

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



In the Matter of:

First Interstate Financial Services, Inc. (CRD No. 118753),
David A. Hinkle (CRD No. 2848447), and
Errol Dean Chittenden (CRD No. 501952),

Respondents.

ODS File No. 11-075

NOTICE OF SERVICE ON THE ADMINISTRATOR
AND
AFFIDAVIT OF COMPLIANCE

STATE OF OKLAHOMA)
)
COUNTY OF OKLAHOMA) ss.

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 ("Administrator").

2. That a copy of the *Notice of Opportunity for Hearing on Recommendation ("Notice")* with *Enforcement Division Recommendation to Suspend Registrations and Impose Civil Penalties ("Recommendation")* attached was delivered to Affiant in the office of the Administrator pursuant to Section 1-611 of the Oklahoma Uniform Securities Act ("Act"), Okla. Stat. tit. 71, §§ 1-101 through 1-701 (Supp. 2009).

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

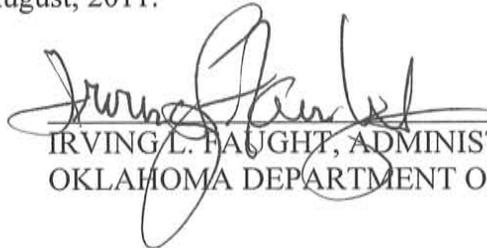
4. That a copy of the *Notice*, with the *Recommendation* attached, and a copy of this *Notice of Service on the Administrator and Affidavit of Compliance* are being sent this 3rd day of August, 2011, by electronic mail and by certified mail, return receipt requested, delivery restricted to addressee, to the last known addresses 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 3rd day of August, 2011.

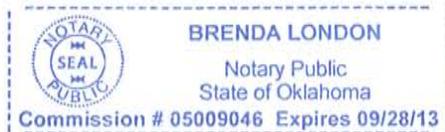
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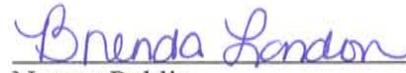


IRVING L. FAUGHT, ADMINISTRATOR OF THE
OKLAHOMA DEPARTMENT OF SECURITIES

Subscribed and sworn to before me this 3rd day of August, 2011.

(SEAL)


BRENDA LONDON
Notary Public
State of Oklahoma
Commission # 05009046 Expires 09/28/13



Notary Public

STATE OF OKLAHOMA
DEPARTMENT OF SECURITIES
FIRST NATIONAL CENTER, SUITE 860
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In the Matter of:

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Errol Dean Chittenden (CRD No. 501952),

Respondents.

ODS File No. 11-075

NOTICE OF OPPORTUNITY FOR HEARING ON RECOMMENDATION

1. Pursuant to Section 1-410 of the Oklahoma Uniform Securities Act of 2004 (Act), Okla. Stat. tit. 71, §§ 1-101 through 1-701 (Supp. 2010), the Examinations Division of the Oklahoma Department of Securities (Department) attempted to conduct an inspection of the records of First Interstate Financial Services, Incorporated (First Interstate), and the activities of David Hinkle (Hinkle) and Dean Chittenden (Chittenden) (collectively, "Respondents") beginning on December 8, 2010 (2010 Examination).

2. Based thereon, the attached *Enforcement Division Recommendation to Suspend Registrations and Impose Civil Penalties* (Recommendation) was left in the office of the Administrator of the Department (Administrator) on the 3rd day of August, 2011.

3. Pursuant to 660:2-9-1 of the Rules of the Oklahoma Securities Commission and the Administrator of the Department of Securities (as amended July 1, 2007) (Rules) and Section 1-411 of the Act, the Administrator hereby gives notice to Respondents of their obligation to file an answer and their right to request a hearing to show why an order based on the Recommendation should not be issued.

4. The answer must be in writing and received by the Administrator within fifteen (15) days after service of this Notice. As required by 660:2-9-2 of the Rules, the answer shall indicate whether Respondents request a hearing and shall specifically admit or deny each allegation contained in the Recommendation or state that Respondents do not have, and are unable to obtain, sufficient information to admit or deny each allegation.

5. Failure to file an answer in compliance with 660:2-9-2 of the Rules or to request a hearing as provided for herein shall result in the issuance of an order suspending the registrations of Respondents for one year or until Respondents comply with the Act and Rules, whichever period is greater; the imposition of a civil penalty against First Interstate in the amount of \$50,000; the imposition of a civil penalty against Hinkle in the amount of \$25,000; and the

imposition of a civil penalty against Chittenden in the amount of \$25,000, pursuant to Section 1-411 of the Act and 660:2-9-2 of the Rules.

6. Upon receipt of a written request, pursuant to 660:2-9-2 of the Rules, a hearing on the Recommendation shall be promptly scheduled 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 3rd day of August, 2011.

(SEAL)



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

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 3rd day of August, 2011, a true and correct copy of the above and foregoing *Notice of Opportunity for Hearing on Recommendation* and attached *Enforcement Division Recommendation to Suspend Registrations and Impose Civil Penalties* was emailed to the following e-mail addresses and mailed by certified mail, return receipt requested, delivery restricted, with postage prepaid thereon, addressed to:

First Interstate Financial Services, Inc.
PO Box 942
Hugo, OK 74743

First Interstate Financial Services, Inc.
119 E. Jackson St., Ste. 200
Hugo, OK 74743

David Andrew Hinkle
2398 E. 2100 Rd.
Hugo, OK 74743
dahinkle@fi-financialservices.com
dahinkle@msn.com

In his capacities as Contact Employee, President, Control Person and Chief Compliance Officer of First Interstate, and as an Individual

Errol Dean Chittenden
2509 La Paloma
McKinney, TX 75070
d_chittenden@fi-financialservices.com

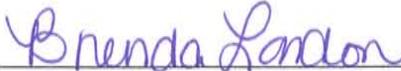
In his capacity as Chief Financial Officer and Control Person at First Interstate, and as an Individual

Joe Hampton
Corbyn Hampton PLLC
One Leadership Square, Ste. 1910
211 N. Robinson
Oklahoma City, OK 73102
jhampton@corbynhampton.com

In his capacity as attorney for some or all of the Respondents

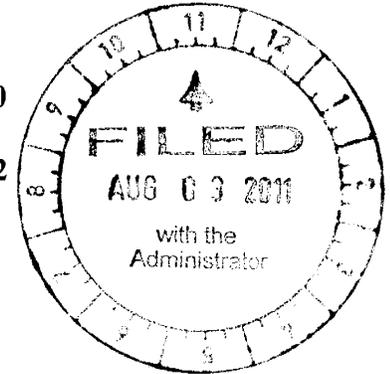
Paul Smith
PO Box 791
Sperry, OK 74073
okmuni@cox.net

*In his capacity as an
investment adviser representative of First Interstate affected by this matter*



Brenda London, Paralegal

STATE OF OKLAHOMA
DEPARTMENT OF SECURITIES
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Errol Dean Chittenden (CRD No. 501952),

Respondents.

ODS File No. 11-075

**ENFORCEMENT DIVISION RECOMMENDATION
TO SUSPEND REGISTRATIONS AND IMPOSE CIVIL PENALTIES,**

Pursuant to Section 1-410 of the Oklahoma Uniform Securities Act of 2004 (Act), Okla. Stat. tit. 71, §§ 1-101 through 1-701 (Supp. 2010), and the Rules of the Oklahoma Securities Commission and the Administrator of the Department of Securities (as amended July 1, 2007) (Rules), the Examinations Division (Examinations Division) of the Oklahoma Department of Securities (Department) attempted to conduct an inspection of the records of First Interstate Financial Services, Incorporated (First Interstate), and the activities of David Hinkle (Hinkle) and Dean Chittenden (Chittenden) (collectively, "Respondents"). Based thereon, the following Findings of Fact, Authorities, and Conclusions of Law are submitted to the Administrator of the Department (Administrator) in support of sanctions against Respondents.

Findings of Fact

Respondents

1. In November 1999, First Interstate registered under the Act as an investment adviser and is currently registered as such. During the times material hereto, First Interstate's principal office and place of business (Principal Office) has been located at various addresses and in different cities according to First Interstate's Application for Investment Adviser Registration (Form ADV). According to First Interstate's most recent Form ADV, First Interstate's current Principal Office is located at 199 E. Jackson Street, Suite 200, in Hugo, Oklahoma (Hugo Office). First Interstate provides investment advice only to corporations and state or municipal government entities.

2. In November 1999, Hinkle registered under the Act as an investment adviser representative of First Interstate and is currently registered as such. At all times material hereto,

Hinkle has been the President, the Chief Executive Officer, the Chief Compliance Officer, the Financial and Operations Principal, a Managing Director, a designated control person and a 53% owner of First Interstate.

3. In November 1999, Chittenden registered under the Act as an investment adviser representative of First Interstate and is currently registered as such. At all times material hereto, Chittenden has been the Vice President, Chairman of the Board, a Managing Director, a designated control person, and a 47% owner of First Interstate.

2001 Examination

4. In September 2001, a representative of the Department's Examinations Division (Examiner) conducted an examination of First Interstate's Principal Office, at that time located in Norman, Oklahoma. Both Hinkle and Chittenden were present during the examination. At the end of the on-site portion of the examination, the Examiner, in writing, advised Hinkle and Chittenden that the Act and Rules required:

- a. that First Interstate's financial statements be prepared no later than 15 business days after the end of the accounting period;
- b. that First Interstate's general ledger be posted no less than once per month; and
- c. that books and records required by the Act and Rules be maintained in First Interstate's Principal Office for 2 years.

5. On October 4, 2001, the Director of the Examinations Division sent a letter to Respondents addressing the deficiencies noted by the Examiner and pointing out that First Interstate's most recent balance sheet indicated that the adviser's liabilities exceeded its assets and equity. The Director of the Examinations Division advised Respondents that investment advisers who willfully violate or fail to comply with the Act or the Rules may have their registrations revoked or suspended. The Director of the Examinations Division requested that Respondents acknowledge, in writing, the steps taken to address the deficiencies.

6. In a letter dated October 10, 2001, Chittenden, as Chairman of First Interstate, stated that Respondents had taken corrective action to cure the deficiencies and had instituted policies to ensure the books and records would be kept in compliance with the Rules.

2010 Examination

7. In October 2010, an Examiner contacted Hinkle via telephone and notified him that the Examinations Division was going to conduct a routine inspection of the records of First Interstate's Principal Office. The Examiner referred Hinkle to the Department's internet homepage for a list of the materials necessary for compliance with the examination, including a checklist of all the documents the Examiner would seek to review. The Examiner also advised Hinkle that First Interstate had been required since 2007 to electronically file Part II of its Form

ADV with the Investment Adviser Registration Depository (IARD) and that First Interstate did not have a Part II on file. Nor had First Interstate updated Part I on the IARD since 2006.

8. At the time the Examiner called Hinkle, First Interstate's Form ADV showed its Principal Office to be in Tecumseh, Oklahoma. Hinkle advised the Examiner that First Interstate's Principal Office was in the process of being moved to Oklahoma City and that within a few weeks all records would be in the Oklahoma City office. Hinkle requested that the examination be delayed until the move was completed.

9. On October 13, 2010, First Interstate's Form ADV was amended to show that its Principal Office was located at 6440 Avondale Drive, Suite 200, Oklahoma City, Oklahoma 73116 (Avondale Office). The Form ADV also provided that all of the required books and records were kept at that location and that Respondents normally conducted business at the Avondale Office between 8:00 A.M. and 5:00 P.M. Monday through Friday.

10. On October 22, 2010, First Interstate's Form ADV was amended to reflect that not all of the required books and records were kept at the Avondale Office. In Section 1.K of Schedule D of the Form ADV, where Respondents were supposed to state where the books and records not at the Principal Office were kept, Respondents stated the records were at the Avondale Office. Where the Form ADV required Respondents to "briefly describe the books and records kept at this location," they responded "main office."

11. On December 8, 2010, two Examiners arrived at the Avondale Office to conduct a routine examination of the records of First Interstate (2010 Examination). Despite having almost two months to prepare for the 2010 Examination, Respondents presented the Examiners with few of the required records. At that time, Hinkle told the Examiners that some of the records were stored at the home of Chittenden in McKinney, Texas, and in the home and/or car of Paul Smith, a registered investment adviser representative of First Interstate who lived in northeastern Oklahoma. Hinkle said he would gather those documents and provide them to the Department.

12. On the date of the 2010 Examination, Respondents were unable to produce and/or had failed to preserve and maintain required books and records including, but not limited to:

- a. accurate monthly and annual financial statements;
- b. support documentation for the financial statements;
- c. support documentation for bank records and invoices;
- d. a general ledger;
- e. correspondence concerning business of the adviser; and
- f. investment advisory contracts entered into with clients.

13. Over the course of the next months, Respondents continued to provide documents to the Examinations Division, including many of the documents required for the 2010 Examination, and additional documents requested by the Examinations Division. However, Respondents repeatedly offered up new versions of financial statements and client invoices that

Respondents explained had been corrected for errors. These inaccuracies raise substantial uncertainty as to First Interstate's true financial condition.

14. On March 14, 2011, First Interstate filed an amendment to its Form ADV stating that its Principal Office had moved to 3030 NW Expressway, Suite 200, Oklahoma City, Oklahoma, 73112 (NW Expressway Office). The Form ADV provided that Respondents normally conducted business at the NW Expressway Office between 8:00 A.M. and 5:00 P.M. Monday through Friday. The Form ADV also provided that not all of the required books and records were kept at the NW Expressway Office. In Section 1.K of Schedule D of the Form ADV, where Respondents were supposed to state where the books and records not in the Principal Office were kept, they stated the records were at the Avondale Office. Where Respondents were supposed to "briefly describe the books and records kept at this location," they responded "main office."

15. Upon review of the contracts for First Interstate's lease of the Avondale Office and the NW Expressway Office, the Examiners discovered that both were "Executive Suites" wherein Respondents did not maintain a physical office, but merely had the opportunity to rent a conference room by the hour as needed. Respondents contracted to have any mail received at the Avondale Office or the NW Expressway Office forwarded to Chittenden's home address in McKinney, Texas.

16. Furthermore, during the times that First Interstate's Principal Office was supposedly located at the Avondale Office and the NW Expressway Office, none of First Interstate's registered investment adviser representatives lived in the Oklahoma City area. Hinkle resided in Hugo, Oklahoma. Chittenden resided in McKinney, Texas. Paul Smith resided in northeastern Oklahoma.

17. On March 29, 2011, First Interstate filed multiple amendments to its Form ADV stating that its Principal Office had moved to the Hugo Office where Respondents stated they normally conducted business between 8:00 A.M. and 5:00 P.M. Monday through Friday. Each of the multiple amendments to the Form ADV stated that not all of the required books and records were kept at the Hugo Office. Originally, Respondents stated that the required books and records were kept in the Avondale Office. By the final amendment that day, Section 1.K of Schedule D of the Form ADV, where First Interstate was supposed to state where the books and records not in the Principal Office were kept, Respondents stated the records were at the Hugo Office. Where Respondents were supposed to "briefly describe the books and records kept at this location," they responded "Main office. There we maintain: complaint files, contract files, invoices, bank statements, check register, checkbook, expenses, and all other required files."

18. On June 27, 2011, Respondents met with the Examiners and the Director of the Examinations Division. Respondents stated that all of First Interstate's books and records were being maintained in the Hugo Office.

19. On July 13, 2011, First Interstate filed an amendment to its Form ADV stating that all required books and records were maintained at First Interstate's Principal Office in Hugo.

20. On July 27, 2011, the Examiners conducted a follow-up examination to ensure that Respondents were in compliance with the Act and Rules. The Examiners discovered that although Respondents did appear to maintain books and records at the Hugo Office, the books and records maintained there were incomplete in material respects and were not arranged and indexed in a way so to permit easy location, access, and retrieval of particular records.

21. During the course of the 2010 Examination, the Examiners requested email correspondence from Respondents relating to the business of First Interstate. Respondents advised the Examiners that each of First Interstate's investment adviser representatives use their own email accounts and that Respondents do not have direct access to those accounts to review for compliance with the Act and Rules nor do they maintain the original or copies of the originals. Respondents advised the Examiners that certain of the emails were lost and were not recoverable.

22. Also, during the course of the 2010 Examination, the Examiners reviewed First Interstate's bank statements and discovered that Respondents had charged retainers, in some cases more than 6 months in advance in excess of \$500, for services yet to be rendered. Respondents did not file an audited statement of financial condition with the Department nor did Respondents maintain any documentation to show that they provided such a statement to their clients.

23. Furthermore, on review of First Interstate's bank statements and financial statements, the Examiners noted several persons to whom First Interstate paid consulting and/or referral fees with unregistered persons. Respondents advised the Examiners that First Interstate did not enter into written contracts with these persons. The lack of such contracts raises questions as to whether violations of the Act and/or Rules have occurred with respect to these persons.

24. Of the investment advisory agreements that were maintained and preserved by Respondents, some do not appear to be final copies as they were not signed and others do not appear to have been executed prior to the services being rendered as the contracts were back-dated or the invoices relating to the contract were dated prior to the contract.

25. Of the investment advisory agreements maintained and preserved, most did not disclose:

- a. whether Respondents had discretionary authority under the agreement;
- b. that no assignment of the contract could be made without the client's consent;
- c. that the client had a right to receive the investment adviser's disclosure document at least 48 hours prior to entering into the contract; or
- d. that the contract could be terminated without penalty within 5 business days of entering into the contract.

26. In addition to his affiliation with First Interstate, Hinkle is employed as the director of the Choctaw County Economic Development Foundation and serves on numerous boards and commissions. Prior to November 2010, Hinkle had not filed an amendment to his Form U-4 since 2004. The Choctaw County Economic Development Foundation was not listed on Hinkle's Form U-4 as an outside business activity before the November 2010 amendment. The boards and commissions have never been listed.

27. In addition to his affiliation with First Interstate, Chittenden owns and operates USDA Capital Corporation and First Interstate Leasing, Inc., and has had a consulting contract with the Tulsa Economic Development Corporation to advise and assist it in taking advantage of tax credit incentives. Prior to March of 2011, Chittenden's affiliation with USDA Capital Corporation was not listed on his Form U-4 as an outside business activity, though the company was formed in 2008. Neither First Interstate Leasing, Inc., nor the Tulsa Economic Development Corporation has ever been listed on Chittenden's Form U-4.

28. The 2010 Examination has been impeded and the Examiners have been unable to complete the 2010 Examination because Respondents have failed to maintain required books and records including, but not limited to:

- a. a general ledger or other comparable record posted at least monthly that reflects asset, liability, reserve, capital, income and expense accounts;
- b. accurate and timely-prepared monthly and annual financial statements;
- c. deposit detail for First Interstate's checking account;
- d. documentation supporting expenses charged to clients;
- e. complete wire detail for incoming and outgoing wires;
- f. email communications relating to the business of the investment adviser;
- g. investment advisory agreements with some clients;
- h. contracts entered into with some third-party affiliates or consultants;
- i. financials and offering documents for Private Placements for which First Interstate acted as Placement Agent;
- j. documentation reflecting the provision of First Interstate's Form ADV, Part II to clients and prospective clients and the provision of, or offer to provide, correcting amendments to clients; and
- k. written supervisory procedures applicable to First Interstate's business model.

29. The Examiners were further impeded from completing the 2010 Examination because Respondents failed to keep current First Interstate's Form ADV, Parts I and II and Hinkle and Chittenden's Form U-4s with material information because they:

- a. failed to disclose that books and records required by the Act were kept at locations other than the Principal Office;
- b. failed to disclose Chittenden's outside business activities and/or affiliations that could create a conflict of interest;

- c. failed to disclose Hinkle's outside business activities or affiliations that could create a conflict of interest;
- d. failed to adequately disclose fee types and schedules;
- e. failed to disclose retainers charged in advance and refunded for terminated services;
- f. failed to make the required financial condition disclosures for charging fees six months in advance in excess of \$500;
- g. failed to make disclosures about Paul Smith on Part 2B of the Form ADV;
- h. failed to file annual amendments to Form ADV in 2007, 2008 and 2009 or to file correcting amendments during times in which First Interstate's business model changed substantially;
- i. failed to file correcting amendments to Form U-4 for Hinkle during times in which Hinkle's outside business activities changed substantially; and
- j. failed to file correcting amendments to Form U-4 for Chittenden during times in which Chittenden's outside business activities changed substantially.

30. In addition, First Interstate's stated procedures in First Interstate's "Policies, Procedures and Compliance Manual" required the investment adviser representatives to disclose and seek approval from Hinkle prior to engaging in outside business activities. When the Examiners questioned Hinkle why certain of Chittenden's business activities were not listed on Chittenden's Form U-4, Hinkle said he was not aware of them.

31. Respondents did not require Paul Smith, one of First Interstate's investment adviser representatives, to submit the originals or copies of investment advisory contracts, documentation supporting invoices and communications with clients for preservation and maintenance in the Principal Office. Respondents could not properly supervise Mr. Smith's activities without reviewing that documentation.

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 1-406 of the Act states, 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 fee 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.

2. Section 1-410 of the Act states, in pertinent part:

C. Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78o(h)) or Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-18a):

1. A broker-dealer registered or required to be registered under this act and an investment adviser registered or required to be registered under this act shall make and maintain the accounts, correspondence, memoranda, papers, books, and other records as required by rule adopted or order issued under this act[.]

D. The records of a broker-dealer registered or required to be registered under this act and an investment adviser registered or required to be registered under this act are subject to such reasonable periodic, special, or other audits or inspections by a representative of the Administrator, within or without this state, as the Administrator considers necessary or appropriate in the public interest and for the protection of investors. An audit or inspection may be made at any time and without prior notice. The Administrator may copy, and remove for audit or inspection copies of, all records the Administrator reasonably considers necessary or appropriate to conduct the audit or inspection.

* * *

F. With respect to an investment adviser registered or required to be registered under this act, a rule adopted or order issued under this act may require that information be furnished or disseminated to clients or prospective clients in this state as necessary or appropriate in the public interest and for the protection of investors and advisory clients.

3. Section 1-411 of the Act states, in pertinent 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;

* * *

8. Refuses to allow or otherwise impedes the Administrator from conducting an audit or inspection under subsection D of Section 27 of this act [Section 1-410 of this title] or refuses access to any registrant's office to conduct an audit or inspection under subsection D of Section 27 of this act [Section 1-410 of this title];

* * *

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;

* * *

13. Has engaged in dishonest or unethical practices in the securities, commodities, investment, franchise, banking, finance or insurance business 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.

H. A person who controls, directly or indirectly, a person not in compliance with this section may be disciplined by order of the Administrator under subsections A through C of this section to the same extent as the non-complying person, unless the controlling person did not know, and in the exercise of reasonable care could not have known, of the existence of conduct that is the basis for discipline under this section.

4. Section 1-502 of the Act states, in pertinent part:

B. 2. A rule adopted or order issued under this act may specify the contents of an investment advisory contract entered into, extended, or renewed by an investment adviser.

5. Section 660:11-7-11 of the Rules states, in pertinent part:

(a) **Investment adviser.** Investment advisers applying for initial registration pursuant to Section 1-406 of the Securities Act:

(1) shall file with the IARD:

(A) a completed Form ADV, including Schedules A-I; and

(B) the filing fee specified in Section 1-612 of the Securities Act;

(2) shall file with the Department within 30 days from the effective date of registration:

(A) Part 2 of the Form ADV;

(B) audited financial statements as required by 660:11-7-44 unless exempt therefrom;

(C) a copy of the investment advisory contract to be executed by Oklahoma clients; and

(D) any additional documentation, supplemental forms and information as the Administrator may deem necessary; and

(3) if a natural person, must have passed the applicable examinations specified in 660:11-7-13.

(b) **Investment adviser representative.** Investment adviser representatives applying for initial registration under the Securities Act:

(1) shall file with the CRD:

(A) a completed Form U-4 if the information on the Form U-4 is not maintained in current form on the CRD;

(B) the filing fee specified in Section 1-612 of the Securities Act; and

(C) any additional documentation, supplemental forms and information as the Administrator may deem necessary; and

(2) must have passed the applicable examinations specified in 660:11-7-13.

6. Section 660:11-7-31 of the Rules states:

a) **Filing requirement.** Pursuant to Section 1-410.B of the Securities Act, all investment advisers registered under Section 1-406 of the Securities Act must make post-registration filings with the Department. The

Department will not accept incomplete or piecemeal filings. The post-registration filing shall contain the financial or operating report fee set forth in Section 1-612 of the Securities Act. Failure to file a complete report when due may result in the suspension or revocation of registration. The Administrator will consider requests that no enforcement action be taken regarding a delinquent filing pursuant to the provisions of 660:2-13-1.

(b) **Report content.** Registered investment advisers who have custody or possession of clients' funds or securities or require prepayment of advisory fees six (6) months or more in advance and in excess of \$500.00 per client shall make one (1) post-registration report each fiscal year. Said filing shall contain the report filing fee specified in Section 1-612 of the Securities Act and an audited statement of financial condition as of the investment adviser's fiscal year end.

(c) **Report filing dates.** Post-registration filings become due on the last day of the fiscal year to which they apply; however a grace period is provided before a filing becomes delinquent. The filing must be made by the last day of the fourth month following the close of the registrant's fiscal year.

7. Section 660:11-7-41 of the Rules states in pertinent part:

(a) **General Requirements.** Every investment adviser registered or required to be registered under the Securities Act shall make and keep true, accurate and current the following books and records:

(1) A journal, or journals, including cash receipts and disbursements, records, and any other records of original entry forming the basis of entries in any ledger.

(2) General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts. In no event shall the general ledger be posted less than once a month.

* * *

(4) All check books, bank statements, canceled checks and cash reconciliations of the investment adviser.

(5) All bills or statements (or copies thereof), paid or unpaid, relating to the business of the investment adviser as such.

(6) All trial balances, financial statements prepared in accordance with generally accepted accounting principles, and internal audit working papers relating to the business of such investment adviser. The trial balance shall be prepared no later than fifteen (15) business days after the end of the accounting period.

(7) Originals of all written communications received and copies of all written communications sent by the investment adviser relating to the business of the investment adviser[.]

* * *

(10) A copy of all agreements entered into by the investment adviser with any client and all other agreements relating to the business of the investment adviser as such, including agreements which set forth the fees to be charged, the manner of computation and method of payment.

* * *

(14) A copy of each written statement and each amendment or revision, given or sent to any client or prospective client of the investment adviser, and a record of the dates that each written statement, and each amendment or revision, was given, or offered to be given, to any client or prospective client who subsequently becomes a client.

* * *

(19) Written procedures to supervise the activities of employees and investment adviser representatives that are reasonably designed to achieve compliance with applicable securities laws and regulations.

* * *

(e) Records retention. Every investment adviser subject to (a) of this Section shall preserve the following records in the manner prescribed:

(1) All books and records required to be made under the provisions of (a) to (c)(1), inclusive, of this Section (except for books and records required to be made under the provisions of (a)(11) and (a)(16) of this Section), shall be maintained and preserved in an easily accessible place for a period of not less than

five years from the end of the fiscal year during which the last entry was made on record, the first two years in the principal office of the investment adviser.

* * *

(4) Books and records required to be made under the provisions of (a)(17)-(22), inclusive, of this Section shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in the principal office of the investment adviser, or for the time period during which the investment adviser was registered or required to be registered in the state, if less.

(5) Notwithstanding other record preservation requirements of this Section, the following records or copies shall be required to be maintained at the business location of the investment adviser from which the customer or client is being provided or has been provided with investment advisory services: (A) records required to be preserved under (a)(3), (a)(7)-(10), (a)(14)-(15), (a)(17)-(19), (b) and (c) inclusive, of this Section, and (B) the records or copies required under the provision of (a)(11) and (a)(16) of this Section which records or related records identify the name of the investment adviser representative providing investment advice from that business location, or which identify the business locations' physical address, mailing address, electronic mailing address, or telephone number. The records will be maintained for the applicable period described in this Subsection.

* * *

(g) Format and storage of records.

(1) The records required to be maintained and preserved may be immediately produced or reproduced, and maintained and preserved for the required time, by an investment adviser on:

(A) paper or hard copy form, as those records are kept in their original form; or

(B) micrographic media, including microfilm, microfiche, or any similar medium; or

(C) electronic storage media, including any digital storage medium or system that meets the terms of this section.

(2) The investment adviser must:

(A) arrange and index the records in a way that permits easy location, access, and retrieval of any particular record;

(B) provide promptly any of the following that the Administrator or his representatives may request:

(i) a legible, true, and complete copy of the record in the medium and format in which it is stored;

(ii) a legible, true, and complete printout of the record; and

(iii) means to access, view, and print the records; and

(C) separately store, for the time required for preservation of the original record, a duplicate copy of the record on any medium allowed by this section.

(3) In the case of records created or maintained on electronic storage media, the investment adviser must establish and maintain procedures:

(A) to maintain and preserve the records, so as to reasonably safeguard them from loss, alteration, or destruction;

(B) to limit access to the records to properly authorized personnel and the Administrator and his representatives; and

(C) to reasonably ensure that any reproduction of a non-electronic original record on electronic storage media is complete, true, and legible when retrieved.

8. Section 660:11-7-42 of the Rules states, in pertinent part:

(a) Purpose. This rule is intended to set forth the standards of ethical practices for investment advisers and investment adviser representatives. Any noncompliance with the standards set forth in this section will constitute unethical practices in the securities business as the same is set forth in Section 1-411.D.13 of the Securities Act; 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 investment advisers and investment adviser representatives in connection with their activities in this state shall be just, reasonable and not unfairly discriminatory. The standards set forth in this section and the disclosure delivery requirement set forth in 660:11-7-43 shall apply to all investment advisers and investment adviser representatives.

(b) Standards. An investment adviser or investment adviser representative shall not engage in dishonest or unethical practices including, although not limited to, the following:

(10) Failing to disclose in writing before any advice is rendered any material conflict of interest relating to the investment adviser or any of its employees which could reasonably be expected to impair the rendering of unbiased and objective advice[.]

* * *

(15) Entering into, extending or renewing any investment advisory contract unless such contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or nonperformance, whether the contract grants discretionary power to the investment adviser or investment adviser representative and that no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract.

(16) Entering into, extending or renewing any investment advisory contract, if such contract contains any provision that limits or purports to limit any of the following:

(A) the liability of the investment adviser for conduct or omission arising from the advisory relationship that does not conform to the Securities

Act, applicable federal statutes, or common law fiduciary standard of care;

(B) remedies available to the client at law or equity or the jurisdiction where any action shall be filed or heard; or

(C) applicability of the laws of Oklahoma with respect to the construction or interpretation of the provisions of the investment advisory contract.

9. Section 660:11-7-43 of the Rules states:

(a) Disclosure delivery requirement. In furtherance of compliance with the standards of ethical practices specified in 660:11-7-42, every investment adviser, registered or required to be registered under the Securities Act shall, in accordance with the provisions of this section, furnish each advisory client and prospective advisory client with a written disclosure statement which may be a copy of Part II of its Form ADV including Schedule F, if applicable, or written documents containing at least the information then so required by Part II of the Form ADV including Schedule F, if applicable; provided however, delivery of the required statement need not be made in connection with entering into an investment company contract or a contract for impersonal advisory services.

(b) Time of delivery. An investment adviser shall deliver the statement required by (a) of this section to an advisory client or prospective advisory client.

(1) not less than 48 hours prior to entering into any written or oral investment advisory contract with such client or prospective client, or

(2) at the time of entering into any such contract, if the advisory client has a right to terminate the contract without penalty within five business days after entering into the contract.

(c) For purposes of this section, "entering into" does not include an extension or renewal without material change of any investment advisory contract which is in effect immediately prior to such extension or renewal.

(d) Annual delivery requirement. Unless exempted as provided in (a) of this section, an investment adviser annually shall, without charge, deliver or offer in writing to deliver upon written request to each of its advisory clients the statement required by this section. Any statement requested in

writing by an advisory client pursuant to an offer required by this subsection must be mailed or delivered within seven (7) days of the receipt of the request.

10. Section 660:11-7-45 of the Rules states:

(a) Periodic examinations. The business and records of each investment adviser registered under the Securities Act may be periodically examined by the Administrator and/or person(s) designated by him at such times and in such scope as the Administrator determines prudent and necessary for the protection of the public. A report of each such examination shall be prepared.

(b) Department access. Each investment adviser scheduled for examination shall provide the personnel of the Department access to business books, documents, and other records. Each investment adviser shall provide personnel with office space and facilities to conduct on-site examinations, and assistance in the physical inspection of assets and confirmation of liabilities. Failure of any applicant or registrant to provide such access shall constitute a violation of this section and shall be a basis for denial, suspension or revocation of the registration or application for registration.

11. The Instructions for Part 2A of Form ADV: Preparing Your Firm Brochure, provides in pertinent part:

(4.) When must we update our brochure? You must update your brochure: (i) each year at the time you file your annual updating amendment; and (ii) promptly whenever any information in the brochure becomes materially inaccurate.

12. The Instructions for Form U-4 provide, in pertinent part:

An individual is under a continuing obligation to amend and update information required by Form U4 as changes occur.

Conclusions of Law

1. Respondents impeded representatives of the Administrator from conducting an audit or inspection under Section 1-410 of the Act by failing to maintain required books and records in their Principal Office, by failing to make those books and records promptly available to the Examinations Division, and by presenting inaccurate financial statements and invoices to

the Examinations Division in violation of Section 1-410 of the Act and Sections 11-7-41 and 11-7-45 of the Rules.

2. Respondents failed to arrange and index their records in a way to permit easy location, access and retrieval of particular records in violation of Section 11-7-41 of the Rules.

3. Respondents failed to maintain and preserve their electronic records so as to reasonably safeguard from loss, alteration or destruction, in violation of Section 11-7-41 of the Rules.

4. Respondents failed to file correcting amendments to First Interstate's Form ADV and Hinkle and Chittenden's Form U-4s in violation of Section 1-406 of the Act, Section 11-7-42 of the Rules, and the Instructions to the Form ADV and the Form U-4.

5. Respondents failed to provide their clients with current and accurate written disclosure statements and to make or offer annual delivery of the written disclosure statement to their clients in violation of Section 11-7-43 of the Rules and/or to document the provision of the written disclosure statements to their clients in violation of Section 11-7-41 of the Rules.

6. Respondents failed to file audited statements of financial condition with the Department in violation of Rule 11-7-31.

7. Respondents willfully engaged in dishonest and unethical practices by failing to disclose to clients material conflicts of interest in writing and by entering into investment advisory contracts that failed to make required disclosures in violation of Section 1-502 of the Act and Section 11-7-42 of the Rules.

8. Hinkle failed to reasonably supervise First Interstate's investment adviser representatives by not establishing and following appropriate procedures for monitoring email communications, by not requiring investment adviser representatives to forward the required books and records to the Principal Office for review and preservation, and by not requiring that investment adviser representatives comply with the written supervisory procedures established with respect to reporting and supervising outside business activities in violation of Section 1-410 of the Act and Section 11-7-41 of the Rules.

9. The Administrator is authorized pursuant to Section 1-411 of the Act to suspend the registrations of Respondents and to impose a civil penalty against Respondents.

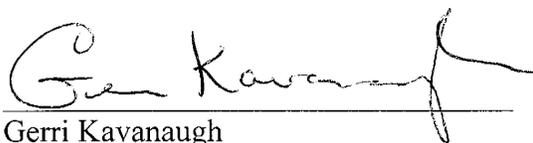
10. It is in the public interest for the Administrator to suspend the registrations of Respondents and to order civil penalties.

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 suspend the investment adviser registration of First Interstate and the investment adviser representative registrations of Hinkle and Chittenden for up to one year or until Respondents have demonstrated compliance with the Act and Rules, whichever period is greater; impose a civil penalty in the amount of \$50,000 against First Interstate; impose civil penalties in the amount of \$25,000 each against Hinkle and Chittenden; and impose any other sanctions deemed appropriate and authorized by law.

Dated this 3rd day of August, 2011.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Gerri Kavanaugh", written over a horizontal line.

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