Agent Blackwell's explanation was that the client lived in the country and was finishing construction on a new home and suggested that Agent Blackwell change the date on the form for expediency. Agent Blackwell stated that he agreed to do it as an "accommodation to everyone."

b.) On March 26, 2003, Randy Wilbanks issued a Letter of Caution to Agent Blackwell for altering a document. Randy Wilbanks' letter to Agent Blackwell stated, in part: "Your explanation of altering the date on the Mutual Fund Disclosure Form for [R. Lauderdale] at his suggestion does not justify doing so, and altering documents is not acceptable in any business, especially the securities industry."

c.) At the time of the 2005 Examination, Wilbanks Securities had not placed Agent Blackwell under special supervision.

48. Ken Boyd

a.) Ken Boyd ("Agent Boyd") was hired by Wilbanks Securities in October 2001. Agent Boyd operates a NBO in Moon Township, Pennsylvania.

b.) Prior to his employment with the Firm, Agent Boyd was employed by FFP Securities Inc. ("FFP"). Agent Boyd's personnel file at Wilbanks Securities shows that FFP terminated him for "Failure to follow company policy and procedures." Contained in the file is correspondence from FFP to Agent Boyd regarding compliance audits conducted in the years 2000 and 2001. The

violations or deficiencies cited by FFP in their 2001 exam included: (1) failure to create a personnel file for his registration information; (2) failure to disclose his outside business activity to FFP (pastor of a church); (3) failure to maintain a complete set of compliance memos; and (4) failure to have a lockable, fireproof safe or file cabinet for any money or securities that need to be stored overnight. In addition to those deficiencies, FFP also cited Agent Boyd for not correcting problems detected during the 2000 exam. Those deficiencies included: (1) not opening or checking the mail every day and allowing his daughter who is not fingerprinted to open the mail; (2) failure to submit correspondence with clients to the Compliance Department for monthly review or to submit a statement when there has been no correspondence; (3) failure to maintain client ledgers or daily transmittal logs that reflect all securities transactions; (4) failure to update client information on a timely basis; (5) failure to maintain a list of employees or relatives with accounts; (6) failure to replace outdated prospectuses; (7) conducting a securities business in a state (Illinois) in which Agent Boyd was not licensed; and (8) failure to update his business address on his letterhead and business cards.

c.) Despite Agent Boyd's history with FFP, Wilbanks Securities hired Agent Boyd but did not place him on heightened supervision and, at the time of the 2005 Examination, had not conducted an on-site examination of his NBO.

49. Charles Campbell

a.) In February 1997, Wilbanks Securities hired Agent Campbell to work out of the Tulsa Branch Office. During the hiring process, Randy Wilbanks contacted Agent Campbell's employer, Emeric Financial Services, Inc. ("Emeric"). The notes written on the report of the background check reflect Randy Wilbanks' conversation with Emeric's President. In the "Job Performance" field, the comment made is, "Very aggressive investment policy." The word "Very" is underlined several times. In the field "Best Skills or Attributes," the word "Best" is crossed out and above it the word "Worst" is written. The comment is, "The most aggressive investment strategy they have ever seen." The next field is "Circumstances of Separation." The comment written is, "He will keep you busy and you may sweat some bullets." On the bottom of the page are three questions written by Randy Wilbanks. The third question is, "Follows sound suitability practices with investors?" The response was, "No, takes all money out [market] into money [market] and dollar cost averages back into aggressive growth over the year." Randy continues quoting Emeric's President as follows:

Emeric would deal with 'problem' eventually [especially] if [market] goes down. 'Needs to learn more about suitability.' Needs to be trained in more conservative investment strategy but may take offense to being told how to invest clients [sic] money. Could be a good [representative] but needs close supervision [especially with respect to] suitability.

b.) Despite the warnings of Emeric's President, the Firm hired Agent Campbell but did not place him under heightened supervision. Additionally, the Firm documented, and presumably conducted, only one on-site examination of Agent Campbell's branch office. Randy Wilbanks conducted that on-site examination on March 27, 2002, five years after Agent Campbell was hired and at about the same time Agent Blackwell was hired to work in the Tulsa Branch Office.

c.) Representatives of the Department conducted an announced examination of Agent Campbell's office on March 16, 2005. During the background interview, Agent Campbell stated that he does not conduct much business because he is devoting most of his time to developing patents on engine parts for race cars. He stated that he had approximately twenty (20) clients and that all twenty were invested in variable annuities. Agent Campbell's commissions for the year 2004 totaled \$51,618.84; all from the sale of variable annuities with the exception of \$699.24 from the sale of mutual funds. Agent Campbell's commissions for January through April 2005 totaled \$1,414.39; all from the sale of variable annuities with the exception of \$354.88 from the sale of mutual funds. The customer files contained the Firm's Account Application for Mutual Funds & Variable Insurance/Variable Annuity Products ("Application"). The Applications for seven clients were reviewed. Of those seven Applications, one did not reflect the client's address, another was missing the client's age, and one was missing the client's investment objective. Except for one client whose investment objective was not marked on the Application, all reviewed Applications showed "aggressive growth" as the investment objective.

d.) At the time of the 2005 Examination, the Main Office's client files did not contain information regarding the variable annuity purchases effected by Agent Campbell. Specifically, the Firm did not have copies of the variable annuity contracts or other documentation evidencing the product(s) purchased, customer account statements since inception/purchase, or customer confirmations for purchases and any subsequent withdrawals.

50. The *Supervisory Procedures* do not describe the circumstances under which an agent should be subject to heightened supervision; what heightened supervision should involve, including the frequency and scope of reviews; or how the supervision should be documented.

To the extent any of these Findings of Fact are more properly characterized as Conclusions of Law, they should be so considered.

Authorities

1. Section 660:11-5-41 of the Rules of the Oklahoma Securities Commission and the Administrator of the Department of Securities ("Rules") provides: "17 CFR § 240.17a-3 and

17 CFR § 240.17a-4 (2003), books and records rules established by the SEC under the 1934 Act, are hereby incorporated by reference as if fully set forth into this Chapter.”

2. Subsection (b) of Section 660:11-5-42 of the Rules provides in part:

- (1) A broker-dealer and his agents, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade. A broker-dealer and his agents shall not violate any federal securities statute or rule or any rule of a national securities exchange or national securities association of which it is a member with respect to any customer, transaction or business effected in this state.

* * *

(18) The following standards shall apply to books and records:

- (A) Each broker-dealer shall keep and preserve books, accounts, records, memoranda, and correspondence in conformity with all applicable laws, rules, regulations, and statements of policy promulgated by the Administrator and/or the Commission under the Securities Act.

* * *

(22) The following standards shall apply to supervisory procedures:

- (A) Each broker-dealer shall establish, maintain and enforce written procedures which will enable it to supervise properly the activities of each registered agent and associated person to assure compliance with applicable securities laws, rules, regulations and statements of policy promulgated by the Administrator and/or the Commission under the Securities Act.

- (B) Final responsibility for proper supervision shall rest with the broker-dealer, the principal(s) of the broker-dealer registered in accordance with 660:11-5-11, and the principal(s) of the broker-dealer in each OSJ, including the main office, and the registered representatives in each non-OSJ branch office designated by the broker-dealer to carry out the supervisory responsibilities assigned to that office by the broker-dealer pursuant to the rules and regulations of the NASD. A copy of the written supervisory procedures shall be kept in each office of supervisory jurisdiction and each non-OSJ branch office.

(C) Each broker-dealer shall be responsible for keeping and preserving appropriate records for carrying out such broker-dealer's supervisory procedures. Each broker-dealer shall review and endorse in writing, on an internal record, all transactions and all correspondence of its registered agents pertaining to the solicitation or execution of any securities transactions.

(D) Each broker-dealer shall review the activities of each office, which shall include the periodic examination of customer accounts to detect and prevent irregularities or abuses and conduct at least an annual inspection of each office of supervisory jurisdiction.

(E) Each broker-dealer shall have the responsibility and duty to ascertain by investigation the good character, business repute, qualifications and experience of any person prior to making such a certification in the application of such person for registration under the Securities Act.

3. At all times material hereto, NASD Rule 2210 provided in part:

(a) Definitions

For purposes of this Rule and any interpretation thereof, "communications with the public" consist of:

(1) "Advertisement." Any material, other than an independently prepared reprint and institutional sales material, that is published, or used in any electronic or other public media, including any Web site, newspaper, magazine or other periodical, radio, television, telephone or tape recording, videotape display, signs or billboards, motion pictures, or telephone directories (other than routine listings).

* * *

(5) "Public Appearance." Participation in a seminar, forum (including an interactive electronic forum), radio or television interview, or other public appearance or public speaking activity.

* * *

(d) Content Standards

(1) Standards Applicable to All Communications with the Public

(A) All member communications with the public shall be based on principles of fair dealing and good faith, must be fair and

balanced, and must provide a sound basis for evaluating the facts in regard to any particular security or type of security, industry, or service. No member may omit any material fact or qualification if the omission, in the light of the context of the material presented, would cause the communications to be misleading.

(B) No member may make any false, exaggerated, unwarranted or misleading statement or claim in any communication with the public. No member may publish, circulate or distribute any public communication that the member knows or has reason to know contains any untrue statement of a material fact or is otherwise false or misleading.

(C) Information may be placed in a legend or footnote only in the event that such placement would not inhibit an investor's understanding of the communication.

(D) Communications with the public may not predict or project performance, imply that past performance will recur or make any exaggerated or unwarranted claim, opinion or forecast. A hypothetical illustration of mathematical principles is permitted, provided that it does not predict or project the performance of an investment or investment strategy.

(E) If any testimonial in a communication with the public concerns a technical aspect of investing, the person making the testimonial must have the knowledge and experience to form a valid opinion.

4. At all times material hereto, NASD Rule 2510 provided in part:

(c) Approval and Review of Transactions

The member or the person duly designated shall approve promptly in writing each discretionary order entered and shall review all discretionary accounts at frequent intervals in order to detect and prevent transactions which are excessive in size or frequency in view of the financial resources and character of the account.

5. At all times material hereto, NASD Rule 3010 provided in part:

(a) Supervisory System

Each member shall establish and maintain a system to supervise the activities of each registered representative and associated person that is reasonably designed to achieve compliance with applicable securities laws

and regulations, and with applicable NASD Rules. Final responsibility for proper supervision shall rest with the member. A member's supervisory system shall provide, at a minimum, for the following:

(1) The establishment and maintenance of written procedures as required by paragraphs (b) and (c) of this Rule.

(2) The designation, where applicable, of an appropriately registered principal(s) with authority to carry out the supervisory responsibilities of the member for each type of business in which it engages for which registration as a broker/dealer is required.

(3) The designation as an office of supervisory jurisdiction (OSJ) of each location that meets the definition contained in paragraph (g) of this Rule. Each member shall also designate such other OSJs as it determines to be necessary in order to supervise its registered representatives and associated persons in accordance with the standards set forth in this Rule, taking into consideration the following factors:

(A) whether registered persons at the location engage in retail sales or other activities involving regular contact with public customers;

(B) whether a substantial number of registered persons conduct securities activities at, or are otherwise supervised from, such location;

(C) whether the location is geographically distant from another OSJ of the Firm;

(D) whether the member's registered persons are geographically dispersed; and

(E) whether the securities activities at such location are diverse and/or complex.

(4) The designation of one or more appropriately registered principals in each OSJ, including the main office, and one or more appropriately registered representatives or principals in each non-OSJ branch office with authority to carry out the supervisory responsibilities assigned to that office by the member.

(5) The assignment of each registered person to an appropriately registered representative(s) and/or principal(s) who shall be responsible for supervising that person's activities.

* * *

(b) Written Procedures

(1) Each member shall establish, maintain, and enforce written procedures to supervise the types of business in which it engages and to supervise the activities of registered representatives and associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with the applicable Rules of this Association.

* * *

(3) The member's written supervisory procedures shall set forth the supervisory system established by the member pursuant to paragraph (a) above, and shall include the titles, registration status and locations of the required supervisory personnel and the responsibilities of each supervisory person as these relate to the types of business engaged in, applicable securities laws and regulations, and the Rules of this Association. The member shall maintain on an internal record the names of all persons who are designated as supervisory personnel and the dates for which such designation is or was effective. Such record shall be preserved by the member for a period of not less than three years, the first two years in an easily accessible place.

* * *

(c) Internal Inspections

(1) Each member shall conduct a review, at least annually, of the businesses in which it engages, which review shall be reasonably designed to assist in detecting and preventing violations of, and achieving compliance with, applicable securities laws and regulations, and with applicable NASD rules. Each member shall review the activities of each office, which shall include the periodic examination of customer accounts to detect and prevent irregularities or abuses.

* * *

(C) Each member shall inspect on a regular periodic schedule every non-branch location. In establishing such schedule, the firm shall consider the nature and complexity of the securities activities for which the location is responsible and the nature and extent of contact with customers. The schedule and an explanation regarding how the member determined the frequency of the

examination schedule shall be set forth in the member's written supervisory and inspection procedures.

Each member shall retain a written record of the dates upon which each review and inspection is conducted.

(2) An office inspection and review by a member pursuant to paragraph (c)(1) must be reduced to a written report and kept on file by the member for a minimum of three years, unless the inspection is being conducted pursuant to paragraph (c)(1)(C) and the regular periodic schedule is longer than a three-year cycle, in which case the report must be kept on file at least until the next inspection report has been written. . . .

* * *

(d) Review of Transactions and Correspondence

(1) Supervision of Registered Representatives

Each member shall establish procedures for the review and endorsement by a registered principal in writing, on an internal record, of all transactions and for the review by a registered principal of incoming and outgoing written and electronic correspondence of its registered representatives with the public relating to the investment banking or securities business of such member. Such procedures should be in writing and be designed to reasonably supervise each registered representative. Evidence that these supervisory procedures have been implemented and carried out must be maintained and made available to the Association upon request.

(2) Review of Correspondence

Each member shall develop written procedures that are appropriate to its business, size, structure, and customers for the review of incoming and outgoing written (i.e., non-electronic) and electronic correspondence with the public relating to its investment banking or securities business, including procedures to review incoming, written correspondence directed to registered representatives and related to the member's investment banking or securities business to properly identify and handle customer complaints and to ensure that customer funds and securities are handled in accordance with firm procedures. Where such procedures for the review of correspondence do not require review of all correspondence prior to use or distribution, they must include provision for the education and training of associated persons as to the firm's procedures governing correspondence; documentation of such education and training; and surveillance and follow-up to ensure that such procedures are implemented and adhered to.

(3) Retention of Correspondence

Each member shall retain correspondence of registered representatives relating to its investment banking or securities business in accordance with Rule 3110. The names of the persons who prepared outgoing correspondence and who reviewed the correspondence shall be ascertainable from the retained records and the retained records shall be readily available to the Association, upon request.

* * *

(g) Definitions

(1) "Office of Supervisory Jurisdiction" means any office of a member at which any one or more of the following functions take place:

(A) order execution and/or market making;

(B) structuring of public offerings or private placements;

(C) maintaining custody of customers' funds and/or securities;

(D) final acceptance (approval) of new accounts on behalf of the member;

(E) review and endorsement of customer orders, pursuant to paragraph (d) above;

(F) final approval of advertising or sales literature for use by persons associated with the member, pursuant to Rule 2210(b)(1); or

(G) responsibility for supervising the activities of persons associated with the member at one or more other branch offices of the member.

(2)(A) "Branch Office" means any location identified by any means to the public or customers as a location at which the member conducts an investment banking or securities business, excluding:

(i) any location identified in a telephone directory line listing or on a business card or letterhead, which listing, card, or letterhead also sets forth the address and telephone number of the branch office or OSJ of the firm from which the person(s)

conducting business at the non-branch locations are directly supervised;

(ii) any location referred to in a member advertisement, as this term is defined in Rule 2210, by its local telephone number and/or local post office box provided that such reference may not contain the address of the non-branch location and, further, that such reference also sets forth the address and telephone number of the branch office or OSJ of the firm from which the person(s) conducting business at the non-branch location are directly supervised; or

(iii) any location identified by address in a member's sales literature, as this term is defined in Rule 2210, provided that the sales literature also sets forth the address and telephone number of the branch office or OSJ of the firm from which the person(s) conducting business at the non-branch locations are directly supervised.

(iv) any location where a person conducts business on behalf of the member occasionally and exclusively by appointment for the convenience of customers, so long as each customer is provided with the address and telephone number of the branch office or OSJ of the firm from which the person conducting business at the non-branch location is directly supervised.

(2)(B) Notwithstanding the exclusions provided in paragraph (2)(A), any location that is responsible for supervising the activities of persons associated with the member at one or more non-branch locations of the member is considered to be a branch office.

(3) A member may substitute a central office address and telephone number for the supervisory branch office or OSJ locations referred to in paragraph (g)(2) above provided it can demonstrate to the Association's District Office having jurisdiction over the member that it has in place a significant and geographically dispersed supervisory system appropriate to its business and that any investor complaint received at the central site is provided to and resolved in conjunction with the office or offices with responsibility over the non-branch business location involved in the complaint.

6. NASD Rule 3012, effective as of January 31, 2005, provides in part:

(a) General Requirements

* * *

(2) The establishment, maintenance, and enforcement of written supervisory control policies and procedures pursuant to paragraph (a) shall include:

(A) procedures that are reasonably designed to review and supervise the customer account activity conducted by the member's branch office managers, sales managers, regional or district sales managers, or any person performing a similar supervisory function[.]

7. At all times material hereto, NASD Rule 3030 provided:

No person associated with a member in any registered capacity shall be employed by, or accept compensation from, any other person as a result of any business activity, other than a passive investment, outside the scope of his relationship with his employer firm, unless he has provided prompt written notice to the member. Such notice shall be in the form required by the member. Activities subject to the requirements of Rule 3040 shall be exempted from this requirement.

8. At all times material hereto, NASD Rule 3110 provided in part:

a. Requirements

Each member shall make and preserve books, accounts, records, memoranda, and correspondence in conformity with all applicable laws, rules, regulations and statements of policy promulgated thereunder and with the Rules of this Association and as prescribed by SEC Rule 17a-3. The recording keeping format, medium, and retention period shall comply with Rule 17a-4 under the Securities Exchange Act of 1934.

9. Rule 17a-3 under the Securities Exchange Act of 1934 states in part:

a. Every member of a national securities exchange who transacts a business in securities directly with others than members of a national securities exchange, and every broker or dealer who transacts a business in securities through the medium of any such member, and every broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934, as amended, . . . shall make and keep current the following books and records relating to its business:

(1) Blotters (or other records of original entry) containing an itemized daily record of all purchases and sales of securities, all receipts and deliveries of securities (including certificate numbers), all receipts and disbursements of cash and all other debits and credits. Such records shall show the account for which each such transaction was effected, the name

and amount of securities, the unit and aggregate purchase or sale price (if any), the trade date, and the name or other designation of the person from whom purchased or received or to whom sold or delivered.

* * *

(3) Ledger accounts (or other records) itemizing separately as to each cash and margin account of every customer and of such member, broker or dealer and partners thereof, all purchases, sales, receipts, and deliveries of securities and commodities for such account and all other debits and credits to such account.

* * *

(6)(i) A memorandum of each brokerage order, and of any other instruction, given or received for the purchase or sale of securities, whether executed or unexecuted. The memorandum shall show the terms and conditions of the order or instruction and of any modification or cancellation thereof; the account for which entered; the time the order was received; the time of entry; the price at which executed; the identity of each associated person, if any, responsible for the account; the identity of any other person who entered or accepted the order on behalf of the customer or, if a customer entered the order on an electronic system, a notation of that entry and, to the extent feasible, the time of execution or cancellation. The memorandum need not show the identity of any person, other than the associated person responsible for the account, who may have entered or accepted the order if the order is entered into an electronic system that generates the memorandum and if that system is not capable of receiving an entry of the identity of any person other than the responsible associated person; in that circumstance, the member, broker or dealer shall produce upon request by a representative of a securities regulatory authority a separate record which identifies each other person. An order entered pursuant to the exercise of discretionary authority by the member, broker or dealer, or associated person thereof, shall be so designated. . . .

(ii) This memorandum need not be made as to a purchase, sale or redemption of a security on a subscription way basis directly from or to the issuer, if the member, broker or dealer maintains a copy of the customer's subscription agreement regarding a purchase, or a copy of any other document required by the issuer regarding a sale or redemption.

* * *

(8) Copies of confirmations of all purchases and sales of securities, including all repurchase and reverse repurchase agreements,

and copies of notices of all other debits and credits for securities, cash and other items for the account of customers and partners of such member, broker or dealer.

10. Rule 17a-4 under the Securities Exchange Act of 1934 provides in part:

(a) Every member, broker and dealer subject to § 240.17a-3 shall preserve for a period of not less than six years, the first two years in an easily accessible place, all records required to be made pursuant to paragraphs § 240.17a-3(a)(1), (a)(2), (a)(3), (a)(5), (a)(21), (a)(22), and analogous records created pursuant to paragraph § 240.17a-3(f).

(b) Every member, broker, and dealer subject to § 240.17a-3 shall preserve for a period of not less than three years, the first two years in an easily accessible place:

(1) All records required to be made pursuant to § 240.17a-3(a)(4), (a)(6), (a)(7), (a)(8), (a)(9), (a)(10), (a)(16), (a)(18), (a)(19), (a)(20), and analogous records created pursuant to paragraph § 240.17a-3(f).

* * *

(4) Originals of all communications received and copies of all communications sent (and any approvals thereof) by the member, broker or dealer (including inter-office memoranda and communications) relating to its business as such, including all communications which are subject to rules of a self-regulatory organization of which the member, broker or dealer is a member regarding communications with the public. As used in this paragraph (b)(4), the term communications includes sales scripts.

11. Section 1-411 of the Act provides in part:

B. If the Administrator finds that the order issued is in the public interest and subsection D of this section authorizes the action an order issued under this act may revoke, suspend, condition, or limit the registration of a registrant and if the registrant is a broker-dealer or investment adviser, any partner, officer, or director, any person having a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser. . . .

C. If the Administrator finds that the order is in the public interest and paragraphs 1 through 6, 8, 9, 10, 12, or 13 of subsection D of this section authorizes the action, an order under this act may censure, impose a bar, impose a civil penalty in an amount not to exceed a maximum of Five Thousand Dollars (\$5,000.00) for a single violation or Two Hundred Fifty Thousand Dollars (\$250,000.00) for multiple violations on a registrant,

and/or recover the costs of the investigation from a registrant and if the registrant is a broker-dealer or investment adviser, from any partner, officer, or director, any person having a similar function or any person directly or indirectly controlling the broker-dealer or investment adviser.

D. A person may be disciplined under subsections A through C of this section if the person:

* * *

2. Has willfully violated or willfully failed to comply with this act or the predecessor act or a rule adopted or order issued under this act or the predecessor act within the previous ten (10) years;

* * *

9. Has failed to reasonably supervise an agent, investment adviser representative, or other individual, if the agent, investment adviser representative, or other individual was subject to the person's supervision and committed a violation of this act or the predecessor act or a rule adopted or order issued under this act or the predecessor act within the previous ten (10) years[.]

* * *

G. An order may not be issued under this section, except under subsection F of this section, without:

1. Appropriate notice to the applicant or registrant;
2. Opportunity for hearing; and
3. Findings of fact and conclusions of law in a record in accordance with the Administrative Procedures Act. If the person to whom the notice is addressed does not request a hearing within fifteen (15) days after the service of notice is effective, a final order as provided in subsection A, B or C of this section may be issued.

Conclusions of Law

1. Final responsibility for proper supervision of the Firm's registered agents and associated persons rests with Wilbanks Securities, Aaron Wilbanks, and Randy Wilbanks, pursuant to Section 660:11-5-42 of the Rules.

2. Respondents failed to establish and maintain an adequate supervisory system and written supervisory procedures to supervise the activities of each registered representative and associated person, in violation of NASD Rule 3010.

3. Respondents failed to establish a supervisory system and written supervisory procedures for the review, by a registered principal, of its registered representatives' incoming written and electronic correspondence with the public, in violation of NASD Rule 3010.

4. Respondents failed to establish, maintain, and enforce a supervisory system and written supervisory procedures reasonably designed to achieve compliance with SEC Rule 17a-3(a)(1) relating to the preparation and maintenance of checks received/forwarded blotter records, in violation of NASD Rule 3010 and SEC Rule 17a-3.

5. Respondents failed to establish a supervisory system and written supervisory procedures addressing how registered principals in NBOs should handle customer complaints, in violation of NASD Rule 3010.

6. Respondents failed to enforce the Firm's written supervisory procedures regarding client file reviews, in violation of NASD Rule 3010.

7. Respondents failed to establish and maintain a supervisory system and written supervisory procedures reasonably designed to achieve compliance with SEC Rule 17a-4 relating to the retention of documents, in violation of NASD Rule 3010 and SEC Rule 17a-4.

8. Respondents failed to establish and maintain a supervisory system that assigns registered persons, including registered principals, to an appropriately registered person responsible for supervising that person's activities, in violation of NASD Rule 3010.

9. Respondents failed to establish, maintain, and enforce written procedures that are reasonably designed to review and supervise the customer account activity conducted by the Firm's registered principals, in violation of NASD Rule 3012.

10. Respondents failed to establish, maintain, and enforce written procedures to supervise the activities of registered representatives and associated persons in non-branch offices, in violation of NASD Rule 3010.

11. Respondents failed to set forth in the Firm's written supervisory and inspection procedures a regular periodic schedule for the inspection of non-branch offices and an explanation regarding how the frequency of the examinations is determined, in violation of NASD Rule 3010.

12. Respondents failed to inspect non-branch offices on a regular periodic schedule, in violation of NASD Rule 3010.

13. Respondents failed to require the Firm's non-branch offices to provide the address and telephone number of their supervisory branch office or OSJ on their business cards, in violation of NASD Rule 3010.

14. Respondents did not require Agent Bandy's designated supervisor to supervise the activities of Agent Bandy, in violation of NASD Rule 3010.

15. Respondents failed to establish written procedures to review and retain incoming and outgoing electronic correspondence with the public, in violation of NASD Rule 3010.

16. Respondents failed to establish and maintain a supervisory system and written supervisory procedures reasonably designed to achieve compliance with NASD Rule 3010(d) and SEC Rule 17a-4(b)(4) relating to the review and retention of correspondence, in violation of NASD Rules 3010 and SEC Rule 17a-4.

17. Respondents failed to establish and maintain a system to supervise the activities of registered representatives placed under heightened supervision that is reasonably designed to achieve compliance with applicable securities laws and regulations and with NASD Rules, in violation of NASD Rule 3010.

18. Respondents failed to establish, maintain, and enforce adequate written procedures concerning heightened supervision, in violation of NASD Rule 3010.

19. Respondents failed to establish, maintain, and enforce a supervisory system and adequate written procedures to ensure that public appearances by representatives of the Firm comply with NASD Rule 2210, in violation of NASD Rule 3010.

20. Respondents failed to prepare and maintain books and records required by SEC Rules 17a-3 and 17a-4, in violation of 660:11-5-41 and 660:11-5-42 of the Rules.

21. Respondents failed to comply with the conditions of the Firm's agreement with the Pennsylvania Securities Commission with respect to Agent Cleaver, in violation of 660:11-5-42 of the Rules.

22. Respondents failed to comply with an Order by the Maryland Division of Securities conditioning Agent Cleaver's registration in that state, in violation of 660:11-5-42 of the Rules.

23. Respondents violated rules promulgated under the Securities Exchange Act of 1934 and rules of the NASD with respect to customers, transactions, and business effected in this state, in violation of 660:11-5-42 of the Rules.

24. Respondents failed to reasonably supervise Agent Schubert and Agent Bacon, who committed violations of the Oklahoma Securities Act, Okla. Stat. tit. 71, §§ 1-413, 501, 701-703 (2001 and Supp. 2003), and/or the Act within the previous ten (10) years.

25. It is in the public interest for the Administrator to limit the registrations of Aaron Wilbanks and Randy Wilbanks to broker-dealer agents; to bar Aaron Wilbanks and Randy Wilbanks from being registered as principals or acting in any supervisory capacity; and to revoke the broker-dealer registration of Wilbanks Securities.

26. Section 1-411 of the Act authorizes the Administrator to limit the registrations of Aaron Wilbanks and Randy Wilbanks to broker-dealer agents; to bar Aaron Wilbanks and Randy Wilbanks from being registered as principals or acting in any supervisory capacity; and to revoke the broker-dealer registration of Wilbanks Securities.

To the extent any of these Conclusions of Law are more properly characterized as Findings of Fact, they should be so considered.

WHEREFORE, it is recommended that the Administrator limit the registrations of Aaron Wilbanks and Randy Wilbanks to broker-dealer agents and bar them from being registered as principals or acting in any supervisory capacity.

IT IS FURTHER RECOMMENDED that the Administrator revoke the broker-dealer registration of Wilbanks Securities and order the Firm to liquidate within ninety (90) days of an order by the Administrator.

IT IS FURTHER RECOMMENDED that the Administrator impose any other sanctions as deemed appropriate and as authorized by law.

Dated this 4th day of August, 2006.

Respectfully submitted,



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