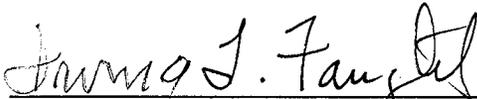




FURTHER AFFIANT SAYETH NOT.

Dated this 2nd day of November, 2004.

(SEAL)

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

Subscribed and sworn to before me this 2nd day of November, 2004.

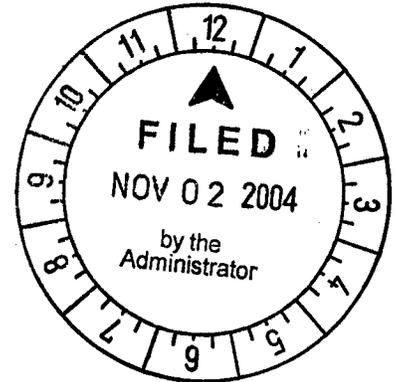
  
\_\_\_\_\_  
Notary Public

My Commission Expires: August 26, 2005

My Commission Number: 01013792

(NOTARY SEAL)

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



In the Matter of:

Benjamin Wei,

Respondent.

ODS File No. 02-166

**NOTICE OF OPPORTUNITY FOR HEARING**

1. Pursuant to his authority under Section 1-602 of the Oklahoma Uniform Securities Act of 2004 (Act), Okla. Stat. tit. 71, §§ 1-101 through 1-701 (Supp. 2003), the Administrator of the Oklahoma Department of Securities (Administrator) authorized an investigation into the activities of Benjamin Wei, in connection with the offer, sale, and/or purchase of securities in and/or from the state of Oklahoma and the rendering of investment advice in and/or from the state of Oklahoma.

2. On the 1st day of November, 2004, the attached Enforcement Division Recommendation (Recommendation) was left in the office of the Administrator.

3. Pursuant to Section 1-411(G) of the Act, the Administrator hereby gives notice to Respondent of his right to request a hearing to show why an order based on the Recommendation should not be issued.

4. The request for a hearing on the Recommendation must be received by the Administrator within fifteen (15) days after service of this Notice. Pursuant to Section 1-411(G) of the Act, failure to request a hearing as provided for herein shall result in the issuance of an order barring Wei from association with an investment adviser and/or broker-dealer in any capacity and/or imposing any other sanctions(s) as deemed appropriate and as authorized by law.

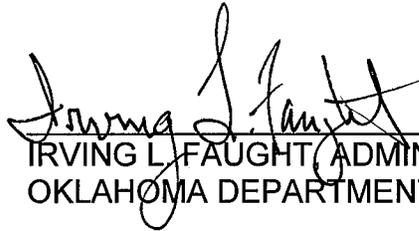
5. The request for hearing shall be in writing and Respondent shall specifically admit or deny each allegation in said request as required by 660:2-9-2(a) of the Rules of the Oklahoma Securities Commission and the Administrator of the Department of Securities (Rules).

6. Upon receipt of a written request, pursuant to 660:2-9-2(b) of the Rules, a hearing on this Notice shall be set within ninety (90) days or a written order denying hearing shall be issued.

7. Notice of the date, time, and location of the hearing shall be given to Respondent not less than forty-five (45) days in advance thereof pursuant to 660:2-9-2(c) of the Rules. Additionally, the notice may contain matters to supplement this Notice and the Recommendation attached hereto.

Witness my Hand and the Official Seal of the Oklahoma Department of Securities this 2nd day of November, 2004.

(SEAL)

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

CERTIFICATE OF MAILING

The undersigned hereby certifies that on the 2nd day of November, 2004, a true and correct copy of the above and foregoing Notice of Opportunity for Hearing and attached Enforcement Division Recommendation was mailed by certified mail, return receipt requested, delivery restricted, with postage prepaid thereon addressed to:

Benjamin Wei  
P.O. Box 663  
New York, NY 10006

  
Brenda London Smith  
Paralegal

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



In the Matter of:

Benjamin Wei,

Respondent.

ODS File No. 02-166

**ENFORCEMENT DIVISION RECOMMENDATION**

Pursuant to the Oklahoma Uniform Securities Act of 2004 (Act), Okla. Stat. tit. 71, §§ 1-101 through 1-701 (Supp. 2003), and the Oklahoma Securities Act (Predecessor Act), Okla. Stat. tit. 71, §§ 1-413, 501, 701-703 (2001 and Supp. 2003), an investigation was conducted into the activities of Benjamin Wei (Wei) in connection with the offer, sale and/or purchase of securities and the provision of investment advice in and/or from Oklahoma. Based thereon, the following Findings of Fact, Authorities, and Conclusions of Law are submitted to the Administrator of the Oklahoma Department of Securities (Administrator) in support of the issuance of an order barring Wei from association with an investment adviser and/or broker-dealer in any capacity and/or imposing any other sanctions(s) as deemed appropriate and as authorized by law.

**Findings of Fact**

1. On January 22, 1997, Wei was registered under the Predecessor Act as an investment adviser representative of Elite Strong Growth Investment, Inc. (Elite), a registered investment adviser. Wei's registration as an investment adviser representative terminated on December 31, 2000. Wei is not currently registered as an investment adviser or investment adviser representative under the Act.

2. On September 19, 2000, Wei was registered under the Predecessor Act as an agent and principal of his closely held company, Benchmark Securities Group, Inc. (Benchmark Securities), a registered broker-dealer. As a result of rule violations found by the Department during examinations of Elite, Wei's continued agent registration was made subject to certain conditions, including that Wei was not allowed to be the supervisory agent of Benchmark Securities notwithstanding his designation as a principal. Wei's registration as an agent of Benchmark Securities terminated on October 3, 2001. Wei is not currently registered as a broker-dealer or agent under the Act.

3. At all times material hereto, and in connection with all activity described herein, Wei conducted business in and/or from the state of Oklahoma.

### **DISHONEST OR UNETHICAL PRACTICES**

#### CUSTOMER A

4. On December 14, 1999, Wei opened a brokerage account at M.H. Meyerson & Company, Inc. (M.H. Meyerson) in the name of Elite, on behalf of Customer A, an Oklahoma resident and advisory client of Elite. At the time the account was opened, Customer A was 68 years of age, retired and single.

5. Wei advised Customer A to purchase stock in Pharmaprint, Inc. (Pharmaprint). Pharmaprint stock was a penny stock traded over-the-counter and involved a high degree of risk.

6. Customer A advised Wei that the money she was going to invest constituted her life savings and that she did not want to lose it. Wei told Customer A that there was no way she could lose her investment and that she would double her money by March 2000.

7. On the recommendation of Wei, Customer A purchased 35,700 shares of Pharmaprint stock in the amount of \$80,000 on December 14, 1999.

8. Pharmaprint stock was an unsuitable investment for Customer A.

9. Wei misrepresented the degree of risk of investing in Pharmaprint stock to Customer A.

10. Wei guaranteed Customer A that her investment would result in the doubling of her money and that she would not lose any money.

11. In March 2000, Customer A requested that Wei sell the Pharmaprint stock because the stock had not doubled in value as Wei had represented. The stock was sold for a profit of approximately \$8,000. A check for the sales proceeds was made jointly payable to Customer A and Benchmark. Wei was out of town and the agent in Elite's office advised Customer A that he was not authorized to sign the check over to her, but that he could deposit it into the account referenced in paragraph 3 above for investment in a money market fund earning 4.5% interest. Customer A agreed and the money was deposited in the account and invested in a money market fund.

12. On March 30, 2000, Wei, without Customer A's authorization or knowledge, purchased 46,000 shares of Pharmaprint for her account at \$1.927 per share for a total purchase price of \$88,682.40.

13. By the time Customer A received notice of the unauthorized purchase of Pharmaprint, the investment had already lost half of its value. Customer A immediately contacted Wei to inquire why the trade had been made without her authorization. Wei told Customer A that she would not lose any money on Pharmaprint.

14. By June 30, 2000, Customer A's investment in Pharmaprint had decreased in value to \$17,710.

15. Wei did not advise Customer A that, at the time he recommended she buy Pharmaprint stock, he was receiving compensation from Pharmaprint for consulting services.

### CUSTOMER B

16. On October 2, 2000, Wei opened a brokerage account at Benchmark for Customer B, a California resident.

17. Wei advised Customer B to purchase stock in Micron Electronics (Micron). Micron stock was traded on NASDAQ and, although it had previously been a profitable company, Micron's disclosures and financial statements filed with the United States Securities and Exchange Commission clearly indicated a significant decline in revenue and unlikely prospects that Micron would be able to continue in the same business sector.

18. Wei told Customer B that he was a consultant for Micron and that she would earn a profit of 30% within three months.

19. On the recommendation of Wei, Customer B purchased 1,600 shares of Micron stock at \$9.063 per share, for a total purchase price of \$14,752.95, on October 2, 2000.

20. By the end of October 2000, the Micron stock had fallen in price to \$7.468 per share.

21. Customer B advised Wei that she wanted to sell the Micron stock. Wei refused and promised Customer B that she would make money on her investment.

22. Wei misrepresented the degree of risk of investing in Micron stock.

23. Wei guaranteed Customer B that her investment would result in a profit.

24. Finally, in April 2001, Customer B's Micron stock was sold for \$1.73 per share, resulting in a loss of \$12,015.01.

25. On December 22, 2000, Wei, without Customer B's authorization or knowledge, purchased 200 shares of Ashton Technologies Group, Inc. (Ashton) stock at \$1.00 per share for a total purchase price of \$200. Ashton stock was a penny stock traded over-the-counter and involved a high degree of risk.

26. In April 2001, Wei advised Customer B to purchase additional shares of stock in Ashton. Customer B purchased 2,100 shares of Ashton stock at \$1.29 per share.

27. Wei misrepresented the degree of risk of investing in Ashton stock.

28. Wei did not advise Customer B that at the time he recommended she buy Ashton stock, he was selling Ashton stock from his personal holdings.

### **TRADING IN ASHTON STOCK**

29. From January 2001 until April 2001, Wei sold from his personal holdings at least 137,250 shares of stock in Ashton. Wei received at least 100,000 of those shares of Ashton stock as compensation for his services as a consultant to Ashton.

30. During the same time period, Wei advised several of his brokerage customers to purchase Ashton stock. In addition, Wei purchased Ashton stock for a customer's account over which he exercised discretionary authority.

31. Several customers repeatedly directed Wei to sell their Ashton stock. In response, Wei promised the customers that they would make money on their investment and encouraged them to hold onto the stock. Other times, Wei did not return the customers' telephone calls and the customers were told that the other agents in Wei's office were not allowed to handle their accounts.

32. Wei did not advise these customers that he was selling Ashton stock from his personal holdings at the time he was advising them to buy Ashton stock and placing the orders to buy such stock on their behalf.

To the extent any of these Findings of Fact should be considered Conclusions of Law, they should be so considered.

### **Authorities**

1. Section 1-701 of the Act provides in pertinent part:
  - A. The predecessor act exclusively governs all actions or proceedings that are pending on the effective date of this act

or may be instituted on the basis of conduct occurring before the effective date of this act. . . .

2. Section 101 of the Predecessor Act provides:

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

- (1) to employ any device, scheme, or artifice to defraud,
- (2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading,
- (3) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

3. Section 102 of the Predecessor Act provides in part:

(a) It is unlawful for any person who receives any consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise:

- (1) to employ any device, scheme, or artifice to defraud the other person; or
- (2) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon the other person.

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

4. Subsection (b) of Rule 660:10-5-42 of the Rules of the Oklahoma Securities Commission and the Administrator of the Department of Securities (Rules) provides in part:

- (1) A broker-dealer and his agents, in the conduct of his business, shall observe high standards of commercial honor

and just and equitable principles of trade. A broker-dealer and his agents shall not violate any rule of a national securities exchange or national securities association of which it is a member with respect to any customer, transaction or business effected in this state.

- (2) In recommending to a customer the purchase, sale or exchange of any security, the broker-dealer and his agents shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs. Prior to making a recommendation to a customer, a broker-dealer shall also make reasonable efforts to obtain information concerning the customer's financial background, tax status, and investment objectives, and such other information used or considered to be reasonable and necessary by such broker-dealer or registered agent in making such recommendation.

\* \* \*

- (13) The following standards shall apply to discretionary accounts:

(B) No broker-dealer or agent of a broker-dealer shall exercise any discretionary power in a customer's account unless such customer has given prior written authorization to a stated individual or individuals and the account has been accepted by the broker-dealer, as evidenced in writing by the broker-dealer or the partner, officer, or manager duly designated by the broker-dealer, in accordance with paragraph (22) hereof.

\* \* \*

- (15) No broker-dealer or agent of a broker-dealer shall effect any transaction in, or induce the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device, practice, plan, program, design, or contrivance.

- (16) The following standards shall apply to the use of customer funds:

\* \* \*

- (E) No broker-dealer or agent of a broker-dealer shall guarantee a customer against loss in any securities account of such customer carried by the broker-dealer or in any securities transaction effected by the broker-dealer or agent with or for such customer.

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

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

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

\* \* \*

- (4) Placing an order to purchase or sell a security for the account of a client without authority to do so.

\* \* \*

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

- (A) Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such service[.]

\* \* \*

- (11) Guaranteeing a client that a specific result will be achieved (gain or no loss) with advice which will be rendered.

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

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

\* \* \*

- (3) bar or suspend the person from association with a broker-dealer or investment adviser subject to the provisions of the Oklahoma Securities Act;
- (4) place limitations on the activities, functions, or operation of the person;
- (5) issue an order against a person who willfully violates the Oklahoma Securities Act or a rule or order of the Administrator under the Oklahoma Securities Act, imposing a civil penalty up to a maximum of Five Thousand Dollars (\$5,000.00) for a single violation or transaction or of Fifty Thousand Dollars (\$50,000.00) for multiple violations or transactions in a single proceeding or a series of related proceedings[.]

7. Section 1-411 of the Act provides in part:

- C. If the Administrator finds that the order is in the public interest and paragraphs 1 through 6, 8, 9, 10, 12 or 13 of subsection D of this section authorizes the action, an order under this act may censure, impose a bar, impose a civil penalty in an amount not to exceed a maximum of Five Thousand Dollars (\$5,000.00) for a single violation or Two Hundred Fifty Thousand Dollars (\$250,000.00) for multiple violations on a registrant, and/or recover the costs of the investigation from a registrant and if the registrant is a broker-dealer or investment adviser, from any partner, officer, or director, any person having a similar function or

any person directly or indirectly controlling the broker-dealer or investment adviser.

- D. A person may be disciplined under subsections A through C of this section if the person:

\* \* \*

2. Has willfully violated or willfully failed to comply with this act or the predecessor act or a rule adopted or order issued under this act or the predecessor act within the previous ten (10) years;

\* \* \*

13. Has engaged in dishonest or unethical practices in the securities, commodities, investment, franchise, banking, finance or insurance business within the previous ten (10) years[.]

#### **Conclusions of Law**

1. The Administrator of the Department is authorized to bar Wei from association with an investment adviser and/or broker-dealer in any capacity.

2. In connection with the offer, sale or purchase of securities in and/or from this state, Wei employed a device, scheme or artifice to defraud.

3. In connection with the offer, sale or purchase of securities in and/or from this state, Wei made untrue statements of material fact and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

4. In connection with the offer, sale or purchase of securities in and/or from this state, Wei engaged in an act, practice or course of business that operated as a fraud or deceit upon his customers.

5. In connection with the rendering of investment advice in and/or from this state, Wei failed to disclose material facts and/or omitted to state material facts necessary in order to make the statements made in light of the circumstances under which they were made, not misleading.

6. Wei engaged in dishonest or unethical practices in the securities business in and/or from this state.

7. It is in the public interest to bar Wei from association with an investment adviser and/or a broker-dealer in any capacity.

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

WHEREFORE, it is recommended that the Administrator issue an order barring Wei from association with an investment adviser and/or broker-dealer in any capacity and/or imposing any other sanctions(s) as deemed appropriate and as authorized by law.

Dated this 1<sup>st</sup> day of November, 2004.

Respectfully Submitted,



---

Rebecca Cryer  
Enforcement Attorney  
Gerri Stuckey  
Enforcement Attorney  
Oklahoma Department of Securities  
120 North Robinson, Suite 860  
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(405) 280-7700