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

In the Matter of:

Jerome A. Alexander,

Respondent. ODS File 14-058

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 the attached copy of the *Order to Cease and Desist and Notice of Opportunity for Hearing* ("*Order and Notice*") 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 (2011).

3. That the Administrator has received service of process on behalf of Respondent pursuant to Section 1-611 of the Act.

4. That a copy of the *Order and Notice*, and a copy of this *Notice of Service on the Administrator and Affidavit of Compliance,* are being sent this 25th day of July, 2014, by certified mail, return receipt requested, delivery restricted to addressee, to the last known address of Respondent, 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 25th day of July, 2014.

(SEAL)

Irving L. Faught, Administrator

Subscribed and sworn to before me this 25th day of July, 2014.

NOTARY PUBLIC SEAL
BRENDA LONDON
Notary Public
State of Oklahoma
Commission # 05009046 Expires 09/28/17

Notary Public

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

In the Matter of:

Jerome A. Alexander,

Respondent.

ODS File 14-058

ORDER TO CEASE AND DESIST
AND
NOTICE OF OPPORTUNITY FOR HEARING

ORDER TO CEASE AND DESIST

Pursuant to Section 1-602 of the Oklahoma Uniform Securities Act of 2004 ("Act"), Okla. Stat. tit. 71, §§ 1-101 through 1-701 (2011), the Oklahoma Department of Securities ("Department") conducted an investigation into the activities of Jerome A. Alexander (CRD# 2885335) ("Respondent"). Based thereon, the following Findings of Fact, Authorities, and Conclusions of Law are adopted in support of this Order against Respondent.

Findings of Fact

Respondent

1. From April 16, 2010, until November 16, 2010, Respondent was registered under the Act as an agent of Wilbanks Securities, Inc. ("Wilbanks Securities"), a registered broker-dealer, and as an investment adviser representative of Wilbanks Securities Advisory ("WSA"), a federally registered investment adviser. During this time, Respondent resided, and maintained a place of business, in Oklahoma.

2. From November 17, 2010, until April 26, 2011, Respondent was not registered under the Act in any capacity. During this time, Respondent resided in Arizona. Respondent was registered under Arizona securities laws as an agent of Ameriprise Financial Services, Inc. ("Ameriprise"), a registered broker-dealer, from February 3, 2011, until April 28, 2011, but was not registered in any other capacity under Arizona securities laws.

3. Since April 27, 2011, and continuing until the present, Respondent has, again, been registered under the Act as an agent of Wilbanks Securities and an

investment adviser representative of WSA. Since July 2011, and continuing until the present, Respondent has resided, and maintained a place of business, in Oklahoma.

4. Concurrent to his registration as an agent under the Act, Respondent has been registered as a general securities representative with Financial Industry Regulatory Authority, Inc. ("FINRA"), a national securities association that was formerly known as "National Association of Securities Dealers, Inc." ("NASD").

5. Respondent has never been registered as an investment adviser under the Act or federal securities laws.

Investment Advice to Client SMA

6. Client SMA is an Oklahoma corporation that has been registered under the Act as an investment adviser since January 1, 1996. Client SMA's office is, and has been at all times material hereto, located in Oklahoma.

7. Although Client SMA is a registered investment adviser, Client SMA does not manage accounts for its clients. Rather, Client SMA works with school districts and municipalities on the issuance of different types of bonds.

8. In April 2010, Client SMA became a client of Respondent in his capacity as an investment adviser representative of WSA.

9. WSA and Client SMA executed an Investment Advisory Agreement on April 22, 2010. Under the agreement, Client SMA was to pay WSA an advisory fee on a quarterly basis for managing a brokerage account that was to be opened for Client SMA at Charles Schwab & Co., Inc. ("Schwab"), a registered broker-dealer. Client SMA's Schwab account was opened a few days later.

10. Client SMA used its Schwab account to invest "excess company funds" until such funds were distributed as bonuses, or otherwise, at the end of each calendar year.

11. Respondent managed Client SMA's Schwab account in his capacity as an investment adviser representative of WSA until November 1, 2010, when Respondent's employment with WSA ended.[1] On that same date, WSA was removed as the designated investment adviser on Client SMA's Schwab account, and WSA's authority relating to the account was revoked.

12. Since November 1, 2010, Respondent has continued to manage Client SMA's Schwab account in his individual capacity with the consent of Client SMA. Respondent uses Client SMA's online user identification and password to access Client SMA's Schwab account to buy and sell securities. Using his discretion, Respondent

[1] Respondent's employment with Wilbanks Securities and WSA ended on November 1, 2010, but his registrations under the Act were not terminated until November 16, 2010.

determines what, and when, securities should be bought and/or sold. With respect to its Schwab account, Client SMA has given Respondent permission to do what he thinks is in its best interest. Respondent has placed hundreds of trades in Client SMA's Schwab account.

13. For his services, Respondent charges Client SMA an advisory fee of up to 1.50% annually. From November 1, 2010, until December 31, 2013, Client SMA paid Respondent advisory fees totaling approximately $38,660. Client SMA paid these fees with checks, drawn on its Schwab account, made payable to Respondent.

Undisclosed Outside Business Activity

14. Respondent never provided written notice of his business as an investment adviser to WSA or Wilbanks Securities, a member of FINRA.

Inaccurate Form U-4

15. To become registered under the Act as an agent of Wilbanks Securities and an investment adviser representative of WSA, Respondent filed a Uniform Application for Securities Industry Registration or Transfer ("Form U-4") with the Department through the Central Registration Depository ("CRD"), on April 27, 2011. On multiple occasions thereafter, Respondent filed amendments to his Form U-4.

16. Section 13 of Form U-4 requires an applicant to disclose whether he is "engaged in any other business either as a proprietor, partner, officer, director, employee, trustee, agent or otherwise." If he is, he must disclose certain details about the other business including, but not limited to, its name and nature.

17. Respondent never disclosed his business as an investment adviser on his Form U-4.

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

<u>Authorities</u>

1. Section 1-102(17) of the Act provides:

> "Investment adviser" means a person that, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing, or selling securities or that, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. The term includes a financial planner or other person that, as an integral component of other financially related services, provides investment advice to others for compensation as part of a business or that

holds itself out as providing investment advice to others for compensation. The term does not include:

a. an investment adviser representative,

b. a lawyer, accountant, engineer, or teacher whose performance of investment advice is solely incidental to the practice of the person's profession,

c. a broker-dealer or its agents whose performance of investment advice is solely incidental to the conduct of business as a broker-dealer and that does not receive special compensation for the investment advice,

d. a publisher of a bona fide newspaper, news magazine, or business or financial publication of general and regular circulation,

e. a depository institution, or

f. any other person excluded by rule adopted or order issued under this act[.]

2. Section 1-403 of the Act provides, in pertinent part:

A. It is unlawful for a person to transact business in this state as an investment adviser unless the person is registered under this act as an investment adviser or is exempt from registration as an investment adviser under subsection B of this section.

B. The following persons are exempt from the registration requirement of subsection A of this section:

1. A federal covered investment adviser;

2. A person without a place of business in this state that is registered under the securities act of the state in which that person has its principal place of business if its only clients in this state are:

a. federal covered investment advisers, investment advisers registered under this act, or broker-dealers registered under this act,

b. institutional investors,

c. bona fide preexisting clients whose principal places of residence are not in this state if the investment adviser is

registered under the securities act of the state in which the clients maintain principal places of residence, or

d. any other client exempted by rule adopted or order issued under this act;

3. A person without a place of business in this state if the person has had, during the preceding twelve (12) months, not more than five clients that are residents of this state in addition to those specified under paragraph 2 of this subsection; or

4. Any other person exempted by rule adopted or order issued under this act.

* * *

E. The exemption from registration provided by subparagraph b of paragraph 2 of subsection B of this section shall not be available to any person who acts as an investment adviser to the state, any county, municipality or school district of this state, or any other political subdivision of this state; any agency or corporate or other instrumentality of any such entity; or any pension fund for the benefit of employees of any such entity.

3. Section 1-406 of the Act provides, in pertinent part:

A. A person shall register as a broker-dealer, agent, investment adviser, or investment adviser representative by filing an application that contains:

1. The information required for the filing of a uniform application, a consent to service of process complying with Section 49 of this act [Section 1-611 of this title], the fee specified in Section 50 of this act [Section 1-612 of this title] and any reasonable fees charged by the designee of the Administrator for processing the filing; and

2. Upon request by the Administrator, any other financial or other information that the Administrator determines is appropriate.

B. If the information contained in an application that is filed under subsection A of this section is or becomes inaccurate or incomplete in any material respect, the registrant shall promptly file a correcting amendment.

4. Section 1-604 of the Act provides, in pertinent part:

A. If the Administrator determines that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this act or a rule adopted or order issued under this act or

constituting a dishonest or unethical practice or that a person has materially aided, is materially aiding, or is about to materially aid an act, practice, or course of business constituting a violation of this act or a rule adopted or order issued under this act or constituting a dishonest or unethical practice, the Administrator may:

1. Issue an order directing the person to cease and desist from engaging in the act, practice, or course of business or to take other action necessary or appropriate to comply with this act;

2. Issue an order denying, suspending, revoking, or conditioning the exemptions for a broker-dealer under subparagraph d or f of paragraph 1 of subsection B of Section 18 of this act [Section 1-401 of this title] or an investment adviser under subparagraph c of paragraph 2 of subsection B of Section 20 of this act [Section 1-403 of this title]; or

3. Issue an order under Section 9 of this act [Section 1-204 of this title].

B. An order under subsection A of this section is effective on the date of issuance. Upon issuance of the order, the Administrator shall promptly serve each person subject to the order with a copy of the order and a notice that the order has been entered. The order must include a statement whether the Administrator will seek a civil penalty or costs of the investigation, a statement of the reasons for the order, and notice that, within fifteen (15) days after receipt of a request in a record from the person, the matter will be scheduled for a hearing and the hearing shall be commenced within fifteen (15) days of the matter being set for hearing. If a person subject to the order does not request a hearing and none is ordered by the Administrator, within thirty (30) days after the date of service of the order, the order, that may include a civil penalty or costs of the investigation if a civil penalty or costs were sought in the statement accompanying the order, becomes final as to that person by operation of law. If a hearing is requested or ordered, the Administrator, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend it until final determination.

C. If a hearing is requested or ordered pursuant to subsection B of this section, a hearing must be held pursuant to the Administrative Procedures Act. A final order may not be issued unless the Administrator makes findings of fact and conclusions of law in a record in accordance with the Administrative Procedures Act. The final order may make final, vacate, or modify the order issued under subsection A of this section.

D. In a final order under subsection C of this section, the Administrator may impose a civil penalty up to a maximum of Five Thousand Dollars ($5,000.00) for a single violation or up to Two Hundred Fifty Thousand Dollars ($250,000.00) for multiple violations in a single proceeding or a series of related proceedings.

E. In a final order, the Administrator may charge the actual cost of an investigation or proceeding for a violation of this act or a rule adopted or order issued under this act.

F. If a petition for judicial review of a final order is not filed in accordance with Section 47 of this act [Section 1-609 of this title], the Administrator may file a certified copy of the final order with the clerk of a court of competent jurisdiction. The order so filed has the same effect as a judgment of the court and may be recorded, enforced, or satisfied in the same manner as a judgment of the court.

G. If a person does not comply with an order under this section, the Administrator may petition a court of competent jurisdiction to enforce the order. The court may not require the Administrator to post a bond in an action or proceeding under this section. If the court finds, after service and opportunity for hearing, that the person was not in compliance with the order, the court may adjudge the person in civil contempt of the order. The court may impose a further civil penalty against the person for contempt in an amount not to exceed One Thousand Dollars ($1,000.00) for each violation and may grant any other relief the court determines is just and proper in the circumstances.

5. 660:11-5-42 of the Rules of the Oklahoma Securities Commission and the Administrator of the Department of Securities ("Rules"), Okla. Admin. Code §§ 660:1-1-1 through 660:25-7-1 (as effective July 1, 2007, through July 31, 2013, and August 1, 2013, through the present), provides in pertinent part:

(a) **Purpose.** This rule is intended to set forth the standards of ethical practices for broker-dealers and their agents. Any noncompliance with the standards of ethical practices specified in this section will constitute unethical practices in the securities business; however, the following is not intended to be a comprehensive listing of all specific events or conditions that may constitute such unethical practices. The standards shall be interpreted in such manner as will aid in effectuating the policy and provisions of the Securities Act, and so as to require that all practices of broker-dealers, and their agents, in connection with their activities in this state shall be just, reasonable and not unfairly discriminatory.

(b) **Standards.**

(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.

6. FINRA Rule 3270 (effective December 15, 2010) (formerly, NASD Rule 3030) provides:

> No registered person may be an employee, independent contractor, sole proprietor, officer, director or partner of another person, or be compensated, or have the reasonable expectation of compensation, from any other person as a result of any business activity outside the scope of the relationship with his or her member firm, unless he or she has provided prior written notice to the member, in such form as specified by the member. Passive investments and activities subject to the requirements of NASD Rule 3040 shall be exempted from this requirement.

7. NASD Rule 3030 (replaced by FINRA Rule 3270 effective December 15, 2010) 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.

Conclusions of Law

1. Respondent has been transacting business in this state as an unregistered investment adviser since November 1, 2010, in violation of Section 1-403 of the Act.

2. Respondent has engaged in unethical practices in the securities business by engaging in outside business activities without providing prompt, or prior, written notice to Wilbanks Securities as required by NASD Rule 3030 and/or FINRA Rule 3270, in violation of 660:11-5-42(b)(1) of the Rules.

3. Respondent did not disclose his business as an investment adviser on his Form U-4, in violation of Section 1-406 of the Act.

4. The Administrator has the authority to order Respondent to cease and desist from engaging in the acts, practices, and/or courses of business constituting a violation of the Act and/or Rules or dishonest or unethical practices, and to pay a civil penalty.

5. It is in the public interest to order Respondent to cease and desist from engaging in the acts, practices, and/or courses of business constituting a violation of the Act and/or Rules or dishonest or unethical practices, and to pay a civil penalty.

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

Order

Based on Section 1-604 of the Act and the Findings of Fact, Authorities, and Conclusions of Law set forth above, IT IS HEREBY ORDERED that Respondent *immediately* cease and desist transacting business in this state as an unregistered investment adviser in violation of the Act, and engaging in the unethical practice of not providing prior written notice of outside business activities to his associated broker-dealer as required by FINRA Rule 3270.

The Administrator may impose a civil penalty in the amount of $38,660, on Respondent in a final order issued under Section 1-604 of the Act.

Witness my Hand and the Official Seal of the Oklahoma Department of Securities this 25th day of July, 2014.

(SEAL)

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

NOTICE OF OPPORTUNITY FOR HEARING

Pursuant to Section 1-604 of the Act, the Administrator hereby gives notice to Respondent of his right to request a hearing. The request for hearing must be received by the Administrator within thirty (30) days after service of the Order to Cease and Desist ("Order"). The request for hearing must be in writing and Respondent shall specifically admit or deny each allegation that is contained in the Order.

Within fifteen (15) days after receipt of a request for hearing from Respondent, this matter will be scheduled for hearing. Notice of the date, time and location of the hearing shall be given to Respondent. If a hearing is requested, the Administrator, after notice of and opportunity for hearing, may modify or vacate the Order or extend it until final determination.

If Respondent does not request a hearing within thirty (30) days after the date of service of the Order and none is ordered by the Administrator, the Order becomes final by operation of law.

Witness my Hand and the Official Seal of the Oklahoma Department of Securities this 25th day of July, 2014.

(SEAL)

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

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 25th day of July, 2014, a true and correct copy of the above and foregoing *Order to Cease and Desist and Notice of Opportunity for Hearing* was mailed by certified mail, return receipt requested, delivery restricted, with postage prepaid thereon, address to:

Mr. Jerome A. Alexander
2739 Farm Drive
El Reno, OK 73036

Brenda London

Brenda London, Paralegal

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

7000 0520 0022 7150 4605

CDNOH 14-058 TB

Postage	$	7/25/14
Certified Fee	330	
Return Receipt Fee (Endorsement Required)	270	Postmark Here
Restricted Delivery Fee (Endorsement Required)	505	
Total Postage & Fees	$ 11.74	

Mr. Jerome A. Alexander
2739 Farm Drive
El Reno, OK 73036

by maller)

for Instructions

SENDER: *COMPLETE THIS SECTION*

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

RESTRICTED DELIVERY

Mr. Jerome A. Alexander
2739 Farm Drive
El Reno, OK 73036

CDNOH 14-058 TB

COMPLETE THIS SECTION ON DELIVERY

A. Received by *(Please Print Clearly)* Jerome Alexander

B. Date of Delivery 8-4-14

C. Signature

X

☐ Agent
☐ Addressee

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? *(Extra Fee)* ☒ Yes

2. Article Number *(Copy from service label)*
7000 0520 0022 7150 4605

PS Form 3811, July 1999 Domestic Return Receipt 102595-00-M-0952