JOINT PERFORMANCE REVIEW COMMITTEE
January 8, 2014

PROVIDED BY

STEPHENS, INC.

EXHIBIT A

MEMORANDUM OF
ROSE LAW FIRM
REGARDING APPLICABLE LAW

ROSE LAW FIRM
A PROFESSIONAL ASSOCIATION

ATTORNEYS

WRITER'S TELEPHONE
501/377-0340

120 East Fourth Street
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WRITER'S ELECTRONIC MAIL
brosenthal@roselawfirm.com

January 3, 2014

VIA HAND DELIVERY

David A. Knight
Stephens Inc.
111 Center St., Ste 2300
Little Rock, AR 72201-4430

RE: Arkansas Securities Department

Dear Mr. Knight:

You have asked us to review whether in our judgment the Arkansas Securities Department ("Department") acted in compliance with Arkansas law in directing money collected in lieu of fines to the North American Securities Administrators Association, Inc., a District of Columbia nonprofit corporation ("NASAA").

We find no authority for fines or money collected in lieu of fines under Ark. Code Ann. §§ 23-42-209(c) or 308(h) being deposited or directed other than to the State of Arkansas, as required by Ark. Code Ann. § 23-42-213(b). Section 213(b) provides in relevant part:

> "all fines imposed and collected or moneys collected in lieu of a fine under §§ 23-42-209 and 23-42-308 shall be deposited as special revenues into the State Treasury and credited to the Investor Education Fund, to be administered by the Securities Commissioner..." (emphasis added).

Under the Arkansas Constitution, "[n]o money shall be paid out of the treasury until the same shall have been appropriated by law." Ark. Const. Art. XVI § 12. In interpreting this section of the Arkansas Constitution, the Arkansas Supreme Court has stated:

> "The primary object of these provisions of the Constitution and Statutes in aid thereof is to prevent the expenditure of the people's money, without their consent, expressed in the organic law or constitutional acts of the Legislature. A specific appropriation is an absolute prerequisite to the drawing from or payment out of the state treasury of any money therein required to be appropriated. No

money for general, ordinary, special, contingent, or other expense, no money at all, can be legally drawn therefrom, except under the forms of law in accordance with an appropriation properly made." *Dickinson v. Clibourn,* 125 Ark. 101, 187 S.W. 909 (1916)); *see also Dir. of Bureau of Legislative Research v. Mackrell,* 212 Ark. 40, 204 S.W.2d 893 (1947) (quoting *Dickinson*).

After analyzing the Arkansas Constitution, Ark. Code Ann. § 23-42-213, and applicable decisions of the Arkansas Supreme Court, it is our reasoned view that the Department did not have the authority to direct money collected in lieu of fines to NASAA.

We understand the Arkansas Securities Commissioner may argue Ark. Code Ann. §§ 23-42-209(c) and 308(h) support the Department's actions. As a principle of statutory interpretation, "[a] general statute must yield when there is a specific statute involving the particular subject matter." *Board of Trustees v. Stodola*, 328 Ark. 194, 942 S.W.2d 255 (1997). While Sections 209(c) and 308(h) may allow a securities matter to be resolved short of a proceeding, in our reasoned view, that right does not overcome the state's specific prescription on how collected moneys are to be appropriated under Ark. Code Ann. § 23-42-213(b).

The Commissioner may assert these payments were voluntary donations to NASAA, but that argument seems difficult because the contributions were procured by the Commissioner while acting in his official capacity. The Commissioner also may argue that Section 213(b) does not extend to matters where he has discretionary authority to impose a fine, but that argument also seems difficult since contributions are documented by way of a consent order and were made to NASAA in lieu of paying a fine to the State of Arkansas. There is no case law interpreting Ark. Code Ann. §§ 23-42-209(c) or 308(h).

Sincerely yours,

Rose Law Firm, a Professional Association

By: Rosenthal
Brian Rosenthal, Member

BR/llr

Rose Law Firm, a
Professional Association

EXHIBIT B

APPLICABLE STATUTORY PROVISIONS (emphasis supplied)

A.C.A. § 23-42-213 (Copy w/ Cite)

A.C.A. § 23-42-213

*** Legislation is current through the 2013 Regular Session and updates ***
*** received from the Arkansas Code Revision Commission through ***
*** October 9, 2013. ***

Title 23 Public Utilities and Regulated Industries
Subtitle 2. Financial Institutions And Securities
Chapter 42 Arkansas Securities Act
Subchapter 2 -- Administration

A.C.A. § 23-42-213 (2013)

23-42-213. Disposition of fines -- Investor Education Fund.

(a) There is created on the books of the Chief Fiscal Officer of the State, the Auditor of State, and the Treasurer of State a fund to be known as the "Investor Education Fund".

(b) Except as provided by subsection (c) of this section, all fines imposed and collected or moneys collected in lieu of a fine under §§ 23-42-209 and 23-42-308 shall be deposited as special revenues into the State Treasury and credited to the Investor Education Fund, to be administered by the Securities Commissioner for the following purposes:

(1) To inform and educate the public regarding investments in securities in order to help investors and potential investors:

(A) Evaluate their investment decisions;

(B) Protect themselves from unfair, inequitable, or fraudulent offerings;

(C) Choose their broker-dealers, agents, and investment advisers more carefully;

(D) Be alert for false or misleading advertising or other harmful practices; and

(E) Know their rights as investors; and

(2) To pay for:

(A) Costs, expenses, and charges incurred by the State Securities Department in connection with the presentation and dissemination of information to the public as described in this section, including costs of printing copies of the Arkansas Securities Act, § 23-42-101 et seq., Rules of the Arkansas Securities Commissioner, and other materials designed to inform the public as set forth in this section;

(B) Costs of advertising and promotional materials designed to accomplish the purposes of this subdivision (b)(2);

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(C) Costs of equipment necessary or useful for such presentations; and

(D) Costs and expenses associated with conducting a stock market game for educational purposes in selected schools in the state's public school system.

(c) Funds in excess of one hundred fifty thousand dollars ($150,000) collected in any one (1) fiscal year shall be designated as special revenues and deposited into the Securities Department Fund.

HISTORY: Acts 2003, No. 759, § 2; 2013, No. 460, § 5.

(6)

A.C.A. § 23-42-308 (Copy w/ Cite) Pages:**5**

A.C.A. § 23-42-308

Title 23 Public Utilities and Regulated Industries
Subtitle 2. Financial Institutions And Securities
Chapter 42 Arkansas Securities Act
Subchapter 3 -- Broker-Dealers, Agents, and Investment Advisers

A.C.A. § 23-42-308 (2013)

23-42-308. Denial, suspension, revocation, or withdrawal of registration, and other penalties.

(a) The Securities Commissioner may by order deny, suspend, make conditional or probationary, or revoke any registration if he or she finds that:

(1) The order is in the public interest; and

(2) 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:

(A) Has filed an application for registration which as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact;

(B) Has willfully violated or willfully failed to comply with any provision of this chapter or a predecessor act or any rule or order under this chapter or a predecessor act;

(C) Has been convicted, within the past ten (10) years, of any misdemeanor involving a security or any aspect of the securities business, or of any felony, or has pending against him or her a charge of unlawful conduct involving securities or any aspect of the securities business;

(D) Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;

(E) Is the subject of an order of the commissioner denying, suspending, revoking, or making conditional or probationary a registration as a broker-dealer, agent, investment adviser, or representative;

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(F) **(i)** Is the subject of an order entered within the past five (5) years by:

(a) The securities administrator of any other state;

(b) Any national securities, commodities, or banking agency or jurisdiction;

(c) Any national securities or commodities exchange;

(d) Any securities or commodities self-regulatory organization;

(e) Any registered securities association or clearing agency denying, revoking, suspending, or expelling him or her from registration as a broker-dealer, agent, investment adviser, or representative, or the substantial equivalent of those terms;

(f) Is the subject of a United States postal fraud order; or

(g) The insurance administrator of any state.

(ii) However, the commissioner may not:

(a) Institute a revocation or suspension proceeding under this subdivision (a)(2)(F) more than five (5) years from the date of the order relied on; and

(b) Enter an order under this subdivision (a)(2)(F) on the basis of an order under another state act, unless that order was based on facts which would currently constitute a ground for an order under this section;

(G) Has engaged in dishonest or unethical practices in the securities business;

(H) Is insolvent, either in the sense that his or her liabilities exceed his or her assets or in the sense that he or she cannot meet his or her obligations as they mature, but the commissioner may not enter an order against a broker-dealer or investment adviser under this subdivision (a)(2)(H) without a finding of insolvency as to the broker-dealer or investment adviser;

(I) Is not qualified on the basis of such factors as training, experience, and knowledge of the securities business, except that:

(i) The commissioner may not enter an order against a broker-dealer on the basis of the lack of qualification of any person other than the broker-dealer himself or herself, if he or she is an individual, or an agent of the broker-dealer;

(ii) The commissioner may not enter an order against an investment adviser on the basis of the lack of qualification of any person other than the investment adviser himself or herself, if he or she is an individual, or any other person who represents the investment adviser in doing any of the acts which make him or her an investment adviser;

(iii) The commissioner may not enter an order solely on the basis of lack of experience if the applicant or registrant is qualified by training or knowledge, or both;

(iv) The commissioner shall consider that an agent who will work under the supervision of a registered broker-dealer need not have the same qualifications as a broker-dealer; and

(v) The commissioner shall consider that an investment adviser or representative is not necessarily qualified solely on the basis of experience as a broker-dealer or agent;

(J) Has failed reasonably to supervise the agents or employees of the broker-dealer or the

(8)

representatives or employees of the investment adviser; or

(K) Has failed to pay the proper filing fee, but the commissioner may enter only a denial order under this subdivision (a)(2)(K), and he or she shall vacate the order when the deficiency has been corrected.

(b) The commissioner may not institute a suspension or revocation proceeding solely on the basis of a final judicial or administrative order known to him or her when registration became effective, unless the proceeding is instituted within one hundred eighty (180) days after registration or unless the applicant or registrant waives the time limitation. For the purpose of this provision, a final judicial or administrative order shall not include an order that is stayed or subject to further review or appeal. This provision shall not apply to renewal registration.

(c) (1) The commissioner may by order summarily postpone or suspend registration pending final determination of any proceeding under this section.

(2) Upon the entry of the order, the commissioner shall promptly notify the applicant or registrant, as well as the employer or prospective employer, if the applicant or registrant is an agent or representative, that the order has been entered, and of the reasons therefor, and that within fifteen (15) days after the receipt of a written request the matter will be set down for hearing.

(3) If no hearing is requested and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination.

(d) The commissioner may by summary order cancel a registration or application if he or she finds that any registrant or applicant:

(1) Is no longer in existence;

(2) Has ceased to do business as a broker-dealer, agent, investment adviser, or representative; or

(3) Is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian or cannot be located after a reasonable search.

(e) (1) Withdrawal from registration as a broker-dealer, agent, investment adviser, or representative becomes effective thirty (30) days after receipt of an application to withdraw, or within such shorter period of time as the commissioner may determine, unless a revocation or suspension proceeding is pending when the application is filed or a proceeding to revoke or suspend or to impose conditions upon the withdrawal is instituted within thirty (30) days after the application is filed.

(2) If a proceeding is pending or instituted, then withdrawal becomes effective at such time and upon such conditions as the commissioner by order determines.

(3) If no proceeding is pending or instituted and withdrawal automatically becomes effective, the commissioner may nevertheless institute a revocation or suspension proceeding under subdivision (a)(2)(B) of this section within one (1) year after withdrawal became effective and may enter a revocation or suspension order as of the last date on which registration was effective.

(f) No order may be entered under any part of this section, except under subdivision (c)(1) of this section, without:

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(1) Appropriate prior notice to the applicant or registrant and to the employer or prospective employer if the applicant or registrant is an agent or representative;

(2) Opportunity for hearing; and

(3) Written findings of fact and conclusions of law.

(g) In addition to the authority granted in subsections (a)-(e) of this section, upon notice and opportunity for hearing as provided in subsection (f) of this section, the commissioner may for each violation of this chapter fine any broker-dealer, agent, investment adviser, or representative not to exceed:

(1) Ten thousand dollars ($10,000) or an amount equal to the total amount of money received in connection with each separate violation; or

(2) If a victim of a violation is sixty-five (65) years of age or older:

(A) Twenty thousand dollars ($20,000) for each violation; or

(B) Two (2) times the amount of money received in connection with each violation.

(h) Nothing in this section shall prohibit or restrict the informal disposition of a proceeding or allegations which might give rise to a proceeding by stipulation, settlement, consent, or default, in lieu of a formal or informal hearing on the allegations or in lieu of the sanctions authorized by this section.

HISTORY: Acts 1959, No. 254, § 6; 1961, No. 248, § 4; 1983, No. 836, §§ 10-12; A.S.A. 1947, § 67-1240; Acts 1995, No. 845, § 19; 2009, No. 534, §§ 9, 10; 2011, No. 339, §§ 6, 7; 2013, No. 460, §§ 11, 12.

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EXHIBIT C

APPLICABLE RULES OF THE ARKANSAS SECURITIES COMMISSIONER
(emphasis supplied)

Arkansas Securities Department
No. 214.00

RULES OF THE ARKANSAS SECURITIES COMMISSIONER

EFFECTIVE – December 1, 2011

ARKANSAS SECURITIES DEPARTMENT
Heritage West Building, Suite 300
201 East Markham
Little Rock, Arkansas 722001

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RULE 209 INJUNCTION, MANDAMUS, OR OTHER ANCILLARY RELIEF.

[RESERVED]

RULE 210 JUDICIAL REVIEW.

[RESERVED]

RULE 211 DISPOSITION OF FEES.

[RESERVED]

RULE 212 REGISTRATION OR AVAILABILITY OF EXEMPTION NOT CONSTRUED AS APPROVAL BY COMMISSIONER - INCONSISTENT REPRESENTATION.

[RESERVED]

RULE 213 DISPOSITION OF FINES-INVESTOR EDUCATION FUND.

213.01 INVESTOR EDUCATION PROGRAM.

(a) **GENERAL.** Utilizing the Investor Education Fund described in Section 23-42-213 of the Act, the Commissioner may administer an investor education program for the citizens of the State of Arkansas. The purpose of the program will be to inform and educate the public regarding investments in securities in order to help investors and potential investors evaluate their investment decisions; protect themselves from unfair, inequitable and fraudulent offerings; choose their broker-dealers, agents, and investment advisers more carefully; be alert for false or misleading advertising or other harmful practices; and know their rights as investors.

(b) **GRANT PROGRAM.** Utilizing the Investor Education Fund described in Section 23-42-213 of the Act, the Commissioner may administer a grant program to solicit grant proposals from public schools and non-profit organizations (Internal Revenue Code Section 501(c)(3), tax-exempt organizations) for the purpose of providing securities/investment education to teachers and students about the securities industry, securities markets, and investment decisions.

(1) Eligible applicants are public schools and non-profit groups that provide investment education to Arkansas students in grades five (5) through twelve (12).

(2) The Commissioner may establish the number of grant awards available as well as the amount of monies available for award through the grant program.

(3) Grant funds awarded may be used to procure any appropriate educational, resource, software materials and equipment consistent with the purpose of the grant program, this Rule and Section 23-42-213 of the Act.

(4) The Commissioner may establish a grant proposal process by which eligible applicants may submit an application for a grant award.

(5) A grant award by the Commissioner will be based upon the merit of the grant proposal considering:

(A) Educational need for the project;

(B) Learning objectives to be accomplished by the project;

(C) Specific description of the project;

(D) Number of students educated;

(E) Description of measurable project outcomes; and

(F) Other school resources dedicated to the project.

(6) Each grant recipient shall file a final grant report detailing the measurable project outcomes and a financial accounting of actual program expenditures.

EXHIBIT D

DUE PROCESS CONSIDERATIONS

Application of Fines/Due Process Considerations

1. The Arkansas Securities Act provides that all fines (or payments in lieu of a fine) are to be paid to the state treasury to be credited to two specific accounts. The first $150,000 per year goes to a special account for investor education, which is not a problem. The balance goes to an account that funds the operations of the securities department. That creates a conflict of interest for securities department personnel. Decisions on whether to impose a fine, and the amount of the fine, should be based on the nature of the misconduct in question and not the budgetary needs of the department. Also, budgetary requests and approvals should not be based upon, or related to, the department's success in imposing and collecting fines. In the case of the SEC, the fines it collects are simply paid to the treasury without further designation. Then the SEC must go to congress to get approval for its budget just like other agencies. That is a far better model.

2. The Arkansas Securities Act provides that the staff of the securities department may investigate alleged violations and then bring an action against the alleged violators in an administrative proceeding before the securities commissioner. In practice, the securities commissioner is actively involved in the decision whether to bring the action, the investigation process, the nature of the charges to be brought, the parties to be named, the amount of the fine or other sanctions to be sought, and any settlement negotiations. In the situation at hand, the commissioner requested a meeting with Stephens' legal representatives and proceeded to advise that he believed Stephens had violated the law and to specify the amount of the fine he was willing to accept in order to settle the matter without litigation. In other words, he was acting as a prosecutor. If Stephens had elected not to settle, Stephens was faced with the fact that he had already decided the outcome of the case, as opposed to having the case heard before an impartial judge. In fact, when Stephens disagreed with the amount of the fine he proposed, he pressured Stephens to settle by threatening to expand the subject investigation in an effort to identify additional alleged violations and obtain a "far greater" fine.

Section 602(d) of the Uniform Securities Act addresses this conflict of interest and lack of due process by authorizing the person subject to the securities commissioner's investigation to apply to an appropriate court for relief from the commissioner's investigative efforts. This also allows a review of the commissioner's conduct in court before an impartial judge. There is no similar section in the Arkansas Securities Act and a person subject to an investigation by the commissioner would likely be unable to get a hearing in court until the issuance of a final order by the commissioner.

The Arkansas Securities Act further provides that any person aggrieved by a final order of the securities commissioner may obtain a review of the order in any state court of competent jurisdiction. However, A. C. A. 23-42-210 (b)(1) contains a statutory presumption that the findings of the commissioner as to the facts are conclusive and denies due process to the aggrieved person as it gives no opportunity for the aggrieved person to provide additional facts or to disprove the commissioner's findings of fact. This is contrary to the Uniform Securities Act which provides no such presumption. Section 609 of the Uniform Act provides simply that "[A] final order issued by the administrator under this [Act] is subject to judicial review in accordance with [the state administrative procedure act]."

A better way to address this conflict of interest and lack of due process is by requiring the securities commissioner to pursue claims in court before an impartial judge. The Uniform Securities Act does not impose restrictions on settlements in lieu of such litigation.

ETHICS MATERIALS

ARKANSAS ETHICS COMMISSION
910 WEST SECOND STREET, SUITE 100
LITTLE ROCK, AR 72201
Phone (501) 324-9600 Toll Free (800) 422-7773

CITIZEN COMPLAINT FORM

The undersigned person files this complaint and requests that the Arkansas Ethics Commission conduct an investigation concerning the facts and actions detailed below for the purpose of determining whether or not there has been a violation of laws under the Commission's jurisdiction.

1. Identify the person you are complaining about:

Name: A. Heath Abshure Position or Title: Securities Commissioner

Address: 201 E. Markham Phone: (Home)

Little Rock, AR 72201 (Work) 501-324-9260

2. State in your own words the *detailed* facts and the actions of the person named in section 1 which prompted you to make this complaint. The brief space provided below is not intended to limit your statement of facts. Please use the back of this form or additional sheets if necessary. Include relevant dates, times, and the names, and addresses of other persons whom you believe have knowledge of the facts.

See attached Complaint

3. Attach or make reference to any documents, materials, minutes, resolutions or other evidence which support your allegations.

State of Arkansas
County of Pulaski

I swear or affirm, under penalty of perjury, that the facts set forth in this complaint are true and correct to the best of my knowledge, information, and belief.

Signature: David A Knight

Subscribed and sworn before me this 15 day of November, 20 13

Print your name: David A. Knight

Notary Signature: Jamie C Robbins

Mailing address: 111 Center Street
Little Rock, AR 72201

JAMIE C. ROBBINS
COMM. EXP.
6-25-2022
No. 12388342
GARLAND COUNTY
NOTARY PUBLIC - ARKANSAS

My Commission Expires: 6-25-22

Phone:(Home) 663-2460 (Work) 377-2573

BEFORE THE ARKANSAS ETHICS COMMISSION

In Re: A. Heath Abshure
Respondent

COMPLAINT

Stephens Inc. brings this complaint against A. Heath Abshure, Commissioner of the Arkansas Securities Department ("Commissioner Abshure" or "the Commissioner") before the Arkansas Ethics Commission and, in support, states:

INTRODUCTION

1. Stephens is aware of three illegal consent orders signed by Commissioner Abshure in which Stephens believes the Commissioner suggested and accepted charitable contributions to the Commissioner's chosen charities from corporations being penalized in lieu of paying a fine to the Arkansas Securities Department. Crews & Associates made a $150,000 contribution to North American Securities Administrators Association ("NASAA") in lieu of a fine on or about July 9, 2013 in connection with the settlement of claims brought by the Department against Crews & Associates related to Bamco Gas, LLC, Ernest Bartlett, Howard Appel and related persons and entities.

2. In addition to the Crews Consent Order, Commissioner Abshure directed ProEquities, Inc. and UVEST Financial Services Group, Inc., as part of a multi-state settlement agreement, to pay amounts that would otherwise be payable to the Department to NASAA. The amounts paid by ProEquities and UVEST were $8,207.55 and $14,150.94, respectively.

3. In connection with the recent settlement of an enforcement action, the Commissioner suggested that Stephens Inc. make a $20,000 contribution to the NASAA in lieu of paying a fine to the Arkansas Securities Department. Stephens rejected this suggestion because the

Commissioner was then serving as President of NASAA, which in Stephens' view was unethical and presented a conflict of interest. Commissioner Abshure then suggested that the contribution be made instead to Economics Arkansas. When asked whether this entity had a relationship with the Commissioner or the Department, the Commissioner replied that he was serving on its Board of Directors. Stephens rejected this suggestion as well and indicated its preference was to pay a fine to the Department. Shortly thereafter, the Commissioner unilaterally increased the amount of the fine to $25,000 in retaliation for Stephens' unwillingness to make the contribution to either of the charities he designated.

4. As explained below, the Commissioner violated express provisions of Arkansas law requiring that fines imposed and collected by the Department be deposited as special revenues into the Arkansas State Treasury for further allocation to designated in-state entities, including the Securities Department. These provisions are consistent with the requirement of the Arkansas Constitution that the indebtedness of corporations to the state may only be discharged by payment into the public treasury

5. Further, in diverting such funds for an unauthorized purpose, the Arkansas Securities Commissioner also used his official position to secure a special privilege for himself and further his personal interests in violation of the Arkansas Code of Ethics.

PARTIES

6. Stephens is an Arkansas corporation with its principal place of business in Little Rock, Arkansas. Stephens is in the business of providing financial services to businesses, state and local governments, institutions, and individuals. At all times relevant to this complaint, Stephens was under the regulatory oversight of the Arkansas Securities Department, an agency and instrumentality of the State of Arkansas.

(26)

7. Commissioner Abshure is a citizen of the State of Arkansas. At all times relevant to this complaint, Commissioner Abshure was the Arkansas Securities Commissioner. He was appointed as Commissioner in December 2007. As Commissioner, he is the head of the Arkansas Securities Department and a public servant as defined by Ark. Code Ann. § 21-8-301. Commissioner Abshure was also an officer, including the President, and/or a member of the Board of Directors of the NASAA at all times relevant to this Complaint. NASAA is an out-of-state, private nonprofit 501(c)(3) organization of securities administrators whose membership consists of 67 state, provincial, and territorial securities administrators in the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Canada, and Mexico. Additionally, the Commissioner was a member of the Board of Directors of Economics Arkansas. Economics Arkansas is an Arkansas nonprofit 501(c)(3) corporation that trains Arkansas K-12 teachers how to integrate principles of economics and personal finance into the classroom curriculum.

JURISDICTION

8. Pursuant to Arkansas Code §§ 7-6-218(a), 21-8-303 and 21-8-304 the Commission may investigate and address alleged violations of the Arkansas Code of Ethics for any public servant who uses or attempts to use . . . "his or her official position to secure special privileges for himself."

APPLICABLE LAW

9. Pursuant to the Arkansas Securities Act, § 23-42-101 et seq. (the "Act"), a fund known as the "Securities Department Fund" was created on the books of the Chief Fiscal Officer of the State, the Auditor of the State, and the Treasurer of the State which fund "shall be used for the maintenance, operation, support, and improvement of the State Securities Department in

carrying out its functions, powers, and duties as set out by law and by rule and regulation not inconsistent with law." Ark. Code Ann. § 23-42-211(a).

10. The Securities Department Fund consists of certain fees received by the Arkansas Securities Department designated for deposit into the fund and such other funds as may be provided by law or regulatory action. Ark. Code Ann. § 23-42-211(a).

11. Pursuant to the Act, the Securities Commissioner has the authority to impose fines for violations of the Act.

12. The Act requires "all fines imposed and collected or moneys collected in lieu of a fine ... shall be deposited as special revenues into the State Treasury and credited to the Investor Education Fund, to be administered by the Securities Commissioner" for the purposes of investor education in Arkansas. Ark. Code Ann. § 23-42-213(b). The Act further provides that "[F]unds in excess of one hundred fifty thousand dollars ($150,000) collected in any one (1) fiscal year shall be designated as special revenues and deposited into the Securities Department Fund." *Id.* § 23-42-213(c).

13. Pursuant to Arkansas Code Ann. § 23-42-213(b), moneys in the Investor Education Fund may be used by the Securities Commissioner only for the following purposes:

> **(1)** To inform and educate the public regarding investments in securities in order to help investors and potential investors:
>
> > **(A)** Evaluate their investment decisions;
> >
> > **(B)** Protect themselves from unfair, inequitable, or fraudulent offerings;
> >
> > **(C)** Choose their broker-dealers, agents, and investment advisers more carefully;
> >
> > **(D)** Be alert for false or misleading advertising or other harmful practices; and

(E) Know their rights as investors; and

(2) To pay for:

(A) Costs, expenses, and charges incurred by the State Securities Department in connection with the presentation and dissemination of information to the public as described in this section, including costs of printing copies of the Arkansas Securities Act, § 23-42-101 et seq., Rules of the Arkansas Securities Commissioner, and other materials designed to inform the public as set forth in this section;

(B) Costs of advertising and promotional materials designed to accomplish the purposes of this subdivision (b)(2);

(C) Costs of equipment necessary or useful for such presentations; and

(D) Costs and expenses associated with conducting a stock market game for educational purposes in selected schools in the state's public school system.

14. Rule 213.01 of the Rules of the Arkansas Securities Commissioner further defines the manner in which the Investor Education Fund may be utilized and allows moneys on deposit in the Investor Education Fund to be used for an investor education program for the citizens of the State of Arkansas and to "administer a grant program to solicit grant proposals from public schools and non-profit organizations" for the purpose of providing investment education to public schools and non-profit organizations that provide investor education to Arkansas students in grades five (5) through twelve (12) (emphasis added). A copy of Rule 213.01 is attached hereto as **Exhibit 1**.

15. The Arkansas Constitution provides that "the indebtedness of any corporation to the State [shall not] ever be released, or in any manner discharged, save by payment into the public treasury." Ark. Const. Art. 12, § 12.

FACTS

Commissioner Abshure's Affiliation with NASAA & Economics Arkansas

16. Commissioner Abshure has been affiliated with NASAA since 2008. Between 2008 and the date of this Complaint, Commissioner Abshure has served as the chair of NASAA's Business/Capital Formation, Ratings Agencies, and Reg D Electronic Filing Committees. He has also served as a member of the Dodd Frank Studies Working Group and Federal Legislation Committee. From 2008 to 2009, he served on NASAA's Corporation Finance Committee. From 2010 to September 2012, the Commissioner served as the chair of NASAA's Corporation Finance Section. From September 2011 to September 2012, he served as President-elect and Vice President of NASAA. Commissioner Abshure became President of NASAA in September, 2012 and continued to serve in that capacity until October 8, 2013. The Commissioner has served as a member of the board of directors of Economics Arkansas at all times relevant to this Complaint.

Commissioner Abshure's Consent Orders Benefitting NASAA

17. On November 19, 2012, Commissioner Abshure signed a Consent Order with ProEquities, Inc. as part of a multi-state settlement related to violations of state and federal securities laws. Pursuant to the settlement, the State of Arkansas was entitled to receive the sum of $8,207.55 from ProEquities. The Commissioner's Consent Order illegally instructed ProEquities to tender payment of this amount directly to NASAA in satisfaction and in lieu of the amount due Arkansas and to send a copy of the check payable to NASAA to the Arkansas Securities Department as evidence of payment. A copy of this Consent Order is attached to this complaint as **Exhibit 2.**

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18. On December 13, 2012, Commissioner Abshure signed a Consent Order with UVEST Financial Services Group, Inc. as part of a multi-state settlement related to violations of state and federal securities laws. Pursuant to the settlement, the State of Arkansas was entitled to receive the sum of $14,150.94 from UVEST. The Commissioner's Consent Order illegally instructed UVEST to tender payment of this amount directly to NASAA in satisfaction and in lieu of the amount due Arkansas and to send a copy of the check payable to NASAA to the Arkansas Securities Department as evidence of payment. A copy of this Consent Order is attached to this complaint as **Exhibit 3.**

19. According to the Consent Orders of ProEquities and UVEST, the charitable contributions were directed to NASAA by the Commissioner allegedly "as consideration for the costs associated with NASAA's coordination of the collaborative investigatory efforts of the multi-state task force and to further advance the investor protection efforts of NASAA." In contrast to the treatment by the Commissioner, the securities regulators of the other states involved in the multi-state investigation, Maine, New Hampshire, Missouri, and Vermont (with respect to UVEST, no Vermont order was found online related to ProEquities) all required similar amounts due their States to be payable to the respective State. Further, the NASAA press release announcing the settlements gave special recognition to the State of Maine for leading, and the States of New Hampshire, Missouri, and Vermont as providing invaluable assistance to, the investigation indicating most of the work on the matter had been performed by those states, not NASAA.

20. On July 9, 2013, Commissioner Abshure signed a Consent Order with Crews & Associates, Inc. as part of a settlement related to violations of state and federal securities laws. In this order, the Commissioner agreed not to assess a fine against Crews for the violations of

securities laws because Crews had contributed $150,000 to NASAA. A copy of this Consent Order is attached to this complaint as **Exhibit 4**. Due to the conduct of Commissioner Abshure described below, it is clear that the contribution by Crews was made at the direction of the Commissioner in lieu of the payment of a fine to the Arkansas Securities Department.

Commissioner Abshure's Interactions with Stephens

21. By letter dated May 21, 2013, Scott Freydl, Staff Attorney at the Arkansas Securities Department, notified Stephens that the Arkansas Securities Department intended to file a complaint against Stephens and Wayne LaRue, a former Stephens' employee, for alleged violations of the Arkansas Securities Act. Stephens responded to Freydl's letter and submitted evidence of compliance with the Arkansas Securities Act.

22. On August 8, 2013, David Knight, Kim Fowler, and Kevin Burns, legal department representatives of Stephens, met with Commissioner Abshure, Freydl, and Scott Fowler, an investigator with the Arkansas Securities Department, to discuss Stephens' response to Freydl's May 21, 2013, letter.

23. Commissioner Abshure stated at the meeting that he thought a $30,000 fine was appropriate due to Stephens's alleged failure to have appropriate written policies in place regarding the sale of inverse and leveraged exchange-traded funds to customers. Stephens countered Commissioner Abshure's demand for a $30,000 fine with a request to pay a $15,000 fine, which in its view was consistent with a fine paid by Morgan Keegan under similar circumstances.

24. The Commissioner then proposed that Stephens pay $20,000 for the alleged violation, and offered to allow Stephens to make a $20,000 charitable contribution to NASAA in lieu of paying the fine to the Arkansas Securities Department. Stephens declined to contribute

$20,000 to NASAA in lieu of paying a fine because of Commissioner Abshure's service as a board member and President of NASAA.

25. Commissioner Abshure then offered to allow Stephens to make a $20,000 charitable contribution to Economics Arkansas in lieu of paying a fine to the Arkansas Securities Department. In response to a question from Stephens, Commissioner Abshure disclosed that he currently served on the Board of Directors of Economics Arkansas. Stephens then declined to contribute $20,000 to Economics Arkansas in lieu of paying a fine because of such affiliation. Stephens told the Commissioner that it would prefer to pay a fine directly to the Arkansas Securities Department rather than make a charitable contribution to these affiliated entities.

26. At the end of the August 8 meeting, Stephens and the Arkansas Securities Department were in agreement that a consent order would provide that Stephens would pay a fine to settle the dispute that Stephens allegedly failed to have in place appropriate written policies regarding the sale of inverse and leveraged exchange-traded funds, but they remained in disagreement as to whether the amount of the fine should be $20,000 or $15,000.

27. On August 16, 2013, Stephens received a draft Consent Order attached to an email from Freydl. Although the description of the alleged misconduct in the proposed Order against Stephens was exactly as agreed at the meeting, the Arkansas Securities Department had unilaterally increased the amount of the fine to $25,000 - $5,000 more than Commissioner Abshure's demand of $20,000 at the conclusion of the August 8 meeting. On August 20, 2013, Stephens provided comments on the draft Consent Order and suggested that the amount of the $25,000 fine be lowered.

28. On August 21, 2013, Freydl responded that the Commissioner's offer was now $25,000 and that:

"should Stephens still be unable to agree to this amount, then the Staff shall be directed to open a full examination of all agents of Stephens that sold inverse and/or leveraged [exchange-traded funds] in Arkansas. It is likely that after such examination, the Staff would request a substantially higher amount."

29. Stephens' counsel then inquired of Freydl whether Stephens' counsel could call Commissioner Abshure to discuss the amount of the fine. Freydl responded:

"If Stephens cannot accept the new amount of $25,000, which is the Commissioner's new offer, then the Staff shall make arrangements for a much larger exam of this issue. If the management of Stephens does not feel that they may have greatly [sic] liability than $25,000 for this issue, then I guess the Staff will need to look at the inverse and/or leveraged [exchange-traded fund] sales for every Stephens agent in Arkansas. After such an exam, I would anticipate the potential liability for Stephens will be much higher than $25,000. While the staff usually tries to be flexible, the circumstances of this case make this fine amount of $25,000 non-negotiable."

30. In response to this threat of retaliation, on August 22, 2013, at 1:57 p.m., Stephens emailed Freydl, indicating that the Consent Order (which included the $25,000 fine) had been signed by Stephens and would be delivered to the Arkansas Securities Department later that afternoon. At 3:25 p.m., Stephens' signed Consent Order was delivered to the Arkansas Securities Department for Commissioner Abshure's signature. At 4:00 p.m., Freydl emailed a copy of the fully signed Consent Order to Gwen Moritz at *Arkansas Business*. At 4:07 p.m., Freydl emailed a copy of the fully signed Consent Order to Stephens.

COMPLAINTS

Violations of Law.

31. Commissioner Abshure violated Arkansas law by diverting fines and/or moneys collected in lieu of fines from enforcement actions against ProEquities, UVEST, and Crews to NASAA instead of the Investor Education Fund and/or the Securities Department Fund as required by statute. As set forth above, the Act requires that "all fines imposed and collected or moneys collected in lieu of a fine ... shall be deposited as special revenues into the State

(34)

Treasury and credited to the Investor Education Fund, to be administered by the Securities Commissioner" for the purposes of investor education in Arkansas. Ark Code Ann. § 23-42-213(b). "Funds in excess of one hundred fifty thousand dollars ($150,000) collected in any one (1) fiscal year shall be designated as special revenues and deposited into the Securities Department Fund." *Id.* § 23-42-213(c). The Act does not allow the payment of fines or the making of contributions to the Commissioner's favorite charities in lieu of fines, irrespective of the meritorious nature of the services provided by them.

32. The multi-state investigation which resulted in the fines against ProEquities and UVEST also involved an investigation of Bankers Life and Casualty Co. and Bankers Life and Casualty Financial Services, Inc. (collectively, "Bankers Life"). A copy of this Consent Order is attached as **Exhibit 5.** In stark contrast to the treatment of the ProEquities and UVEST fines, and as part of the same multi-state settlement, the Commissioner appropriately directed Bankers Life to pay fines directly to the Department as required by law. Thus, the Commissioner was well aware of the proper disposition of fines imposed by the Department. It is unknown whether Bankers Life also turned down the "opportunity" to make a charitable contribution to NASAA in lieu of a fine.

33. Commissioner Abshure violated the Arkansas Constitution requirements that "the indebtedness of any corporation to the State [shall not] ever be released, or in any manner discharged, save by payment into the public treasury" (Ark. Const. art. 12, § 12) by directing amounts due to the State of Arkansas in the ProEquities and UVEST matters to instead be paid to NASAA and by directing that a charitable contribution be made to NASAA by Crews in lieu of a fine payable to the State of Arkansas.

34. Commissioner Abshure is not allowed to donate funds due to the State to his favorite charities. Commissioner Abshure violated his own Rules of the Arkansas Securities Commissioner by not causing the fines due from ProEquities, UVEST, and Crews to be paid to the Investor Education Fund and/or the Securities Department Fund and thereafter utilizing such funds for investor education for the citizens of Arkansas.

35. The violations of law described in the foregoing paragraphs cost the State of Arkansas $172,348.49.

Ethical Violations.

36. At all times relevant to this Complaint, Commissioner Abshure had full knowledge of the restrictions imposed on him by Ark. Const. Art. 12, § 12; Ark. Code Ann. §23-42-213(b), and §21-8-304; and Rule 213.01 of the *Rules of the Arkansas Securities Commissioner*.

37. Arkansas law provides that:

> No public servant shall use or attempt to use his or her official position to secure special privileges or exemptions for himself or herself or his or her spouse, child, parents, or other persons standing in the first degree of relationship, or for those with whom he or she has a substantial financial relationship that are not available to others except as may be otherwise provided by law.

Ark. Code Ann. §21-8-304(a). This statutory provision is incorporated almost verbatim into the rules of the Arkansas Ethics Commission under the caption "Fair Treatment" as follows:

> No public servant shall use or attempt to use his or her official position to secure special privileges or exemption for himself or herself or his or her spouse, child, parents or other persons standing in the first degree of relationship, or for those with whom he or she has a substantial financial relationship that is not available to others except as may be otherwise provided by law.

Arkansas Ethics Commission Rules on Conflicts §402(a).

(36)

It is important to note that neither this statutory provision nor the companion Commission rule require that the public servant receive a financial benefit. To the contrary, the Commission's rules simply define an unwarranted privilege or exemption as "a particular benefit or advantage unfairly extended to a person beyond the common advantages of others or the unjustified release of a person from a duty or obligation required of others." *Arkansas Ethics Commission Rules on Conflicts* § 400(r). This definition does not specify that the "particular benefit" be of a financial nature.

38. Service as the President and a board member of NASAA, and providing outside financial support for it, strengthened the Securities Commissioner's professional resume and will almost certainly make him a more attractive candidate for future jobs in the public or private sectors of the securities industry. The Commissioner "unfairly extended" that benefit to himself when he unlawfully diverted public funds to the benefit of NASAA, and it was a benefit extended to the Commissioner "beyond the common advantage of others" because of his unique position as president and a member of the board of directors of NASAA. The "substantial financial relationship" language of the rule and statute relates solely to the issue of whether the public servant is attempting to confer a benefit upon another person or entity (as opposed to himself), such as a business in which he has a substantial financial investment or ownership position.

39. However, Commissioner Abshure also has an indirect, but substantial, financial relationship with NASAA due to his service as President and a member of the Board of Directors. While Commissioner Abshure does not receive a salary from NASAA, inherent in these positions is the responsibility to insure that the organization is properly managed with sufficient financial resources to achieve the organization's goals.

40. Commissioner Abshure committed ethical violations by using his official position as the Arkansas Securities Commissioner to secure a special privilege and benefit for himself and NASAA when the Commissioner:

1) directed ProEquities to pay the amount of $8,207.55 due Arkansas under the multi-state settlement directly to NASAA in lieu of paying any amount to Arkansas;

2) directed UVEST to pay the amount of $14,150.94 due Arkansas under the multi-state settlement directly to NASAA in lieu of paying any amount to Arkansas; and

3) signed the July 9, 2013, Consent Order declining to assess a fine against Crews for violations of several state and federal securities regulations because Crews contributed $150,000 to NASAA.

41. Crews' donation to NASAA, combined with direct payments previously made by ProEquities and UVEST, bring the total amount of illegal contributions to NASAA between November 2012 and July 2013 to $172,358.49.

42. During the course of his interactions with Stephens outlined above Commissioner Abshure committed additional ethical violations by attempting to use his official position as the Arkansas Securities Commissioner to secure an unwarranted privilege for himself and for NASAA:

1) by offering to accept a $20,000 charitable contribution from Stephens to NASAA in lieu of a fine for an enforcement action at the August 8, 2013, meeting between the Arkansas Securities Department and representatives of Stephens;

2) by offering to accept a $20,000 charitable contribution from Stephens to Economics Arkansas in lieu of a fine for an enforcement action at the August 8, 2013, meeting between the Arkansas Securities Department and representatives of Stephens;

3) by directing Freydl to draft a consent order increasing the fine against Stephens from $20,000 to $25,000 in direct retaliation for Stephens' refusal to make a charitable contribution to either the NASAA or Economics Arkansas; and

4) by directing Freydl to retaliate against Stephens and coerce it into paying the increased $25,000 fine through threats of an unwarranted "full examination" of sales in Arkansas by Stephens of inverse and/or leveraged exchange-traded funds.

43. Had Commissioner Abshure been successful in diverting money from Stephens to his favorite charities, the total amount of money known at this time to be illegally diverted from the State of Arkansas would have been $192,348.49.

44. As further evidence of the direct retaliatory actions taken by the Commissioner and the Arkansas Securities Department for Stephens' refusal to make a charitable contribution to either NASAA or Economics Arkansas, Freydl was also directed to email a copy of Stephens' fully signed Consent Order to the press (including Gwen Moritz at *Arkansas Business*) before emailing a fully signed copy of the order to Stephens in an effort to seek accolades and publicity for Commissioner Abshure.

Executed this 15th day of November, 2013, under penalty of perjury.

STEPHENS INC.
111 Center St.
Little Rock, Arkansas 72201

By: David Knight
David Knight, Executive Vice President and
General Counsel

SUBSCRIBED AND SWORN TO before me, the undersigned Notary Public, on this 15th day of November, 2013.

Jamie C. Robbins
Notary Public

My Commission Expires:
6-25-22

JAMIE C. ROBBINS
COMM. EXP.
6-25-2022
No. 12388342
GARLAND
COUNTY
NOTARY PUBLIC - ARKANSAS

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EXHIBIT 1

Rule 213.01 INVESTOR EDUCATION PROGRAM.

(a) GENERAL. Utilizing the Investor Education Fund described in Section 23-42-213 of the Act, the Commissioner may administer an investor education program for the citizens of the State of Arkansas. The purpose of the program will be to inform and educate the public regarding investments in securities in order to help investors and potential investors evaluate their investment decisions; protect themselves from unfair, inequitable and fraudulent offerings; choose their broker-dealers, agents, and investment advisers more carefully; be alert for false or misleading advertising or other harmful practices; and know their rights as investors.

(b) GRANT PROGRAM. Utilizing the Investor Education Fund described in Section 23-42-213 of the Act, the Commissioner may administer a grant program to solicit grant proposals from public schools and non-profit organizations (Internal Revenue Code Section 501(c)(3), tax-exempt organizations) for the purpose of providing securities/investment education to teachers and students about the securities industry, securities markets, and investment decisions.

(1) Eligible applicants are public schools and non-profit groups that provide investment education to Arkansas students in grades five (5) through twelve (12).

(2) The Commissioner may establish the number of grant awards available as well as the amount of monies available for award through the grant program.

(3) Grant funds awarded may be used to procure any appropriate educational, resource, software materials and equipment consistent with the purpose of the grant program, this Rule and Section 23-42-213 of the Act.

(4) The Commissioner may establish a grant proposal process by which eligible applicants may submit an application for a grant award.

(5) A grant award by the Commissioner will be based upon the merit of the grant proposal considering:

(A) Educational need for the project;

(B) Learning objectives to be accomplished by the project;

(C) Specific description of the project;

(D) Number of students educated;

(E) Description of measurable project outcomes; and

(F) Other school resources dedicated to the project.

(6) Each grant recipient shall file a final grant report detailing the measurable project outcomes and a financial accounting of actual program expenditures.

EXHIBIT 2

BEFORE THE ARKANSAS SECURITIES COMMISSIONER
CASE NO. S-12-0135
ORDER NO. S-12-0135-12-OR01

IN THE MATTER OF:

PROEQUITIES, INC. **RESPONDENTS**

CONSENT ORDER

WHEREAS, state regulators from multiple jurisdictions conducted coordinated investigations of Bankers Life and Casualty Company ("Bankers Life") and BLC Financial Services, Inc. ("BLCFS") (collectively, "Bankers") to determine whether Bankers should have been registered as a broker-dealer and investment adviser between January 1, 2005, and December 2, 2011; and

WHEREAS, the investigations revealed that Bankers has acted as a broker-dealer and investment adviser in Arkansas without being registered, exempt from registration, or a federal covered investment adviser, and has employed or associated with agents and investment adviser representatives who were not so registered on behalf of Bankers, in violation of Ark. Code Ann. § 23-42-301 of the Arkansas Securities Act, codified at Ark. Code Ann. §§ 23-42-101 through 23-42-509 ("Act"); and

WHEREAS, ProEquities, Inc. ("ProEquities") entered into an agreement with Bankers effective April 30, 2010, to provide brokerage and investment advisory services out of Bankers Life branch office locations; and

WHEREAS, the conduct addressed herein has resulted in no known direct consumer harm, and the parties understand that registered agents or representatives of ProEquities participated in all securities transactions and at locations that were registered with the appropriate securities authorities as broker-dealer locations of ProEquities; and

WHEREAS, ProEquities has cooperated with state regulators conducting the investigations by responding to inquiries, providing documentary evidence, and halting further payment to BLCFS of broker-dealer and investment adviser related compensation while the investigations were pending; and

WHEREAS, ProEquities, as part of this settlement, agrees to comply with all state and federal licensing, registration, and other securities laws; and

WHEREAS, ProEquities has agreed to resolve the investigations through this Consent Order in order to avoid protracted and expensive proceedings in numerous states; and

WHEREAS, ProEquities, without admitting or denying the Findings of Fact and Conclusions of Law set forth below and solely for the purposes of this Consent Order, admits the jurisdiction of the Act and the Arkansas Securities Commissioner ("Commissioner"), voluntarily consents to the entry of this Consent Order, and waives any right to a hearing or to judicial review regarding this Consent Order;

NOW THEREFORE, the Commissioner hereby enters this Consent Order.

FINDINGS OF FACT

1. Bankers Life is a life insurance company located in Illinois that has never been registered as a broker-dealer or investment adviser.

2. BLCFS is a wholly-owned subsidiary of Bankers Life that also is located in Illinois. BLCFS (CRD No. 126638) has been a member of NASD or FINRA since 2003 and is registered as a broker-dealer only in Illinois. During its existence, BLCFS has had no business activity other than as described herein. BLCFS has never been registered as a broker-dealer or investment adviser in Arkansas, and it has not registered any agents or investment adviser representatives in Arkansas.

3. At all relevant times, ProEquities (CRD No. 15708) has been a broker-dealer registered in Arkansas and a federal covered investment adviser.

4. Bankers Life and BLCFS entered into an agreement with ProEquities effective April 30, 2010 (the "ProEquities Agreement"). The ProEquities Agreement specifies that ProEquities would "exercise exclusive control" over the broker-dealer and investment advisory activities of ProEquities agents who were also insurance agents for Bankers Life (the "dual agents"). In addition, the ProEquities Agreement assigned the following securities-related roles to BLCFS or to BLCFS and Bankers Life, which roles BLCFS and Bankers Life did perform until December 2, 2011:

a. consulting with ProEquities on the persons to be appointed as representatives of ProEquities;

b. identifying securities product training and marketing opportunities for review by ProEquities;

c. conferring with ProEquities concerning the securities products made available for distribution by the dual agents;

d. terminating the clearing broker selected by ProEquities (BLCFS only) in the event that the clearing agent did not use commercially reasonable efforts to process and service customer accounts at a level consistent with BLCFS' standards;

e. paying for advertising and promotional material (BLCFS only) in the event that BLCFS ordered more than a reasonable quantity of such materials or required customization of them;

f. recruiting representatives for ProEquities and assisting with the licensing and registration process;

g. providing marketing, training and support; and

h. paying for:

i. pre-examination training for required FINRA examinations;

ii. sales training materials;

iii. recruitment and travel costs; and

iv. ProEquities stationary and business cards.

5. Under the ProEquities Agreement, ProEquities was required to pay BLCFS between 87% and 91% of revenue received by ProEquities for the securities business conducted by the dual agents. ProEquities also was required to provide reports to BLCFS of the amount of compensation to be paid to each dual agent for securities work, and BLCFS was to retain the difference.

6. BLCFS, in its current Form BD filing, lists the following as other business:

> BLC Financial Services, Inc. (BLCF) provides sales support & a marketing program to Bankers Life & Casualty agents who are securities licensed with ProEquities. BLCFS will receive compensation from ProEquities based on these securities sales. BLCFS will not have any representatives that sell to the public.

7. Evidence obtained during the investigation indicated that Bankers screened prospective securities agents, trained new securities agents, conducted some periodic training sessions for securities agents, monitored and attempted to increase securities production of securities agents, and played a significant role in determining the compensation of securities agents. Additionally, evidence showed that the involvement of Bankers in securities-related roles led to confusion in the reporting and responsibility hierarchies as between Bankers and ProEquities.

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8. At no time were the dual agents registered as agents or investment adviser representatives of Bankers Life or BLCFS. The agents were registered representatives and investment adviser representatives of ProEquities.

9. From April 30, 2010, through November 31, 2011, Bankers received, on a nationwide basis, a total of approximately $11 million from ProEquities under the ProEquities Agreement for variable annuity and securities transactions and investment advice.

CONCLUSIONS OF LAW

1. It is unlawful for a person to transact business in Arkansas as a broker-dealer unless registered under the Act. Ark. Code Ann. § 23-42-301(a).

2. It is unlawful for a person to transact business in Arkansas as an investment adviser or representative without first being registered under the Act, exempt from registration, or a federal covered investment adviser. Ark. Code Ann. § 23-42-301(c).

3. It is unlawful for a registered broker-dealer to employ an unregistered agent, as defined in Ark. Code Ann. § 23-42-102(1)(A), except a nonresident agent who is registered by any other state securities administrator and who effects transactions in this state exclusively with registered broker-dealers. Ark. Code Ann. § 23-42-301(b)(1).

4. By engaging in the conduct set forth above, Bankers acted as an unregistered broker-dealer and investment adviser in Arkansas in violation of Ark. Code Ann. § 23-42-301(a) and (c).

5. Furthermore, by employing or associating with dual agents who were not registered as agents of Bankers, Bankers violated Ark. Code Ann. § 23-42-301(b)(1).

6. By engaging in the conduct set forth above, ProEquities has engaged in conduct giving rise to liability under Ark. Code Ann. § 23-42-308 of the Act.

7. Whenever it appears to the Commissioner, upon sufficient grounds and evidence satisfactory to the Commissioner, that any person has engaged or is about to engage in any act or practice constituting a violation of the Act, the Commissioner may summarily order the person to cease and desist from the act or practice. Ark. Code Ann. § 23-42-209(a)(1)(A). By engaging in the conduct set forth above, an order to cease and desist against ProEquities under Ark. Code Ann. § 23-42-209(a)(1)(A) is appropriate and in the public interest.

8. The informal disposition of allegations which might give rise to a proceeding by settlement or consent is permissible. Ark. Code Ann. §§ 23-42-209(c) and 23-42-308(h).

9. As a result, this Consent Order and the following relief are appropriate and in the public interest.

ORDER

1. ProEquities shall cease and desist from conduct giving rise to liability under Ark. Code Ann. § 23-42-308 of the Act;

2. In accordance with the terms of the multistate settlement, ProEquities shall pay an amount of $435,000 to the states where dual agents were located during the period from April 30, 2010, through December 2, 2011, allocated according to a schedule provided by the multi-state investigation working group. ProEquities shall pay $8,207.55 to the North American Securities Administrators Association ("NASAA") as consideration for the costs associated with NASAA's coordination of the collaborative investigatory efforts of the multi-state task force and to further advance the investor protection efforts of NASAA, as Arkansas's portion of the total amount. Such payment shall be made by check to NASAA within ten days from the date this Consent Order is signed by the Commissioner. A copy of the check to NASAA should be sent to the Arkansas Securities Department ("Department") to evidence the payment.

3. If any state securities regulator determines not to accept the settlement offer of ProEquities reflected herein, including the amount allocated to the applicable state according to the schedules referenced in paragraph 2 above, the payment to Arkansas set forth in paragraph 2 above shall not be affected; and ProEquities shall not be relieved of any of the non-monetary provisions of this Consent Order.

4. ProEquities shall not attempt to recover any part of the payments addressed in this Consent Order from dual agents, Bankers Life, or customers of ProEquities.

5. ProEquities shall fully cooperate with any investigation or proceeding related to the subject matter of this Consent Order.

6. From the date of this Consent Order through March 31, 2015, and while Bankers has dual agents that are registered representatives or investment adviser representatives of ProEquities, any agreement between Bankers and ProEquities shall be consistent with the provisions set forth in a separate Consent Order, Order No. S-12-0134-12-OR01, executed by Bankers and the Commissioner in Case No. S-12-0134.

7. This Consent Order concludes the investigation by the Department and any other action that the Commissioner could commence under applicable law on behalf of Arkansas as it relates to the violations described above, up to and including activity occurring through December 2, 2011; provided, however, that excluded from and not covered by this paragraph are any claims by the Department arising from or relating to the "Order" provisions contained herein.

8. The Commissioner has agreed to the terms of this Consent Order based on, among other things, the representations made to the Commissioner by ProEquities, ProEquities' counsel, and the Department's own factual investigation. If payments are not made by ProEquities, if

ProEquities defaults in any of its obligations set forth in this Consent Order, or if any material representations made by ProEquities or ProEquities' counsel in this Consent Order are later found to be materially inaccurate or misleading, the Commissioner may vacate this Consent Order, at his sole discretion, upon ten days notice to ProEquities and without opportunity for administrative hearing or judicial review, and commence a separate action.

9. Nothing herein shall preclude Arkansas, its departments, agencies, boards, commissions, authorities, political subdivisions and corporations, other than the Department and only to the extent set forth herein, (collectively, "State Entities") and the officers, agents or employees of State Entities from asserting any claims, causes of action, or applications for compensatory, nominal and/or punitive damages, administrative, civil, criminal, or injunctive relief against ProEquities.

10. The parties admit and acknowledge that the Commissioner has no authority or jurisdiction over any other state or federal agency or regulatory authority. Nonetheless, this Consent Order is not intended by the Commissioner to subject any person to any disqualifications under the laws of the United States, any state, the District of Columbia, Puerto Rico, or the Virgin Islands including, without limitation, any disqualification from relying upon the state or federal registration exemptions or safe harbor provisions.

11. This Consent Order and the order of any other state in related proceedings against ProEquities (collectively, the "Orders") shall not disqualify any person from any business that they otherwise are qualified, licensed or permitted to perform under applicable securities laws of Arkansas, and any disqualifications from relying upon Arkansas's registration exemptions or safe harbor provisions that arise from the Orders are hereby waived.

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12. This Consent Order and any dispute related thereto shall be construed and enforced in accordance with, and governed by, the laws of Arkansas without regard to any choice of law principles.

13. This Consent Order shall be binding upon ProEquities, its relevant affiliates, successors and assigns.

14. Except as set forth above, the Department agrees to take no action adverse to ProEquities based solely on the same conduct addressed in this Consent Order. However, nothing in this Consent Order shall preclude the Department from: (a) taking adverse action based on other conduct; (b) taking this Consent Order and the conduct described above into account in determining the proper resolution of action based on other conduct; (c) taking any and all available steps to enforce this Consent Order; or (d) taking any action against other entities or individuals, regardless of any affiliation or relationship between ProEquities and the entities or individuals.

IT IS HEREBY ORDERED on this 19th day of November, 2012.

A. Heath Abshure

A. Heath Abshure
Arkansas Securities Commissioner

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CONSENT TO ENTRY OF CONSENT ORDER

ProEquities, Inc., by signing below, agrees to the entry of this Consent Order and waives any right to a hearing or to judicial review.

ProEquities, Inc., states that no promise of any kind or nature whatsoever that is not reflected in this Consent Order was made to it to induce it to enter into this Consent Order and that it has entered into this Consent Order voluntarily.

Michael J. Mangerst (name) represents that he or she has been authorized to enter into this Consent Order on behalf of ProEquities, Inc.

ProEquities, Inc.

By: _____

Title: CEO

Date: 11/12/12

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EXHIBIT 3

BEFORE THE ARKANSAS SECURITIES COMMISSIONER
CASE NO. S-12-0136
ORDER NO. S-12-0136-12-OR01

IN THE MATTER OF:

UVEST FINANCIAL SERVICES GROUP, INC. **RESPONDENT**

CONSENT ORDER

WHEREAS, state regulators from multiple jurisdictions conducted coordinated investigations of Bankers Life and Casualty Company ("Bankers Life") and BLC Financial Services, Inc. ("BLCFS") (collectively, "Bankers") to determine whether Bankers should have been registered as a broker-dealer and investment adviser between January 1, 2005, and December 2, 2011; and

WHEREAS, the investigations revealed that Bankers has acted as a broker-dealer and investment adviser in Arkansas without being registered, exempt from registration, or a federal covered investment adviser, and has employed or associated with agents and investment adviser representatives who were not so registered on behalf of Bankers, in violation of Ark. Code Ann. § 23-42-301 of the Arkansas Securities Act, codified at Ark. Code Ann. §§ 23-42-101 through 23-42-509 ("Act"); and

WHEREAS, UVEST Financial Services Group, Inc. ("UVEST") entered into an agreement with Bankers to provide brokerage and investment advisory services out of Bankers Life branch office locations; and

WHEREAS, this Consent Order is entered into with the understanding that the conduct addressed herein has resulted in no known direct consumer harm and with the understanding that registered agents or representatives of UVEST participated in all securities transactions; and

WHEREAS, UVEST has cooperated with state regulators conducting the investigations by responding to inquiries and providing documentary evidence; and

WHEREAS, UVEST is in the process of winding down its business and filed a Form BDW (Notice of Withdrawal from Registration as Broker-Dealer) withdrawing its broker-dealer registration in Arkansas on May 17, 2012; and

WHEREAS, UVEST has agreed to resolve the investigations through this Consent Order in order to avoid protracted and expensive proceedings in numerous states; and

WHEREAS, UVEST, without admitting or denying the Conclusions of Law set forth below and solely for the purposes of this Consent Order, admits the jurisdiction of the Act and the Arkansas Securities Commissioner ("Commissioner"), admits the Findings of Fact set forth below, voluntarily consents to the entry of this Consent Order, and waives any right to a hearing or to judicial review regarding this Consent Order;

NOW THEREFORE, the Commissioner hereby enters this Consent Order.

FINDINGS OF FACT

1. Bankers Life is a life insurance company located in Illinois that has never been registered as a broker-dealer or investment adviser.

2. BLCFS is a wholly-owned subsidiary of Bankers Life that also is located in Illinois. BLCFS (CRD No. 126638) has been a member of NASD or FINRA since 2003 and is registered as a broker-dealer only in Illinois. During its existence, BLCFS has had no business activity other than as described herein. BLCFS has never been registered as a broker-dealer or investment adviser in Arkansas, and it has not registered any agents or investment adviser representatives in Arkansas.

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3. At all relevant times, UVEST (CRD No. 13787) was a broker-dealer registered in Arkansas and (through an affiliate) a federal covered investment adviser.

4. Effective January 1, 2005, Bankers Life entered into a Financial Services Agreement with UVEST (the "UVEST Agreement") under which Bankers Life insurance agents who became licensed as registered representatives and/or investment adviser representatives of UVEST (the "dual agents") would provide brokerage and investment advisory services out of Bankers Life branch office locations. The UVEST Agreement specified that UVEST would "exercise exclusive control" over the broker-dealer and investment advisory activities of the dual agents and assigned Bankers Life several securities-related roles, which Bankers Life did perform, including:

a. appointing the persons to be dual agents and having sole discretion to withdraw appointments at any time;

b. determining with UVEST the number and identity of dual agents at each office;

c. determining with UVEST the compensation to be paid to each agent;

d. determining with UVEST the "brokerage product offerings available for distribution" by the dual agents;

e. approving the clearing broker selected by UVEST;

f. approving advertising and promotional material; and

g. paying for:

   i. pre-examination training for required NASD/FINRA examinations;

   ii. investment research materials used in the branch offices;

   iii. recruitment and travel costs; and

   iv. UVEST stationary and business cards.

5. The UVEST Agreement provided for UVEST to pay Bankers Life "Revenue Sharing Payments" according to a schedule that varied from 82% to 85% of the gross commissions received by UVEST for the dual agents' securities transactions. The UVEST Agreement characterized these payments as representing reimbursement for the compensation Bankers Life pays to the dual agents and "payment for the use of the facilities and equipment" of Bankers Life. The UVEST Agreement provided that Bankers Life would not compensate Series 6 licensed dual agents for the sale of individual stocks and bonds, and instead Bankers Life would retain all such revenue.

6. In March of 2005, Bankers Life determined that BLCFS should have been a party to the UVEST Agreement. As a result, the three firms agreed to a new first page of the UVEST Agreement that added BLCFS as a party and a new signature page, which was executed by the three parties. The revised UVEST Agreement did not assign BLCFS any rights or duties separate from those of Bankers Life and made all of Bankers Life's rights and duties also apply to BLCFS.

7. Bankers and UVEST terminated the UVEST Agreement effective on or about April 29, 2010.

8. Evidence uncovered during the investigation showed that Bankers screened prospective securities agents, trained new securities agents, conducted periodic training sessions for securities agents, monitored and attempted to increase securities production of securities agents, and played a significant role in determining the compensation of securities agents. Additionally, evidence showed that the involvement of Bankers in securities-related roles led to confusion in the reporting and responsibility hierarchies as between Bankers and the applicable broker-dealer.

9. At no time were the dual agents registered as agents or investment adviser representatives of Bankers Life or BLCFS.

10. From January 1, 2005, through April 29, 2010, Bankers received, on a nationwide basis, a total of approximately $17 million from UVEST under their agreement for variable annuity and securities transactions and investment advice.

CONCLUSIONS OF LAW

1. It is unlawful for a person to transact business in Arkansas as a broker-dealer or agent unless such person is registered under the Act. Ark. Code Ann. § 23-42-301(a).

2. It is unlawful for a person to transact business in Arkansas as an investment adviser or representative without first being registered under the Act, exempt from registration, or a federal covered investment adviser. Ark. Code Ann. § 23-42-301(c).

3. It is unlawful for a registered broker-dealer to employ an unregistered agent, as defined in Ark. Code Ann. § 23-42-102(1)(A), except a nonresident agent who is registered by any other state securities administrator and who effects transactions in Arkansas exclusively with registered broker-dealers. Ark. Code Ann. § 23-42-301(b)(1).

4. By engaging in the conduct set forth above, Bankers acted as an unregistered broker-dealer and investment adviser in Arkansas in violation of Ark. Code Ann. § 23-42-301(a) and (c).

5. Furthermore, by employing or associating with dual agents who were not registered as agents of Bankers, Bankers violated Ark. Code Ann. § 23-42-301(b)(1).

6. The Commissioner may by order deny, suspend, make conditional or probationary, or revoke any registration if he finds that the order is in the public interest and the registrant has engaged in dishonest or unethical practices in the securities business. Ark. Code

Ann. § 23-42-308(a)(1) and (a)(2)(G).

7. By engaging in the conduct set forth above, UVEST materially aided an act, practice, or course of business constituting a violation of the Act. As a result, UVEST engaged in dishonest or unethical practices in the securities business, in violation of Ark. Code Ann. § 23-42-308(a)(2)(G).

8. Whenever it appears to the Commissioner, upon sufficient grounds and evidence satisfactory to the Commissioner, that any person has engaged or is about to engage in any act or practice constituting a violation of the Act, the Commissioner may summarily order the person to cease and desist from the act or practice. Ark. Code Ann. § 23-42-209(a)(1)(A). By engaging in the conduct set forth above, an order to cease and desist against UVEST under Ark. Code Ann. § 23-42-209(a)(1)(A) is appropriate and in the public interest.

9. The informal disposition of allegations which might give rise to a proceeding by settlement or consent is permissible. Ark. Code Ann. §§ 23-42-209(c) and 23-42-308(h).

10. As a result, this Consent Order and the following relief are appropriate and in the public interest.

ORDER

1. UVEST shall cease and desist from materially aiding Bankers in violating the Act;

2. In accordance with the terms of the multistate settlement, UVEST shall pay an amount of $750,000 among the states where dual agents were located during the period from January 1, 2005, through April 29, 2010, allocated according to a schedule provided by the multi-state investigation working group. UVEST shall pay $14,150.94 to the North American Securities Administrators Association ("NASAA") as consideration for the costs associated with

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NASAA's coordination of the collaborative investigatory efforts of the multi-state task force and to further advance the investor protection efforts of NASAA, as Arkansas's portion of the total amount. Such payment shall be made by check to NASAA within ten days from the date this Consent Order is signed by the Commissioner. A copy of the check to NASAA should be sent to the Arkansas Securities Department ("Department") to evidence the payment.

3. If any state securities regulator determines not to accept the settlement offer of UVEST reflected herein, including the amount allocated to the applicable state according to the schedule referenced in paragraph 2 above, the payment to Arkansas set forth in paragraph 2 above shall not be affected; and UVEST shall not be relieved of any of the non-monetary provisions of this Consent Order.

4. UVEST shall not attempt to recover any part of the payments addressed in this Consent Order from dual agents, Bankers, or customers of UVEST.

5. UVEST shall fully cooperate with any investigation or proceeding related to the subject matter of this Consent Order.

6. This Consent Order concludes the investigation by the Department and any other action that the Commissioner could commence under applicable law on behalf of Arkansas as it relates to the violations described above, up to and including activity occurring through April 29, 2010; provided, however, that excluded from and not covered by this paragraph are any claims by the Department arising from or relating to the "Order" provisions contained herein.

7. The Commissioner has agreed to the terms of this Consent Order based on, among other things, the representations made to the Commissioner by UVEST, UVEST's counsel, and the Department's own factual investigation. If payments are not made by UVEST, if UVEST defaults in any of its obligations set forth in this Consent Order, or if any material representations

made by UVEST or UVEST's counsel in this Consent Order are later found to be materially inaccurate or misleading, the Commissioner may vacate this Consent Order, at his sole discretion, upon ten days notice to UVEST and without opportunity for administrative hearing or judicial review, and commence a separate action.

8. Nothing herein shall preclude Arkansas, its departments, agencies, boards, commissions, authorities, political subdivisions and corporations, other than Department and only to the extent set forth herein, (collectively, "State Entities") and the officers, agents or employees of State Entities from asserting any claims, causes of action, or applications for compensatory, nominal and/or punitive damages, administrative, civil, criminal, or injunctive relief against UVEST.

9. The parties admit and acknowledge that the Commissioner has no authority or jurisdiction over any other state or federal agency or regulatory authority. Nonetheless, this Consent Order is not intended by the Commissioner to subject any person to any disqualifications under the laws of the United States, any state, the District of Columbia, Puerto Rico, or the Virgin Islands including, without limitation, any disqualification from relying upon the state or federal registration exemptions or safe harbor provisions.

10. This Consent Order and the order of any other state in related proceedings against UVEST (collectively, the "Orders") shall not disqualify any person from any business that they otherwise are qualified, licensed or permitted to perform under applicable securities laws of Arkansas, and any disqualifications from relying upon Arkansas's registration exemptions or safe harbor provisions that arise from the Orders are hereby waived.

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11. This Consent Order and any dispute related thereto shall be construed and enforced in accordance with, and governed by, the laws of Arkansas without regard to any choice of law principles.

12. This Consent Order shall be binding upon UVEST, its relevant affiliates, successors and assigns as well as to successors and assigns of relevant affiliates with respect to all conduct subject to the provisions above and all future obligations, responsibilities, undertakings, commitments, limitations, restrictions, events, and conditions.

13. Except as set forth above, the Department agrees to take no action adverse to UVEST based solely on the same conduct addressed in this Consent Order. However, nothing in this Consent Order shall preclude the Department from: (a) taking adverse action based on other conduct; (b) taking this Consent Order and the conduct described above into account in determining the proper resolution of action based on other conduct; (c) taking any and all available steps to enforce this Consent Order; or (d) taking any action against other entities or individuals, regardless of any affiliation or relationship between UVEST and the entities or individuals.

IT IS HEREBY ORDERED on this 13th day of December, 2012.

A. Heath Abshure
Arkansas Securities Commissioner

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CONSENT TO ENTRY OF CONSENT ORDER

UVEST Financial Services Group, Inc., by signing below, admits the Findings of Fact set forth above, agrees to the entry of this Consent Order, and waives any right to a hearing or to judicial review.

UVEST Financial Services Group, Inc., states that no promise of any kind or nature whatsoever that is not reflected in this Consent Order was made to it to induce it to enter into this Consent Order and that it has entered into this Consent Order voluntarily.

Kathleen Van Nay-Pineda (name) represents that he or she has been authorized to enter into this Consent Order on behalf of UVEST Financial Services Group, Inc.

UVEST Financial Services Group, Inc.

By: Kathleen Van Nay-Pineda

Title: EVP and Chief Compliance Officer

Date: 12/10/12

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EXHIBIT 4

BEFORE THE ARKANSAS SECURITIES COMMISSIONER
CASE NO. S-10-0060
ORDER NO. S-10-0060-13-OR03

IN THE MATTER OF

CREWS & ASSOCIATES, INC. **RESPONDENT**

CONSENT ORDER

This Consent Order is entered pursuant to the Arkansas Securities Act, codified at Ark. Code Ann. §§ 23-42-101 through 23-42-509 ("Act"), the Rules of the Arkansas Securities Commissioner ("Rules") promulgated under the Act, and the Arkansas Administrative Procedures Act, codified at Ark. Code Ann. §§ 25-15-201 through 25-15-219, in accordance with an agreement by and between the staff of the Arkansas Securities Department ("Staff") and Crews & Associates, Inc. (CRD# 8052) ("Crews"), in full and final settlement of all claims that could be brought against Crews by the Staff on the basis of the facts set forth herein.

Crews admits the jurisdiction of the Act and the Arkansas Securities Commissioner ("Commissioner"), waives its right to a formal hearing, and without admitting or denying the findings of fact or conclusions of law made herein, consents to the entry of this Order and agrees to abide by its terms in the settlement of any possible violations committed by Crews concerning the matters detailed in this Order.

FINDINGS OF FACT

INTRODUCTION

1. Between August 2005 and December 2008, Bamco Gas, LLC ("Bamco"), a Delaware limited liability company ("LLC") engaged in the oil and gas industry; Ernest Ancin Bartlett, III (CRD# 1581684) ("Ernest Bartlett" or "Bartlett"); Howard Miller Appel (CRD# 1293152) ("Howard Appel" or "Appel") and related persons or entities conducted

securities offerings of senior debentures ("Senior Bamco Debentures") and subordinate debentures ("Subordinate Bamco Debentures") (collectively "Bamco Debentures") collateralized by the revenue and assets of Bamco, including its oil and gas properties, which raised a total of $17 million from investors in Alabama, Arkansas, Colorado, Connecticut, Florida, Kentucky, Kansas, Louisiana, Massachusetts, Michigan, Ohio, Oklahoma, Texas, Washington, West Virginia, and Wisconsin. Crews served as the private placement agent ("Placement Agent") for Bamco for the Bamco Debenture offerings and, as such, was responsible for and conducted the due diligence investigation into Bamco, drafted and revised the offering documents ("private placement memoranda" or "PPMs") for the Bamco Debenture offerings, and sold all of the Bamco Debentures to accredited investors and qualified institutional buyers ("QIBs").

2. The PPM for the Senior Bamco Debenture offering failed to include certain information regarding some "principal interest holders" ("Principal Members") of Bamco which controlled Bamco, including the significant regulatory and legal backgrounds of the control persons of certain Principal Members. The PPM for the Subordinate Bamco Debenture offering failed to include equivalent information regarding the same Principal Members, failed to adequately describe the use of the Subordinate Bamco Debenture proceeds, and failed to disclose the improper dispensation of assets by Bamco after the Senior Bamco Debenture offering and the encumbrances upon assets sought to be obtained with the Subordinate Bamco Debenture proceeds.

3. As detailed in this Order, Crews did not conduct a reasonable due diligence investigation into Bamco and its related persons or entities and, as a result, sold the Bamco Debentures without an adequate understanding of Bamco, the Bamco Debenture offerings, or whether Crews' recommendations of the Bamco Debentures were suitable investments for at

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least some investors under a reasonable-basis suitability analysis. Crews ignored a number of red flags and certain information about Bamco, Bamco's control persons, and the Bamco Debentures which should have alerted Crews as the Placement Agent for the Bamco Debentures to both the duty of additional inquiries and investigation into Bamco and the Bamco Debentures, and the potential need for disclosure of additional facts or clarification of information submitted to its customers regarding the Bamco Debentures. Crews' failure to conduct a reasonable due diligence investigation into Bamco and the Bamco Debentures ultimately caused the distribution of inaccurate and insufficient information to its customers.

4. Furthermore, Crews failed to reasonably supervise its agents by failing to enforce its internal written supervisory procedures ("WSP") for the approval for sale of, recommendation to its customers of, and reasonable due diligence investigation into the Bamco Debenture offerings made pursuant to the United States Securities and Exchange Commission's ("SEC") Regulation D ("Reg D") under Section 4(2) of the Securities Act of 1933 ("Securities Act"), codified at 17 C.F.R. §§ 230.501 through 230.508, commonly known as Reg D offerings or private placement offerings.

RESPONDENT

5. Crews is an Arkansas corporation and wholly-owned subsidiary of First Security Bancorp of Searcy, Arkansas, with its principal place of business and sole office of supervisory jurisdiction located in Little Rock, Arkansas. Crews has been registered with the Arkansas Securities Department ("Department") as a broker-dealer and investment adviser since March 25, 1980, and maintains Arkansas branch offices in Cabot, Clarksville, Conway, Fayetteville, Heber Springs, Little Rock, Maumelle, Mountain Home, Mountain View, Searcy, and Springdale.

Additionally, Crews has ten out-of-state branch offices located in Alabama, Louisiana, Maryland, Mississippi, Missouri, Ohio, Texas, and West Virginia.

6. Crews and its agents involved in the matters set forth herein have fully cooperated with the Staff throughout its investigation and, without admitting or denying the findings of fact and conclusions of law contained in this Order, consents to the entry of this Order. Crews and its agents involved in the matters set forth herein have assured the Staff that appropriate steps have been taken to prevent further violations of the Act and Rules.

Bamco Debenture Offerings

7. Bamco is a private, manager-managed Delaware LLC, which was formed in 2004 to participate in various areas of the oil and natural gas industry, including acquiring, exploring, drilling, and developing oil and gas properties; and acquiring ownership interests in oil and gas properties, projects, or entities. Its focus was to acquire exploration and development assets in the Texas Gulf Coast Region. During the time period set forth herein, Bamco's main office was located at 111 Presidential Boulevard, Suite 158, Bala Cynwyd, Pennsylvania 19004 ("Main Office Address"). Bamco registered as a foreign LLC in Arkansas on June 22, 2006, which status, according to the Arkansas Secretary of State, was subsequently revoked on December 31, 2007.

8. Bamco offered and sold two series of Bamco Debentures. On or about August 9, 2005, Bamco closed a private placement offering of Series 2005, $10,000,000 8.25% Debentures –the Senior Bamco Debentures. Similarly, on or about March 28, 2008, Bamco closed a subsequent private placement offering of Series 2008, $7,000,000 10.00% Subordinate Debentures – the Subordinate Bamco Debentures. On August 16, 2005, and April 14, 2008, respectively, Bamco filed Notices of Sales of Securities on SEC Form D ("Form D") with the

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Department for the Senior Bamco Debenture offering and the Subordinate Bamco Debenture offering. Bamco made the Form D filings pursuant to Ark. Code Ann. §§ 23-42-501(3) and 23-42-509(c)(1) in order to offer or sell the Bamco Debentures in and from Arkansas as federal covered securities in private placement offerings.

9. The Senior Bamco Debentures were issued by Bamco under a trust indenture in 2005 ("2005 Trust Indenture") to raise funds to pay off the outstanding balance of prior debts or loans from Texas Capital Bank headquartered in Dallas, Texas, in the amount of $1,836,543.00; RMS Advisors, Inc. ("RMS Advisors"), described in the PPM for the Senior Bamco Debenture offering as a Bamco "related party" in the amount of $1,253,341.00; FEQ Gas, Inc. ("FEQ Gas"), a related party, in the amount of $56,338.00; DDH Resources II, Limited ("DDH Resources"), in the amount of $734,956.00; and Westwood AR, Inc., a related party, in the amount of $310,389.00; provide working capital for Bamco; fund a debt service reserve account in the amount of $750,000.00; and pay the costs of the issuance of the Senior Bamco Debentures. The Senior Bamco Debenture holders possessed a security interest in and senior lien on Bamco's revenues, any property or funds held by the trustee for the Bamco Debentures ("Trustee") pursuant to the 2005 Trust Indenture, and all other assets of Bamco existing at the time of the offering or acquired after the offering.

10. The Subordinate Bamco Debentures were issued by Bamco pursuant to a supplemental trust indenture in 2008 ("2008 Trust Indenture") (collectively with the 2005 Trust Indenture, "Trust Indentures") to provide approximately $6,079,350.00 in working capital that Bamco expected to use to acquire a 45% interest in Freedom Pipeline, LLC ("Freedom Pipeline"), a Texas LLC, from its current owner, Striker Petroleum, LLC ("Striker"), a Texas LLC also engaged in the oil and gas industry; provide approximately $500,000.00 for working

capital purposes; and pay the costs of issuance of the Subordinate Bamco Debentures. The Subordinate Bamco Debenture holders obtained a subordinate security interest in Bamco's revenues, the property or funds held by the Trustee pursuant to the 2008 Trust Indenture, and all other assets of Bamco then held or acquired after the offering, including the 45% interest in Freedom Pipeline that was to be acquired with the proceeds of the Subordinate Bamco Debentures.

11. On December 3, 2009, the SEC filed a complaint against Striker in the United States District Court for the Northern District of Texas, Dallas Division, for violations of the federal securities fraud provisions found in Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], Section 10b of the Securities Exchange Act of 1934 [15 U.S.C. § 78j(b)] ("Exchange Act"), and Rule 10b-5 of the Exchange Act [17 C.F.R. 240.10b-5] in the offer and sale of debentures by Striker collateralized by oil and gas properties, which raised approximately $57 million from investors across the country from September 2006 through September 2008. Specifically, the offering materials for the debentures were alleged to have included misstatements and omissions regarding Striker's assets, earnings, use of investor proceeds, and employment of an independent trustee for the debentures. The SEC's action resulted in agreed permanent injunctions against Striker and its principals, the freezing of Striker's assets, and the appointment of a receiver, attorney Dennis L. Roossien, Jr. ("Roossien") of Munsch Hardt Kopf & Harr, P.C., of Dallas, Texas. *See SEC v. Striker Petroleum, LLC, Mark S. Roberts, and Christopher E. Pippin*, Case No. 3:09-CV-2304-D (N.D. Tex. Dec. 3, 2009).

12. Roossien's *Receiver's First Interim Report* filed with the court on July 30, 2010, stated, in pertinent part, as follows:

> The structure of these [debenture] offerings was such that Striker was the manager of each of the issuer entities, and Reichmann Petroleum Corp. would serve as the

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> operator of the properties. Later offerings raised another $57 million, and they were premised upon the use of funds to drill new wells on essentially the same leases and to fund the acquisition of a pipeline [, held by Freedom Pipeline, LLC,] that served certain of the properties. In these offerings, Striker itself was the issuer of what were called the debenture investments . . . .
>
> Parallel to Mark Roberts [, Striker's president, director, and sole owner ("Mark Roberts" or "Roberts")], *there were others raising money on the same assets under the Bamco banner, principally by Earnest [sic] Bartlett and Howard Appel*. The extent of this fundraising is unknown, but there were at least two debenture offerings that were similar to the Striker debenture offerings, and *the land records show that Bamco also received percentage interests in the same wells in which Striker had percentage interests. Additionally, there were multiple transfers of the oil and gas properties and the pipeline back and forth between Striker and Bamco*. (Emphasis added).

In 2010, after notification of Bamco's potentially-overlapping interests in Striker's oil wells, the Staff initiated an investigation into Bamco and the circumstances surrounding the sales of the Bamco Debentures.

13. Bamco sold the Bamco Debentures through Crews, which served as the Placement Agent for the Senior Bamco Debenture offering and the Subordinate Bamco Debenture offering, using PPMs that were prepared by Bamco, Crews, and Crews' outside counsel. As the Placement Agent, Crews functioned as the exclusive marketer and seller of the Bamco Debentures and was responsible for conducting the due diligence investigation into Bamco and the Bamco Debentures. As a result, Crews was considerably involved with Bamco, Bamco's affiliates and control persons, and the issuance of the Bamco Debentures. Through 17 of its agents, Crews sold the Bamco Debentures to accredited investors and QIBs. Crews received a Placement Agent fee of $600,000.00 for the Senior Bamco Debenture offering and $525,000.00 for the Subordinate Bamco Debenture offering, totaling $1.125 million, from which Crews' agents received a total of approximately $666,900.00 in commissions from the sales of the Bamco Debentures.

14. First Security Bank of Searcy, Arkansas, an Arkansas state bank; wholly-owned subsidiary of First Security Bancorp; and affiliate of Crews, served as the Trustee for the Bamco Debentures. The Senior Bamco Debentures were sold pursuant to the 2005 Trust Indenture dated August 1, 2005, between Bamco and the Trustee. The Subordinate Bamco Debentures were sold pursuant to the 2008 Trust Indenture dated March 15, 2008, between Bamco and the Trustee. Bamco and the Trustee also entered into certain corresponding continuing disclosure agreements ("Disclosure Agreements") for the Bamco Debenture offerings.

15. FEQ Gas, a manager-managed Delaware LLC, served as the manager of Bamco. The manager of FEQ Gas is FEQ Investments, Inc. ("FEQ Investments") (collectively with FEQ Gas, "FEQ Entities"), a Delaware corporation. Ernest Bartlett, a resident of Little Rock, Arkansas, serves as the president of FEQ Investments and as the principal for both FEQ Entities. Bartlett was given substantial authority to manage Bamco on a daily basis through his control of the manager entity, FEQ Gas. Furthermore, Bartlett was a Principal Member with control of Bamco, owning approximately 8.32% of Bamco through his control of the FEQ Entities – FEQ Gas, which owned approximately 2.03% of Bamco, and FEQ Investments, which owned approximately 6.29% of Bamco.

16. Howard Appel is a resident of Pennsylvania. For the Senior Bamco Debenture offering, Appel served as an "Authorized Company Representative" of Bamco and as Bamco's Secretary. Appel served as the general partner of 1025 Partners, LP ("1025 Partners"), a Delaware limited partnership ("LP"); as the president of RMS Advisors, a Nevada corporation described by Bamco as a related party; and as the president of DDH Resources, an entity of unidentified origin. RMS Advisors served as the manager of various entities, including, but not

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limited to, RMS Gas, LLC ("RMS Gas"), a Delaware LLC; and PHT Gas, LLC ("PHT Gas"), a Delaware LLC.

17. During the Bamco Debenture offerings, Appel was the single largest Principal Member with control of Bamco, owning an approximate 27.29% interest in Bamco through his control of 1025 Partners, which owned approximately 10.04%; RMS Gas, which owned approximately 7.99%; PHT Gas, which owned approximately 5.71%; 1025 Investments, Inc. ("1025 Investments"), a Nevada corporation for which Appel served as president and director, which owned approximately 1.99%; and RMS Advisors, which owned an approximate 1.56% interest in Bamco. Appel also controlled or had interests in numerous other entities with interests in Bamco and Bamco related parties, several of which shared Bamco's Main Office Address. Bartlett, Appel, and entities with which they are associated have been involved in a myriad of complex securities offerings spanning an undetermined period of time.

18. During the time period set forth herein, Bartly Williams Barnwell (CRD# 1413781) ("Bart Barnwell" or "Barnwell") and David Paul Crews (CRD# 1382369) ("David Crews" or "D.Crews") were agents of Crews. Barnwell and D.Crews had been actively engaged in oil and gas projects prior to the Bamco Debenture offerings and had personally invested in various oil and gas interests. During the time period set forth herein, due to Barnwell's and D.Crews' background in the oil and gas sector, Barnwell and D.Crews were the agents at Crews who typically fielded requests from outside parties to put together oil and gas financing projects.

19. Barnwell and D.Crews were personally acquainted with Ernest Bartlett, Howard Appel, and other Principal Members of Bamco and became aware of Bamco through these relationships. In 2005, Bartlett contacted Barnwell and D.Crews about coordinating the Senior

Bamco Debenture offering for Bamco, which subsequently led to the Subordinate Bamco Debenture offering in 2008, as well.

20. Crews' WSP state that Crews' Chief Executive Officer, Rush Flowers Harding, III (CRD# 501131) ("Rush Harding" or "Harding"), is the registered principal with supervisory responsibility over Crews' participation in private placement offerings. Harding also serves as the direct supervisor for Barnwell, D.Crews, and all of the agents who sold the Bamco Debentures. Harding approves Crews' participation in private placement offerings based on certain information provided by issuers of securities, like Bamco, and issuers' counsel. Harding is to either conduct the due diligence investigations for the private placement offerings or engage counsel or otherwise qualified persons to conduct the due diligence investigations. Moreover, Harding documents Crews' due diligence file, establishes any limitations on private placement offerings, and decides what information to provide to Crews' selling agents. For this reason, Barnwell and D.Crews approached Harding about putting together the initial Senior Bamco Debenture offering for Bamco. Harding subsequently approved Crews' participation in and coordination of the Senior Bamco Debenture offering and the Subordinate Bamco Debenture offering for Bamco as the Placement Agent.

21. Barnwell and D.Crews sold the majority of the Bamco Debentures for Crews. Barnwell made approximately 71 sales of the Bamco Debentures, totaling approximately $346,255.00 in selling commissions. D.Crews made approximately 135 sales of the Bamco Debentures, with selling commissions totaling approximately $202,701.00. The remaining Bamco Debentures were sold by 15 other agents at Crews, including Harding, for total of approximately $118,000.00 in commissions.

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22. In addition to selling the Subordinate Bamco Debentures in 2008, Barnwell and D.Crews formed Completion Consultants, LLC ("Completion"), an Arkansas LLC, on March 17, 2008. Both Barnwell and D.Crews served as 50% owners and co-managers of Completion. As Completion, Barnwell and D.Crews executed an "Agreement of the Servicing Agent" for the benefit of Crews and the Trustee, and acted as the servicing agent for the Subordinate Bamco Debenture offering. Barnwell's and D.Crews' participation in Completion was proposed to, disclosed to, and permitted by Harding as an outside business activity.

23. As Completion, Barnwell and D.Crews split a fee of $172,500.00 from the Subordinate Bamco Debenture proceeds for assisting with the due diligence investigation for the Subordinate Bamco Debenture offering, reviewing drafts of the PPM for the Subordinate Bamco Debenture offering for revision, and providing financial consulting services and post-closing compliance consulting and assistance to Bamco. The post-closing compliance consulting and assistance conducted by Barnwell and D.Crews included, but was not limited to, assisting Bamco in complying with the 2008 Trust Indenture and meeting Bamco's obligations under the Disclosure Agreements with the Trustee. The PPM for the Subordinate Bamco Debenture offering disclosed the responsibilities of Completion, Barnwell's and D.Crews' concurrent involvement in Completion and role as selling brokers for the Subordinate Bamco Debentures, and Completion's receipt of the $172,500.00 fee for acting as the servicing agent for the Subordinate Bamco Debenture offering.

24. Barnwell and D.Crews performed similar tasks for the Senior Bamco Debenture offering, but with no formal agreement or supplemental compensation received for the equivalent work in 2005. For the Bamco Debenture offerings, Barnwell and D.Crews were in regular contact with Bamco and Bamco's affiliates and control persons, and had continuous

access to information about Bamco, the Bamco Debentures, and Bamco's compliance with the Trust Indentures and other agreements with the Trustee.

25. Paul Edward Phillips (CRD# 3019520) ("Paul Phillips" or "Phillips"), an agent of Crews, led the due diligence investigation into Bamco for the Bamco Debenture offerings. Crews' due diligence team included Phillips, Barnwell, D.Crews, additional analysts at Crews, and outside legal counsel, in addition to Bamco and Bamco's legal counsel and experts. Unlike Barnwell and D.Crews, the Bamco Debenture offerings were Phillips' first oil and gas financing transactions. During the time set forth herein, Phillips did not own oil and gas interests and had never invested in the area. Rush Harding also served as Phillips' direct supervisor.

Bamco Receivership

26. Frank Faust ("Faust"), Senior Vice President & Trust Officer for the Trustee, sent a letter to Bamco on February 25, 2009, reminding Bamco of the following requirements under the Trust Indentures:

> Pursuant to Section 5.01 of the [Trust] Indentures, "[a]ll Revenues shall, as and when received by [Bamco], be deposited into the Revenue Fund." To date, while Bamco has not missed a payment on any of the debentures issued under the [Trust] Indentures, [Bamco] has not been following these agreed upon procedures. I have to insist that Bamco immediately commence depositing its Revenues as and when received into the Revenue Fund . . . .

Faust also detailed certain additional, monthly deposits required by Bamco. Regarding additional irregularities in Bamco's compliance with its agreements with the Trustee, Faust stated as follows:

> Bamco has also not delivered certain required financial disclosure, including the 12/31/07 Year End Reviewed Statement and the 3/31/08, 6/30/08 and 9/30/08 unaudited quarterly statements . . . .
>
> With the giving of notice and the passage of time, upon the direction of the debenture holders, it would be incumbent upon me to declare a default as a result of the above violations of the [Trust] Indentures.

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Please provide assurance to me that Bamco will bring itself into compliance with the Indentures immediately.

27. On May 4, 2009, the Trustee filed a complaint against Bamco in the Pulaski County Circuit Court in Little Rock, Arkansas, which initiated a receivership action against Bamco and requested the appointment of a receiver over Bamco's assets. *See First Sec. Bank v. Bamco Gas, LLC*, Case No. 60CV-09-3218 (Ark. Sixth Jud. Cir. – Div. 2; May 4, 2009). In its complaint, the Trustee alleged, in pertinent part, as follows:

> Bamco Gas has not provided the Financial Statements, accounting information, and disclosures contractually required by the [2005] Trust Indenture.
>
> . . . .
>
> Despite its contractual obligations in the Trust Indenture and demands made by the Trustee, Bamco Gas has refused to deposit all its revenues into the Revenue Fund.
>
> Bamco Gas is in violation of its contractual trust obligations to deposit all of its revenues into the Revenue Fund at First Security Bank.
>
> It is believed, and therefore alleged, that the revenues of Bamco Gas, which are the security for its Debenture obligations under the Trust Indenture, are being held and transferred in derogation of the Trustee's security interest and its contractual rights under the Trust Indenture.
>
> It is believed, and therefore alleged, that the Trustee's security interest in the revenues of Bamco Gas is being impaired by such funds being transferred and depleted outside of the Revenue Fund, and its protective provisions established by the Trust Indenture.
>
> . . . .
>
> Despite its contractual obligations in the Trust Indenture and demands made by the Trustee, Bamco Gas has failed and refused to provide Trustee the Financial Statements, accounting information, and disclosures.

28. The last semiannual distribution payments to Subordinate Bamco Debenture holders occurred on or about December 1, 2008, less than nine months after the Subordinate Bamco Debenture offering, and to Senior Bamco Debenture holders on or about June 1, 2009.

29. The court appointed Llano Consolidated Resources, LLC ("Llano"), a Texas LLC managed by Steven E. Looper ("Looper") of Amarillo, Texas, as the receiver for Bamco on May 6, 2009, tasked with taking charge and possession of the offices, assets, facilities, records, correspondence, and books of Bamco; collection of Bamco's revenues and gross receipts; and other managerial and operational duties. On May 13, 2010, the court removed Llano and Looper as Bamco's receiver for failure to abide by the court's orders and appointed Alan Wayne Barksdale (CRD# 4538369) of Little Rock, Ernest Bartlett's step-son-in-law, as the successor receiver for Bamco ("Barksdale" or "Successor Receiver").

30. Barksdale was registered with the Department as an agent with Crews from July 12, 2002, through September 11, 2003; as an agent with Stephens, Inc. ("Stephens") from September 15, 2003, through October 30, 2003; and, again, as an agent with Crews from January 22, 2004, through June 18, 2010. From on or about May 17, 2004, through June 16, 2004, Barksdale served a 31-day suspension from association with any NASD-registered broker-dealer and was fined $5,000.00 by the National Association of Securities Dealers, Inc. ("NASD"), now known as the Financial Industry Regulatory Authority ("FINRA"), the federal self-regulatory organization for securities firms in the United States, for soliciting an attorney to make contributions to an issuer with which Stephens was engaging in municipal securities business at the time.

31. The June 1, 2010 *Sworn Affidavit of Alan Barksdale* as Successor Receiver stated as follows:

> Prior to my appointment as the Successor Receiver, I was employed as an investment banker by Crews & Associates, Inc. . . . I was a Director in the Capital Markets Group . . . [and] resigned from my position at Crews & Associates effective June 1, 2010.
>
> . . . .

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> . . . I was employed by Crews & Associates during the time Crews & Associates placed the Bamco 2005 Debentures and the Bamco 2008 Debentures, and was aware of Crews & Associates' representation in the matter and its appointment as the Placement Agent. However, I was not part of the team which worked on the [Bamco Debentures].
>
> . . . .
>
> My first contact with Bamco was in late 2008 when Mr. Bartlett asked me, as a personal favor, to look at some documents relating to transactions among Bamco, Striker . . . MSB Energy, Inc. ("MSB"), and Freedom Pipeline . . . . I told my future father-in-law that the transactions I looked at gave me concerns and suggested that he seek counsel. I also advised Crews & Associates and First Security Bank. Upon learning of the transactions that Bamco was involved in, Crews & Associates asked me to look into the transactions involving Striker, MSB, Freedom, and the principals of those entities. From my review I advised Crews & Associates that I thought Bamco was operating its business in a manner that put Bamco's assets at serious risk of dissipating. Thereafter, First Security Bank initiated this case resulting in the appointment of Llano as the Receiver for Bamco.

32. In the *Trustee's Eighth Notice to Debenture Holders of Bamco Gas, LLC* ("Trustee's Eighth Notice"), dated September 21, 2011, the Trustee disclosed the following information which had come to its attention regarding Barksdale and his role as Successor Receiver:

> Alan Barksdale, Successor Receiver, was a principal and shareholder in Black Rock Capital, LLC, a Texas Corporation ("Black Rock"), which was believed to have been formed to acquire certain oil and gas working interests. Black Rock has acquired working interests in oil and gas wells in which [Bamco] has interests. Alan Barksdale may be involved in other companies that act as operating companies managing wells in which [Bamco] has working interests.
>
> Through a Reorganization and Share Exchange Agreement, all of the shares of Black Rock have been acquired by Red Mountain Resources, Inc., (f/k/a Teaching Time, Inc.), a corporation formed in the State of Florida . . . .
>
> . . . It appears from [a Form 8-K report filed by Red Mountain with the SEC] that Alan Barksdale is the largest shareholder in Red Mountain with 18,000,000 shares, and that Mr. Barksdale is the new proposed chief executive officer.

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> Red Mountain has submitted proposals to acquire all of the assets of [Bamco].

The Trustee further encouraged the Bamco Debenture holders to review RMR's filings with the SEC and to take into consideration Barksdale's involvement with RMR, Black Rock, and other entities controlling the oil and gas wells in which Bamco also owned interests and its potential effect on the assessment and valuation of Bamco's assets.

33. On June 15, 2012, the Successor Receiver filed his *Motion of Receiver for Approval of (A) Sale Transaction, (B) Proposed Distribution of Receivership Assets, and (C) Related Relief* ("Receiver's Motion") with the court. On October 1, 2012, the court entered an *Order Granting Motion of Receiver for Approval of: (A) Sale Transaction; (B) Proposed Distribution of Receivership Assets; and (C) Related Relief* ("Approval Order"). Specifically, the Receiver's Motion detailed the following proposed sale transaction of Bamco's assets:

> The [Successor] Receiver, Mr. Barksdale, is also the Chairman and Chief Executive Officer of, and the owner of the largest equity interest in, Red Mountain Resources, Inc. ("RMR"), a [Florida corporation and] publicly traded entity. RMR is engaged in the oil and gas exploration and production business . . . .
>
> Mr. Barksdale, on behalf of RMR, is proposing to purchase . . . from [Bamco's] Receivership Estate [assets] . . . all of [Bamco's] rights, title and interest in the Lease Assets[, Bamco's fractional interests in oil and gas leases located in the state of Texas;] Whitewater Pipeline Interest[, oil and gas working interests in an exploration project located in Delta and Mesa Counties, Colorado, and the corresponding pipeline assets;] and [Bamco's] Miscellaneous Assets[, including office furniture, computers, and related equipment worth approximately $10,000.00] . . . . As consideration for the purchase of [Bamco's assets,] RMR will issue, and/or cause to be delivered, to the Receivership Estate 5,375,000 shares of RMR's common stock . . . .
>
> . . . .
>
> The [Successor] Receiver makes no representations or warranties with respect to the value of the Asset Sale Shares and would state, for informational purposes only, that as of the close of trading on May 21, 2012, RMR's stock closed at $1.42 per share.

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. . . .

> . . . [T]he [Successor] Receiver proposes that once RMR has tendered the Asset Sale Shares to the Receiver at the close of the Sale Transaction (which tender shall occur within five (5) days of the final approval of the Sale Transaction by the Court), the Receiver shall deliver the Asset Sale Shares to the Trustee within three (3) business days thereafter for distribution to the Class 1 Secured Senior Debenture Claims, followed by distributions to the Class 2 Secured Subordinate Debenture Claims.

34. Pursuant to the Approval Order, Barksdale as the Successor Receiver received the 5,375,000 shares of RMR, the corporation for which he also serves as the president, chief executive officer, and chairman, in exchange for Bamco's assets. The Successor Receiver subsequently distributed the shares of RMR and certain funds to the remaining Bamco Debenture holders. On March 25, 2013, the Trustee filed a *Motion Seeking Approval of Final Distribution and Dismissing Receivership* requesting that the court dismiss the Bamco receivership due to the fact that all assets of Bamco have been sold and distributed to the holders of the Senior Bamco Debentures. The court subsequently entered an *Order Granting Approval of Final Distribution* on March 29, 2013.

Bamco Private Placement Memoranda

35. The PPMs for the Senior Bamco Debenture offering and the Subordinate Bamco Debenture offering failed to disclose certain information regarding Bamco, Bamco's affiliates and control persons, and the Bamco Debentures, including, but not limited to, the following:

a. Bartlett Background –

i. Bartlett was registered with the Department as a broker-dealer agent in Arkansas with two separate securities firms from December 5, 1986, until June 1, 1988. Through a decision rendered on June 14, 1989, the NASD censured Bartlett, fined him $15,000.00, and barred him from association with any NASD-

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registered broker-dealer in any capacity. The sanctions were based on findings that Bartlett exercised discretionary power over three customer accounts, and purchased and sold securities without the prior written consent from the customers. NASD also found that Bartlett used high-pressure sales tactics and made exaggerated and misleading statements to customers to solicit their business. Additionally, Bartlett failed to respond to NASD's requests for information pursuant to the NASD Rules of Fair Practice.

ii. The following information about Bartlett was included in the PPMs for the Senior Bamco Debenture offering and the Subordinate Bamco Debenture offering:

> Ernest Bartlett has been a self-employed investment banker and private investor in the oil and gas industry for over 5 years. He has engaged in investment banking services for private and publicly held companies for over 20 years. He has performed investment banking services for two publicly held companies in the oil and gas industry, Touchstone Resources USA, Inc. (otc:tsnu) and Endeavour International Corp. (amex:end), who have raised in excess of $100 million of capital in the public market for oil and gas exploration and development. He has acted as advisor for numerous oil and gas projects in the private sector that have raised equity investment [sic] of over $100 million in oil and gas projects in the private sector, and that have contributed to the discovery of in excess of 1 Trillion cubic feet of natural gas and equivalents.

iii. Bartlett's securities-industry background and adverse regulatory history were not disclosed to Bamco investors in the PPMs for the Senior Bamco Debenture offering or the Subordinate Bamco Debenture offering.

b. Appel Involvement and Background –

i. Appel has never been registered with the Department in any capacity but was registered with the NASD and other states' securities regulators as a broker-

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dealer agent with five different broker-dealer firms from on or about August 1984 through December 1990. From on or about February 1985 through March 1990, Appel was registered as an agent with and served as the president and registered principal of the broker-dealer firm Bailey, Martin & Appel ("BMA"). In 1991, the NASD permanently barred Appel from associating with any NASD-registered broker-dealer and fined him $125,000.00 resulting from Appel's participation in a fraudulent scheme to manipulate the price of the stock of a publicly-traded company. BMA, acting through Appel, effected principal sales of equity securities, agency cross transactions, and municipal securities to public customers at unfair prices. BMA also failed to make certain disclosures on confirmations, sold unregistered shares of common stock to customers, and sold limited partnership interests on an "all or none" basis and caused funds to be disbursed from the escrow account before the contingency was met.

ii. Appel faced numerous other regulatory actions and customer complaints from his time as a registered broker-dealer agent. Appel's most recent customer complaint from 1995 resulted in an NASD arbitration decision in December 1997 finding Appel jointly and severally liable to a former customer for $44,500.00 plus interest and over $12,600.00 in attorney's fees for allegations including breach of fiduciary duty, breach of contract, fraud and deceit, negligent misrepresentation, breach of duty of reasonable care, respondeat superior, agency, and breach of duty to supervise.

iii. In *United States v. Howard M. Appel*, Case No. 1:04-cr-00505-JG (E.D.N.Y. filed May 26, 2004), Appel pleaded guilty to the felonies of conspiracy

to commit securities fraud and conspiracy to commit money laundering on September 21, 2004. On February 26, 2008, he was sentenced to one year and one day in prison and three years of supervised release. Appel was ordered to pay $2,883,037.99 in restitution to approximately 68 individuals, which was scheduled to be paid at 20% of Appel's net monthly income to begin immediately after his release. Appel served his prison sentence from June 12, 2008, through April 24, 2009. The record of Appel's prosecution, conviction, and sentencing was sealed by the United States District Court for the Eastern District of New York until November 2008. However, Appel's conviction and the ultimate service of his prison sentence shortly after the beginning of the Subordinate Bamco Debenture offering were known to Bartlett and others involved in the Subordinate Bamco Debenture offering.

iv. On June 12, 2008, the exact date Appel entered prison, Appel emailed several individuals, including, but not limited to, Bartlett. Appel referenced and specified certain funds owed to Bamco at that time as a result of various transactions. Additionally, Appel encouraged individuals needing to reach him to either email him or coordinate with Bartlett, as he would be "tough to reach."

v. Pursuant to an invoice from Appel as president of RMS Advisors dated August 3, 2005, RMS Advisors received a wired payment of $1,253,341.92 from the Trustee from the proceeds of the Senior Bamco Debenture offering. Pursuant to another invoice signed by Appel as president of DDH Resources dated August 3, 2005, DDH Resources received a payment of $734,956.71 from the Trustee from the proceeds of the Senior Bamco Debentures. The separate

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invoices listed the address for RMS Advisors and DDH Resources as Bamco's Main Office Address. Additionally, the PPMs for the Senior Bamco Debenture offering and the Subordinate Bamco Debenture offering disclosed that Bamco had a 30.94% ownership interest in PHT Gonzalez Partners, LP ("PHT Gonzalez"), a Delaware LP. Appel was the president of PHT Gonzalez. Certain bank statements show that Bamco made payments on Appel's credit cards and indicate various debits and credits to and from entities affiliated with Appel during the time period set forth herein. Appel also signed multiple Bamco-related contracts and documents on behalf of Bamco related parties and entities.

vi. In the PPM for the Senior Bamco Debenture offering under the heading "Related Parties," Bamco states that "[w]hile not an affiliate of Touchstone Resources USA, Inc. [("Touchstone")] . . . , [Bamco] has overlapping interests with Touchstone. Touchstone is the operator of [Bamco's] PHT Vicksburg Project, and other projects, discussed [in the PPM]. Touchstone is a leading-edge oil and gas exploration company targeting high-potential assets." Under the heading "Joint Operating Agreements/Joint Ventures," the PPM for the Senior Bamco Debenture offering further discloses that "Touchstone and [Bamco] entered into a joint venture in April 2004 . . . . Touchstone is a participant in and is the operator of certain of [Bamco's] wells." Additional documents filed with the SEC regarding Cygnus Oil & Gas Corporation ("Cygnus"), a Delaware corporation formerly known as Touchstone, indicate that as of on or about July 3, 2006, Appel as president of HMA Advisors, Inc. ("HMA"), a Delaware corporation, was the beneficial owner of with voting and/or dispositive power

over 300,000 shares of Cygnus stock. HMA Advisors has also shared Bamco's Main Office Address.

vii. Bamco maintained a brokerage account at Crews solely for the purpose of purchasing Senior Debentures in the secondary market with its excess capital. Bamco's account profile and account forms at Crews completed on or about March 22, 2007, listed both Bartlett and Appel at Bamco's Main Office Address as the contacts for Bamco's account. Barnwell was listed as the agent at Crews responsible for Bamco's account. Appel was Crews' second point of contact for Bamco, in case Bartlett was unavailable at any time.

viii. Additionally, a June 2, 2005, letter in Crews' due diligence file from W.D. Von Gonten & Co. ("W.D. Von Gonten"), a Texas petroleum engineering firm, and addressed to Appel at Bamco Associates, LLC [sic], at Bamco's Main Office Address, indicates that Appel requested an estimate of Bamco's oil and gas reserves and revenues as of May 1, 2005. The findings of the W.D. Von Gonten reserve report prepared pursuant to Appel's request and a similar request also submitted by Bartlett were ultimately included in the PPM for the Senior Bamco Debenture offering, although Appel is not specifically identified in the PPM.

ix. Despite Appel's involvement with Bamco and involvement with and control of numerous entities affiliated with or related to Bamco, Appel's connection to Bamco and adverse legal and regulatory history were not disclosed in the PPMs for the Senior Bamco Debenture offering or the Subordinate Bamco Debenture offering.

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c. Background of Stephen P. Harrington –

i. Stephen Patrick Harrington (CRD# 1075628) ("Stephen Harrington" or "Harrington") is a resident of Pennsylvania.

ii. In the PPMs for the Senior Bamco Debenture offering and the Subordinate Bamco Debenture offering, Harrington is disclosed as a Principal Member of Bamco with control of Bamco, owning an approximate 5.2% interest in Bamco through his control of SPH Investments, Inc., a Pennsylvania corporation for which Harrington served as the president and which shares Bamco's Main Office Address, which owned approximately 4.29%; and SPH Profit Sharing Plan f/b/o Harrington, which owned approximately 0.91%.

iii. Along with Appel, Harrington faced regulatory sanctions by the NASD in the early 1990s. There is a history of interrelated entities, securities offerings, and transactions between Bartlett, Appel, and Harrington. This information about Harrington was not disclosed in the PPMs for the Senior Bamco Debenture offering or the Subordinate Bamco Debenture offering.

d. Inconsistent Disclosure of Principal Members –

i. The PPMs for the Senior Bamco Debenture offering and the Subordinate Bamco Debenture offering included a description of Bamco's Principal Members, which, as stated, controlled a majority of the company at the time the Bamco Debentures were sold. A total of ten Principal Members were listed with Bamco ownership levels of between 0.91% and 14.5%. For entities controlled by certain individuals, such as Ernest Bartlett's control of FEQ Gas (2.03% owner) and FEQ

Investments (6.29% owner), the PPMs specifically disclose the name of the individuals with control.

ii. As stated above, Appel served as the general partner of 1025 Partners, and as the president of RMS Advisors, a Bamco related party. RMS Advisors served as the manager of RMS Gas and PHT Gas. Both 1025 Partners (10.04% owner) and RMS Gas (7.99% owner) are disclosed as Principal Members, yet Appel's control of these entities is not similarly disclosed when compared to the other Principal Members of Bamco. Additionally, 1025 Investments owned 1.99%, and PHT Gas owned a 5.71% interest in Bamco. These entities are not disclosed as Principal Members or mentioned at all in the PPMs for the Senior Bamco Debenture offering or the Subordinate Bamco Debenture offering, despite the fact that entities owning as much as 0.91% are disclosed, along with their control persons. Through Appel's control of these entities, Appel owned an approximate 27.29% interest in Bamco and was effectively the Principal Member controlling the largest percentage interest in Bamco, over 10% more than any other Principal Member.

iii. The inconsistencies in the PPMs for the Senior Bamco Debenture offering and the Subordinate Bamco Debenture offering regarding Bamco's Principal Members were acknowledged by Crews and brought to the attention of other parties involved in the Bamco Debenture offerings. However, no changes were made to the PPMs, and specifically, Appel's involvement was never disclosed.

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e. Snyder Loan –

i. Jim C. Snyder ("Snyder") is a resident of Seattle, Washington. Pursuant to a promissory note dated March 7, 2008, Snyder granted a bridge loan to Striker ("Striker Bridge Loan") in the aggregate principal amount of $5.5 million to pay certain debts to Freedom Pipeline, which was secured by a lien on the following property:

> *All of the membership interests in Freedom Pipeline, LLC*, . . . owned by [Striker], currently consisting of a ninety percent (90%) ownership interest, and all attachments, increases, revision, or additions thereto, granted to [Striker] under the Second Amended Chapter 11 Plan of Reorganization of Freedom Pipeline, LLC as modified, dated October 17, 2007. (Emphasis added).

ii. On March 28, 2008, Snyder entered into a subordination of the Striker Bridge Loan in which, in consideration for payment of all existing indebtedness under the Striker Bridge Loan, Snyder subordinated his security interest in Freedom Pipeline. In the subordination agreement, Snyder also loaned Bamco, Freedom Pipeline, and Striker the additional sum of $3 million for which, in part, Snyder received a subordinate lien on the assets of Bamco. On March 28, 2008, Bamco was to acquire 45% of Freedom Pipeline from Striker, which would subsequently be pledged to the Trustee as collateral for the Subordinate Bamco Debentures pursuant to the terms of the 2008 Trust Indenture.

iii. The PPM for the Subordinate Bamco Debenture offering stated as follows regarding the Striker debt:

> From the proceeds of the Subordinate Debentures, [Bamco], directly or indirectly and in cooperation with Striker, will acquire an interest in Freedom Pipeline, which was originally owned by Reichmann Petroleum Corp. ("Reichmann"). Reichmann filed for bankruptcy on December 8, 2006, and has

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continued to operate its business and manage its properties, assets and affairs as a debtor-in-possession.

On December 27, 2006, an involuntary chapter 7 bankruptcy was initiated against Freedom and on January 8, 2007, the bankruptcy court entered an Agreed Order for Relief. A settlement agreement was reached in October 2007 between Freedom, Striker, Texas Wyoming Drilling, Inc. and Energy Transfer Fuel, LP ("ETF") resolving the various claims, objections and disputes asserted in connection with Freedom's bankruptcy case. The bankruptcy court approved the Settlement by Order dated October 18, 2007. Pursuant to the October 18, 2007 Settlement Order, Freedom filed an amended plan of reorganization ("Freedom Plan") *setting forth certain payments to Reichmann, including a $5,000,000 promissory note in satisfaction of Reichmann's claims.* The Freedom Plan was approved by the bankruptcy court on October 17, 2007.

Pursuant to the settlement, Reichmann received on October 30, 2007, a promissory note (the "Promissory Note") from Striker in the original principal amount of $5,000,000, accruing interest at a rate of nine percent (9%) per annum from the date of the Promissory Note. The Promissory Note had a ninety (90) day maturity date and is secured by the ninety percent (90%) of the stock of Freedom currently owned by Striker pursuant to the Freedom Plan with ten percent (10%) owned ETF . . . .

The Promissory Note was to originally mature on January 28, 2008. Striker requested and Reichmann agreed to a short extension of the Promissory Note which was to mature on March 9, 2008. *Striker paid this Promissory Note on March 8, 2008.* (Emphasis added).

iv. The delivery instructions in the closing transcripts for the Subordinate Bamco Debenture offering stated that the proceeds from the sale of the Subordinate Bamco Debentures were to be distributed as follows:

1) accrued interested in the amount of $25,277.78 shall be deposited into the 2008 Subordinate Debenture Fund;

2) $6,079,350.00 shall be deposited in the Freedom Pipeline Project Fund;

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3) Upon approval from the Special Counsel, from the Freedom Pipeline Project Fund, *pay the Promissory Note payable to Mr. Jim C. Snyder in the amount of $5,522,150 representing principal plus accrued interest*;

4) Upon payment of the Promissory Note, the Trustee shall transfer from the Freedom Pipeline Project Fund an amount of $5,000 into the Costs of Issuance Account for payment of Bamco's counsel fee payable to Fox Rothschild LP; and

5) $760,000 shall be deposited in the Cost of Issuance Account within the 2008 Subordinate Debenture Fund to pay the costs of issuance as set forth on Schedule A attached hereto; (Emphasis added).

v. On March 28, 2008, Snyder sent a statement to the Trustee for the amount due to pay the Striker Bridge Loan, which included the principal balance of $5.5 million and the interest due through March 28, 2008, of $22,150.00, for a total of $5,522.150.00. Documents show that the Trustee wired Snyder a total of $5,522,150.00 on March 28, 2008, to pay the Striker Bridge Loan.

vi. The PPM for the Subordinate Bamco Debenture offering provided to investors did not disclose that Striker was able to pay off its debt to Reichmann through the Striker Bridge Loan. Also, the PPM did not disclose that the bulk of the proceeds from the sale of the Subordinate Bamco Debentures were to be used to pay Snyder for the Striker Bridge Loan debt, in order for Bamco to acquire the 45% interest in Freedom Pipeline from Striker.

vii. Snyder was considered a "Class A" member of Bamco during the Bamco Debenture offerings, having invested approximately $968,000.00 and owning an approximate 3.22% interest in Bamco. Additionally, Snyder loaned Bamco $2 million pursuant to a 12% promissory note on or about August 2006. While the notes to Bamco's December 31, 2006, financial statements attached to the

PPM for the Subordinate Bamco Debenture offering disclose this promissory note under the heading "Notes Payable – Related Party," no additional information is disclosed in regarding Snyder, his investments in Bamco, or the Striker Bridge Loan by Snyder.

f. Jedco Lien on Freedom Pipeline –

i. James E. Davison ("James Davison" or "Davison") is a resident of Ruston, Louisiana. During the time period set forth herein, Davison served as the member of Jedco Properties, LLC ("Jedco"), a Louisiana LLC. Bart Barnwell and Davison are friends who were introduced by Ernest Bartlett in 2005. Additionally, Davison has been a client of Crews since 2005. Prior to and following the Subordinate Bamco Debenture offering, Barnwell and Davison discussed Bamco's intent to purchase 45% of Freedom Pipeline from Striker with the proceeds of the Subordinate Bamco Debenture offering.

ii. Effective as of October 9, 2007, Jedco agreed to loan Freedom Pipeline $7.8 million ("Jedco Debt") pursuant to a 6% interest promissory note secured by the total of Freedom Pipeline's assets at the time, including the pipeline which was to be acquired with the proceeds from the sale of the Subordinate Bamco Debentures. As stated in the promissory note, the total of the $7.8 million was to be loaned to Freedom Pipeline in two advances – the first advance in the principal amount of $6 million on October 9, 2007, and the second advance of $1.8 million through several subsequent payments. The promissory note was signed by Mark Roberts as Freedom Pipeline's president; by Bartlett for Bamco, as a member of Freedom Pipeline; and by Roy Patton for Energy Transfer Fuel, LP, a Delaware

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LP, as a member of Freedom Pipeline. A deed of trust for the Jedco Debt was recorded in Johnson County, Texas, on January 27, 2009. A Uniform Commercial Code financing statement was also filed with Texas Secretary of State.

iii. The promissory note for the Jedco Debt stated as follows regarding Bamco:

> Notwithstanding anything contained in this Note or any other Loan Documents . . . to the contrary, no portion of any principal amount of the indebtedness evidenced by this Note (including, but not limited to, the [two advances to Freedom Pipeline], *include any of the $1,133,000 loan advanced by [Jedco] to Bamco Gas, LLC.* (Emphasis added).

Specifically regarding the $1.133 million loan referenced in the promissory note for the Jedco Debt, pursuant to another promissory note dated December 10, 2008, Davison loaned an additional $1.133 million directly to Bamco ("Bamco Loan"). The promissory note for the Bamco Loan stated as follows:

> [James Davison] has extended a loan to [Bamco] in the principal amount of this Note, *to enable [Bamco] to pay the principal and accrued interest due and owing under certain debentures issued by [Bamco].* This Note evidences and sets forth the terms of [Bamco]'s obligation to repay said loan to [James Davison]. Among [Bamco]'s assets, [Bamco] owns and has the right to own and control a total of 90% of the membership interests in Freedom Pipeline . . . , with the remaining 10% of the membership interests in Freedom Pipeline owned by Energy Transfer Corp. [sic] [Bamco] *acknowledges that a certain loan in the principal amount of $6,000,000 previously extended by [James Davison] or an affiliate thereof is secured by and convertible into a 45% interest in Freedom Pipeline.* (Emphasis added).

iv. The promissory note for the Bamco Loan was signed by Bartlett for Bamco. Additionally, Bartlett signed on behalf of PHT Whitewater, LLC ("PHT Whitewater"), a Delaware LLC; and FEQ Realty, LLC ("FEQ Realty"), a

Delaware LLC sharing Bamco's Main Office address, both of which are managed by FEQ Gas, which is managed by FEQ Investments, for which Bartlett serves as the president. PHT Whitewater and FEQ Realty agreed to unconditionally guarantee and act as sureties for the complete and timely payment and performance of the promissory note for the Bamco Loan. Bartlett, for FEQ Realty, also agreed to pledge and grant a second mortgage on FEQ Realty's leasehold interests in approximately 1,200 acres in Stone County, Arkansas, and all improvements thereon, as collateral security for FEQ Realty's guarantee, and further agreed to execute additional mortgages, instruments, and other documents as Davison required. Also signing for FEQ Gas, Bartlett pledged FEQ Gas's then-held 14.64% interest in Bamco as additional collateral for the issuance of the promissory note for the Bamco Loan. The Trustee's records show an incoming wire transfer of $1.133 million from Davison to the Trustee on December 2, 2008.

v. A series of emails between several individuals including, but not limited to, Bart Barnwell, Paul Phillips, Stephen Harrington, and Ryan Lee, an individual affiliated with HMA Advisors for which Appel serves as president, from December 1 – 10, 2008, show the revision of and the ultimate execution of the promissory note for the Bamco Loan by Ernest Bartlett. In an email on December 10, 2008, Barnwell indicated he would contact Bartlett for his signatures on the promissory note for the Bamco Loan.

vi. On or about April 22, 2008, Bamco and Striker had entered into an Amended and Restated Purchase and Sales Agreement, which was to convey certain Bamco assets to Striker and which stated as follows:

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> [Striker] or its successor *Assure Energy, Inc. ("AEI")* shall assume and/or refinance [Bamco] bonds in the principal amount of approximately $13.5 million payable to Crews & Associates, Inc., *and the obligation to James Davison in the amount of $6 million plus interest currently secured by the assets of Freedom Pipeline.* (Emphasis added).
>
> [Striker] shall cause AEI to issue to [Bamco] or its designees 5,947,249 shares of common stock of AEI, representing approximately 29.8% of the shares of AEI being issued to [Striker] and its affiliate in connection with the contribution of assets described in Section 1.04 [of this Amended and Restated Purchase and Sales Agreement].

vii. As early as April 30, 2008, Crews was in negotiations to act as the Placement Agent for an offering of approximately $25 million in AEI debentures that were to be issued in conjunction with a proposed consolidation of entities including, but not limited to, Striker, Bamco, and Freedom Pipeline, with and into AEI. The AEI debenture project would have consisted of the refinancing of the Bamco Debentures and the financing of additional properties and facilities of AEI. There is no evidence that AEI issued debentures for the above-stated purpose or that Crews acted as the Placement Agent for AEI at any time.

viii. The PPM for the Subordinate Bamco Debenture offering did not disclose this proposed consolidation of Striker, Bamco, and Freedom Pipeline, or the potential refinancing of the Bamco Debentures that was to occur after the closing of the Subordinate Bamco Debenture offering. Additionally, the PPM for the Subordinate Bamco Debenture offering did not disclose that the refinancing of the Bamco Debentures would be used to repay James Davison for the Jedco Debt.

ix. In the Trustee's Eighth Notice dated September 21, 2011, the Trustee included the following statement provided by the Successor Receiver's counsel regarding Freedom Pipeline:

> Freedom Pipeline has a secured creditor, Jedco Properties, LLC . . . who is owed approximately $8 million . . . . The debt owed to Jedco is secured by Freedom's pipeline assets. There is a Promissory Note, recorded Deed of Trust, Assignment of Rents and Security Agreement, and filed UCC Statement. To the best of the Successor Receiver's knowledge, the Jedco secured debt has not been serviced for a couple of years. For certain, Freedom has not had the cash to service the debt since the Successor Receiver was appointed. Recently the Successor Receiver was contacted by Jedco and informed that Jedco had made a decision to initiate foreclosure proceedings.
>
> Freedom's financial situation is as follows: Since the Successor Receiver's appointment [in May 2010], Freedom has been able to cash flow itself on a current operational basis. The problem is that freedom has a large "legacy debt" issue, consisting of both secured and unsecured debts that were left over from the Freedom Bankruptcy and/or accrued thereafter. These "legacy debts" are in addition to the Jedco secured debt . . . .
>
> . . . .
>
> Accordingly, Freedom owes various creditors "legacy debts" in an aggregate of no less than $600,000 and which could be as much as nearly $2 million. At this time, Freedom does not have the means to service the Jedco secured debt or satisfy the "legacy debts" and does not anticipate that it would have the financial ability to do so in the near future. . . . The Successor Receiver believes that at this time it is reasonable to assume that the value of Freedom's assets, at best, may be just about equal to the Jedco secured debt, but likely under.
>
> Given Freedom's current financial condition as described above, the Successor Receiver believes, in his business judgment, that it would be reasonable to abandon Freedom and allow Jedco to proceed with the foreclosure. Further, the Successor Receiver does not intend to take any action to stop the foreclosure proceedings, once initiated. . . .

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x. Additionally, in the receivership action against Bamco, the Successor Receiver stated as follows in his June 15, 2012, Receiver's Motion:

> The Trustee informed the Receiver that, prior to the appointment of the Receiver, the Trustee was unaware of the existence of the Jedco Debt. The Trustee stated that in 2008, at the time of the issuance of the Subordinate Debentures, Bamco did not disclose the Jedco Debt. The Receiver is informed that upon learning of the Jedco Debt and the foreclosure proceeding from the Receiver, the Trustee provided notice to the holders of the Debentures of the newly disclosed information . . . .
>
> On November 1, 2011, Texas Midstream [Acquisition Corp, LLC, an assignee of Jedco and holder of the Jedco Debt,] foreclosed on Freedom's assets. As a result of the foreclosure, Freedom no longer has any remaining assets of value and its operations have ceased. Accordingly, the Receivership Estate's interest in Freedom, consisting of an approximately 90% membership interest, is of no marketable value.

xi. On January 7, 2009, Barksdale, while still an agent at Crews, had forwarded an email from Stephen Harrington to individuals including, but not limited to, Bart Barnwell and Paul Phillips, with a subject line reading, "Loan Documents for $7.8 Million Loan to Freedom." Barksdale stated that he had "attached the documents they want Ernest to sign." The original email to Harrington from a Texas attorney stated that "[a]t the request of Earnest [sic] Bartlett, attached are execution copies of the following documents . . . ." Nine documents were attached to the email for execution by Bartlett, including, but not limited to, the promissory note, deed of trust, and security agreement for the Jedco Debt, all effective on October 9, 2007. Further, the email to Harrington stated that "Mr. Bartlett is signing these documents this afternoon [January 6, 2009] and delivering them to me in trust pending Bamco's release of the signed documents. . . ."

xii. As stated in the PPM for the Subordinate Bamco Debenture offering, the proceeds from the sale of the Subordinate Bamco Debentures were to be used directly or indirectly to purchase 45% of Freedom Pipeline. Furthermore, the PPM describes Freedom Pipeline and the properties that the pipeline encompasses. However, the PPM for the Subordinate Bamco Debenture offering failed to disclose that Bamco, Crews, and other parties to the transaction were aware of the Jedco Debt, and that they would likewise be involved in negotiations to refinance the Bamco Debentures in the principal amount of approximately $13.5 million payable to Crews and the obligation to Davison/Jedco in the amount of $7.8 million secured by the assets of Freedom Pipeline.

g. Waiver by the Senior Bamco Debenture Holders –

i. Between the Senior Bamco Debenture offering and the Subordinate Bamco Debenture offering, Bamco violated a provision of the 2005 Trust Indenture regarding the dispensation of certain assets. Specifically, the 2005 Trust Indenture stated as follows regarding the dispensation of assets:

> Sale of Assets. From and after the issuance of any of the Debentures and for so long as any of the Debentures are Outstanding, [Bamco] shall not sell, lease or otherwise dispose of or transfer assets, properties, rights or claims, including, without limitation, any Facilities, *in excess of One Hundred Thousand Dollars ($100,000) in the aggregate in any twelve-month period*, or sell, lease or otherwise dispose of or transfer any of its assets, properties, rights or claims not in the ordinary course of business, unless such sale, lease or other disposition is at not less than fair market value and the proceeds thereof are deposited in the Revenue Fund and applied to the redemption of Debentures . . . . (Emphasis added).

ii. While reviewing Bamco's financial statements prior to the Subordinate Bamco Debenture offering, Crews and the Trustee discovered that Bamco had not

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complied with the "Sale of Assets" provision of the 2005 Trust Indenture and was effectively in default due to Bamco's failure to make required deposits of proceeds from the sale, lease, or other dispensation of its assets. Subsequently, as required by the 2005 Trust Indenture, Crews, the Trustee, and Crews' outside counsel obtained the required waiver of the defaults from 25% of the Senior Bamco Debenture holders.

iii. On March 5, 2008, three Senior Bamco Debentures holders constituting the necessary 25% executed waivers of the Bamco default, less than a month before the closing of the Subordinate Bamco Debenture offering on March 28, 2008. The waivers stated as follows:

> [S]ince January 1, 2006, [Bamco] has sold, leased or otherwise disposed of assets and received cash proceeds upon the sale, lease or other disposition thereof of $6,302,563.00 with such amounts being received during 2007; and . . . since January 1, 2006, [Bamco] has, however, also acquired additional oil and gas interests at a cost of $14,123,671 such that [Bamco's] net book value of proved and unproved oil and gas properties totaled $10,999,235 and $5,234,571, respectively, as of September 30, 2007.

iv. While the PPM for the Senior Bamco Debenture offering included language regarding the requirements for the dispensation of assets by Bamco, the PPM for the Subordinate Bamco Debenture offering did not disclose Bamco's inappropriate dispensation of assets and the subsequent waiver of Bamco's default of the 2005 Trust Indenture by the Senior Bamco Debenture holders.

Due Diligence Investigation into Bamco

36. Crews and its agents, in coordination with Crews' outside counsel and Bamco, conducted the due diligence investigation into Bamco and the Bamco Debentures; prepared,

commented on, and revised the PPMs for the Senior Bamco Debenture offering and the Subordinate Bamco Debenture offering; and sold all of the Bamco Debentures. Furthermore, Crews' agents formed Completion, which acted as the Servicing Agent for the Subordinate Bamco Debenture offering. This relationship afforded Crews additional access to information about Bamco, the Bamco Debentures, and Bamco's compliance with the Trust Indentures, and provided extra compensation to the agents involved in Completion.

37. Crews' due diligence responsibilities for the Bamco Debentures were heightened by the fact that Crews served as the Placement Agent for the Bamco Debentures issued by Bamco, an entity with a limited operating history, numerous related party transactions, and with individuals with a history of significant regulatory actions in positions of authority; assisted in preparing and revising the PPMs for the Bamco Debenture offerings; had extraordinary access to information about Bamco; sold all of the Bamco Debentures; and implied that it was an informed broker of the Bamco Debentures. A broker-dealer must understand the products that it sells and the potential risks and rewards of the products, which includes, but is not limited to, the duty to conduct a reasonable due diligence investigation into an issuer and an issuer's management. The fact that Crews sold the Bamco Debentures to accredited investors and QIBs did not alleviate Crews' responsibility to comply with certain regulatory requirements for the sale of private placement offerings.

38. The information that was not disclosed in the PPMs for the Senior Bamco Debenture offering and the Subordinate Bamco Debenture offering correlates to the mismanagement of Bamco and the ultimate failure of Bamco to make certain, timely payments to the Trustee. Additionally, a reasonable due diligence investigation by Crews into the Bamco Debentures would have uncovered the inconsistencies in the PPMs and misinformation provided

by Bamco and its control persons and, ultimately, provided directly to Bamco's investors. Instead, Crews overlooked certain red flags and adverse information about Bamco of which it was aware and failed to include this information in the PPMs for the Bamco Debenture offerings, which resulted in inaccurate PPMs being provided to its customers.

39. A reasonable due diligence investigation would have discovered the Jedco Debt, which ultimately led to the loss of all value for the Subordinate Bamco Debenture holders. Crews and Crews' outside counsel conducted lien searches to evaluate potential security interests on Bamco's assets and any assets to be acquired by Bamco. These searches did not uncover the Jedco Debt, since the deed of trust was not recorded until January 27, 2009. However, Crews did not provide documentation that Bamco was ever directly asked about its debts or specifically questioned regarding the existence of any liens or other security interests on its current or future assets. Further, it appears that Crews, its agents, and its outside counsel had knowledge of the Jedco Debt and failed to ensure that this information was disclosed to its investors.

40. Crews' due diligence file provided to the Staff contained very little due diligence documentation for the Bamco Debenture offerings. In advance of the Senior Bamco Debenture offering, on April 14, 2005, Crews and Crews' outside counsel sent a nine-page "Confidential Initial Due Diligence and Document Request List" ("Due Diligence Request") to counsel for Bamco at that time. However, the Due Diligence Request was never fulfilled, and Crews did not receive the bulk of the information it requested from Bamco and its control persons.

41. For example, the following information was specifically requested from Bamco regarding the management and control persons of Bamco:

> Please provide a biographical sketch of each *key officer and personnel* of Bamco Gas . . . and a description of their position and value to Bamco Gas, including: Ernest Bartlett[;] Howard Appel . . . [; and the following] Principal Members (owners of 5% or more [of Bamco]): William Miller[;] FEQ Investments,

> Inc.[;] . . . 1025 Partners, LP[;] PHT Gas, LLC [;] FEQ Gas, LLC [; and] RMS Gas, LLC . . . . (Emphasis added).

Crews' due diligence file did not include the requested biographical sketches, and Crews was unable to provide officer and director questionnaires, résumés, or other evidence of investigations into the background of Bartlett, as president of Bamco's managing member; Appel; or other related persons, other than Bartlett's biography included in the PPMs for the Senior Bamco Debenture offering and the Subordinate Bamco Debenture offering. Additionally, despite Crews' awareness of Appel's involvement with Bamco and Bamco related parties or entities, Crews did not thoroughly investigate Appel, his legal and regulatory background, or the details of Appel's role in Bamco.

42. Crews did not send a similar Due Diligence Request in advance of the Subordinate Bamco Debenture offering in 2008. Furthermore, Crews did not conduct a reasonable investigation into Striker, Freedom Pipeline, or any related persons or entities, other than the information provided by Bamco, despite the extensive involvement of these entities in the Subordinate Bamco Debenture offering. Striker played a principal role in the Freedom Pipeline transaction and had been involved in prior transactions with Bamco, as well. As stated above, a reasonable investigation was likewise not conducted into any potential liens or encumbrances upon Freedom Pipeline, notwithstanding Crews' knowledge of opposing claims.

43. At the time of Senior Bamco Debenture offering in 2005, Bamco was a small, fairly new entity with an untested background. A more thorough due diligence investigation is required when securities are issued by smaller, recently-established entities. However, Crews and its agents relied exclusively on information provided by Bamco, its counsel, and its experts and failed to appropriately follow up on certain red flags in information provided, or in the deficiency of information provided, by Bamco for the Bamco Debenture offerings. Additionally,

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Crews failed to properly document the due diligence investigation that was conducted, leaving gaps in the information and unanswered questions from Bamco. Likewise, Crews did not conduct a reasonable, follow-up due diligence investigation for the Subordinate Bamco Debenture offering, despite the fact that Bamco had defaulted on its obligations in the 2005 Trust Indenture for the Senior Bamco Debenture offering prior to the Subordinate Bamco Debenture offering. As a result, Crews failed to conduct a reasonable and independent due diligence investigation of Bamco and the Bamco Debentures prior to their offer and sale.

Bamco Debenture Settlement

44. As stated previously in this Order, Crews has thoroughly cooperated with the Staff throughout its investigation of Bamco and the Bamco Debenture offerings. Additionally, Crews has undertaken to resolve the losses experienced by its customers who purchased the Bamco Debentures.

45. Crews made a tender offer to the Bamco Debenture holders ("Tender Offer") in an attempt to make the investors whole. As of the date of this Order, pursuant to the Tender Offer, Crews has bought 93.57% of the issued and outstanding Senior Bamco Debentures for cash at $.70 on the dollar against the then-outstanding balance of the Senior Bamco Debentures. When added to the payments previously received by Bamco prior to the default, the Senior Bamco Debenture holders who accepted the Tender Offer have received, on average, approximately 114.01% of their original investment total. Likewise, Crews has bought 97.61% of the issued and outstanding Subordinate Bamco Debentures for cash at $.4357 on the dollar against the then-outstanding balance of the Subordinate Bamco Debentures. When added to the previous payments by Bamco prior to default, the Subordinate Bamco Debenture holders who

accepted the Tender Offer have received, on average, approximately 100.01% of their original investment total.

APPLICABLE LAW

46. Broker-dealers have a "special relationship" with their customers and, as a result, implicitly represent to their customers that they have an "adequate and reasonable" basis for their recommendations of securities, which is based upon a reasonable investigation. *Hanly v. SEC*, 415 F.2d 589, 596-97 (2d. Cir. 1969). Furthermore, "[Broker-dealers] may not blindly rely upon the issuer for information concerning a company [when performing a due diligence investigation], although the degree of independent investigation which must be made by a [broker-]dealer will vary in each case." *Id.* at 597; *see Everest Sec., Inc. v. S.E.C.*, 116 F.3d 1235, 1239 (8th Cir. 1997) ("[R]eliance on others does not excuse [a broker-dealer's] and [agent's] own lack of investigation."). A more thorough investigation is required for "securities issued by smaller companies of recent origin." *Id.* A broker-dealer's duty to conduct a reasonable due diligence investigation is not alleviated when it sells securities exclusively to "sophisticated or knowledgeable" investors.

47. Each broker-dealer and agent shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business. The following conduct shall be considered grounds for denial, suspension, or revocation of a broker-dealer or agent registration, in addition to such other unethical practices within the meaning of Ark. Code Ann. § 23-42-308:

a. Recommending to a customer the purchase, sale, or exchange of any security when a broker-dealer or agent does not 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 their other security holdings and as to their financial situation and needs, or encouraging a customer to invest beyond their immediate financial resources. Rule 308.01(d) of the Rules. Likewise, NASD Conduct Rule 2310 (Recommendations to Customers – Suitability), then in effect and since superseded by FINRA Conduct Rule 2111, sets forth equivalent suitability requirements for broker-dealers and their agents when recommending the purchase, sale, or exchange of securities to their customers.

b. Failing to comply with any applicable provision of the conduct rules, any applicable fair practice or ethical standard, or any other applicable law or rule related to conducting business involving securities promulgated by the SEC or any self-regulatory organization. Rule 308.01(x) of the Rules.

c. The unfair, misleading, or unethical practices set forth under Rule 308.01 of the Rules are not exclusive of other activities, such as non-disclosure or misstatement of material facts, which shall be considered grounds for suspension or revocation and the Commissioner may suspend or revoke a registration when necessary or appropriate in the public interest. Rule 308.01(y) of the Rules.

48. As reiterated in certain FINRA-guidance notices (as cited in this paragraph, "FINRA Notices") to its broker-dealer members on the topics of due diligence and suitability, broker-dealers and their agents must conduct a "reasonable-basis" suitability analysis to determine whether an investment is suitable for at least some investors, and a "customer-specific" suitability analysis to determine whether an investment is suitable for a particular, individual customer to whom the broker-dealer will recommend it. A reasonable due diligence investigation is a fundamental component of a broker-dealer's reasonable-basis suitability

analysis, as a broker-dealer must thoroughly understand the products it sells, including any potential risks and rewards of the investment. *See, e.g.*, FINRA Regulatory Notice 10-22, *Obligation of Broker-Dealers to Conduct Reasonable Investigations in Regulation D Offerings* (April 2010); NASD Notice to Members 05-18, *Private Placements of Tenants-in-Common Interests* (March 2005); NASD Notice to Members 03-71, *NASD Reminds Members of Obligations When Selling Non-Conventional Investments* (November 2003); NASD Notice to Members 03-07, *NASD Reminds Members of Obligations When Selling Hedge Funds* (February 2003).

49. Additionally, FINRA Notice 10-22 states that, in order to fulfill their suitability responsibilities, broker-dealers should conduct a reasonable due diligence investigation into the issuer and its management, the issuer's business prospects, the assets held by or to be acquired by the issuer, the use of the proceeds of the offering, and the claims being made by the issuer. Additionally, subsequent offerings may require additional due diligence. Broker-dealers who help prepare PPMs for private placement offerings are held to a higher reasonableness standard with regard to their due diligence investigations, and any potential gaps or omissions in investigations by assisting counsel or experts must be assumed by the broker-dealer.

50. NASD Conduct Rule 3010 (Supervision) describes the supervisory requirements of broker-dealers and requires that broker-dealers establish, maintain, and enforce a system, including corresponding written procedures, to supervise the activities of its agents and employees that is reasonably designed to achieve compliance with state and federal securities laws and regulations. This duty includes broker-dealers' adequate supervision of the due diligence investigations of securities they sell and all necessary suitability analyses prior to the recommendation of securities to customers.

51. The Commissioner may by order deny, suspend, make conditional or probationary, or revoke any registration if he finds that the order is in the public interest and the registrant has engaged in dishonest or unethical practices in the securities business or has failed reasonably to supervise the agents or employees of the broker-dealer. Ark. Code Ann. § 23-42-308(a)(1), (a)(2)(G) and (J).

52. Whenever it appears to the Commissioner, upon sufficient grounds or evidence satisfactory to the Commissioner, that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of the Act, except the provisions of Ark. Code Ann. § 23-42-509, or any rule or order under the Act, he may summarily order the person to cease and desist from the act or practice. Ark. Code Ann. § 23-42-209(a)(1)(A).

53. The Commissioner may fine any broker-dealer or agent up to $10,000.00 or an amount equal to the total amount of money received in connection with each separate violation. Ark. Code Ann. § 23-42-308(g)(1).

54. Nothing in Ark. Code Ann. § 23-42-308 shall prohibit or restrict the informal disposition of a proceeding or allegations which might give rise to a proceeding by settlement or consent. Ark. Code Ann. § 23-42-308(h).

55. The Commissioner may apply to the Pulaski County Circuit Court to temporarily or permanently enjoin an act or practice that violates the Act and to enforce compliance with the Act or any rule or order under the Act without issuing an order under Ark. Code Ann. § 23-42-209(a)(1) or (a)(2). Ark. Code Ann. § 23-42-209(a)(3)(B).

CONCLUSIONS OF LAW

56. Crews violated NASD Conduct Rule 2310 (Recommendations to Customers – Suitability), Ark. Code Ann. § 23-42-308(a)(2)(G), and Rules 308.01(d) and (x) of the Rules by

recommending its customers purchase the Bamco Debentures after Crews failed to conduct a reasonable due diligence investigation for the Senior Bamco Debenture offering or the Subordinate Bamco Debenture offering. Crews did not have an adequate and reasonable basis for believing that the recommendations of the Bamco Debentures were suitable for at least some customers of Crews. As a result, the Bamco Debentures were not suitable for Crews' customers under a reasonable-basis suitability analysis.

57. Crews violated Ark. Code Ann. § 23-42-308(a)(2)(G) and Rule 308.01(y) of the Rules when Crews failed to disclose certain information about Bamco, Bamco's control persons, and the Bamco Debentures, including, but not limited to, the inconsistent disclosure of Bamco's Principal Members, including Howard Appel; the Striker Bridge Loan; the Jedco Debt; and the waiver by the Senior Bamco Debenture Holders, which was not adequately and more thoroughly investigated and which was not included in the PPMs for the Bamco Debentures.

58. With respect to the Bamco Debenture offerings, Crews failed to enforce a supervisory system reasonably designed to enable Crews and its agents to achieve compliance with applicable securities laws, rules, and regulations. In addition, the violations discussed in paragraphs 56 and 57 resulted, in part, from Crews' supervisory failures. Crews' failure to reasonably supervise the Bamco Debenture offerings is in violation of NASD Conduct Rule 3010 (Supervision), Ark. Code Ann. § 23-42-308(a)(2)(G) and (J), and Rule 308.01(x) of the Rules.

59. Pursuant to Ark. Code Ann. § 23-42-209(a)(1)(A), Crews should be ordered to cease and desist from further violations of the Act and Rules, including, but not limited to, the violations of the Act and Rules detailed herein.

OPINION

60. This Order is in the public interest. The facts set out in paragraphs 1 through 45 support the violations of the Act and Rules set out in paragraphs 46 through 59.

ORDER

By agreement and with consent of the Staff, Crews, and Crews' authorized representatives, IT IS HEREBY ORDERED:

1. Crews shall cease and desist from further violations of Ark. Code Ann. § 23-42-308(a)(2)(G) and (J); and Rule 308.01(d), (x), and (y) of the Rules;

2. In recognition of Crews' efforts to repurchase the Bamco Debentures from its customers and its donation of $150,000.00 to the North American Securities Administrators Association[1] ("NASAA") to advance the training and investor-protection programs offered by NASAA, there will be no fine;

3. Upon the Staff's request, for one calendar year from the date of this Order, Crews shall notify the Department in writing of any and all private placement offerings for which it acts as the Placement Agent and shall provide the following information to the Department:

a. A copy of the PPM for the offering and any and all additional disclosure materials provided to its customers;

b. A list of Crews' selling agents for the offering and their supervisors;

[1] Organized in 1919, NASAA is the oldest international organization dedicated to investor protection and serves as the voice of securities agencies responsible for grassroots investor protection and efficient capital formation. NASAA's membership consists of securities administrators in the 50 states, the District of Columbia, Canada, Mexico, Puerto Rico and the U.S. Virgin Islands.

c. A copy of the full due diligence file for the offering, which shall include, but not be limited to, a list of the agents at Crews who conducted the due diligence investigation, including the agents responsible for presenting the offering to Crews for approval, and the supervisors for the due diligence investigation; and

d. Any and all additional information the Department may require after review of the above-mentioned materials provided by Crews; and

4. Prior to the entry of this Order, Crews revised its WSP in an effort to address regulatory notices issued by FINRA and the issues outlined in this Order regarding Crews' role in the Bamco Debenture offerings. Within 30 days from the date of this Order, Crews shall submit to the Department the name of an independent broker-dealer supervisory compliance expert ("Expert") accompanied by a curriculum vitae and such other information as the Department may request. Within 60 days of the approval of the Expert by the Department, the Expert shall submit to the Department an opinion that the portion of Crews' WSP then in effect which addresses private placement offerings is in a form which is consistent with industry standards and compliant with relevant FINRA conduct rules, the Act, and the Rules, accompanied by copies of the applicable portions of Crews' WSP. The Department shall be notified, in writing, of any and all of the Expert's recommendations to Crews, if any, and Crews' subsequent implementation of the recommendations.

Crews & Associates, Inc. hereby agrees to the entry of this Consent Order; consents to all terms, conditions, and orders contained therein; and waives any right to an appeal from this Order.

Rush Flowers Harding, III (CRD# 501131)
Chief Executive Officer
Crews & Associates, Inc.

7/05/13
Date

APPROVED AS TO FORM:

G. Michael Millar
Counsel for Crews & Associates, Inc.
Millar Jiles, LLP

7/9/13
Date

APPROVED AS TO FORM
AND CONTENT:

Amber E. Crouch
Staff Attorney
Arkansas Securities Department

July 9, 2013
Date

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EXHIBIT 5

BEFORE THE ARKANSAS SECURITIES COMMISSIONER
CASE NO. S-12-0134
ORDER NO. S-12-0134-12-OR01

IN THE MATTER OF:

BANKERS LIFE AND CASUALTY COMPANY
AND BLC FINANCIAL SERVICES, INC. **RESPONDENTS**

CONSENT ORDER

WHEREAS, state regulators from multiple jurisdictions conducted coordinated investigations of Bankers Life and Casualty Company ("Bankers Life") and BLC Financial Services, Inc. ("BLCFS") (collectively, "Bankers") to determine whether Bankers should have been registered as a broker-dealer and investment adviser between January 1, 2005, and December 2, 2011; and

WHEREAS, the investigators determined that Bankers has acted as a broker-dealer and investment adviser in those jurisdictions without being registered, exempt from registration, or a federal covered investment adviser, and has employed or associated with agents and investment adviser representatives who were not so registered on behalf of Bankers; and

WHEREAS, Bankers has engaged in similar conduct in Arkansas, in violation of Ark. Code Ann. § 23-42-301 of the Arkansas Securities Act, codified at Ark. Code Ann. §§ 23-42-101 through 23-42-509 ("Act"); and

WHEREAS, the conduct addressed herein has resulted in no known direct consumer harm, and the parties understand that registered agents or representatives of registered broker-dealers or investment advisers other than Bankers participated in all securities transactions and at locations that were registered with the appropriate securities authorities as broker-dealer locations of broker-dealers other than Bankers; and

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WHEREAS, Bankers has cooperated with state regulators conducting the investigations by responding to inquiries, providing documentary evidence, and halting further receipt of broker-dealer and investment adviser related compensation while the investigations were pending; and

WHEREAS, Bankers, in order to avoid protracted and expensive proceedings in numerous states, has agreed to resolve the investigations through a multistate settlement which includes this Consent Order; and

WHEREAS, Bankers, as part of this settlement, agrees to comply with all state and federal licensing, registration, and other securities laws; and

WHEREAS, Bankers, without admitting or denying the Conclusions of Law set forth below and solely for the purposes of this Consent Order, admits the jurisdiction of the Act and the Arkansas Securities Commissioner ("Commissioner"), admits the Findings of Fact set forth in paragraphs 1-11 below, voluntarily consents to the entry of this Consent Order, and waives any right to a hearing or to judicial review regarding this Consent Order;

NOW THEREFORE, the Commissioner hereby enters this Consent Order.

FINDINGS OF FACT

1. Bankers Life is a life insurance company located in Illinois that has never been registered as a broker-dealer or investment adviser.

2. BLCFS is a wholly-owned subsidiary of Bankers Life that also is located in Illinois. BLCFS (CRD No. 126638) has been a member of NASD or FINRA since 2003 and is registered as a broker-dealer only in Illinois. During its existence, BLCFS has had no business activity other than as described herein. BLCFS has never been registered as a broker-dealer or investment adviser in Arkansas, and it has not registered any agents or investment adviser

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representatives in Arkansas.

3. Effective January 1, 2005, Bankers Life and UVEST Financial Services Group, Inc. (CRD No. 13787) ("UVEST") entered into a Financial Services Agreement ("UVEST Agreement"), under which insurance agents of Bankers Life who became licensed as registered representatives and/or investment adviser representatives of UVEST would provide brokerage and investment advisory services out of Bankers Life branch office locations. At all relevant times, UVEST has been a broker-dealer registered in Arkansas and (through an affiliate) a federal covered investment adviser. The UVEST Agreement specified that UVEST would "exercise exclusive control" over the broker-dealer and investment advisory activities of the dual agents and assigned Bankers Life several securities-related roles, which Bankers Life did perform, including:

a. appointing the persons to be dual agents and having sole discretion to withdraw appointments at any time;

b. determining with UVEST the number and identity of dual agents at each office;

c. determining with UVEST the compensation to be paid to each agent;

d. determining with UVEST the "brokerage product offerings available for distribution" by the dual agents;

e. approving the clearing broker selected by UVEST;

f. approving advertising and promotional material; and

g. paying for:

    i. pre-examination training for required NASD/FINRA examinations;

ii. investment research materials used in the branch offices;

iii. recruitment and travel costs; and

iv. UVEST stationary and business cards.

4. The UVEST Agreement provided for UVEST to pay Bankers Life "Revenue Sharing Payments" according to a schedule that varied from 82% to 85% of the gross commissions received by UVEST for the dual agents' securities transactions. The UVEST Agreement characterized these payments as representing reimbursement for the compensation Bankers Life pays to the dual agents and "payment for the use of the facilities and equipment" of Bankers Life.

5. In March of 2005, Bankers Life determined that BLCFS should have been a party to the UVEST Agreement. As a result, the three firms agreed to a new first page of the UVEST Agreement that added BLCFS as a party and a new signature page, which was executed by the three parties. The revised UVEST Agreement did not assign BLCFS any rights or duties separate from those of Bankers Life and made all of Bankers Life's rights and duties also apply to BLCFS.

6. Coincident with Bankers and UVEST terminating the UVEST Agreement, Bankers Life and BLCFS entered into a similar agreement with ProEquities, Inc. (CRD No. 15708) ("ProEquities") effective April 30, 2010 ("ProEquities Agreement"). At all relevant times, ProEquities has been a broker-dealer registered in Arkansas and (through an affiliate) a federal covered investment adviser. The ProEquities Agreement specifies that ProEquities will "exercise exclusive control" over the broker-dealer and investment advisory activities of the dual agents and assigns the following securities-related roles to BLCFS or to BLCFS and Bankers Life, which BLCFS and Bankers Life subsequently engaged in:

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a. consulting with ProEquities on the persons to be appointed as representatives of ProEquities;

b. identifying securities product training and marketing opportunities;

c. determining with ProEquities the securities products made available for distribution by the dual agents;

d. approving the clearing broker selected by ProEquities (BLCFS only);

e. approving advertising and promotional material (BLCFS only);

f. recruiting representatives for ProEquities and assisting with the licensing and registration process;

g. providing marketing, training, and support; and

h. paying for:

i. pre-examination training for required FINRA examinations;

ii. sales training materials;

iii. recruitment and travel costs; and

iv. ProEquities stationary and business cards.

7. Under the ProEquities Agreement, ProEquities is required to pay BLCFS between 87% and 91% of revenue received by ProEquities for the securities business conducted by the dual agents. ProEquities also is required to provide reports to BLCFS of the amount of compensation to be paid to each dual agent for securities work, and BLCFS is to retain the difference.

8. BLCFS, in its current Form BD filing, lists the following as other business:

> BLC Financial Services, Inc. (BLCF) provides sales support & a marketing program to Bankers Life & Casualty agents who are securities licensed with ProEquities. BLCFS will receive compensation from ProEquities based on these securities sales. BLCFS will not have any representatives that sell to the public.

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9. The involvement of Bankers in securities-related roles led to confusion in the reporting and responsibility hierarchies as between Bankers and the applicable broker-dealer.

10. At no time were the dual agents licensed as agents or investment adviser representatives of Bankers Life or BLCFS. The agents were registered representatives and investment adviser representatives of UVEST or ProEquities.

11. From January 1, 2005, through November 31, 2011, Bankers received, on a nationwide basis, a total of approximately $21 million from UVEST and ProEquities under their respective agreements for variable annuity and securities transactions and investment advice. Approximately $15 million of this amount was passed on by Bankers to the dual agents as compensation, leaving approximately $6 million retained by Bankers or used by Bankers for expenses.

CONCLUSIONS OF LAW

1. It is unlawful for a person to transact business in Arkansas as a broker-dealer or agent unless such person is registered under the Act. Ark. Code Ann. § 23-42-301(a).

2. It is unlawful for a person to transact business in Arkansas as an investment adviser or representative without first being registered under the Act, exempt from registration, or a federal covered investment adviser. Ark. Code Ann. § 23-42-301(c).

3. It is unlawful for a registered broker-dealer to employ an unregistered agent, as defined in Ark. Code Ann. § 23-42-102(1)(A), except a nonresident agent who is registered by any other state securities administrator and who effects transactions in Arkansas exclusively with registered broker-dealers. Ark. Code Ann. § 23-42-301(b)(1).

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4. By engaging in the conduct set forth above, Bankers acted as an unregistered broker-dealer and investment adviser in Arkansas in violation of Ark. Code Ann. § 23-42-301(a) and (c).

5. Furthermore, by employing or associating with dual agents who were not licensed as agents of Bankers, Bankers violated Ark. Code Ann. § 23-42-301(b)(1).

6. As a result, this Consent Order and the following relief are appropriate and in the public interest.

ORDER

On the basis of the Findings of Fact, Conclusions of Law, and the consent of the Respondents to the entry of this Consent Order,

IT IS HEREBY ORDERED:

1. Bankers shall cease and desist from (1) acting as a broker-dealer or investment adviser in Arkansas unless and until registered to do so; (2) employing or associating with agents in Arkansas who are not registered on behalf of Bankers; or otherwise violating the Act; provided, however, that nothing in this Consent Order shall prevent Bankers from employing or associating with insurance producers who are also registered representatives or investment adviser representatives of a licensed broker-dealer so long as all securities-related functions are carried out consistent with the conditions set forth below.

2. In accordance with the terms of the multistate settlement, Bankers Life and/or BLCFS shall pay $9.9 million to be distributed among the states where dual agents were located during the period from January 1, 2005, through December 2, 2011, allocated according to a schedule provided by the multi-state investigation working group. Bankers shall pay a fine of $77,937.98 to the Arkansas Securities Department ("Department") as its portion of the total

amount. Such payment shall be made by check to the Department within ten days from the date this Consent Order is signed by the Commissioner.

3. Bankers Life and/or BLCFS shall pay past licensing and registration fees totaling $260,000 to the states where dual agents were located during the period from January 1, 2005, through December 2, 2011, allocated according to a schedule provided by the multi-state investigation working group. Bankers shall pay $5,000.00 to the Department for its portion of the total past fees. Such payment shall be made to the Department within ten days from the date this Consent Order is signed by the Commissioner.

4. Bankers Life and/or BLCFS shall pay $106,000 to fund state audits to ensure compliance with this Consent Order and similar orders, decrees, and agreements in other states, allocated in accordance with a schedule provided by the multi-state investigation working group. Bankers Life and/or BLCFS shall pay $2,000.00 to the Department for its portion of the state audit funds. Such payment shall be made to the Department within ten days from the date this Consent Order is signed by the Commissioner.

5. Bankers shall contract with an independent third party, with disclosure of any prior relationship to Bankers and with a scope of work not unacceptable to the Maine Securities Administrator, for the purpose of reviewing Bankers' compliance with the terms of this Consent Order. The independent third party shall submit annual reports of the same, including findings and recommendations, to the Maine Securities Administrator, which report shall be delivered on or before September 30 of each year commencing with the September 30, 2012, report and ending with the September 30, 2014, report. Bankers shall make no claim of privilege or other protection from disclosure to the Maine Securities Administrator of the reports or any information received or considered by the independent third party, and Bankers shall not take

any action to prevent or impede the Maine Securities Administrator from sharing the reports or information with other state securities regulators.

6. If any state securities regulator determines not to accept the settlement offer of Bankers reflected herein, including the amount allocated to the applicable state according to the schedules referenced in paragraphs 2 through 4 above, the payments to Arkansas shall not be affected and Bankers shall not be relieved of any of the non-monetary provisions of this Consent Order.

7. Bankers shall not attempt to recover any part of the payments addressed in this Consent Order from dual agents, UVEST, ProEquities, or customers of Bankers (including through premium increases); provided, however, that nothing in this Consent Order prohibits Bankers from modifying its premiums or expenses for reason(s) unrelated to the payments referenced herein.

8. Bankers shall fully cooperate with any investigation or proceeding related to the subject matter of this Consent Order.

9. Bankers has an existing relationship with ProEquities, a third party licensed broker-dealer. From the date of this Consent Order through March 31, 2015, and while Bankers has dual agents that are registered representatives or investment adviser representatives of a third party broker-dealer, any agreement between Bankers and the third party broker-dealer shall be consistent with the provisions set forth below, provided, however, Bankers may seek leave with the applicable securities administrators for relief from this provision:

a. The third party broker-dealer ("TPBD") must be solely responsible for the hiring, training, supervision and conduct of each of its registered representatives and investment adviser representatives as that conduct relates

concerning securities products. The Insurance Producer may explain that the Insurance Producer is not licensed to discuss securities products.

b. While gathering information for the Bankers' Factfinder or similar document or tool, an Insurance Producer shall not inquire into a consumer's satisfaction with the consumer's current investments in securities or with the consumer's current broker-dealer, investment adviser, registered representative, or investment adviser representative or make comparisons between securities and non-securities products. As used in this subparagraph, "securities" refers both to specific securities products and to securities in general.

c. No commissions or other compensation derived from a securities transaction shall be paid to or split with an Insurance Producer.

11. Pursuant to a Consent Order entered with the Maine Securities Administrator, on April 27, 2012, BLCFS made the filings necessary to withdraw its registration as a broker-dealer with the Securities and Exchange Commission and Illinois and terminate its membership with FINRA. BLCFS shall not reapply for registration or membership.

12. This Consent Order concludes the investigation by the Department and any other action that the Commissioner could commence under applicable law on behalf of Arkansas as it relates to the violations described above, up to and including activity occurring through December 2, 2011; provided, however, that excluded from and not covered by this paragraph are any claims by the Department arising from or relating to the "Order" provisions contained herein.

13. The Commissioner has agreed to the terms of this Order based on, among other things, the representations made to the Commissioner by Bankers, Bankers' counsel, and the

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Department's own factual investigation. If payments are not made by Bankers Life or BLCFS, if Bankers defaults in any of its obligations set forth in this Consent Order, or if any material representations made by Bankers or Bankers' counsel in this Consent Order are later found to be materially inaccurate or misleading, the Commissioner may vacate this Consent Order, at his sole discretion, upon ten days notice to Bankers and without opportunity for administrative hearing or judicial review, and commence a separate action.

14. Nothing herein shall preclude Arkansas, its departments, agencies, boards, commissions, authorities, political subdivisions and corporations, other than the Department and only to the extent set forth herein, (collectively, "State Entities") and the officers, agents or employees of State Entities from asserting any claims, causes of action, or applications for compensatory, nominal and/or punitive damages, administrative, civil, criminal, or injunctive relief against Bankers, provided, however, that this Consent Order shall not be deemed to constrain, estop or preclude Bankers in asserting any legal or factual position, response or defense, provided, however, Bankers admits the facts set forth in Findings of Fact in paragraphs 1-11 herein.

15. The parties admit and acknowledge that the Commissioner has no authority or jurisdiction over any other state or federal agency or regulatory authority. Nonetheless, this Consent Order is not intended by the Commissioner to subject any person to any disqualifications under the laws of the United States, any state, the District of Columbia, Puerto Rico, or the Virgin Islands including, without limitation, any disqualification from relying upon the state or federal registration exemptions or safe harbor provisions.

16. This Consent Order and the order of any other state in related proceedings against Bankers (collectively, the "Orders") shall not disqualify any person from any business that they

otherwise are qualified, licensed or permitted to perform under applicable securities laws of Arkansas, and any disqualifications from relying upon Arkansas's registration exemptions or safe harbor provisions that arise from the Orders are hereby waived.

17. This Consent Order and any dispute related thereto shall be construed and enforced in accordance with, and governed by, the laws of Arkansas without regard to any choice of law principles.

18. This Consent Order shall be binding upon Bankers, its relevant affiliates, successors and assigns.

19. This Consent Order is entered into solely for the purposes of resolving the referenced multistate investigation, and is not intended to be used for any other purpose. For any person or entity not a party to the Consent Order, this Consent Order does not create any private rights or remedies against Bankers, create liability of Bankers, or limit or preclude any legal or factual positions or defenses of Bankers in response to any claims.

20. Except as set forth above, the Department agrees to take no action adverse to Bankers or its agents based solely on the same conduct addressed in this Consent Order. However, nothing in this Consent Order shall preclude the Department from: (a) taking adverse action based on other conduct; (b) taking this Consent Order and the conduct described above into account in determining the proper resolution of action based on other conduct; (c) taking any and all available steps to enforce this Consent Order; or (d) taking any action against other entities or individuals, regardless of any affiliation or relationship between Bankers and the entities or individuals.

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IT IS HEREBY ORDERED on this 18th day of September, 2012.

A. Heath Abshure
Arkansas Securities Commissioner

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CONSENT TO ENTRY OF CONSENT ORDER

Bankers, by signing below, admits paragraphs 1-11 of the Findings of Fact set forth above, agrees to the entry of this Consent Order, and waives any right to a hearing or to judicial review.

Bankers states that no promise of any kind or nature whatsoever that is not reflected in this Consent Order was made to it to induce it to enter into this Consent Order and that it has entered into this Consent Order voluntarily.

WILLIAM D. FRITTS, JR. (name) represents that he or she has been authorized to enter into this Consent Order on behalf of Bankers Life and Casualty Company.

Bankers Life and Casualty Company

By: William D. Fritts Jr.

Title: SVP REGULATORY AND GOVERNMENT AFFAIRS

Date: SEPTEMBER 14, 2012

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STATE OF ARKANSAS)
) ss.
COUNTY OF PULASKI)

AFFIDAVIT OF KIM FOWLER

The undersigned, being duly sworn, deposes and states under oath the following:

1. My name is Kim Fowler. I am Senior Vice-President and Associate General Counsel of Stephens Inc.

2. On August 8, 2013, David Knight, Executive Vice President and General Counsel, Kevin Burns, Senior Vice-President and Associate General Counsel, and I met with Arkansas Securities Commissioner Heath Abshure, Scott Freydl, Staff Attorney at the Arkansas Securities Department, and Scott Fowler, an investigator with the Arkansas Securities Department.

3. The purpose of the meeting was to discuss Stephens' response to a May 21, 2013, letter from Mr. Freydl notifying Stephens that the Arkansas Securities Department intended to file a complaint against Stephens and Wayne LaRue, a former Stephens' employee, for alleged violations of the Arkansas Securities Act.

4. Commissioner Abshure stated at the meeting that he thought a $30,000 fine was appropriate due to Stephens's alleged failure to have appropriate written policies in place regarding the sale of inverse and leveraged exchange-traded funds to customers. Stephens countered Commissioner Abshure's demand for a $30,000 fine with a request to pay a $15,000 fine, which in its view was consistent with a fine paid by Morgan Keegan under similar circumstances.

5. The Commissioner then proposed that Stephens pay $20,000 for the alleged violation, and offered to allow Stephens to make a $20,000 charitable contribution to NASAA in

lieu of paying the fine to the Arkansas Securities Department. Stephens declined to contribute $20,000 to NASAA in lieu of paying a fine because of Commissioner Abshure's service as a board member and President of NASAA.

6. Commissioner Abshure then offered to allow Stephens to make a $20,000 charitable contribution to Economics Arkansas in lieu of paying a fine to the Arkansas Securities Department. In response to a question from Mr. Knight, Commissioner Abshure disclosed that he currently served on the Board of Directors of Economics Arkansas. Mr. Knight then declined to allow Stephens to contribute $20,000 to Economics Arkansas in lieu of paying a fine because of such affiliation.

7. Mr. Knight told the Commissioner that Stephens would prefer to pay a fine directly to the Arkansas Securities Department rather than make a charitable contribution to these entities affiliated with Commissioner Abshure.

8. At the end of the August 8 meeting, Stephens agreed with the Arkansas Securities Department that a consent order would provide that Stephens would pay a fine to settle the dispute that Stephens allegedly failed to have in place appropriate written policies regarding the sale of inverse and leveraged exchange-traded funds, but Stephens and the Commissioner remained in disagreement as to whether the amount of the fine should be $20,000 or $15,000.

9. On August 16, 2013, I received a draft Consent Order attached to an email from Mr. Freydl. The description of the alleged misconduct in the proposed Order against Stephens was exactly as agreed at the meeting. However, the Arkansas Securities Department had unilaterally increased the amount of the fine to $25,000 - $5,000 more than Commissioner

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Abshure's demand of $20,000 at the conclusion of the August 8 meeting. A copy of the email is attached hereto as Exhibit A.

10. On August 20, 2013, I spoke to Mr. Freydl on the telephone about the unexpected increase in the fine. In the conversation, Mr. Freydl stressed that the Department had reviewed only a small number of trades at Stephens involving inverse and/or leveraged exchange traded funds, and that the Arkansas Securities Department could undertake a review of all such trades placed by Stephens registered representatives in the State of Arkansas, which might result in a much higher fine. Mr. Freydl agreed to discuss the amount of the fine with the Commissioner again. Later the same day I emailed minor comments on the draft Consent Order to Mr. Freydl and requested that the amount of the $25,000 fine be lowered as discussed in our telephone conversation earlier that day.

11. On August 21, 2013, Mr. Freydl confirmed in writing that the Commissioner's offer had increased to $25,000 and that:

> "should Stephens still be unable to agree to this amount, then the Staff shall be directed to open a full examination of all agents of Stephens that sold inverse and/or leveraged [exchange-traded funds] in Arkansas. It is likely that after such examination, the Staff would request a substantially higher amount."

12. I then inquired of Mr. Freydl whether Mr. Knight could call Commissioner Abshure or we could meet with him again to discuss the amount of the fine. Mr. Freydl responded:

> "If Stephens cannot accept the new amount of $25,000, which is the Commissioner's new offer, then the Staff shall make arrangements for a much larger exam of this issue. If the management of Stephens does not feel that they may have greatly [sic] liability than $25,000 for this issue, then I guess the Staff will need to look at the inverse and/or leveraged [exchange-traded fund] sales for every Stephens agent in Arkansas. After such an exam, I would anticipate the potential liability for Stephens will be much higher than $25,000. While the staff usually tries to be flexible, the circumstances of this case make this fine amount of $25,000 non-negotiable."

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A copy of the chain of emails dated August 20-21, 2013, discussed above, is attached hereto as Exhibit B.

13. On August 22, 2013, at 1:57 p.m., I emailed Mr. Freydl, indicating that the Consent Order (which included the $25,000 fine) had been signed by Mr. Knight on behalf of Stephens, and would be delivered to the Arkansas Securities Department later that afternoon. At 3:25 p.m., Stephens' signed Consent Order was delivered to the Arkansas Securities Department for Commissioner Abshure's signature. At 4:07 p.m., Mr. Freydl emailed a copy of the fully signed Consent Order to me, a copy of which is attached hereto as Exhibit C.

14. At 4:12 p.m. on that same day, Stephens received a copy of the Consent Order from Gwen Moritz at *Arkansas Business* which revealed that the Arkansas Securities Department had sent the Consent Order to the media at 4:00 p.m., seven (7) minutes *before* it was sent to Stephens. A copy of that email is attached hereto as Exhibit D.

_____
Kim Fowler

Subscribed and sworn to before me this _____ day of November, 2013.

_____
Notary Public

My Commission Expires:

_____

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Kim (Keller) Fowler

From: Scott Freydl <scott@securities.arkansas.gov>
Sent: Friday, August 16, 2013 1:25 PM
To: Kim (Keller) Fowler
Subject: Proposed Consent Order for Stephens, Inc.
Attachments: LaRue - Stephens.docx

I have attached a copy of the Consent Order, which I drafted in settlement of the violations of the Arkansas Securities Act and Rules of the Arkansas Securities Commissioner committed by Stephens, Inc. (Stephens). I am willing to discuss any reasonable and minor changes or alterations to the language of this order that you may feel are beneficial to Stephens. As you will see, the fine amount has actually increased to $25,000. This fine amount is appropriate in this case for the following reasons:

1. The Morgan Keegan order, which you referred to during our meeting, required Morgan Keegan to pay a fine of $15,000 and restitution of over $44,000.

2. The Morgan Keegan order only covered the failure of Morgan Keegan to supervise one agent's handling of one client's accounts. The Stephens order is not as narrowly worded.

Hopefully, the fine amount will not prevent this settlement. Nevertheless, the Staff cannot agree to a lesser amount. I look forward to discussing this matter further.

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Kim (Keller) Fowler

Ex B

From: Scott Freydl <scott@securities.arkansas.gov>
Sent: Wednesday, August 21, 2013 1:59 PM
To: Kim (Keller) Fowler
Subject: RE: Consent Order for Stephens Inc.

I understand that the increase of $5,000 may cause issues for you. However, it is the result of the scope that the Commissioner did not realize at the time of our meeting. I don't think an additional meeting would be of any use. If Stephens cannot accept the new amount of $25,000, which is the Commissioner's new offer, then the Staff shall make arrangements for a much larger exam of this issue. If the management of Stephens does not feel that they may have greatly liability than $25,000 for this issue, then I guess the Staff will need to look at the inverse and/or leveraged ETF sales for every Stephens agent in Arkansas. After such an exam, I would anticipate the potential liability for Stephens will be much higher than $25,000. While the staff usually tries to be flexible, the circumstances of this case make this fine amount of $25,000 non-negotiable.

From: Kim (Keller) Fowler [mailto:kim.fowler@stephens.com]
Sent: Wednesday, August 21, 2013 1:25 PM
To: Scott Freydl
Subject: RE: Consent Order for Stephens Inc.

I do not want to be irritating or difficult, but please understand that the increase to $25,000 has put David Knight, Kevin Burns and I, as lawyers, in an awkward situation with Stephens top management. Based on our meeting with the Commissioner, we told them the fine was expected to be $15,000- $20,000. We will now have to go back to them and tell them the amount has increased. Would it be appropriate for David to call the Commissioner directly or for us to meet with him again?

Kim Fowler
Sr. Vice President
Associate General Counsel
Stephens Inc.
111 Center St.
Little Rock, AR 72201
(501) 377-2546
Kim.fowler@stephens.com

From: Scott Freydl [mailto:scott@securities.arkansas.gov]
Sent: Wednesday, August 21, 2013 9:01 AM
To: Kim (Keller) Fowler
Subject: RE: Consent Order for Stephens Inc.

I included all but one of your changes in this final version of the Consent Order. Although I did make some slight adjustments to the language of your changes. Unfortunately, the Commissioner will not sign an order that includes the changes "or the conclusions of law". This change is frequently requested and always refused. As for the fine amount, the Commissioner stated that $25,000 is his current offer to Stephens. The increase in the fine amount was necessary in view of the scope of the order. However, should Stephens still be able to agree to this amount, then the Staff shall be directed to open a full examination of all agents of Stephens that sold inverse and/or leveraged ETFs in Arkansas. It is likely that after such an examination, the Staff would request a substantially higher fine amount.

From: Kim (Keller) Fowler [mailto:kim.fowler@stephens.com]
Sent: Tuesday, August 20, 2013 5:04 PM

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To: Scott Freydl
Subject: Consent Order for Stephens Inc.

Scott,

Per our conversation attached are Stephens suggested revisions to the Consent Order. I did nothing with the amount of the fine, but am hoping we can change that. Please call me if we can discuss this.

Kim Fowler
Sr. Vice President
Associate General Counsel
Stephens Inc.
111 Center St.
Little Rock, AR 72201
(501) 377-2546
Kimfowler@stephens.com

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Kim (Keller) Fowler

From: Scott Freydl <scott@securities.arkansas.gov>
Sent: Wednesday, August 21, 2013 1:59 PM
To: Kim (Keller) Fowler
Subject: RE: Consent Order for Stephens Inc.

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From: Kim (Keller) Fowler [mailto:kim.fowler@stephens.com]
Sent: Wednesday, August 21, 2013 1:25 PM
To: Scott Freydl
Subject: RE: Consent Order for Stephens Inc.

I do not want to be irritating or difficult, but please understand that the increase to $25,000 has put David Knight, Kevin Burns and I, as lawyers, in an awkward situation with Stephens top management. Based on our meeting with the Commissioner, we told them the fine was expected to be $15,000- $20,000. We will now have to go back to them and tell them the amount has increased. Would it be appropriate for David to call the Commissioner directly or for us to meet with him again?

Kim Fowler
Sr. Vice President
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111 Center St.
Little Rock, AR 72201
(501) 377-2546
Kimfowler@stephens.com

From: Scott Freydl [mailto:scott@securities.arkansas.gov]
Sent: Wednesday, August 21, 2013 9:01 AM
To: Kim (Keller) Fowler
Subject: RE: Consent Order for Stephens Inc.

I included all but one of your changes in this final version of the Consent Order. Although I did make some slight adjustments to the language of your changes. Unfortunately, the Commissioner will not sign an order that includes the changes "or the conclusions of law". This change is frequently requested and always refused. As for the fine amount, the Commissioner stated that $25,000 is his current offer to Stephens. The increase in the fine amount was necessary in view of the scope of the order. However, should Stephens still be able to agree to this amount, then the Staff shall be directed to open a full examination of all agents of Stephens that sold inverse and/or leveraged ETFs in Arkansas. It is likely that after such an examination, the Staff would request a substantially higher fine amount.

From: Kim (Keller) Fowler [mailto:kim.fowler@stephens.com]
Sent: Tuesday, August 20, 2013 5:04 PM

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To: Scott Freydl
Subject: Consent Order for Stephens Inc.

Scott,

Per our conversation attached are Stephens suggested revisions to the Consent Order. I did nothing with the amount of the fine, but am hoping we can change that. Please call me if we can discuss this.

Kim Fowler
Sr. Vice President
Associate General Counsel
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Kimfowler@stephensinc.com

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Kim (Keller) Fowler

From: Scott Freydl <scott@securities.arkansas.gov>
Sent: Thursday, August 22, 2013 4:07 PM
To: Kim (Keller) Fowler
Subject: Consent Order for Stephens Inc.
Attachments: 20130822154028058.pdf

Attached please find a copy of the filed marked Consent Order. The original copy should arrive by mail with a few days.

Ex C

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Frank Thomas

From: Gwen Moritz <gmoritz@abpg.com>
Sent: Thursday, August 22, 2013 4:12 PM
To: Frank Thomas
Subject: FW: Consent order for In the Matter of Stephens Inc., Arkansas Securities Department Case number S-12-0067
Attachments: 20130822154028058.pdf

From: Scott Freydl [mailto:scott@securities.arkansas.gov]
Sent: Thursday, August 22, 2013 4:00 PM
To: gmoritz@abpg.com
Subject: Consent order for In the Matter of Stephens Inc., Arkansas Securities Department Case number S-12-0067

Attached please find a copy of a Consent Order that was entered today against Stephens Inc. by the Arkansas Securities Commissioner. If you have any questions about this order, don't hesitate to contact me.

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ARKANSAS ETHICS COMMISSION

910 West Second Street, Suite 100
Post Office Box 1917
Little Rock, Arkansas 72203-1917
(501) 324-9600 Fax (501) 324-9606
Toll Free (800) 422-7773

November 20, 2013

Mr. David A. Knight
Executive Vice President
General Counsel
Stephens, Inc.
111 Center Street
Little Rock, Arkansas 72201

Re: Case No. 2013-CO-038

Dear Mr. Knight:

This letter serves to confirm receipt of your citizen complaint against A. Heath Abshure. That complaint was brought against Mr. Abshure in his capacity as Commissioner of the Arkansas Securities Commission.

It has been determined that said complaint meets the requirements set forth in subparagraph A(3) of Section V of the Ethics Commission's Rules of Practice and Procedure. Accordingly, an investigation is being commenced.

Briefly restated, the essential allegations of your complaint are as follows:

1. Mr. Abshure is affiliated with the "North American Securities Administrators Association ('NASAA')", which is an "out-of-state, private nonprofit 501(c)(3) organization of securities administrators". With regard to that affiliation, he has served as "an officer, including the President, and/or a member of the Board of Directors". In addition, he serves on the "Board of Directors of Economics Arkansas", which is an "Arkansas nonprofit 501(c)(3) corporation that trains Arkansas K-12 teachers how to integrate principles of economics and personal finance into the classroom curriculum".

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2. Based upon Mr. Abshure's affiliation with NASAA and in connection with the settlement of certain claims brought by the Arkansas Securities Department, he "divert[ed] fines and/or moneys collected in lieu of fines from enforcement actions against ProEquities[, Inc.], UVEST [Financial Services Group, Inc.], and Crews [& Associates] to NASAA instead of the Investor Education Fund and/or the Securities Department Fund as required by [the Arkansas Securities Act]".

3. Based upon Mr. Abshure's affiliation with NASAA and Economics Arkansas, and in connection with the settlement of certain claims brought by the Arkansas Securities Department against Stephens, Inc. ("Stephens"), he "offer[ed] to accept a...charitable contribution from Stephens to NASAA in lieu of a fine for an enforcement action...; offer[ed] to accept a...charitable contribution from Stephens to Economics Arkansas in lieu of a fine for an enforcement action...; direct[ed] [Scott] Freydl[,] [Staff Attorney at the Arkansas Securities Department] to draft a consent order increasing the fine against Stephens....in direct retaliation for Stephens' refusal to make a charitable contribution to either NASAA or Economics Arkansas...; and...direct[ed] [Mr.] Freydl to retaliate against Stephens and coerce it into paying the increased...fine through threats of an unwarranted 'full examination' of sales in Arkansas by Stephens of [certain] exchange-traded funds."

It is noted that your complaint also references alleged violations of (i) the Arkansas Securities Act (Ark. Code Ann. § 23-42-101 *et seq.*), (ii) the Rules of the Arkansas Securities Commissioner, and (iii) Ark. Const. art. XII, § 12. With regard to such allegations, please be advised that the Ethics Commission's enforcement jurisdiction is limited to the following statutes:

Ark. Code Ann. § 3-8-701 *et seq.* (entitled "Disclosure Act for Initiative Proceedings");

Ark. Code Ann. § 7-1-103(a)(1)-(4), (6) and (7) (concerning "Elections");

Ark. Code Ann. § 7-6-201 *et seq.* (entitled "Campaign Financing");

Ark. Code Ann. § 7-9-401 *et seq.* (entitled "Disclosure Act for Public Initiatives, Referenda, and Measures Referred to Voters");

Ark. Code Ann. § 21-1-401 through § 21-1-408 (concerning "Constitutional Officers and Their Spouses");

> Ark. Code Ann. § 21-8-301 through § 21-8-903 (referred to as "The Disclosure Act for Lobbyists and State and Local Officials"); and
>
> Ark. Code Ann. § 21-8-1001 *et seq.* (concerning "State Boards, Commissions, and Entities Receiving State Funds").

Based upon the foregoing and in accordance with Ark. Code Ann. § 7-6-218, the scope of the Ethics Commission's investigation is limited to alleged violations of the above-listed statutes.

The Ethics Commission's investigation will focus on whether or not Mr. Abshure violated Ark. Code Ann. § 21-8-304(a) in his capacity as Commissioner of the Arkansas Securities Department by using or attempting to use his official position to secure special privileges or exemptions by suggesting and accepting charitable contributions to NASAA and Economics Arkansas from corporations that were penalized in lieu of paying fines to the Arkansas Securities Department as set forth in allegation nos. 1 through 3 above.

With regard to the Ethics Commission's investigation, Ark. Code Ann. § 21-8-304(a) provides, in pertinent part, as follows:

> No public servant shall use or attempt to use his...official position to secure special privileges or exemptions for himself...or his...spouse, child, parents, or other persons standing in the first degree of relationship, or for those with whom he...has a substantial financial relationship that are not available to others except as may be otherwise provided by law.

It is noted that the term "public employee" is defined in Ark. Code Ann. § 21-8-301(3) to mean "an individual who is employed by a governmental body or who is appointed to serve a governmental body" and the definition of the term "public servant" in Ark. Code Ann. § 21-8-301(5) includes public employees. In addition, the term "special privileges or exemptions" is defined in § 400(p) of the Ethics Commission's Rules on Conflicts to mean "a particular benefit or advantage unfairly extended to a person beyond the common advantages of others or the unjustified release of a person from a duty or obligation required of others."

In accordance with Section VI(3) of the Ethics Commission's Rules of Practice and Procedure, I am requesting that you submit any and all evidence which you may have concerning the allegation nos. 1 through 3 set forth above.

If you should have any questions or comments, please do not hesitate to contact us.

Sincerely,

Graham F. Sloan
Director