

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



In the Matter of:

Spelman & Co., Inc. (CRD No. 10232),  
William V. Harris (CRD No. 4348386),  
Michael C. Leipart (CRD No. 2547918),  
Frank G. McGuire III (CRD No. 328147), and  
John H. Neely (CRD No. 501565),

Respondents.

File No. ODS 05-018

**NOTICE OF SERVICE ON THE ADMINISTRATOR**  
**AND**  
**AFFIDAVIT OF COMPLIANCE**

STATE OF OKLAHOMA    )  
                                  )  
                                  )    ss.  
COUNTY OF OKLAHOMA )

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

1. That he is the Administrator of the Oklahoma Department of Securities ("Department").

2. That a copy of the Notice of Opportunity for Hearing ("Notice") with Enforcement Division Recommendation ("Recommendation") attached was delivered to Affiant in the office of the Administrator of the Department ("Administrator") pursuant to Section 1-611 of the Oklahoma Uniform Securities Act ("Act"), Okla. Stat. tit. 71, §§ 1-101 through 1-701 (Supp. 2003).

3. That the Administrator has received service of process on behalf of Spelman & Co., Inc., William V. Harris, Michael C. Leipart, Frank G. McGuire III, and John H. Neely pursuant to Section 1-611 of the Act.

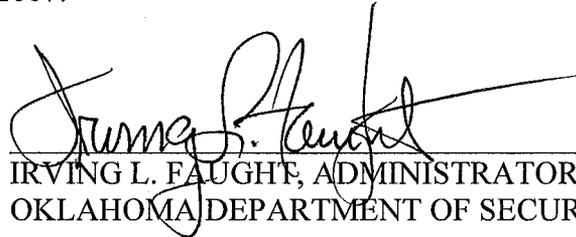
4. That a copy of the Notice, with the Recommendation attached, and a copy of this Notice of Service on the Administrator and Affidavit of Compliance are being sent this 31st day of July, 2007, by certified mail, return receipt requested, delivery restricted to addressee, to the last known addresses 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.

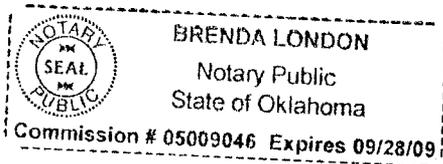
FURTHER AFFIANT SAYETH NOT.

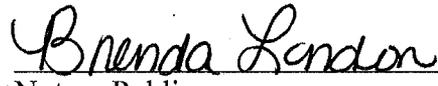
Dated this 31st day of July, 2007.

(SEAL)

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

Subscribed and sworn to before me this 31st day of July, 2007.



  
\_\_\_\_\_  
Notary Public

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



In the Matter of:

Spelman & Co., Inc. (CRD No. 10232),  
William V. Harris (CRD No. 4348386),  
Michael C. Leipart (CRD No. 2547918),  
Frank G. McGuire III (CRD No. 328147), and  
John H. Neely (CRD No. 501565),

Respondents.

File No. ODS 05-018

**NOTICE OF OPPORTUNITY FOR HEARING**

1. Pursuant to the Oklahoma Uniform Securities Act of 2004 ("Act"), Okla. Stat. tit. 71, §§ 1-101 through 1-701 (Supp. 2003), and the Oklahoma Securities Act ("Predecessor Act"), Okla. Stat. tit. 71, §§ 1-413, 501, 701-703 (2001 and Supp. 2003), the Examinations Division of the Oklahoma Department of Securities ("Department") conducted an examination of the activities of the Spelman & Co., Inc. ("Spelman") branch office located in Oklahoma City, Oklahoma.

2. On the 27th day of July, 2007, the attached Enforcement Division Recommendation ("Recommendation") was left in the office of the Administrator.

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 John H. Neely ("Neely"), William V. Harris ("Harris"), and Michael C. Leipart ("Leipart") in all capacities for thirty (30) business days; limiting Frank G. McGuire's ("McGuire") responsibilities to non-supervisory functions; imposing civil penalties against Neely and Harris, individually, in the

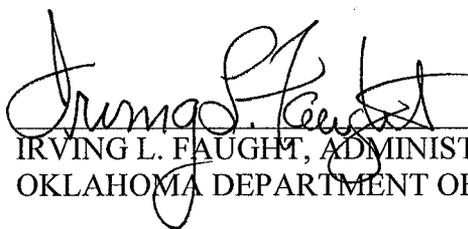
amount of \$20,000 each; imposing civil penalties against Leipart and McGuire, individually, in the amount of \$10,000 each; and imposing civil penalties against Spelman in the amount of \$50,000, pursuant to Section 1-411 of the Act and 660:2-9-2 of the Rules.

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 31st day of July, 2007.

(SEAL)

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

CERTIFICATE OF MAILING

The undersigned hereby certifies that on the 31st day of July, 2007, a true and correct copy of the above and foregoing Notice of Opportunity for Hearing and attached Enforcement Division Recommendation was mailed by certified mail, return receipt requested, delivery restricted, with postage prepaid thereon, addressed to:

Phillip A. Hofling  
Vice President, Legal  
AIG Financial Advisors Inc  
2800 N Central Ave Ste 2100  
Phoenix AZ 85004

William V Harris  
Century Advisors, LLC  
1633 W Garriott Ste B  
Enid OK 73703

William V Harris  
922 Compound  
Enid OK 73703

Michael C Leipart  
Century Advisors LLC  
3503 NW 63rd St Ste 200  
Oklahoma City OK 73116-2203

Michael C Leipart  
3323 NW 60th St  
Oklahoma City OK 73112

Frank G McGuire III  
Century Advisors LLC  
3503 NW 63rd St Ste 200  
Oklahoma City OK 73116-2203

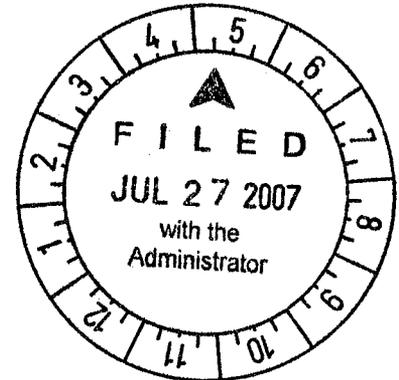
Frank G McGuire III  
3405 Partridge Rd  
Oklahoma City OK 73120

John H Neely  
Century Advisors LLC  
3503 NW 63rd St Ste 200  
Oklahoma City OK 73116-2203

John H Neely  
2708 Asheforde Oaks Blvd  
Edmond OK 73034

  
Brenda London, Paralegal

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



In the Matter of:

Spelman & Co., Inc. (CRD No. 10232),  
William V. Harris (CRD No. 4348386),  
Michael C. Leipart (CRD No. 2547918),  
Frank G. McGuire III (CRD No. 328147), and  
John H. Neely (CRD No. 501565),

Respondents.

File No. ODS 05-018

**ENFORCEMENT DIVISION RECOMMENDATION**

The following Findings of Fact, Authorities, and Conclusions of Law are submitted to the Administrator of the Oklahoma Department of Securities ("Department") in support of this Recommendation for sanctions against Respondents.

**Findings of Fact**

1. Spelman & Co, Inc. ("Spelman") was a broker-dealer and an investment adviser registered under the Oklahoma Securities Act ("Predecessor Act"), Okla. Stat. tit. 71, §§ 1-413, 501, 701-703 (2001 and Supp. 2003), and the Oklahoma Uniform Securities Act of 2004 ("Act"), Okla. Stat. tit. 71, §§ 1-101 through 1-701 (Supp. 2003), until November 2005. Spelman was a member of the NASD until December 2005, when Spelman merged with AIG Financial Advisors, Inc., a registered broker-dealer and investment adviser. At all times material hereto, Spelman's main office was located at 3503 Northwest 63rd Street in Oklahoma City, Oklahoma ("OKC Branch").

2. John H. Neely ("Neely"), Frank G. McGuire III ("McGuire"), and Michael C. Leipart ("Leipart") were registered agents of Spelman in the OKC Branch from July 1999 until June 2004. Neely, McGuire, and Leipart were investment adviser representatives of Spelman from May 2002 until June 2004. William V. Harris ("Harris") was a registered agent of Spelman in a branch office in Enid, Oklahoma, ("Enid Branch") from February 2001 until June 2004, and an investment adviser representative from February 2004 until June 2004. Neely, Harris, Leipart, and McGuire are currently registered investment adviser representatives of Century Advisors, LLC, and registered agents of WFG Investments, Inc.

3. At all times material hereto, the OKC Branch was designated as an office of supervisory jurisdiction ("OSJ"). McGuire was the "OSJ Manager" of the OKC Branch until December 2002, when he was replaced in such capacity by Leipart. In November 2003, McGuire became a "delegated supervisory principal" at the OKC Branch.

4. At all times material hereto, the Enid Branch, a non-OSJ, was directly supervised from the OKC Branch.

5. At all times material hereto, Harris and Neely had an agreement in which Harris referred Spelman accounts to Neely for the purpose of soliciting sales of securities. Harris and Neely equally shared the compensation for the resulting sales. Harris and Neely terminated their agreement in July 2004.

6. Harris and Neely were the brokers of record on each of the Spelman accounts hereinafter discussed. These accounts were commission accounts. Neely solicited and effected each of the transactions hereinafter described and shared the resulting compensation with Harris.

7. During the year 2003, Neely ranked first in sales production for the OKC Branch and third in sales production among all Spelman agents.

#### CUSTOMER HODGDEN

8. Customer Hodgden, as trustee, opened a trust account at Spelman on March 15, 2002. The account holder's return objective was current income, and the risk profile was primarily moderate and secondarily conservative.

9. With respect to Customer Hodgden's account, Neely and Harris failed to utilize mutual fund reinvestment privileges, effected unsuitable transactions, and circumvented breakpoints.

#### ***Failure to Utilize Mutual Fund Reinvestment Privilege***

10. On October 21, 2003, Customer Hodgden sold \$83,427 in Class A shares of the Eaton Vance High-Yield Municipals Fund ("ETHYX") for a realized loss of over \$13,000. On February 20, 2004, Customer Hodgden repurchased \$96,000 in shares of ETHYX resulting in gross dealer concessions of \$3,360. Had Customer Hodgden repurchased the ETHYX shares within 60 days of the October redemption, she would have qualified for reinvestment at net asset value with no sales charges. Instead, Customer Hodgden paid another front-end load on the purchase of shares of ETHYX.

#### ***Unsuitable Transactions***

11. On January 9, 2003, Customer Hodgden sold \$75,713 in shares of the Van Kampen American Capital Trust for Insured Municipals Fund ("VIM") for a gain of \$1,197 after holding the position for seven months. The sale of the VIM shares generated \$842 in commission. On the same date, the VIM proceeds were used to purchase \$75,401 in shares of

the Van Kampen Value Municipal Income Trust ("VKV") for which Customer Hodgden paid \$1,044 in commission. Both funds were closed-end municipal bond funds that had an investment objective of "current income exempt from federal income tax, consistent with preservation of capital." On October 21, 2003, Customer Hodgden repurchased \$20,808 in shares of VIM, generating \$487 in commission.

12. On January 24, 2003, Customer Hodgden sold her shares of the ACM Income Fund ("ACG") for a net gain of \$2,304 after the position was held for eight months. The sale of the ACG shares generated \$1,257 in deferred sales charges. Customer Hodgden used the \$91,175 in ACG sale proceeds to purchase a PSEG Energy Holdings corporate note that was sold only three months later for a net gain of \$4,895. The PSEG transactions were executed by Spelman as "riskless principal" transactions. Customer Hodgden incurred a \$1,700 mark-up on the PSEG purchase and a \$1,700 mark-down on the PSEG sell. On October 21, 2003, Customer Hodgden repurchased \$41,144 in shares of the ACG fund, generating a commission of \$902. In total, these transactions resulted in the payment by Customer Hodgden of \$5,559 in sales charges, mark-ups, and mark-downs.

### *Circumvention of Breakpoints*

13. On April 23, 2003, Customer Hodgden held approximately \$46,000 of the Van Kampen High Yield Municipal Bond Fund, Class B, ("ACTGX"), and approximately \$80,000 of the Eaton Vance High Yield Municipal Bond Fund, Class A, ("ETHYX"). On April 23, 2003, Customer Hodgden purchased \$58,313 in Class A shares of the Nuveen High Yield Municipal Bond Fund ("NHMAX"), a municipal bond fund with the same investment objectives as ACTGX and ETHYX, incurring a front-end sales charge of \$2,041. The Van Kampen High Yield Municipal Bond Fund and the Eaton Vance High Yield Municipal Bond Fund offer rights of accumulation that allow investors to include their already owned shares, both Class A and Class B, of mutual funds in the respective fund family in determining breakpoint discounts on the purchase of Class A shares. Therefore, instead of purchasing shares of NHMAX, Customer Hodgden could have purchased Class A shares of the Van Kampen High Yield Municipal Bond Fund or additional shares of ETHYX, thereby incurring a discounted sales charge corresponding to the respective fund's \$100,000 breakpoint.

### CUSTOMERS LINDSEY

14. The Lindseys are an elderly, retired and married couple. The Lindseys opened an account at Spelman on June 15, 2000. The account holders' return objectives were current income and capital appreciation. The risk profile was primarily conservative and secondarily moderate. The Lindseys were in the 39% tax bracket with annual income exceeding \$100,000 and net worth exceeding \$500,000. The Lindseys' account is not tax-deferred.

15. With respect to the Lindseys' account, Neely and Harris employed an unsuitable short-term trading strategy.

16. Class C shares in the Eaton Vance Worldwide Health Science Fund ("ECHSX") were purchased in June 2003, resulting in a gross dealer concession of \$525. The shares in

ECHSX were sold for a gain of \$1,734 in September 2003, for which the Lindseys incurred a contingent deferred sales charge of \$525.

17. Class A shares in the PIMCO High Yield Bond Fund ("PHDAX") were purchased in March 2003, resulting in a gross dealer concession of \$1,873. The shares in PHDAX were sold eight months later for a gain of \$2,051.

18. In January 2003, the Lindseys purchased a PSEG Energy Holdings corporate note with a coupon rate of 10%, incurring a \$1,000 mark-up. In March 2003, the Lindseys sold the note for a gain of \$3,447, incurring a \$1,000 mark-down. These transactions were executed as "riskless principal" transactions.

19. In February 2003, the Lindseys purchased a \$49,604 interest in the Kinder Morgan Energy Partners LP ("KMP"), generating a commission of \$749. In April 2003, the Lindseys sold the KMP interest for a gain of \$2,988, generating a commission of \$782.

20. A strategy of realizing short-term capital gains is not suitable for the Lindseys because their account is not tax deferred, they are retired, and they are in a high tax bracket.

#### CUSTOMER HAMMONS

21. Customer Hammons, as trustee, opened three trust accounts with Spelman on March 15, 2002. The account holder's return objectives were primarily current income and secondarily capital appreciation, and the risk profiles were primarily moderate and secondarily conservative. The three account numbers end as follows: 1183, 1191, and 1209.

22. With respect to Customer Hammons' accounts, Neely and Harris effected unsuitable short-term trades and circumvented breakpoints. From January 1, 2003 through May 31, 2004, Hammons' three accounts incurred \$52,398 in sales charges, commissions, mark-ups and/or mark-downs, and \$18,913 in deferred sales charges from early redemption of Class B mutual fund shares.

#### *Unsuitable Short-Term Trades*

23. On January 21, 2003, in account 1183, Customer Hammons sold shares in the ACM Income Fund ("ACG") at a loss of \$319 and used the sales proceeds to purchase a \$98,500 interest in a PSEG Energy Holdings corporate note. The PSEG note was held for only three months before it was sold for a gain of \$432. Customer Hammons incurred a \$2,125 mark-up on the purchase of the corporate note and a \$2,000 mark-down on the sell.

24. In account 1183, Customer Hammons purchased \$100,000 in Class A shares of the Eaton Vance Government Obligations Fund ("EVGOX") on March 13, 2003, generating a gross dealer concession of \$3,500. On that date, account 1183 was already long \$71,352 in the Eaton Vance Government Obligations Fund, Class B shares, ("EMGOX"). After being held for only six months, the EVGOX shares were sold at a loss of \$7,562. Customer Hammons purchased shares in the Van Kampen Value Municipal Income Trust ("VKV") with the EVGOX

sales proceeds, generating a \$1,365 commission. After being held for only four months, the VKV shares were sold for a gain of \$3,153, generating a \$1,407 commission. The EMGOX shares were sold in November 2003 resulting in a deferred sales charge of \$3,757 and a loss of \$8,673 to the customer.

25. In account 1191, Customer Hammons purchased EVGOX shares on May 16, 2003, generating gross dealer concessions of \$1,462. Customer Hammons sold the EVGOX shares on October 10, 2003, only five months later, at a loss of \$2,886.

26. In account 1191, Customer Hammons purchased Class A shares in the PIMCO High Yield Fund ("PHDAX") on March 25, 2003, generating a gross dealer concession of \$1,780. Customer Hammons sold the PHDAX shares for a gain of \$958 on June 12, 2003, less than three months later.

27. In accounts 1191 and 1209, Customer Hammons purchased shares in the Eaton Vance High Yield Municipal Fund ("ETHYX") on February 19, 2003, generating gross dealer concessions of \$1,479 and \$2,112. On April 4, 2003 and May 2, 2003, Customer Hammons sold the ETHYX shares in the two accounts for a total loss of \$4,166.

28. In account 1209, Customer Hammons purchased Class A shares in the Oppenheimer AMT-free Municipals Fund ("OPTAX") on December 3, 2003, generating a gross dealer concession of \$1,600. Customer Hammons sold the OPTAX shares at a loss of \$2,445 on May 10, 2004.

29. In account 1209, Customer Hammons purchased Class A shares in the Fidelity Advisor Municipal Income Fund ("FAMUX") on April 13, 2004, resulting in a gross dealer concession of \$1,037. Customer Hammons sold the FAMUX shares at a loss of \$1,811 on May 10, 2004.

### ***Circumvention of Breakpoints***

30. Neely and Harris circumvented breakpoints by recommending mutual funds with similar investment objectives in different fund families and by failing to aggregate participating funds in related accounts. From January 1, 2003 through May 31, 2004, Customer Hammons' accounts were invested in the following mutual fund categories: high-yield municipal, short government, municipal national long, and high-yield bond. Neely and Harris effected transactions in ten different funds of five different fund families and in both Class A and Class B shares of the same fund.

31. On February 19, 2003, Customer Hammons purchased \$50,000 and \$77,000 in Class A shares of the Van Kampen High Yield Municipal Fund ("ACTHX") in accounts 1209 and 1191, respectively. On the same day, Customer Hammons purchased \$49,700 and \$34,800 in Class A shares of the Eaton Vance High Yield Municipal Fund ("ETHYX") in those same accounts. Customer Hammons incurred a 4.25% sales load in both the ACTHX and ETHYX purchases. If these high yield municipal fund purchases had been made in one fund family, Customer Hammons would have qualified for reduced sales charges.

32. On March 13, 2003, Customer Hammons' three accounts held long positions totaling approximately \$510,305 in five different Eaton Vance funds including, but not limited to, the Eaton Vance Government Obligations Fund, Class B ("EMGOX"). On March 13, 2003, Customer Hammons purchased \$100,000 in Class A shares of the Eaton Vance Government Obligations Fund ("EVGOX") in account 1183 and paid a 3.5% sales load. On May 16, 2003, with positions totaling approximately \$529,710 in Eaton Vance funds, Customer Hammons purchased an additional \$34,400 of EVGOX and paid a 4.25% sales load. Under the fund's rights of accumulation, Customer Hammons qualified for a sales charge of 2%, rather than 3.5% and 4.25%, on the EVGOX purchases.

### CUSTOMER BOWERS

33. Customer Bowers, as trustee, opened a Profit Sharing Trust account at Spelman on July 15, 2002. The account holder's return objective was capital appreciation and the risk profile was conservative.

34. With respect to Customer Bowers' account, Neely and Harris failed to implement an appropriate fee structure, failed to utilize mutual fund exchange and/or reinvestment privileges, and employed an unsuitable short-term trading strategy.

#### ***Failure to Implement Appropriate Fee Structure***

35. From January 1, 2003, until May 31, 2004, Customer Bowers' account had an average beginning monthly balance of \$1,071,027. During the same time period, Customer Bowers' account incurred front-end sales charges, contingent deferred sales charges, dealer concessions, and commissions totaling \$89,237. If Customer Bowers' account had been placed in a managed account and charged an annualized fee of 2% on assets during the time period January 1, 2003, through May 31, 2004, Customer Bowers' would have incurred a fee of approximately \$26,189, thereby saving approximately \$63,048.

#### ***Failure to Utilize Mutual Fund Exchange and Reinvestment Privileges***

36. From January 1, 2003 through May 31, 2004, Neely and Harris effected numerous buy and sell transactions, sometimes several days or weeks apart, in the same share class of the same family of mutual funds without exercising fund exchange privileges or reinvestment privileges.

37. The transactions below occurred in the Van Kampen family of mutual funds in Customer Bowers' account.

Van Kampen Fund	Date	Transaction	Amount	Sales charge
Global Franchise Fund, Class B	12/02/03	Sell	\$11,368	\$400
Global Franchise Fund, Class A	01/08/04	Buy	\$50,012	\$2,000

The Van Kampen family of mutual funds allows Class B shareholders who have redeemed shares of a Van Kampen fund to reinvest the proceeds in Class A shares of the same fund within 180 days, without a sales charge. Therefore, Neely and Harris could have utilized the available privilege to reduce the \$2,000 front-end load on the January 2004 purchase.

38. The transactions below occurred in the Eaton Vance family of mutual funds in Customer Bowers' account.

<b>Eaton Vance Fund</b>	<b>Date</b>	<b>Transaction</b>	<b>Amount</b>	<b>Sales charge</b>
Government Obligations, Class B	01/01/03	Long	4,929 shs	
Income Fund of Boston, Class A	05/02/03	Buy	\$25,000	\$1,063
Worldwide Health Science, Class A	05/09/03	Buy	\$10,000	\$500
Worldwide Health Science, Class A	05/20/03	Buy	\$15,000	\$750
Worldwide Health Science, Class A	06/18/03	Buy	\$25,000	\$1,000
Government Obligations, Class B	07/07/03	Buy	\$50,000	\$125
Utilities, Class A	09/04/03	Buy	\$50,000	\$1,500
Strategic Income, Class A	10/03/03	Buy	\$50,000	\$2,125
Government Obligations, Class B	10/20/03	Sell	\$22,330	
Government Obligations, Class A	10/20/03	Sell	\$47,640	
Worldwide Health Science, Class A	12/02/03	Sell	\$50,790	
Income Fund of Boston, Class A	12/02/03	Sell	\$25,484	
Strategic Income, Class A	12/11/03	Buy	\$25,000	\$1,063
Strategic Income, Class A	12/30/03	Buy	\$100,000	\$3,500

The purchases made on December 11, 2003, and December 30, 2003, resulted in front-end sales charges totaling \$4,563. However, the Eaton Vance family of mutual funds allows investors who redeem shares to reinvest, with no sales charge, all or any portion of the redemption proceeds in the same class of shares of any Eaton Vance fund within 60 days of the redemption. The Eaton Vance family of mutual funds also allows investors to exchange, with no sales charge, shares of an Eaton Vance fund for shares of the same class of another Eaton Vance fund. Therefore, Neely and Harris could have reduced or eliminated the front-end sales loads on the December 2003 purchases by exchanging the Class A shares sold in December 2003, for the Class A shares purchased in December 2003, or by utilizing the reinvestment privilege.

39. The transactions below occurred in the Calamos family of mutual funds in Customer Bowers' account.

<b>Calamos Fund</b>	<b>Date</b>	<b>Transaction</b>	<b>Amount</b>	<b>Sales charge</b>
Growth, Class A	05/02/03	Buy	\$25,000	\$1,000
Growth, Class A	10/03/03	Buy	\$50,000	\$1,750
Growth, Class A	02/24/04	Sell	\$82,346	
Growth and Income, Class A	03/22/04	Buy	\$50,000	\$1,750
Growth and Income, Class A	04/16/04	Buy	\$25,000	\$875

The two purchases made on March 22, 2004, and April 16, 2004, incurred front-end sales charges totaling \$2,625. However, the Calamos family of mutual funds allows investors to exchange, with no sales charge, shares of one Calamos fund for shares of the same class of another Calamos fund. Therefore, Neely could have effected the sell of the Growth fund on the

same day as the purchases of the Growth and Income fund, thereby eliminating the front-end sales loads incurred on the purchases.

40. The transactions below occurred in the Fidelity Advisor family of mutual funds in Customer Bowers' account.

Fidelity Advisor Fund	Date	Transaction	Amount	Sales charge
Electronics, Class A	05/09/03	Buy	\$10,000	\$500
Electronics, Class A	01/23/04	Buy	\$50,000	\$1,875
Electronics, Class A	03/16/04	Sell	\$55,094	\$426
Leveraged Co., Class A	03/18/04	Buy	\$25,000	\$1,250

The Fidelity Advisor family of mutual funds allows shares of one of its funds to be exchanged for shares of the same class of another of its funds with no sales charge. Fidelity Advisor also allows the proceeds from the redemption of shares in one of its funds to be reinvested in the same class of another of its funds within 90 days of the redemption, with no sales charge. Therefore, Neely and Harris could have eliminated the \$1,676 sales charges on the March 2004 transactions by exchanging the shares sold on March 16, 2004, for the shares bought on March 18, 2004, or by utilizing the reinvestment privilege.

41. The transactions below occurred in the SunAmerica family of mutual funds in Customer Bowers' account.

SunAmerica Fund	Date	Transaction	Amount	Sales charge
Focused Technology, Class A	05/20/03	Buy	\$15,000	\$750
Focused Multi-Cap Growth, Class A	06/18/03	Buy	\$25,000	\$1,250
Focused Technology, Class A	06/18/03	Buy	\$25,000	\$1,250
Focused Growth & Income, Class A	06/20/03	Buy	\$25,000	\$750
Focused Small-Cap Growth, Class A	06/20/03	Buy	\$25,000	\$750
Focused Equity Strategy, Class A	08/21/03	Buy	\$50,000	\$2,000
Focused Technology, Class A	10/03/03	Buy	\$25,000	\$1,000
Focused Large Cap Growth, Class A	10/22/03	Buy	\$50,000	\$2,000
Focused Small-Cap Growth, Class A	10/31/03	Buy	\$30,000	\$1,200
Focused Growth & Income, Class A	12/02/03	Sell	\$25,888	
Focused Small-Cap Growth, Class A	01/23/04	Sell	\$62,970	
Focused Equity Strategy, Class A	02/24/04	Buy	\$87,312	\$2,182
Focused Technology, Class A	02/27/04	Sell	\$78,900	
Focused Equity Strategy, Class A	04/30/04	Sell	\$162,630	

The SunAmerica family of mutual funds allows shares of one fund to be exchanged for the same class shares of one or more other SunAmerica funds, without a sales charge. Therefore, Customer Bowers could have exchanged the shares sold on December 2, 2003, January 23, 2004, or February 27, 2004, for the shares purchased on February 24, 2004, reducing or eliminating the front-end sales load of \$2,182.

### ***Unsuitable Short-Term Trades***

42. Neely and Harris recommended and effected unsuitable short-term trades in Customer Bowers' account as demonstrated in paragraphs 38 through 41 above.

### **CUSTOMER CREWS**

43. On January 11, 2000, Customer Crews opened an individual account at Spelman. As of August 23, 2003, the account holder's return objective was capital appreciation and the risk profile was primarily moderate and secondarily aggressive.

44. With respect to Customer Crews' account, Neely and Harris failed to utilize mutual fund exchange privileges and effected unsuitable short-term trades.

### ***Failure to Utilize Mutual Fund Exchange Privilege***

45. The transactions below occurred in the SunAmerica family of mutual funds in Customer Crews' account.

<b>SunAmerica Fund</b>	<b>Date</b>	<b>Transaction</b>	<b>Amount</b>	<b>Sales charge</b>
Focused Technology, Class C	06/06/03	Buy	\$21,000	\$420
Focused Equity Strategy, Class A	12/08/03	Buy	\$37,512	\$1,500
Focused Technology, Class A	01/06/04	Buy	\$10,000	\$300
Focused Equity Strategy, Class A	02/25/04	Buy	\$50,000	\$2,000
Focused Technology, Class A	02/26/04	Sell	\$9,553	
Focused Technology, Class C	02/26/04	Sell	\$26,874	

Shares of a SunAmerica fund can be exchanged for the same class of shares of another SunAmerica fund, without a sales charge. Neely and Harris could have reduced the \$2,000 sales charge incurred on February 25, 2004, by exchanging the Class A shares of the Focused Technology fund sold on February 26, 2004, for the Class A shares of the Focused Equity Strategy fund.

### ***Unsuitable Short-Term Trades***

46. During the time period January 1, 2003, through May 31, 2004, Customer Crews account had an average monthly ending account value of \$198,739. During this time period, Neely and Harris recommended and effected unsuitable short-term trades in six different fund families as demonstrated below.

<b>Acquisition Date</b>	<b>Disposition Date</b>	<b>Mutual Fund</b>	<b>Share Class</b>	<b>Quantity Sold</b>	<b>Cost Basis</b>	<b>Sell Proceeds</b>	<b>Realized Gain/Loss</b>	<b>Front-end loads</b>
02/11/03	04/22/03	ACTHX	A	1,924.84	\$21,012.85	\$19,865.00	(\$1,147.85)	\$892.50
03/25/03	06/06/03	PHDAX	A	4,319.654	\$40,012.85	\$40,610.09	\$597.24	\$1,600.00
06/06/03	09/08/03	ECTMX	C	2,182.952	\$21,012.85	\$20,773.98	(\$238.87)	\$210.00
10/14/03	02/24/04	CVGRX	A	1,076.658	\$50,012.85	\$48,950.09	\$1,062.76	\$1,750.00
06/06/03	02/25/04	FTHCX	C	1,699.029	\$21,012.85	\$26,087.10	\$5,074.25	\$210.00
06/06/03	05/26/04	STNTX	C	5,370.844	\$21,012.85	\$26,874.91	\$5,862.06	\$420.00
01/06/04	02/26/04	STNAX	A	1,858.736	\$10,012.85	\$9,553.23	(\$459.62)	\$300.00

## CUSTOMERS PRICE

47. On July 14, 1998, the Prices, as trustees, opened two trust accounts at Spelman. At that time, each account holders' return objective was long-term growth while the risk profile was moderate. On July 21, 2004, the investment objectives for the accounts were changed to income but the risk profiles remained moderate. The Prices are an elderly, married couple who live off the income from their two trust accounts.

48. Neely and Harris projected the performance of the Van Kampen Value Municipal Income Trust ("VKV") in communications to the Prices. In a letter to Mr. Price, dated May 13, 2004, Neely recommended selling Class B shares in the Van Kampen High Yield Municipal Bond Fund ("ACTGX") and purchasing shares in VKV. A basis for Neely's recommendation was that VKV was yielding 7.5% at that time. In his letter to Mr. Price, Neely made the following statements:

If interest rates rise, as most think they will, fixed income securities generally drop in value. Every fixed income security reacts differently but they still drop in value. This drop in value generally lasts approximately 2-4 years (interest rate cycle average). During this time dividends continue being paid on a monthly basis as usual. If interest rates rise and the value of municipal funds decline then you might as well get the highest rate possible during that down time. In the swap above you would receive approximately \$2,952 tax exempt income more than what you currently own. Even though VKV will most likely drop more[,] it has already fallen historically more than it will continue to fall. In other words, most of the decrease in value has already occurred.

Leipart approved the letter containing the performance projection.

## CUSTOMER ALLEN

49. During the time period March 28, 2004 through April 5, 2004, Neely made requests to Spelman to correct breakpoint discounts for approximately 40 mutual fund trades, in certain customer accounts, that were originally executed under incorrect rights of accumulation amounts. For example, Customer Allen bought \$118,000 of Class A shares of a SunAmerica mutual fund and had no other assets in the fund family. Customer Allen was entitled to receive the discount for the \$100,000 breakpoint, but the order was erroneously entered under the \$250,000 breakpoint. By reprocessing the trades with the correct, lower breakpoint discounts, Neely increased the sales charges paid by the customers and the compensation paid to Neely and Harris. In a letter dated April 8, 2004, to the effected customers including, but not limited to, Customer Allen, Neely misrepresented the reasons for reprocessing the trades. The letter stated that there had been a problem with the Pershing/Vision 2020 software ("Software") over the past six months that caused the accounts to show more shares than were purchased. The letter further stated, "Upon discovering this problem, we immediately notified Pershing who is currently

correcting this error to show the correct number of shares. . . . You may be receiving confirmations marked 'corrected' in the next few days." According to Spelman's Director of Compliance, there was no known issue with the Software as described in the letter. The OKC Branch was not enrolled to use the Software until February 20, 2004. Leipart approved the letter.

### **VIOLATIONS OF FIRM PROCEDURES**

50. Spelman's written sales practice policy and procedures manual prohibited and/or discouraged the following sales practices:

- a.) failure to use rights of accumulation when warranted;
- b.) recommending diversification among several fund families with similar investment objectives to avoid breakpoints;
- c.) recommending clients to engage in market timing in different fund families where there are transaction costs associated with the trades;
- d.) encouraging a client to switch mutual fund investments primarily to induce sales charges or commissions; and
- e.) excessive activity in a client's account.

51. Neely and Harris violated Spelman's written sales practice policy and procedures manual as described in paragraphs 8 through 46 above.

### **FAILURE TO SUPERVISE**

52. At all times material hereto, Leipart was the direct supervisor of Neely and Harris.

53. At times material hereto, McGuire was delegated responsibilities pertaining to the supervision of Neely and Harris including, but not limited, to reviewing trade blotters, signing mutual fund switch letters, and conducting onsite inspections.

54. Spelman, Leipart, and McGuire had access to the information needed to evaluate whether trading by Neely and Harris in the above-referenced customer accounts was in compliance with the Predecessor Act, the Rules of the Oklahoma Securities Commission and the Administrator of the Department of Securities (as amended July 15, 1998 and January 1, 2001) ("Oklahoma Rules"), NASD Conduct Rules, and Spelman's written policies. In fact, Spelman's surveillance reports from June 2003 until May 2004 contained handwritten notes acknowledging that Neely and Harris failed to exercise exchange privileges in certain transactions in which B shares and A shares were traded for A shares in the same fund family.

55. Spelman and Leipart did not take any disciplinary action against Neely and/or Harris until June 7, 2004, when Neely was referred to the Executive Review Committee ("ERC")

based on a review of his B share trading practices. The ERC is an internal venue for resolution of escalated events of registered agents. Neely terminated from Spelman prior to a final decision being made. The ERC completed the review of Neely's trading practices and rebooked certain trades of B shares.

56. In the year 2000, Spelman received numerous customer complaints alleging unauthorized trading by one of its brokers, Paul W. Inman, II ("Inman"), at the OKC Branch. As a result, Inman's employment with Spelman was terminated. At the time, McGuire was the "OSJ Manager" of the OKC Branch.

57. On January 5, 2001, Spelman entered into a "Special Supervision Agreement" with McGuire that was in effect for twelve (12) months ("Supervision Agreement"). The Supervision Agreement stated that it was "necessary based on certain supervisory issues which have arisen, and certain regulatory concerns which have been expressed by the [Department], particularly in light of the customer complaints generated as a result of the activities of [Inman]." Pursuant to the Supervision Agreement, McGuire's supervisory duties were revoked except that he remained the "OSJ Manager" for purposes of business direction, business development and marketing. A "Co-OSJ Manager," named by the Supervision Agreement, was given "full and clear authority over all Branch compliance matters and operations."

58. Leipart signed a Principal/OSJ Independent Contractor Agreement with Spelman in October 2002. As a result, Leipart became the designated "OSJ Manager" or supervisory principal of the OKC Branch in December 2002.

59. Spelman performed an internal audit of the OKC Branch in February 2003. Item 3 of the internal audit report provided to Leipart in April of 2003 ("Internal Audit Report"), stated:

It is important that all securities related activities and items requiring review and approval by the OSJ be evidenced for review and approval by exclusively the OSJ or the individual designated as supervisor over the activities by the OSJ. Furthermore, the State of Oklahoma made it clear that Mr. McGuire may not act in a supervisory capacity.

Item 8 of the Internal Audit Report stated:

Evidence of each trade view is done by printing the daily trade log. The log indicates that the first review is done by Frank McGuire and the second review is done by Mike Leipart. Further, the following transactions reflected Frank's review: Sue Dunham 1/30/03 purchase of Wells REIT and Director Annuity. Frank McGuire must immediately cease from acting in any supervisory or review capacity. All reviews must be conducted by the designated Supervisory Principal, Mike Leipart, or the individual

designated to act in Mike's place, which may not be Frank McGuire.

Item 12 of the Internal Audit Report stated:

The examiner reflected on satellite office examinations conducted in the second part of 2002 and in January 2003 is Frank McGuire. Please be advised that the State of Oklahoma has made it clear that Frank may not act in any supervisory capacity. Satellite office examinations are considered part of the supervisory structure. Therefore, Frank must cease from conducting any future satellite office examinations.

60. Leipart replied to the Internal Audit Report in May 2003. In his response to item 3 of the Internal Audit Report, Leipart stated, "No one from the Home Office or Compliance Department chose to discuss with me or Frank McGuire that I was to become the new OSJ until late January 2003. Please don't criticize us if you don't share the rules with us." In response to item 8 of the Internal Audit Report, Leipart stated, "The log indicated that Frank McGuire and I review all transactions. We will both continue to review them and my operations managers, Julie Cockrell will also continue to review them." In response to item 12 of the Internal Audit Report, Leipart stated, "As I stated in deficiency #3 no one from Spelman shared with us the fact that you were changing the OSJ Supervisor duties from Frank McGuire to me until late January 2003."

61. In November 2003, Kimberly Branch, on behalf of Spelman, performed a formal office visit ("FOV") of the Oklahoma City branch. Kimberly Branch's notes from the FOV state, "[McGuire] is going to be the delegated OSJ for the branch. [Leipart] will still be the OSJ, but all other duties will be delegated to [McGuire] that can be. They are very pleased about this and will implement immediately. Both of them want for [McGuire] to become the OSJ one day, but neither of them want to go back to the state and ask them permission to allow [McGuire] to use his S24 again (if you need more details, please advise)." Spelman agreed to let McGuire act as delegated OSJ Manager for all duties except signing new account forms and signature guaranteeing documents.

#### **NEELY'S PREVIOUS HISTORY**

62. In 1982, the Administrator of the Department ("Administrator") issued an Order Suspending Registration against Neely, and a broker-dealer for which he was an officer, director, principal, and agent, for violating Oklahoma securities laws including, but not limited to, knowingly and willfully employing an unregistered agent in violation of Section 201 of the Oklahoma Securities Act. The broker-dealer registration of the firm was suspended for three days.

## MCGUIRE'S PREVIOUS HISTORY

63. In June 1991, McGuire was a named respondent in an NASD Arbitration for failure to supervise during his association with Park Avenue Securities, Inc., a broker-dealer registered in this state from July 1982 until May 1994. The arbitration resulted in an award to the customer in the amount of \$60,000. McGuire was required to pay the forum fee.

64. From March 1994 until June 1999, McGuire was associated with Century Investment Group Incorporated ("Century"), a broker-dealer registered in this state from March 1994 until December 1999. In October 1994, the Department conducted a routine examination of Century and found several violations of the Predecessor Act and the Oklahoma Rules. Such violations included, but were not limited to, employing unregistered agents. McGuire was the designated supervisor and President of Century at the time of the examination. Based upon the examination findings, the Administrator entered into an agreement with Century, in March 1997, in which Century agreed to comply with all provisions of the Predecessor Act and Oklahoma Rules and paid a civil penalty in the amount of \$1,000.

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 1-701 of the Act provides in part:
  - A. The predecessor act exclusively governs all actions or proceedings that are pending on the effective date of this act or may be instituted on the basis of conduct occurring before the effective date of this act. . . .
2. Section 101 of the Predecessor Act provides:

It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly[:]

  - (1) to employ any devise, scheme, or artifice to defraud,
  - (2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, [or]
  - (3) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.
3. Subsection (b) of Section 660:10-5-42 of the Oklahoma Rules provides in part:

- (1) A broker-dealer and his agents, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade. A broker-dealer and his agents shall not violate any 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.
- (2) In recommending to a customer the purchase, sale or exchange of any security, the broker-dealer and his agents shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs. Prior to making a recommendation to a customer, a broker-dealer shall also make reasonable efforts to obtain information concerning the customer's financial background, tax status, and investment objectives, and such other information used or considered to be reasonable and necessary by such broker-dealer or registered agent in making such recommendation.

\* \* \*

- (22) The following standards shall apply to supervisory procedures:
  - (A) Each broker-dealer shall establish, maintain and enforce written procedures which will enable it to supervise properly the activities of each registered agent and associated person to assure compliance with applicable securities laws, rules, regulations and statements of policy promulgated by the Administrator and/or the Commission under the Securities Act.
  - (B) Final responsibility for proper supervision shall rest with the broker-dealer, the principal(s) of the broker-dealer registered in accordance with 660:10-5-11, and the principal(s) of the broker-dealer in each OSJ, including the main office, and the registered representatives in each non-OSJ branch office designated by the broker-dealer to carry out the supervisory responsibilities assigned to that office by the broker-dealer pursuant to the rules and regulations of the NASD. A copy of the written supervisory procedures shall be kept in each office of supervisory jurisdiction and each non-OSJ branch office.
  - (C) Each broker-dealer shall be responsible for keeping and preserving appropriate records for carrying out such broker-dealer's supervisory procedures. Each broker-dealer shall review

and endorse in writing, on an internal record, all transactions and all correspondence of its registered agents pertaining to the solicitation or execution of any securities transactions.

4. NASD Conduct Rule 2110 provides:

A member, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade.

5. Subsection (d)(1) of NASD Conduct Rule 2210 provides in part:

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

\* \* \*

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

6. NASD Conduct Rule 2310 provides in part:

(a) In recommending to a customer the purchase, sale or exchange of any security, a member shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs.

7. NASD Conduct Rule 3010 provides in part:

(a) Supervisory System

Each member shall establish and maintain a system to supervise the activities of each registered representative and associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with the Rules of this Association. Final responsibility for proper supervision shall rest with the member[.]

\* \* \*

(b) Written Procedures

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

8. Section 406 of the Predecessor Act provides in part:

(a) If the Administrator reasonably believes, whether or not based upon an investigation conducted under Section 405 of this title, that a person has violated the Oklahoma Securities Act, except under the provisions of Section 202.1 or 305.2 of this title, or a rule or order of the Administrator under the Oklahoma Securities Act or has engaged in dishonest or unethical practices in the securities business, the Administrator, in addition to any specific power granted by any other section of the Oklahoma Securities Act, may impose one or more the following sanctions:

\* \* \*

- (2) censure the person, if the person is a registered broker-dealer, agent, investment adviser, or investment adviser representative;
- (3) bar or suspend the person from association with a broker-dealer or investment adviser subject to the provisions of the Oklahoma Securities Act;
- (4) place limitations on the activities, functions, or operation of the person;
- (5) issue an order against a person who willfully violates the Oklahoma Securities Act or a rule or order of the Administrator under the Oklahoma Securities Act, imposing a civil penalty up to a maximum of Five Thousand Dollars (\$5,000.00) for a single violation or transaction or of Fifty Thousand Dollars (\$50,000.00) for multiple violations or transactions in a single proceeding or a series of related proceedings;
- (6) recover the costs of the investigation conducted under Section 405 of this title.

### Conclusions of Law

1. At all times material hereto, final responsibility for proper supervision of Neely and Harris rested with Spelman, Leipart, and/or McGuire, pursuant to Section 660:10-5-42(b)(22)(B) of the Oklahoma Rules.

2. Neely and Harris engaged in acts, practices, or a course of business which operated or would operate as a fraud or deceit upon any person, in violation of Section 101 of the Predecessor Act.

3. Neely and Harris failed to observe high standards of commercial honor and just and equitable principles of trade, in violation of Section 660:10-5-42 of the Oklahoma Rules.

4. Neely and Harris violated NASD Conduct Rules 2110, 2210, and 2310 with respect to the above-referenced transactions effected in this state, in violation of Section 660:10-5-42 of the Oklahoma Rules.

5. Neely and Harris made recommendations to their customers without having reasonable grounds for believing that the recommendations were suitable for such customers, in violation of Section 660:10-5-42 of the Oklahoma Rules.

6. Spelman, Leipart, and McGuire failed to enforce written procedures that would enable the firm to supervise properly the activities of each registered agent and associated person to assure compliance with applicable securities laws, rules, and regulations, in violation of Section 660:10-5-42 of the Oklahoma Rules.

7. Spelman failed to establish and maintain a system to supervise the activities of Neely and Harris that was reasonably designed to achieve compliance with applicable securities laws and regulations and NASD Rules in violation of NASD Conduct Rule 3010, thereby violating Section 660:10-5-42 of the Oklahoma Rules.

8. The Administrator of the Department is authorized to suspend Respondents, to place limitations on the functions of Respondents, and to impose civil penalties against Respondents, pursuant to Section 406 of the Predecessor Act.

9. It is in the public interest to suspend Neely, Harris, and Leipart; to limit McGuire's functions to non-supervisory functions; and to impose civil penalties against all Respondents.

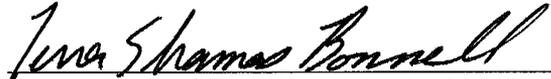
To the extent any of these Conclusions of Law are more properly characterized as Findings of Fact, they should be so considered.

WHEREFORE, it is recommended that the Administrator suspend Neely, Harris, and Leipart in all capacities for thirty (30) business days; limit McGuire's activities and functions to non-supervisory activities and functions; impose civil penalties against Neely and Harris, individually, in the amount of \$20,000 each; impose civil penalties against Leipart and McGuire, individually, in the amount of \$10,000 each; impose civil penalties against Spelman in the

amount of \$50,000; and impose any other sanctions as deemed appropriate and as authorized by law.

Dated this 27<sup>th</sup> day of July, 2007.

Respectfully submitted,



Terra Shamas Bonnell, OBA No. 20838  
Amanda Cornmesser, OBA No. 20044  
Oklahoma Department of Securities  
120 North Robinson, Suite 860  
Oklahoma City, OK 73102  
Telephone: (405) 280-7700  
Facsimile: (405) 280-7742