

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



In the Matter of:

Anthony L. Cross (CRD #3155726), and
The O.N. Equity Sales Company (CRD #2936),

Respondents.

ODS File No. 11-017

**DEPARTMENT'S OBJECTION TO ISSUANCE OF THE SUBPOENA DUCES TECUM
TO THERESA HUGHES REQUESTED BY RESPONDENT ANTHONY L. CROSS**

The Oklahoma Department of Securities ("Department") respectfully objects to the issuance of the *Subpoena Duces Tecum* to Theresa I. Hughes requested by Respondent Anthony L. Cross ("Cross") on June 6, 2012 ("Requested Subpoena"). In support of its objections, the Department states:

Pursuant to 660:2-9-4(a) of the Rules of the Oklahoma Securities Commission and the Administrator of the Department of Securities ("Rules"), the Administrator of the Department may, in his discretion, require a party seeking a subpoena to show the general relevance and reasonable scope of the evidence sought as a condition precedent to the issuance of the requested subpoena. Okla. Admin. Code § 660:2-9-4(a). If the Administrator "determines that the subpoena or any of its terms are unreasonable, oppressive, excessive in scope, unduly burdensome or not relevant," after considering all the circumstances, "he may refuse to issue the subpoena, or issue the subpoena only upon such conditions as fairness requires." *Id.*

The Requested Subpoena is unreasonable, excessive in scope, unduly burdensome and seeks irrelevant evidence. In the *Enforcement Division*

Recommendation filed against Respondents Cross and The O.N. Equity Sales Company (“ONESCO”) (collectively, “Respondents”) on January 25, 2012 (“Recommendation”), the Department alleges that Cross engaged in unethical practices in violation of 660:11-5-42 of the Rules by making an unsuitable recommendation that Ms. Hughes mortgage her home and purchase securities, particularly the Highland Floating Rate Advantage Fund Class A shares (“XSFRX”), with the mortgage proceeds; reporting information he knew or should have known was false on Ms. Hughes’ ONESCO new account form; falsely representing that Ms. Hughes’ purchases of shares of XSFRX and another mutual fund were unsolicited; and engaging in the prohibited conduct constituting violations of ONESCO’s supervisory procedures. The activities at issue occurred during the year 2006.

Items 1 through 4 of Exhibit A to the Requested Subpoena seek the production of various items relating to Ms. Hughes’ purchase or sale of any securities through any person or firm other than Respondents during an unspecified time period. Ms. Hughes is approximately 82 years old. To require Ms. Hughes to produce documents relating to purchases or sales of securities she made 10, 20, 30 or more years ago is unreasonable, excessive and unduly burdensome. The documents are also irrelevant to the Department’s cause of action against Respondents or the defense thereof. It is the facts, relating to Ms. Hughes’ other security holdings and financial situation and needs, known by Respondent Cross at the time he made the recommendations at issue that are relevant. See Okla. Admin. Code § 660:11-5-42(b)(2). Those recommendations were made in the second half of 2006. As a result, Items 1 through 4

are unreasonable, excessive in scope, unduly burdensome and seek irrelevant evidence.

Items 5 and 6 of Exhibit A to the Requested Subpoena seek the production of monthly bank account statements for Ms. Hughes' bank accounts for an unreasonable, excessive and irrelevant time period and thus are unduly burdensome. Item 5 requests bank account statements for a particular bank account for parts of 2007, 2008, and 2009, and all of 2010 and 2011. Item 6 requests bank account statements for the time period July 2006 through December 2011, for any other bank account maintained by Ms. Hughes from 2006 through 2011. Again, it is Ms. Hughes' financial situation and needs at the time the recommendations by Respondent Cross were made, not the time after such recommendations were made, that is relevant to this proceeding.

In conclusion, the Requested Subpoena is unreasonable, excessive in scope, and unduly burdensome, and seeks irrelevant evidence. The Requested Subpoena should not be issued in its proposed form.

Respectfully,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 12th day of June, 2012, a true and correct copy of the above and foregoing objection was emailed and mailed by first-class mail with postage prepaid thereon, to the following:

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