IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

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SOUTHEAST INVESTMENTS, N.C. INC., A NORTH CAROLINA CORPORATION; and FRANK H. BLACK,	)	
Plaintiffs/Petitioners,	)	
vs.	)	Case No. CV-2015-86
THE STATE OF OKLAHOMA *ex rel.* THE OKLAHOMA SECURITIES COMMISSION,	)	
Defendant.	)	

RESPONSE TO PETITIONERS' OPENING BRIEF

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On October 24, 2014, Frank H. Black (Black) and Southeast Investments, N.C., Inc. (Southeast) (collectively, the "Petitioners") filed a petition under Section 1-609 of the Oklahoma Uniform Securities Act of 2004 (Act), Okla. Stat. tit. 71, §§ 1-101 through 1-701 (2013), seeking review by the Oklahoma Securities Commission (Commission) of the *Order to Cease and Desist and Imposing a Civil Penalty* issued by the Administrator of the Oklahoma Department of Securities (Department) on October 10, 2014 (Administrator's Order). The Administrator ordered Petitioners to cease and desist their violations of the Act and the Rules of the Oklahoma Securities Commission and the Administrator of the Department of Securities (Rules). After a full hearing, the Commission upheld the Administrator's Order with its order issued on December 22, 2014 (Commission's Order). Section 1-609(B) of the Act states an appeal by a person aggrieved by a final cease and desist order of the Commission shall be taken to the district court of Oklahoma County. Petitioners

filed their appeal of the cease and desist order with this Court. Petitioners also filed an appeal of the imposition of the $5,000 monetary penalty with the Oklahoma Supreme Court as authorized by the Act.

I. PROCEDURAL SUMMARY OF THE CASE

At the inception of this case, Rodney Larry Watkins, Jr. (Watkins) had been registered as a broker-dealer agent and an investment adviser representative of Ameriprise Financial Services, Inc. (AFS) operating from Tulsa, Oklahoma. (Record at Tab 15, Ex. 8, pp.62-63 and 76-77.) AFS allowed Watkins to voluntarily resign for violations of the firm's policies relating to, *inter alia,* unacceptable activities/transactions; pre-signed forms and applications; forgery; and other signature issues. (Record at Tab 15, Ex. 8, pp.74-75.) In February of 2012, Southeast entered into a broker-dealer/agent relationship with Watkins. (Record at Tab 3, p.1.)

On March 29, 2012, the Enforcement Division of the Department (Enforcement Division) commenced an administrative action against Watkins based on his dishonest and unethical conduct while with AFS. (*See* admissions in Record at Tab 3, p.2 and Record at Tab 15, Ex. 8, pp.75-76.) To resolve the matter, Watkins voluntarily entered into an agreement with the Department in August of 2012 (First Agreement). (*See* admissions in Record at Tab 2, pp.2-3 and Record at Tab 3, p.2.) The First Agreement provided for the issuance of an order imposing a retroactive suspension for a period of nine months (First Watkins Order). (Record at Tab 2, p.3 and Record at Tab 3, p.3.)

On March 26, 2013, the Enforcement Division filed a second recommendation alleging that Watkins violated the First Agreement and First Watkins Order (2013 Recommendation). (Record at Tab 1, p.8.) The 2013 Recommendation also alleged that

Appellants failed to supervise Watkins, in violation of 660:11-5-42 of the Rules. (Record at Tab 1, p.8.)

On June 20, 2014, the Enforcement Division supplemented its 2013 Recommendation alleging that Petitioners failed to establish, maintain and enforce written procedures that enable Southeast to supervise properly the activities of Southeast's registered agents and associated persons to assure compliance with applicable securities laws, rules, and regulations (Supplemental Recommendation). (Record at Tab 41.)

When the Department filed its Supplemental Recommendation, this case was no longer about Watkins' violations of Oklahoma law – it was about Petitioners' violations of Oklahoma law.[1] The Administrator found that the Petitioners committed violations of the Act and Rules, to wit: Southeast failed to establish, maintain and enforce adequate supervisory procedures; Black failed to enforce Southeast's supervisory procedures; and Petitioners engaged in dishonest and unethical practices in the securities business. The Commission upheld the Administrator's Order.

II. STANDARD OF REVIEW

Where the facts are not in dispute, as is the case here[2], and the appellate court is left to consider only a question of law, the appellate court reviews under a *de novo* standard. *Stipe v. State ex rel. Bd. of Trustees of Oklahoma Public Employees Retirement System,* 2008 OK 52, ¶ 8, 188 P.3d 120, 122 (citing *State ex rel. Porter v. Ferrell,* 1998 OK 41, 959 P.2d 576, 577); *Poteau Valley Imp. Auth. v. Oklahoma Pub. Employees Ret. Sys.,* 2010 OK CIV APP 45, ¶ 6, 233 P.3d 423, 426. An agency's order may only be reversed "if an appealing party's substantial rights were prejudiced because the agency's findings, inferences,

[1] On April 30, 2014, Watkins voluntarily entered into a second agreement with the Department. (Record at Tab 33.)
[2] See Section III below. (Record at Tab 54, pp.9-14.)

conclusions or decisions were entered in excess of its statutory authority or jurisdiction, were arbitrary or capricious, or were clearly erroneous in view of the reliable, material, probative and substantial competent evidence." *Scott v. Okla. Secondary School Activities Ass'n,* 2013 OK 84, ¶ 26, 313 P.3d 891, 899.

The Commission's Order should be affirmed by this Court. The Commission acted within its statutory authority and jurisdiction. Further, the Commission's findings, inferences, conclusions and decisions were not arbitrary or capricious, and were not erroneous in view of the reliable, material, probative and substantial competent evidence that is the undisputed facts of this case.

III. UNDISPUTED FACTS

1. Southeast became registered as a broker-dealer on May 8, 2009, under the Act, and has been a member of the Financial Industry Regulation Authority (FINRA)[3] since July 1, 1997. (Admitted – Record at Tab 54, p.9, no. 1.)

2. Black, a South Carolina resident, is the owner and control person of Southeast. In addition to these duties, Black is Southeast's Chief Compliance Officer, Financial and Operations Principal, and "Designated Supervisory Principal" (the title used to designate particular authority and responsibilities in Southeast's written supervisory procedures (WSPs)). Black is not and has not been registered under the Act in any capacity. (Admitted – Record at Tab 54, p.9, no. 2.)

3. Watkins was first registered as an agent under the Act in December 1998. From March 2009 until October 2011, Watkins was registered as an agent of AFS. Watkins was allowed to resign as a result of an internal AFS investigation. AFS filed a Uniform

[3] FINRA, formerly known as the National Association of Securities Dealers, Inc. (NASD), is the self-regulatory organization authorized by Congress to write and enforce rules for broker-dealers in the United States and to examine broker-dealers for compliance with FINRA rules and federal securities laws.

Termination Notice for Securities Industry Registration (Form U-5) with the CRD [Central Registration Depository] stating that Watkins had violated the firm's policies relating to "discretionary power; unacceptable activities/transactions; pre-signed forms and applications; forgery; signature stamps; and other signature issues and annuity overview." Watkins became an agent of Southeast in February of 2012 and designated an address in Tulsa, Oklahoma, as his business address. (Admitted – Record at Tab 54, p.9, no. 3.)

4. Southeast's principal place of business located in Charlotte, North Carolina, is designated as Watkins' office of supervisory jurisdiction. (Admitted – Record at Tab 54, p.10, no. 5.)

5. Black is responsible for directly supervising all of Southeast's approximately one hundred and forty-five (145) agents as well as its associated persons from Southeast's principal place of business. (Admitted – Record at Tab 54, p.12, no. 6.)

6. The Southeast agents are geographically dispersed throughout the United States, mostly in one or two-agent offices. Many of the agents are held out to be independent contractors who conduct outside business activities. For purposes of supervision, Southeast does not maintain a system of branch offices or regional offices of supervisory jurisdiction, but instead relies entirely on Black, individually, to supervise all agents other than himself. (Admitted – Record at Tab 54, p.10, nos. 7 and 8.)

7. The WSPs provide that Southeast and Black must report to CRD any disclosable event, including administrative actions, within ten (10) days of the event. (Admitted – Record at Tab 54, p.13, no. 14.)

8. Southeast and Black did not timely report the proceeding on the 2013 Recommendation to CRD as to Watkins. (Admitted – Record at Tab 54, p.13, no. 15.)

9. When Southeast and Black did report the 2013 Recommendation, the filing was inaccurate as to the date, the basis and the conditions of the action. (Admitted – Record at Tab 54, p.13, no. 16.)

10. In June 2013, Watkins directed Southeast to update his business and residential addresses on CRD. Neither Southeast nor Black updated Watkins' business and residential addresses until November 2013, leaving Watkins' CRD profile inaccurate during this period. (Admitted – Record at Tab 54, p.13, no. 17.)

11. The WSPs provide that Southeast's agent shall complete order tickets and submit them to Black for approval. (Admitted – Record at Tab 54, p.14, no. 18.)

12. Contrary to the WSPs, Southeast's agents do not complete order tickets, but instead call in orders over the phone to one or more of Southeast's employees in the firm's Charlotte, North Carolina office. (Admitted – Record at Tab 54, p.14, no. 19.)

13. The WSPs provide that Southeast will conduct annual compliance interviews with each of its agents and maintain a record of all interviews. (Record at Tab 55, p.21.) Southeast has not submitted to the Department any record of compliance interviews with Watkins and Lamar Guillory, a second Southeast agent located in Oklahoma, even though there were two separate discovery requests for such records. (Record at Tab 61, p.14, n.10.)

IV. ARGUMENT AND AUTHORITIES

The securities regulatory scheme under Oklahoma law is set forth in the Act and the rules adopted and promulgated thereunder. The Act is based on the Uniform Securities Act of 2002 as approved by the National Conference of Commissioners on Uniform State Laws. As discussed by the Oklahoma Supreme Court in *Oklahoma Dept. of Securities ex rel. Faught v. Blair,* 2010 OK 16 ¶ 8, 231 P.3d 645, Section 1-608 of the Act addresses the

"important objective of promoting 'greater uniformity in securities matters'" among the federal government, the states and self-regulatory organizations. The Court in *Blair* also reiterated that Oklahoma's securities laws are modeled after those at the federal level and that interpretations of the federal securities laws are properly considered when interpreting similar state provisions. *Id.*

In promoting uniformity as discussed above, the Department relied upon the interpretative history of similar federal provisions in support of its allegations of violations of Oklahoma's securities laws by Petitioners. In no way, did the Department intend to prove violations of federal securities laws. Accordingly, in connection with the administrative proceedings below, the Administrator and the Commission did not find that the Petitioners violated federal securities laws. This matter relates solely to violations by the Petitioners of certain of Oklahoma's securities laws and regulations.

A. **The Commission and the Administrator acted pursuant to their authority.**

The Commission and the Department were created by statute. The Commission is the governing authority of the Department. *See* Section 1-601 of the Act. The Department "possesses those powers expressly granted by law, by constitution or statute, and such powers as are necessary for the due and efficient exercise of the powers expressly granted[.]" *Blair,* at ¶ 9. The Administrator is responsible for the administration and enforcement of the Act. *See* Section 1-601 of the Act. The Commission is responsible for reviewing a final order of the Administrator when such order is appealed by the aggrieved party. *See* Section 1-609 of the Act.

Governing the actions of those operating within the state of Oklahoma is a key objective of the Act. *See Lintz v. Carey Manor Ltd.,* 613 F. Supp. 543, 551 (W.D. Va. 1985).

Broker-dealers operating within the state of Oklahoma, like Petitioner Southeast, are among those subject to this state's securities statutes and regulations. Such statutes and regulations include, but are not limited to, the broker-dealer registration requirement (Section 1-401 of the Act); filing requirement to correct information in a registration application (Section 1-406 of the Act); recordkeeping requirements and regulatory inspection authority (Section 1-410 of the Act); and standards of ethical practice for broker-dealers that include required supervisory procedures (660:11-5-42 of the Rules). Violations of any of these statutes and regulations may result in one or more of the sanctions set forth in Sections 1-411 and 1-604 of the Act. It is these Oklahoma statutes and regulations that the Commission seeks to enforce.

B. **The Commission's Order is not erroneous in view of the evidence.**

This Court may not substitute its judgment for that of the Commission in regard to the factual determinations made. *Poteau Valley Imp. Auth. v. Okla. Pub. Employees Ret. Sys.,* 2010 OK CIV APP 45, ¶ 6, 233 P.3d 423. Since there is more than substantial evidence in the record to support the factual findings upon which the order is based, the Commission's Order should be affirmed. *Okla. Dept. of Public Safety v. McCrady,* 2007 OK 39, ¶ 18 176 P.3d 1194. Moreover, Petitioners previously admitted the Commission's Findings of Fact 1-14.

1. Evidence shows that Southeast failed to establish an adequate supervisory system.

The standards of ethical practice set forth in 660:11-5-42 of the Rules require a broker-dealer to establish, maintain *and* enforce written procedures that will enable it to supervise properly the activities of its agents and associated persons. *See* 660:11-5-42(b)(22) of the Rules. Supervision is essential to broker-dealer operations. *In the Matter of Prospera*

Financial Services, Inc., SEC Release No. 34-43352, 2000 WL 1424360 *5 (September 26, 2000). Broker-dealers must design and implement a supervisory system that is "appropriate for their specific businesses and structures." NASD Notice to Members 99-45, 1999 WL 33176539 (June 1999).

As offices under the supervision of a broker-dealer become more "numerous, dispersed and distant," the need for control increases. *In the Matter of Prospera Financial Services, Inc.,* *5. A broker-dealer should, therefore, have a system in place to effectively supervise its agents when the firm's structure includes using independent contractors dispersed throughout the country. *In the Matter of Royal Alliance Associates, Inc.,* SEC Release No. 34-38174, 1997 WL 13023 *5. Furthermore, a broker-dealer should have sufficient staffing and resources to implement the system and a system for follow-up and review to ensure the system is being exercised. *In the Matter of Prospera Financial Services, Inc.,* at *5.

Southeast primarily employs independent contractors in small one or two person offices, many of which are located far from Southeast's home office in North Carolina. (*See* Undisputed Fact No. 6.) While this sort of structure creates greater challenges in supervision than those in a more traditional firm structure, the broker-dealer must still meet the same high standards of supervision. *In the Matter of Royal Alliance Associates, Inc.,* at *6.

Southeast has not addressed the challenges created by its chosen structure. Instead of designating multiple OSJs and assigning registered principals to supervise particular offices or regions, Southeast has designated its Charlotte, North Carolina office as the only OSJ and Black as the only OSJ Supervisor for all of its approximately 145 agents whether they are located in North Carolina, California or Oklahoma. (*See* Undisputed Fact Nos. 4-5.)

Clearly, many of Southeast's agents are geographically distant from their OSJ, and Southeast's agents are geographically dispersed from each other. (*See* Undisputed Fact No. 6.)

Broker-dealers have been warned that they should consider whether they have an appropriate number of registered principals located in places sufficient to effectively supervise off-site representatives. NASD Notice to Members 86-65, 1986 WL 591919 (September 1986). Although the Department is unaware of any jurisdiction that has officially set a maximum ratio of registered principal to number of agents supervised, at least two states have considered the matter in connection with a broker-dealer's supervisory system and implemented a ratio far less than Southeast's ratio of 1 principal to 145 agents. Pennsylvania issued an agreed order under its securities laws concluding that the firm failed to reasonably supervise its agents where they assigned one principal to 116 agents. *In the Matter of Ameriprise Financial Services, Inc.,* Docket No. 2008-03-25, 2009 WL 387148 (Pa. Sec. Com. 2009). Florida has issued orders under its securities laws requiring firms to maintain principal to agent ratios of 1 to 4 and 1 to 8 in connection with agreed orders. *In re: Cantella & Co., Inc.*, Admin. Proceeding No. 3424-S-02/02, 2002 WL 31235051 (Fla. Dept. Bank. Fin. 2002); *In re: FFP Securities, Inc.*, Admin. Proceeding No. 3030-S-11/00, 2003 WL 22098881 (Fla. Dept. Bank. Fin. 2003). Again, Southeast's ratio of principal to agents is 1 to 145.

The implementation of an effective system for supervising remote offices becomes even more important when the broker-dealer chooses to employ agents with a history of compliance related concerns or other conduct that could be a "red flag" for future misconduct. *In the Matter of the Application of Robert J. Prager and James Alexander for*

Review of Disciplinary Action Taken by the NASD, SEC Release No. 34-51974, 2005 WL 1584983, *11 (July 6, 2005). "Extraordinary supervision of a registered representative with a disciplinary past is particularly appropriate when that representative operates out of a one-person office located a substantial distance away from supervisory or compliance personnel." *In the Matter of Signal Securities, Inc.,* SEC Release No. 34-43350, 2000 WL 1423891, *6 (September 26, 2000). This clearly describes Watkins. (*See* Undisputed Fact No. 3.)

Watkins came to Southeast having been allowed to resign from his previous broker-dealer, AFS. AFS filed a Form U-5 to Watkins' CRD record stating that Watkins had violated the firm's policies relating to "discretionary power; unacceptable activities/transactions; pre-signed forms and applications; forgery; signature stamps; and other signature issues and annuity overview." (*See* Undisputed Fact No. 3.) In addition, the Department had filed a recommendation against Watkins in March 2012 relating to those same issues. (*See* admission in Record at Tab 3, p.2 and Record at Tab 15, Ex. 8, pp.75-76.) Although the Department allowed Watkins to become registered under the Act as an agent of Southeast, Watkins agreed to significant sanctions including the imposition of heightened supervision. (Record at Tab 2, pp.2-3 and Record at Tab 3, p.2.) Petitioners should have placed Watkins under extraordinary or heightened supervision, especially because he was located so far from North Carolina in a small office where he was conducting various types of business.

Instead, Southeast allowed Watkins to operate out of a small office with no on-site supervision. Because Watkins was located so far from Petitioners, Southeast conducted Watkins' annual compliance interviews by telephone rather than in person. Southeast's WSPs only require an actual on-site inspection once every three years. These are not

effective procedures for an agent with prior disciplinary history located in a remote small office. *In the Matter of Royal Alliance Associates, Inc.,* at *6 (firm's pre-announced inspection even if conducted once a year would likely be inadequate supervision of small remote offices); *In the Matter of Consolidated Investment Services, Inc.*, SEC Release No. 34-36687, 1996 WL 20829, *4 (January 5, 1996) (unverified averments by agents were not adequate substitute for on-site inspections).

2. Evidence shows that Petitioners failed to enforce Southeast's written supervisory procedures.

The Petitioners are correct in asserting that there is a regulatory concern with them failing to comply with their own WSPs. 660:11-5-42(b)(22) of the Rules specifically requires a broker-dealer to establish, maintain, *and* enforce written procedures to supervise the activities of each of its registered agents and associated persons to assure compliance with applicable securities laws, rules and regulations, and statements of policy promulgated under the Act. Written supervisory procedures document the supervisory system that has been established to ensure that compliance guidelines are being followed by registered agents and to prevent and detect prohibited practices. *NASD Notice to Members 99-45* (June 1999).

a. Order tickets

Southeast's WSPs require the firm's agents to complete an order ticket upon taking their customers' orders and send the order tickets to the Designated Supervisory Principal for review. (Record at Tab 55, pp.40-44 and Undisputed Fact No. 11.) Contrary to Southeast's WSPs, the order tickets are not completed by the customer's agent but instead are called in to Southeast's OSJ by the agent and completed by a Southeast employee. Petitioners admit that they do not follow this requirement of Southeast's WSPs. (Record at Tab 54, p.14, nos. 18 and 19.)

b. Annual compliance interviews

Southeast's WSPs require the firm to conduct annual compliance interviews with each of its agents *and* to maintain a record of all interviews. (*See* Undisputed Fact No. 13.) On two separate occasions, the Department requested that Southeast provide it with copies of the records of the annual compliance interviews with Watkins and one other Southeast agent based in Oklahoma. (*See* Undisputed Fact No. 13.) Southeast admitted to not providing the Department with copies of the records of the interviews. (*See* Undisputed Fact No. 13.) The only reasonable inference to be drawn from this scenario is that the records do not exist. Accordingly, Southeast failed to comply with a specific requirement of its WSPs in regard to the compliance interviews with its two Oklahoma agents.

Petitioners failed to establish certain supervisory procedures and failed to enforce certain of its established supervisory procedures. Such supervisory failures constitute violations of the ethical standards set forth in 660:11-5-42 of the Rules. *See* 660:11-5-42(b)(22) of the Rules. Such noncompliance constitutes an unethical practice in the securities business. *See* 660:11-5-42(a) of the Rules.

3. Southeast and Black failed to timely and accurately update public records.

The Department requires that an agent file with CRD the Uniform Application for Securities Industry Registration or Transfer (Form U-4) to become registered under the Act. It is important to note that an individual agent does not ordinarily have the ability to access his CRD record directly, but instead, must advise his broker-dealer to make any necessary update or correction on his behalf. Section 1-406(B) of the Act provides that if any information filed in a registrant's application becomes inaccurate, he *shall* promptly file a correcting amendment.

The information contained within a registrant's application includes his business and residential addresses. In June of 2013, Watkins directed Southeast to update his business and residential addresses on CRD. (*See* Undisputed Fact No. 10.) It was some five (5) months later that Southeast and Black filed the correcting amendment. (*See* Undisputed Fact No. 10.) It is reasonable to conclude that the correcting amendment was not promptly filed as required by the Act.

Another key component of the Form U-4 is the agent's disciplinary history. Notwithstanding Section 1-406(B) of the Act, Southeast's own WSPs require the firm to report to CRD any disclosable event, including administrative actions, within ten (10) days of the event. While associated with Southeast, Watkins became the subject of the 2013 Recommendation. (Record at Tab 1.) The 2013 Recommendation, a disclosable event, required an update to Watkins' Form U-4. Petitioners were obviously aware of the 2013 Recommendation because they were also named therein and the action was disclosed on the CRD records for Southeast and Black. Yet, Southeast waited one (1) year to disclose the 2013 Recommendation on the Form U-4 of Watkins. (Record at Tab 54, p.13, no. 16.) Furthermore, when Petitioners finally did amend Watkins' Form U-4 to report the 2013 Recommendation, the filing was inaccurate as to the date, basis and conditions of the action. (*See* Undisputed Fact No. 9.)

Petitioners contend that the late and inaccurate filings are not material. The CRD information, including business and residential addresses of agents, is relied on by the Department to present a complete and accurate record "which can be used in conjunction with, *inter alia,* license renewals or revocations, requests for public inspection and to ascertain the existence of patterns of misconduct warranting regulatory intercession." *In re*

UBS Fin. Servs., Inc., 851 N.Y.S.2d 75 (Sup. Ct. 2007). Without access to accurate address information, the Department would be unable to locate an agent or know where to go to conduct an on-site examination of his business activities in carrying out the Department's duties under the Act.

The disclosures are public information through FINRA's BrokerCheck and current or potential clients of Southeast and/or Watkins may consider a pending action by a state regulator material to deciding whether to do business with Southeast and/or Watkins. *Dept. of Enforcement v. Wedbush Securities, Inc.*, FINRA Disciplinary Proceeding No. 20070094044 (August 2, 2012). Without access to accurate disciplinary history, another regulator may register an agent when that regulator might otherwise object to his application or seek to place restrictions on his registration. A customer may be unable to identify the correct agent on which to conduct a due diligence check and may choose to do business with an agent that they might otherwise reject with full and complete disclosure.

The failures by Southeast and Black to timely and accurately update the CRD record of Watkins constitute violations of Section 1-406(B) of the Act.

C. **The Commission's Order is not arbitrary and capricious.**

Oklahoma defines the phrase "arbitrary and capricious" as an action that is "willful and unreasonable without consideration or in disregard of facts or without determining principle," or "unreasoning . . . in disregard of facts and circumstances." *State ex. rel. Bd. of Trustees of Teacher's Ret. Sys. v. Garrett,* 1993 OK CIV APP 29, 848 P.2d 1182, 1183 (citations omitted).

As established above, the Commission did not act unreasonably or in disregard of the facts and circumstances. First, the Commission acted within its statutory authority and

jurisdiction in establishing its factual findings and legal conclusions that Petitioners violated Section 1-406 of the Act and 660:11-5-42 of the Rules. Second, the Commission issued an order that is not erroneous in view of the evidence. Finally, the Commission, acting in the public interest, discharged its responsibility under the Act reasonably and in a principled manner with regard to the sanctions ordered against Petitioners.

Such responsibility is appropriately, and by necessity, a matter for administrative competence. The decision as to what discipline is proper lies with the administrative body as long as the sanction is within the law, is justified in fact, and is not arbitrary or capricious. *Johnson v. Bd. of Governors of Registered Dentists of the State of Okla.*, 1996 OK 41, 913 P.2d 1339, 1347. The court in *Steadman v. Securities & Exchange Commission,* 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds,* 450 U.S. 91 (1981), established factors for evaluating the propriety of sanctions to include the egregiousness of the act; whether the conduct is isolated or recurrent; the sincerity of the appellant's assurances against future violations; the appellant's recognition of the wrongful nature of the act; and the likelihood that the appellant's occupation will present opportunities for future violations. Based on the violations committed by the Petitioners in this case, the Petitioners' continued failures to recognize their noncompliance with the Act and Rules, and the continual opportunity for future violations, the imposed sanctions against the Petitioners are necessary to protect the public interest. The magnitude of a cease and desist order and $5,000 monetary penalty is minimal considering the other sanctions authorized by the Act.

Petitioners failed to establish, maintain and enforce supervisory procedures to enable the firm to assist compliance with applicable securities laws in violation of 660:11-5-42(b)(22). In addition, Petitioners failed to promptly file a correcting amendment to disclose

an agent's change of address and the filing of the Department's 2013 Recommendation. These actions were willful on behalf of Petitioners and the conduct constituted dishonest and unethical practices in the securities business. As found by the Commission, it is in the public interest to direct the Petitioners to take the necessary steps to come into compliance with the Act and Rules and to impose a monetary penalty. The Commissioner's Order is not arbitrary or capricious.

V. CONCLUSION

Public interest demands enforcement and compliance with the disclosure requirements of the Act as well as the ethical practice standards for broker-dealers. Petitioners have engaged in acts, practices, or courses of business that constitute material violations of the Act and/or Rules. In light of the violations, the ordered sanctions are fully warranted and the Commission's Order should be affirmed.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on 17th of September, a true and correct copy of the above and foregoing *Response to Petitioners' Opening Brief* was mailed with postage prepaid thereon, addressed to:

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