

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



In the Matter of:

Southmark of Tulsa, Inc.,  
Wendell D. Belden, and  
Gertrude M. Edwards,

Respondents.

File No. ODS 01-150

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

STATE OF OKLAHOMA    )  
                                  )    SS.  
COUNTY OF OKLAHOMA)

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

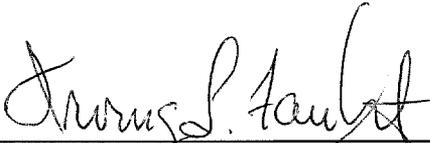
1. That he is the Administrator of the Oklahoma Department of Securities (Department).
2. A copy of the Notice of Opportunity for Hearing (Notice) with the Recommendation to Deny Effectiveness of Registrations (Recommendation) attached was delivered to Affiant in the office of the Administrator pursuant to Section 413(g) of the Oklahoma Securities Act (Act), Okla. Stat. tit. 71, §§ 1-413, 501, 701-703 (1991 & Supp. 2000).
3. A copy of the Notice, with the Recommendation attached, is being sent this 21st day of November, 2001, by certified mail, return receipt requested, delivery restricted to addressee, to the last known addresses of Southmark of Tulsa, Inc. (Southmark), Wendell D. Belden (Belden) and Gertrude M. Edwards (Edwards), in compliance with Section 413(g) of the Act.
4. This Affidavit of Compliance shall serve as notice to Southmark, Belden and Edwards that service of process has been effected on Southmark, Belden and Edwards by service on the Administrator pursuant to Section 413(g) 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 413(g) of the Act.

FURTHER AFFIANT SAYETH NOT.

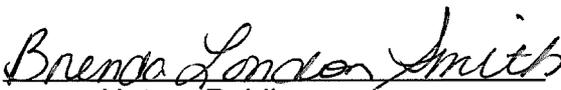
Dated this 21<sup>st</sup> day of November, 2001.

(SEAL)

  
\_\_\_\_\_  
Irving L. Faught  
Administrator

Subscribed and sworn to before me this 21<sup>st</sup> day of November, 2001.

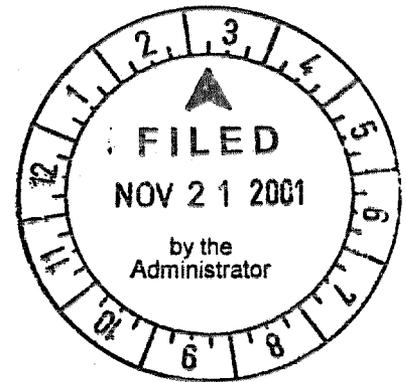
(NOTARY SEAL)

  
\_\_\_\_\_  
Brenda London Smith  
Notary Public

My Commission Expires:

August 26, 2005

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



In the Matter of:

Southmark of Tulsa, Inc.,  
Wendell D. Belden, and  
Gertrude M. Edwards,

Respondents.

File No. ODS 01-150

**NOTICE OF OPPORTUNITY FOR HEARING**

1. Pursuant to his authority under Section 405 of the Oklahoma Securities Act (Act), Okla. Stat. tit. 71, §§ 1-413, 501, 701-703 (1991 & Supp. 2000), the Administrator of the Oklahoma Department of Securities (Department) authorized an investigation into the application for registration under the Act of Southmark of Tulsa, Inc. (STI) as an investment adviser and the applications for registration of Wendell D. Belden (Belden) and Gertrude M. Edwards (Edwards) as investment adviser representatives of STI.

2. On the 21st day of November, 2001, the attached Recommendation to Deny Effectiveness of Registrations (Recommendation) was left in the office of the Administrator.

3. Pursuant to Section 406(b) of the Act, the Administrator hereby gives notice to STI, Belden and Edwards of their right to request a hearing to show why an order based on the Recommendation should not be issued.

4. The request for a hearing on the Recommendation must be received by the Administrator within fifteen (15) days after service of this Notice. Pursuant to Section 406(b) of the Act, failure to request a hearing as provided for herein shall result in the issuance of an order to deny registration under the Act.

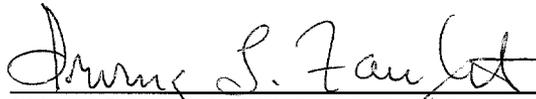
5. The request for hearing shall be in writing and STI, Belden and Edwards shall specifically admit or deny each allegation in said request as required by 660:2-9-1(c) of the Rules of the Oklahoma Securities Commission and the Administrator of the Department of Securities (Rules).

6. Upon receipt of a written request, pursuant to 660:2-9-2 of the Rules, a hearing on this Notice shall be set within sixty (60) days or a written order denying hearing shall be issued.

7. Notice of the date, time and location of the hearing shall be given not less than ten (10) days in advance thereof pursuant to 660:2-9-3(a) of the Rules. Additionally, the notice may contain matters to supplement this Notice and the Recommendation attached hereto.

Witness my Hand and the Official Seal of the Oklahoma Department of Securities this 21st day of November, 2001.

(SEAL)



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

CERTIFICATE OF MAILING

The undersigned hereby certifies that on the 21st day of November 2001, a true and correct copy of the above and foregoing Notice of Opportunity for Hearing and attached Recommendation to Deny Effectiveness of Registrations was mailed by certified mail, return receipt requested, delivery restricted, with postage prepaid thereon addressed to:

Southmark of Tulsa, Inc.  
5110 S. Yale Ave. Suite 100  
Tulsa, OK 74135-7438

Wendell D. Belden  
5110 S. Yale Ave. Suite 100  
Tulsa, OK 74135-7438

Gertrude M. Edwards  
5110 S. Yale Ave. Suite 100  
Tulsa, OK 74135-7438



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

In the Matter of:

Southmark of Tulsa, Inc.,  
Wendell D. Belden, and  
Gertrude M. Edwards,

Respondents.

File No. ODS 01-150

**RECOMMENDATION TO DENY  
EFFECTIVENESS OF REGISTRATIONS**

Pursuant to the Oklahoma Securities Act (Act), Okla. Stat. tit. 71, §§ 1-413, 501, 701-703 (1991 & Supp. 2000), an investigation was conducted in connection with the applications of Southmark of Tulsa, Inc. ("STI" or the "Company"), Wendell D. Belden (Belden), and Gertrude M. Edwards (Edwards) for registration under the Act. Based thereon, the following Findings of Fact, Authorities and Conclusions of Law are submitted to the Administrator of the Oklahoma Department of Securities (Administrator) in support of the issuance of an order denying the effectiveness of the registration of STI as an investment adviser and the registrations of Belden and Edwards as investment adviser representatives.

**Findings of Fact**

1. STI was initially registered under the Act as an investment adviser on August 5, 1991. STI's registration under the Act lapsed on December 31, 2000, when the Company failed to renew its investment adviser registration.

2. Since 1983, Belden has been affiliated with entities that have transacted business as a broker-dealer and/or investment adviser in and/or from the state of Oklahoma (the "Belden Entities"). Belden is currently the Chairman of the Board and the sole shareholder of STI. Belden was initially registered under the Act as an investment adviser representative of STI on August 5, 1991. Belden's registration as an investment adviser representative of STI lapsed on December 31, 2000, when his investment adviser representative registration under the Act was not renewed.

3. Edwards was initially registered under the Act as an investment adviser representative of STI on August 12, 1993. Edwards' registration as an investment adviser representative of STI lapsed on December 31, 2000, when her investment adviser representative registration under the Act was not renewed.

4. On February 2, 2001, Wayne Wilson, the then President of STI, was advised by an employee of the Oklahoma Department of Securities (Department) that an application for renewal of STI's investment adviser registration for calendar year 2001 was not received by the Department.

5. On April 2, 2001, STI submitted a new application for its registration as an investment adviser and new applications to register Belden and Edwards as investment adviser representatives.

### **Unregistered Investment Adviser Activities**

6. After December 31, 2000, STI and Belden represented to its clients and/or prospective clients that STI was a registered investment adviser when it was not.

7. Although their registrations had lapsed, STI, Belden and Edwards continued to provide investment advisory services in this state. STI generated or earned investment advisory fees of approximately \$654,610.00 between January 1, 2001, and September 30, 2001.

### **Misleading Sales Literature**

8. Respondents prepared and/or distributed sales literature describing STI's managed account program that uses timing signals provided by New Century Financial Group LLC in connection with investments in the Potomac Funds (Sales Literature).

9. The Sales Literature contained backtested performance results for a hypothetical \$100,000.00 investment in the Potomac Small Cap Plus Fund made on December 31, 1995. The Sales Literature purportedly compares the performance results of an unmanaged investment account to the performance results of a managed investment account as of the end of calendar years 1996 through 2000.

10. The Sales Literature does not prominently disclose the following: (a) that the performance results do not represent the results of actual trading using client assets; and (b) that the Potomac Small Cap Plus Fund did not originate until February 19, 1999, and did not exist as of December 31, 1995, December 31, 1996, December 31, 1997, or December 31, 1998.

11. The Sales Literature does not disclose:

- (a) that STI did not "manage" accounts that invested in the Potomac Funds until February or March 2000, and that STI did not have a relationship, affiliation or other association with the Potomac Funds as of December 31, 1995, December 31, 1996, December 31, 1997, December 31, 1998, or December 31, 1999;

- (b) that prior to March of 2001, STI relied on timing signals produced by Four Seasons Asset Management, Inc.;
- (c) that it was not until March of 2001 that STI began using the timing signals produced by New Century Financial Group, LLC;
- (d) whether the described performance results are for an investment in the Broker Class, Advisor Class or Investor Class shares of the Potomac Small Cap Plus Fund; and
- (e) the origin or basis for the figures reflected.

### **Misrepresentations of Services and Qualifications**

12. The Sales Literature describes STI's managed account program as a "personalized management service" and states that the "results of each client may differ due to the client's individual investment decisions."

13. The Sales Literature also contains the following representation: "Southmark [STI] utilizes a market timing signal produced by New Century Financial Group LLC, the consulting firm. Although New Century Financial Group, LLC is an SEC-registered investor advisor, the sole investment advisor for this program shall be Southmark [STI]. As such, Southmark [STI] is responsible for the investment's management and implementation."

14. The agreement by which an investor contracts with STI for its account services (the "Client Agreement") states in pertinent part as follows: "Southmark [STI] agrees to monitor your investments on a daily basis . . . to keep your investments in the best possible combination of security first and return second."

15. In reality, Respondents uniformly move clients in and out of the same two mutual fund portfolios based on identical asset allocations in total reliance on the timing signals produced by a third-party timing service and without regard to each client's investment objectives, risk tolerance and financial condition.

16. Respondents do not exercise any independent judgment in connection with their investment advisory recommendations or make investment recommendations based on each client's particular investment objectives, risk tolerance and financial condition.

### **Charging of Unreasonable Investment Advisory Fees**

17. According to the Client Agreement, STI receives a one percent per quarter investment advisory or management fee, or an annual fee of four percent. The four percent fee exceeds the advisory fee customarily charged in the securities industry for services similar to those provided by STI.

18. Respondents do not disclose to their investment advisory clients that the four percent investment advisory or management fee per year is substantially higher

than the fee customarily charged in the industry and/or that services similar to those provided by Respondents are available from other investment advisers at lower rates.

### **Making of Unsuitable Recommendations**

19. On February 24, 2000, Southmark, Inc., a broker-dealer owned and operated by Belden, entered into an agreement with Rafferty Capital Markets, Inc., the principal underwriter in connection with the distribution of the mutual fund shares of the Potomac Funds (Dealer Agreement). The Dealer Agreement authorized Southmark, Inc. to offer and sell shares of certain designated mutual fund shares of the Potomac Funds.

20. The Potomac Funds use aggressive investment techniques and are designed principally for experienced investors who intend to follow an asset allocation strategy.

21. The Potomac Funds consist primarily of pairs of funds with each pair consisting of one "plus" fund and one "short" fund, *i.e.*, the Potomac OTC Plus Fund and the Potomac OTC/Short Fund; the Potomac Small Cap Plus Fund and the Potomac Small Cap/Short Fund; the Potomac Internet Plus Fund and the Potomac Internet/Short Fund; and the Potomac U.S. Plus Fund and the Potomac U.S./Short Fund. Each of the Potomac Plus Funds invests significantly in futures contracts on stock indexes, options on futures contracts and financial instruments such as options on securities and stock index options. Each "plus" fund is designed to provide a return that is greater than the return provided by its target index when the value of the target index rises. Each "short" fund is designed to provide investment results that are opposite of the return of its target index.

22. The Potomac Funds also offer the Potomac U.S. Government Money Market Fund (Money Market Fund), a money market fund that is designed to provide stability of principal, liquidity and current income.

23. As part of the Client Agreement, the investment advisory clients routinely executed a limited power of attorney appointing Belden, or in the alternative, the President of Southmark, Inc., as their "attorney-in-fact" with the power to hire, manage and/or change the investment managers on their accounts; to hire and/or change the custodians on their accounts; and to change the mutual funds and/or variable annuities in their accounts.

24. During the period between January 1, 2001, and June 30, 2001, Respondents recommended the purchase of shares of the Money Market Fund and the Potomac Small Cap Plus Fund (Small Cap Plus Fund) by their mutual fund clients.

25. Relying totally on the timing signals provided by the third-party timing service, Respondents periodically switched their advisory clients between the Money Market Fund and the Small Cap Plus Fund.

26. Shares of the Small Cap Plus Fund and the Money Market Fund are offered and sold through three separate classes: the Broker Class, the Advisor Class and the Investor Class. Each class charges different fees and expenses.

27. In connection with the purchase of Broker Class shares, the investor will not pay a front-end sales charge at the time of purchase but if shares are sold within six years of purchase, the investment is subject to a contingent deferred sales charge (CDSC) of five percent in the first year after purchase, four percent in the second year, three percent in the third and fourth years, two percent in the fifth year, one percent in the sixth year, and none thereafter.

28. The Broker Class shares automatically convert into Investor Class shares at no cost to the investor after holding the Broker Class shares for eight years. The Broker Class shares are available exclusively through a participating broker or dealer.

29. The Advisor Class shares are available exclusively through an investment advisor, bank, trust company or other authorized representative. An investor will not pay a front-end sales charge at the time of purchase or a deferred sales charge at the time of sale.

30. The Investor Class shares are available directly from the Potomac Funds or through participating brokers or dealers. An investor will not pay a front-end sales charge at the time of purchase or a deferred sales charge at the time of sale.

31. The Broker Class shares, Advisor Class shares and Investor Class shares are subject to ongoing distribution and service fees (Rule 12b-1 fees). The Rule 12b-1 fees for the Investor Class shares are significantly lower than the Rule 12b-1 fees for the Broker and Advisor Class shares.

32. The Dealer Agreement sets forth the following schedule of the compensation (Commissions) to be paid to Southmark, Inc. for the sale of the mutual fund shares of the Potomac Funds:

- (a) on the initial sale of the Broker Class shares, an amount equal to four percent of the aggregate sales by Southmark, Inc. in a given month (Initial Sales Charge) plus 2.08 basis points (.0208%) per month on the average assets in the Broker Class shares held by Southmark, Inc. or its clients for such month (Continued Compensation);
- (b) on the sale of Advisor Class shares, an amount equal to 8.33 basis points (.0833%) per month on the average assets in the Advisor Class shares held by Southmark, Inc. for such month; and
- (c) on the sale of Investor Class shares, Southmark, Inc. receives no compensation.

33. Respondents recommended and directed the purchase of the Broker Class shares for most of their investment advisory clients who invested in mutual funds.

## **G. Robb Account**

34. On December 6, 2000, Belden opened a Potomac Funds individual retirement account on behalf of G. Robb, an Oklahoma resident and advisory client of STI. At the time the account was opened, Mr. Robb was 80 years of age.

35. On the recommendation of STI and Belden, Mr. Robb purchased Broker Class shares of the Money Market Fund in the amount of \$86,192.13 on December 21, 2000. An additional purchase of \$1,543.44 was made on January 2, 2001. The money in Mr. Robb's account was periodically switched between the Broker Class shares of the Money Market Fund and the Small Cap Plus Fund.

36. Following his death, Mr. Robb's account was liquidated on June 15, 2001. The balance in Mr. Robb's account was reduced by a deferred sales charge of \$4,386.77 since the Broker Class shares were redeemed within one year of purchase.

37. During the period of time that Mr. Robb's account was active, STI received investment advisory fees in the amount of \$921.56.

38. In connection with Mr. Robb's purchases, Southmark, Inc. received the four percent Initial Sales Charge and the Continued Compensation.

39. Had STI and Belden recommended the purchase of Advisor Class shares and/or Investor Class shares, Mr. Robb would not have incurred a deferred sales charge and the account's closing balance would have been at least \$4,386.77 more.

40. The recommendation by STI and Belden to purchase the Broker Class shares subjected Mr. Robb's account to the deferred sales charge and resulted in higher Commissions paid to Southmark, Inc. than would have been paid had the investments been made in the Advisor Class or Investor Class shares.

## **R. Adams and J. Adams Account**

41. On July 31, 2000, Belden opened a Potomac Funds account on behalf of R. Adams and J. Adams as joint tenants (Adams Account). J. Adams is the son of R. Adams. At the time the account was opened, R. Adams was 90 years of age. R. Adams currently lives in a nursing home.

42. On the recommendation of STI and Belden, Broker Class shares of the Money Market Fund in the amount of \$33,815.87 were purchased in the Adams Account on August 7, 2000. The money in the Adams Account was periodically switched between the Broker Class shares of the Money Market Fund and the Small Cap Plus Fund.

43. In connection with the purchase in the Adams Account, Southmark, Inc. received the four percent Initial Sales Charge and the Continued Compensation.

44. Shares valued at \$660.08 were redeemed in the Adams Account on January 23, 2001, to defray nursing home expenses, causing the account to incur a deferred sales charge of \$33.00 since the Broker Class shares were redeemed within one year of purchase.

45. During the time that the Adams Account was active, STI received investment advisory fees of at least \$299.54.

46. Had STI and Belden recommended the purchase of Advisor Class shares and/or Investor Class shares, the Adams Account would not have incurred a deferred sales charge.

47. The recommendation by STI and Belden to purchase the Broker Class shares subjected the Adams Account to the deferred sales charge and resulted in more Commissions paid to Southmark, Inc. than would have been paid had the investment been made in the Advisor Class or Investor Class shares.

### **T.J. Christmas Account**

48. On January 17, 2001, Belden opened a Potomac Funds account on behalf of T.J. Christmas (Christmas Account). At the time the account was opened, T.J. Christmas was 73 years of age.

49. On the recommendation of STI and Belden, Broker Class shares of the Money Market Fund in the amount of \$19,787.72 were purchased in the Christmas Account on January 24, 2001. The money in the Christmas Account was periodically switched between the Broker Class shares of the Money Market Fund and the Small Cap Plus Fund.

50. In connection with the purchase in the Christmas Account, Southmark, Inc. received the four percent Initial Sales Charge and the Continued Compensation.

51. Shares valued at \$3,170.52 were redeemed in the Christmas Account on April 5, 2001, causing the account to incur a deferred sales charge of \$158.52 since the Broker Class shares were redeemed within one year of purchase.

52. Shares valued at \$14,395.58 were redeemed in the Christmas Account on September 21, 2001, causing the account to incur a deferred sales charge of \$719.77 since the Broker Class shares were redeemed within one year of purchase.

53. During the time that the Christmas Account was active, STI received investment advisory fees of at least \$466.48.

54. Had STI and Belden recommended the purchase of Advisor Class shares and/or Investor Class shares, the Christmas Account would not have incurred the

deferred sales charges and there would have been an additional \$878.29 available to T.J. Christmas on redemption of the Broker Class shares.

55. The recommendation by STI and Belden to purchase the Broker Class shares subjected the Christmas Account to the deferred sales charges and resulted in more Commissions paid to Southmark, Inc. than would have been paid had the investment been made in the Advisor Class or Investor Class shares.

56. Respondents' rationale for recommending the purchase of Broker Class shares was to maximize the Commissions Southmark, Inc. would earn, and not to maximize the return on their advisory clients' investments.

57. Respondents did not disclose to their investment advisory clients that Respondents' total reliance on market timing signals provided by a third-party restricts the clients' investment opportunities to the portfolios of a very limited number of mutual funds when a multitude of mutual funds are available from other sources that could be more suitable and/or provide a greater return for such clients.

58. Transactions dictated by the timing signals were effected through Southmark, Inc., the broker-dealer owned and operated by Belden. Respondents did not inform their investment advisory clients of their ability to seek executions of transactions through other broker-dealer firms or directly through the Potomac Funds.

### **Improper Attempts to Shift Responsibility**

59. By including the following provisions in the Client Agreement, STI attempts to shift certain of its responsibilities as an investment adviser to its advisory clients and to absolve itself of responsibility:

- (a) "Client agrees to request any information necessary to keep them fully informed about any investment Southmark [STI] is using for them . . . ."; and
- (b) "Client(s) agrees that all investments chosen for them by Southmark [STI] are suitable for them . . . ."

### **Failure to Comply with Request for Documents**

60. On August 13, 2001, the Administrator issued a subpoena duces tecum (Subpoena) to Belden in accordance with Section 405 of the Act. On August 13, 2001, the Subpoena was personally served on Belden.

61. The Subpoena ordered that certain documents be produced before the Administrator by August 31, 2001. Belden did not fully comply with the Subpoena.

62. On September 20, 2001, the Administrator advised Belden that full compliance with the Subpoena would be expected on or before September 26, 2001.

63. To date, Belden has not fully complied with the Administrator's order.

### **Disciplinary History**

64. According to the records of the Central Registration Depository System (CRD), on September 27, 1993, the National Association of Securities Dealers, Inc., (NASD) entered an order of Censure and a \$25,000 fine against Belden for advertising, operating, and effecting securities transactions through a non-registered broker-dealer and for providing the public with unapproved and misleading sales literature.

65. According to the records of the CRD, on February 14, 2001, the NASD Regulation Inc., (NASDR) initiated an action against Belden. The NASDR alleged that Belden recommended and effected sales of Class B mutual fund shares to a public customer without having reasonable grounds for believing the recommendations and resultant transactions were suitable on the basis of the customer's financial situation and needs and that the recommendations of Class B shares, rather than Class A shares, resulted in higher commissions. The hearing panel determined that Belden made unsuitable recommendations to the customer. The hearing panel ordered that Belden be fined \$40,000, suspended in all capacities for 90 days, ordered to pay restitution of \$55,567.03 plus interest, ordered to requalify by examination, and ordered to pay assessed costs.

66. On at least two previous occasions, the Belden Entities failed to apply for the renewal of their investment adviser registrations as required by the Act.

67. On at least three other occasions, the Belden Entities operated through individuals required to be registered as investment advisers or investment adviser representatives under the Act but who were not so registered.

68. The previous violations of the Act by Belden and/or the Belden Entities were handled informally or by written agreement. In such agreements, Belden and/or the Belden Entities agreed to comply in the future with the Act and the Rules of the Oklahoma Securities Commission and the Administrator of the Department of Securities (Rules).

69. Based upon the foregoing, it is in the public interest to deny the effectiveness of the registrations of STI, Belden and Edwards under the Act.

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 102 of the Act provides in part:

- (b) In the solicitation of advisory clients, it is unlawful for any person to make any untrue statement of a material fact, or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.

2. Section 201 of the Act provides in part:

- (c)(1) It is unlawful for any person to transact business in this state as an investment adviser unless registered under this act or unless exempt from registration as provided in paragraph (2) of this subsection.

\* \* \*

- (d)(1) It is unlawful for any person to transact business in this state as an investment adviser representative unless registered under this act or unless he is exempt from registration as provided in paragraph (3) of this subsection. It is unlawful for any person required to be registered as an investment adviser under this act, or any person exempt from registration as an investment adviser under this act, to employ, supervise, be represented by or be associated with an investment adviser representative unless the investment adviser representative is registered under this act or unless the investment adviser representative is exempt from registration as provided in paragraph (3) of this subsection.

3. Section 204 of the Act provides in part:

- (a) The Administrator may issue a final order denying effectiveness to, or suspending or revoking the effectiveness of, any registration or impose any sanction authorized by Section 406 of this title if the Administrator finds that the order is in the public interest and that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:

\* \* \*

- (2) has willfully violated or willfully failed to comply with any provision of the Oklahoma Securities Act or a predecessor act or any rule or order under this act or a predecessor act;

\* \* \*

- (8) has engaged in dishonest or unethical practices in the securities business[.]

4. Rule 660:2-7-7 of the Rules provides:

In case of failure to comply with the Administrator's investigational processes, appropriate action may be initiated by the Administrator, including actions for enforcement by the Administrator.

5. Rule 660:10-7-42 of the Rules provides in part:

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

- (1) Recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known by the investment adviser or investment adviser representative.

\* \* \*

- (8) To misrepresent to any advisory client, or prospective advisory client, the qualifications of the investment adviser or an investment adviser representative or to misrepresent the nature of the advisory services being offered or fees to be charged for such service, or to omit to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading.

- (9) Charging a client an unreasonable advisory fee.

\* \* \*

- (12) Publishing, circulating and distributing any advertisement which does not comply with Reg. § 275.206(4)-1, under the Investment Advisers Act of 1940.

## Conclusions of Law

1. The Administrator of the Department is authorized to deny the registration of STI as an investment adviser in the state of Oklahoma pursuant to Section 204 of the Act.
2. The Administrator of the Department is authorized to deny the registrations of Belden and Edwards as investment adviser representatives in the state of Oklahoma pursuant to Section 204 of the Act.
3. In the solicitation of advisory clients, STI, Belden, and Edwards failed to disclose material facts and/or omitted to state material facts necessary in order to make the statements made in light of the circumstances under which they were made, not misleading, in violation of Section 102 of the Act.
4. STI transacted business in this state as an unregistered investment adviser, in violation of Section 201 of the Act.
5. STI employed, supervised, has been represented by and has been associated with unregistered investment adviser representatives in violation of Section 201 of the Act.
6. Belden and Edwards transacted business in this state as unregistered investment adviser representatives in violation of Section 201 of the Act.
7. The Sales Literature prepared and distributed by Respondents is not in compliance with Reg. § 275.206(4)-1 under the Investment Advisers Act of 1940.
8. STI, Belden and Edwards engaged in dishonest or unethical practices in violation of subsection (b) of 660:10-7-42 of the Rules.
9. Belden failed to comply with the Administrator's investigational processes.
10. It is in the public interest to deny the effectiveness of the registrations of STI, Belden and Edwards under the Act.

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 issue an order denying the effectiveness of the registrations of STI, Belden and Edwards under the Act and/or imposing any other sanctions(s) as deemed appropriate and as authorized by the Act.

Dated this 21<sup>st</sup> day of November, 2001.

Respectfully Submitted,



Rebecca A. Cryer  
Enforcement Attorney  
Melanie Hall  
Deputy Administrator  
Oklahoma Department of Securities  
120 North Robinson, Suite 860  
Oklahoma City, OK 73102  
(405)280-7700