

STATE OF OKLAHOMA
DEPARTMENT OF SECURITIES
THE FIRST NATIONAL CENTER
120 N. ROBINSON, SUITE 860
OKLAHOMA CITY, OKLAHOMA 73102



In the Matter of:

Rodney Larry Watkins, Jr. (CRD #3091936);
Southeast Investments, N.C. Inc. (CRD #43035); and
Frank H. Black (CRD #22451);

Respondents.

ODS File No. 12-058

**RESPONDENTS' RESPONSE TO DEPARTMENT'S
MOTION FOR SUMMARY DISPOSITION AND RENEWED
MOTION TO DIMISS SUPPLEMENTAL RECOMMENDATION**

Respondents Southeast Investments, N.C. Inc. and Frank H. Black (collectively, "Respondents" and, individually, "Southeast" and "Black") respond below to the Department's Motion for Summary Disposition filed July 23, 2014 ("Department Motion"). For the reasons set forth herein, the Department Motion should be denied and this proceeding should be dismissed. This reponse is supported in part by Exhibits "A" (deposition testimony of Lamar Guillory), "B" (deposition testimony of Frank H. Black), and "C" (Affidavit of Frank H. Black).

PROCEDURAL HISTORY

This proceeding commenced with the Recommendation that the Department filed on March 26, 2013 ("Original Recommendation"). It has become obvious by now that the Original Recommendation was, from its inception, predicated on a mistaken assumption. That assumption was this: because former Respondent Rodney L. Watkins, Jr. resided in Tulsa and maintained a general financial services office there, securities transactions consummated during Mr. Watkins' Oklahoma suspension necessarily occurred in Oklahoma. Confronted with

overwhelming evidence that the assumption was in fact mistaken – the testimony of Mr. Watkins himself, of his wife and office-mate Sharmien Watkins, of his Southeast Securities colleague Lamar Guillory and, especially, the affidavits of the customers themselves¹ -- the Department settled its claims with Mr. Watkins. The settlement requires, most significantly, that Watkins facilitate periodic reviews of his practice by a third-party consultant. No additional suspension or fine was imposed.²

The Department's response to the Respondents' motion for summary disposition of the Original Recommendation was dominated by argument about the existence of a "nexus" when no transactions actually occurred in the state. That argument is a testament to just how clear it was that the proceeding commenced on March 26, 2013 rested on the slenderest of reeds. Here is a sample:

Section 413(e) [of the former Oklahoma Securities Act] provided in pertinent part as follows: 'For the purpose of this section, an offer to sell or, to buy is made in this state, whether or not either party is then present in this state, when the offer: (1) originates from this state[.]' While recognizing there is little guidance as to the meaning of "originates," the *Nuveen* court concluded that some sort of nexus between the "sale" and the state is required. The court found the presence of a sufficient nexus to warrant application of this state's securities laws due to. *inter alia*, an

¹ The Department would have borne the burden of proof at hearing, a burden that it could not meet. See *Thompson v. State ex rel. Bd. of Trustees of Okla. Pub. Empl. Ret. Sys.*, 264 P.3d 1251, 1255-56 (Okla. 2011). See also cases collected in 73A C.J.S. PUBLIC ADMIN. LAW AND PROC. § 240 (West update 2013)(the "burden is on the one making the charges in disciplinary proceedings or where the issue is whether the party charged has committed an illegal or improper act, and this rule applies where the charge is made by the administrative body").

² As is so often the real-world case, Watkins had little choice at the end of the day but to capitulate to the Department's demands. Absent such capitulation, he faced the potential of many more months, or years, of *practical* suspension while the internal and external appeals processes played out. Unlike litigants in private civil actions, a party to a proceeding like this one cannot post a supersedeas bond to stay enforcement of an agency action. Such is the power of government licensing regulators.

employee's involvement in the preparation of certain of the offering documents and his research activities while in Oklahoma.

Department Response filed February 28, 2014 at 15-16.

Respondents respectfully suggest that, when a regulatory agency sets out in search of "some sort of nexus" so it can pull a broker's license and confiscate his livelihood, the agency ought to take a moment and re-examine its priorities.³ Yet the allegations against *Southeast* in the original Recommendation were even more attenuated: it stood accused of failing to prevent the slender-reed, putative violations by Watkins.

Almost fourteen months after commencement of this proceeding, the Department got around to taking *Southeast's* deposition through its principal, Respondent Black. Some three weeks after the Black deposition (on June 10, 2014), the Department announced that it had discovered startling new evidence of independent violations by *Southeast*. As discussed herein, the actions that the Department "discovered" at the eleventh hour are neither startling, nor momentous, nor (most importantly) unlawful. Nevertheless on the strength of the supposed new discoveries, the Department filed what amounts to an entirely new proceeding against *Southeast* on June 20, 2014, by way of the Supplemental Enforcement Division Recommendation ("Supplemental Recommendation") of that date. With the full cooperation of the Administrator,

³ And in *Watkins's* case, of course, there were no "offering materials" and no "research," much less which occurred in Oklahoma. *Watkins* sold listed securities to existing clients, so even the attenuated "nexus" of the *Niveen* case did not exist. The truth is that the Department never had a valid suspension case against *Watkins*. Not only did the statutes (and the United States Constitution) undermine the Department's actions, so too did the original suspension order itself. That order explicitly limited its geographic reach to Oklahoma.

the evidentiary hearing scheduled for June 23, 2014 was stricken⁴ and, over the Respondents' objection, the Supplemental Recommendation was allowed.

The events described above represent a continuation of the bootstrap character of these proceedings that has permeated the same from the outset: if the original allegations turn out to be contradicted by the facts, just argue "some sort of nexus;" if the Department's vicarious liability theory against the broker-dealer falls with the failure of the underlying misconduct allegation (as necessarily it must), just "discover" some entirely *new* violations to keep the broker-dealer in the dock. This bob-and-weave approach to the wielding of government power, Respondents respectfully suggest, ought not to be countenanced.⁵

OVERVIEW OF THE DEPARTMENT MOTION

A review of the Department Motion in its entirety prompts the following observations:

- All of the alleged Southeast violations, for which the Department demands a one-year suspension of Southeast, are purely procedural. Not a single *substantive* violation of any kind -- like those set forth in the Commission's rules at Rule 660:11-5-42(b)(2) through (b)(21) -- is alleged.
- Every alleged statutory and every alleged regulatory violation are alleged violations of statutes or regulations that simply incorporate FINRA/NASD rules, rather than statutes or

⁴ Indeed, the Administrator refused even to hear -- on the date when the evidentiary hearing had been scheduled to occur -- counsel's argument and discuss the matter of a new schedule in the wake of the newly-minted allegations. These matters are the subject of Respondents' motion to disqualify the Administrator filed this date.

⁵ Perhaps most unconscionable is the indirect effect of the Department's actions on Mr. Watkins. Suspension of Southeast, as the Department well knows, will result in Watkins' loss of a substantial component of his livelihood. Hence the Department seeks to achieve the result, through the back door, that it could not achieve on its claims against Mr. Watkins directly.

regulations that expressly proscribe even “procedural” conduct (to say nothing of *substantive* conduct).

- The FINRA/NASD rules to which the statutes and regulations punt are themselves purely procedural. A careful review, one-by-one, of those rules shows that Southeast has in fact complied with the same. As will be seen in the discussion below, many of the rules contain express materiality conditions that appear designed to discourage the very sort of draconian, “gotcha” application that permeates the Department Motion. Indeed both the FINRA (NASD) rule on supervision and the rule on written procedures require procedures that are simply “reasonably designed to achieve compliance.”
- The Department Motion is dominated not by allegations that Southeast has failed to comply with any statute, any regulation, or even any FINRA/NASD rule. It is dominated instead by allegations that Southeast has failed to adhere to the letter of *its own* WSPs. Indeed, of the paragraphs in the Department’s “Statement of Facts” that appear to level some kind of allegation of some kind of wrongdoing (paragraphs 8 through 21), seven invoke alleged WSP violations only (paragraphs 9, 11, 13, 14, 18, 19 and 20).⁶ Of the alleged FINRA/NASD rule violations, two relate to Southeast’s delay in updating Rodney L. Watkins’ address information on the CRD record (paragraphs 16 and 17) and one relates to Southeast’s delay in reporting this proceeding to the CRD. Again the Department Motion is utterly devoid of any allegation of any substantive rule violation.

⁶ Moreover, even the putative factual allegations that do *not* invoke WSPs, in many cases, do not manage to allege any proscribed conduct. *See, e.g.*, ¶ 8 of the Statement of Facts, which alleges that Southeast does not maintain multiple OSJs. No law, regulation or FINRA rule requires Southeast to maintain more than one OSJ, due to the number of agents who work in its nonbranch offices. Typical of the Department Motion, the Department has simply manufactured a “violation” by substituting its judgment -- about what Southeast “should do” -- not only for Southeast’s business judgment, but for FINRA’s judgment. (FINRA, the promulgator of the rule, has not criticized Southeast’s nonbranch office system).

RESPONSES TO DEPARTMENT'S STATEMENT OF FACTS

The Department's Statement of Facts is simply a reproduction of the Supplemental Recommendation allegations. Southeast has already responded to these allegations in its response to the Supplemental Recommendation filed July 15, 2014 ("7-15-14 Response"). Additional responsive material is contained in Southeast's opposition to the filing of the Supplemental Recommendation filed June 19, 2014 ("6-19-14 Objection"). Material in the 6-19-14 Objection is expressly incorporated in the 7-15-14 Response, all of which Respondents commend to the Administrator for careful consideration. For convenience, the following table shows the paragraph numbers of the Department's Statement of Facts and the paragraph numbers of the responsive paragraphs in the 7-15-14 Response directed to the identical allegations in the Supplemental Recommendation.

STATEMENT OF FACT PARAGRAPH NUMBER	RESPONSIVE PARA- GRAPH IN SOUTHEAST'S RESPONSE FILED JULY 15, 2014
6	29
7	30
8	31
9	34
10	35
11	36
12	37
13	38
14	39
15	40
16	41
17	42
18	43
19	44
20	45
21	46

One "factual" allegation that the Department, misleadingly, continues to advance deserves additional attention here. It is paragraph 13, where the Department alleges that

“[c]ontrary to the WSPs, [Lamar] Guillory stated that he does not provide his emails to Southeast.” Respondents have already submitted Guillory’s “E-mail and Electronic Communications Acknowledgment Form” (attached to the 7-15-14 Response as Exhibit “B”) in which he states that he does not transact securities business via e-mail. Moreover, the Department omits reference to Guillory’s (completely consistent) deposition testimony that he “very, very rarely” communicates with clients by e-mail on *any subject*.⁷

RESPONSE TO THE DEPARTMENT’S LEGAL ARGUMENT

The Department’s argument consists of a series of potshots taken at various, allegedly defective, Southeast procedural practices – everything from delayed updating of a CRD address to broad allegations of “failure to supervise.” The Department endeavors to tie all of these defects to a statutory, regulatory, or FINRA procedural requirement. Failing such a showing (and fail the Department does), the Department falls back on allegations that Southeast violated its own WSPs, which, in turn (the Department says), are required to be maintained by the FINRA/NASD rules, which rules are, in turn, incorporated into the regulations and statutes. The Department’s analytical gymnastics give new meaning to the word “attenuated.” Be that as it may, Respondents respond here by examining the actual statutes and rules that the Department invokes, one at a time, in the order of their legal importance (first statutes, i.e., actual *legislative enactments*, then regulations, then FINRA/NASD rules).

⁷ The Department’s counsel did not ask Guillory about his client communications related to his securities business; she asked him, more broadly: “Do you communicate with your clients through e-mail?” As seen in the discussion below, the FINRA/NASD rules relating to e-mail supervision are expressly limited to e-mails that concern securities business. The questions and answers that the Department omitted from its Exhibit “H” are attached hereto as Exhibit “A.”

Oklahoma Statutes

Aside from sweeping references to the entire Oklahoma Securities Act (“the Act”), the Department Motion cites a single statute, § 1-406(B) of the Act. According to the Department, that statute provides that “if any information filed in a registrant's application becomes inaccurate, he shall promptly file a correcting amendment.” Department Motion at 15. Here is what the cited statute *actually* provides:

If the information contained in an application that is filed under subsection A of this section is or becomes inaccurate or incomplete *in any material respect*, the registrant shall promptly file a correcting amendment.

(emphasis added). It is easy to understand why the Department chose to omit the italicized language. It undercuts the Department’s draconian, hypertechnical bases for disciplinary action.

Like the similar FINRA rule,⁸ the statute on its face incorporates a materiality condition. Perhaps one reason the Legislature included that condition was to prevent the rule’s use as a cudgel by overzealous regulators. Southeast’s grievous violations of the quoted statute, according to the Department, were these: (i) it failed to update Watkins’ CRD office address and (ii) it failed to report the instant proceedings to the CRD, “promptly.” Both eventually were reported.⁹ In the meantime, no customer or anyone else was deprived of any information that

⁸ The Department quotes FINRA Rule 1122 as follow: “No member or person associated with a member shall file with FINRA information with respect to membership or registration which is incomplete or inaccurate *so as to be misleading*, or which could in any way tend to mislead, or fail to correct such filing after notice thereof” (emphasis added).

⁹ The Department’s complaint about the late change of Watkins’ address is especially trivial and technical. As the record in this proceeding reveals, Watkins did not conduct any securities business at all between September 19, 2012 and his reinstatement in the spring of 2014. See Original Recommendation at p. 4, ¶ 24 and Department Motion, Ex. B (3d page)(showing address change at 6/20/13). Plainly the address information could not have affected any customer.

would, by any realistic assessment, influence any customer.¹⁰ Again, there has never been any allegation in any phase of these proceedings that any customer has ever been harmed or even made unhappy.

Oklahoma Regulations

1. *Rule 660:11-5-42(b)(1)*

The Department notes that Rule 660:11-5-42(b)(1) “specifically” provides that “a broker-dealer registered under the Act shall not violate any rule of a national securities association of which it is a member.” The cited regulation provides in its entirety:

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 federal securities statute or rule or 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.

Southeast, of course, does not stand accused of violating any federal securities laws or even any substantive Oklahoma statutory law. Those would be a serious matters. Even more ironically, Southeast does not even stand accused of violating the many substantive provisions of Rule 660:11-5-42 itself. These substantive provisions deal with things like charging customers fairly, use of customer funds, customer credit, bribing issuers, sharing in customer profits and

¹⁰ The Department even suggests that the delayed change-of-address filing might have prevented the Department itself from being able to “locate the agent.” Department Motion at 17. Throughout this proceeding the Department has contradictorily maintained that Watkins was all too easy to locate at an office in Tulsa shown on one of his e-mail addresses. And, of course, the change of address was to a Dallas office, where the Commission has no jurisdiction. Regarding the reporting of these proceedings, the circularity theme continues. First the Department files a proceeding that it has no jurisdiction to prosecute and which involves no substantive violation or customer harm. Then the customer is somehow harmed because this unwarranted proceeding is not reported immediately to potential customers who ought to have this information in the “total mix” and be able to avoid a broker who has done nothing wrong.

losses, etc. Instead, Southeast stands accused of violating the “incorporated” FINRA supervision and reporting rules discussed below.

2. *Rule 660:11-5-42(b)(22)*

The Department cites but one other (again purely procedural) Oklahoma regulation, which, the Department states, “specifically requires a broker-dealer to establish, maintain, and enforce written procedures to supervise the activities of each of its registered agents and associated persons.” Department Motion at 15, citing Rule 660:11-5-42(b)(22). Of course, Southeast has adopted written procedures. To the extent that the stringency of those procedures exceed legal requirements (including even “incorporated” requirements of FINRA/NASD rules), “violations” of the WSPs have no legal effect. The reality, however, is that Southeast has complied with its WSPs in every *material* respect and with the statutes and regulations in all respects. See 7-15-14 Response and attached exhibits.

FINRA/NASD RULES

Overwhelmingly, the procedural requirements upon which the Department’s recommendation for suspension rest are contained in FINRA/NASD requirements incorporated by reference in the statutes and regulations. One might think that FINRA itself would be best suited to understand the underlying intent of, and to see to the enforcement of, its own rules. Of course FINRA (and before it, the NASD) does exactly that. Southeast is regularly examined by FINRA and the Securities & Exchange Commission, each of which sends examiners to the Southeast home office. Southeast is on a two-year inspection cycle with FINRA and has been it since it began business on July 1, 1997. Hence Southeast has been subjected to nine FINRA inspections including a 2014 inspection. During the same time period, the SEC has inspected

Southeast four times. None of those inspections has ever resulted in any sanction of Southeast of any kind. *See* Black Affidavit (Exhibit "C" hereto).

It is not entirely clear why the Department concludes that it has a better understanding of the purposes and proper application of FINRA's rules than FINRA itself. Be that as it may, the (again purely procedural) FINRA/NASD rules that the Department says Southeast violated are surveyed and discussed below.

1. *NASD Rule 3010(d)(2) (e-mail review)*

According to the Department, NASD Rule 3010(d) requires that a broker-dealer establish procedures for "review by a registered principal of incoming and outgoing written and electronic correspondence of its registered representatives with the public" relating to its securities business." Department Motion at 13. Here is the text of Rule 3010(d)(2), the subsection of the rule relating to e-mail and from which the Department quotes:

Each member shall develop written procedures *that are appropriate to its business, size, structure, and customers* for the review of incoming and outgoing written (i.e., non-electronic) and electronic correspondence with the public *relating to its investment banking or securities business*, including procedures to review incoming, written correspondence directed to registered representatives *and related to the member's investment banking or securities business* to properly identify and handle customer complaints and to ensure that customer funds and securities are handled in accordance with firm procedures. *Where such procedures for the review of correspondence do not require review of all correspondence prior to use or distribution*, they must include provision for the education and training of associated persons as to the firm's procedures governing correspondence; documentation of such education and training; and surveillance and follow-up to ensure that such procedures are implemented and adhered to.

(emphasis added). *See* also NASD Rule 3010(d)(1). What the quoted rule, contrary to the Department's suggestion, self-evidently *does not do* is require any *particular* procedure for e-

mail review. Indeed the quoted rule is noteworthy for its flexibility. Plainly it does not require, as the Department again misleadingly suggests, a system that allows supervisors to access all broker e-mail traffic without the agent's knowledge. The rule on its face makes clear, moreover, that it *does not* require review of *all* correspondence "prior to use or distribution" because it gives instructions to members who choose *not to* impose such a requirement. Southeast's practices do not violate Rule 3010(d) and FINRA itself has never so found. The practices violate nothing except the Department's unilateral opinion about how a FINRA rule ought to be implemented.

2. *NASD Rule 3010(a)(3) (agent supervision)*

The Department says that "NASD Rule 3010 specifies the minimum requirements of an acceptable supervisory system . . ." In this second in the Department's series of potshots, the Department in effect lays out what it would require of Southeast if it were FINRA, as opposed to what FINRA actually requires. The actual FINRA rule is not cookie cutter; it has the flexibility to take into account the particular scope and peculiarities of a particular broker-dealer's operations. The Department's central criticism here appears to be this: Southeast cannot possibly keep up with its far-flung network of agents without additional OSJs and additional day-to-day supervisors. It ignores the facts on the ground: the majority of Southeast's brokers are financial advisors that sell insurance and provide other services besides securities trading. Indeed, the majority of these brokers engage in only a handful of securities transactions annually. *See* Black Depo testimony (Exhibit "B") at pp. 24-25. The transactions are in fact reviewed by Black or others in Charlotte and the supervisors are not overwhelmed or even "whelmed." The Department proffers no evidence to the contrary and offers no explanation as to why FINRA itself is unperturbed by Southeast's system. The Department wants the Administrator to make a

summary decision suspending Southeast in the face of the contrary decision by the very entity that wrote the rule that Southeast has supposedly traduced.

The applicable NASD rule – Rule 3010(a)(3) -- actually sets forth a series of nonexclusive factors that the broker-dealer should consider in determining whether multiple OSJs are needed:

. . . Each member shall also designate such other OSJs *as it determines to be necessary* in order to supervise its registered representatives, registered principals, and other associated persons in accordance with the standards set forth in this Rule, taking into consideration the following factors:

- (A) whether registered persons at the location engage in retail sales or other activities involving regular contact with public customers;
- (B) whether a substantial number of registered persons conduct securities activities at, or are otherwise supervised from, such location;
- (C) whether the location is geographically distant from another OSJ of the firm;
- (D) whether the member's registered persons are geographically dispersed; and
- (E) whether the securities activities at such location are diverse and/or complex.

(emphasis added).

Southeast has in fact considered these factors, particularly factor (B), in conjunction with the closely-related fact that the “registered persons” at each nonbranch office themselves engage in only a few transactions per year.¹¹ Southeast has not violated Rule 3010(a). It has instead run afoul of the Department’s unilateral conclusion about how Southeast ought to run its business.

¹¹ The Department does not even contend that the NASD rule or any other rule or regulation imposes an explicit requirement that Southeast establish additional OSJs or branch offices. The

3. *NASD Rule 3010(d)(1) (review of transactions)*

According to the Department, NASD Rule 3010(d) “specifically requires a broker-dealer to make provisions for the review of all transactions.” The Department suggests that, in order to comply with the FINRA/NASD rule, the broker-dealer must adhere to its own WSP to the letter. Again it is helpful to consult the actual language of the rule invoked. Rule 3010(d)(1) provides in pertinent part:

Each member shall establish procedures for the review and endorsement by a registered principal in writing, on an internal record, of all transactions . . . of its registered representatives with the public relating to the investment banking or securities business of such member. Such procedures should be in writing *and be designed to reasonably supervise each registered representative.* Evidence that these supervisory procedures have been implemented and carried out must be maintained and made available to the Association upon request.

(emphasis added).

No reasonable examiner would deem the review procedure that Frank Black has described to contravene the standard quoted above and, of course, no FINRA examiner ever has. (At the risk of redundancy, it is FINRA’s own rule). *See* 6-19-14 Objection at p. 5, ¶ 9 (describing Black’s detailed review of each broker order) and Black Depo. at p. 34, line 22 to p. 39, line 13 (deposition pages attached as Exhibit “B”). The truth is that Southeast’s transaction review protocol is far more stringent than most SEC/FINRA-regulated firms. Its president reviews every single order request and the firm itself actually places the order only after the presidential review. Neither would such an examiner find Southeast’s suitability review

Department merely suggests, again in opposition to FINRA itself, that it, the Department, knows best and that additional OSJs ought to be established. The Department does so in the face of the absence of any customer complaint or any evidence of any violation of any substantive securities law or regulation (substantive regulations like those set delineated in Rules 660:11-5-42(b)(2) through (b)(17). Indeed Southeast has never had a valid complaint lodged against the firm based on the activities of any agent anywhere.

procedures deficient. *See id* (testimony regarding review process including suitability review). These conclusions are not speculative ones. The actual examiners -- *from the organization that promulgated the subject rule* -- have not in fact issued any sanction against Southeast ever, for this or any other supposed infraction. That the Oklahoma Department of Securities would do so based on FINRA's own rule -- and in the face of FINRA's own contrary decision -- is passing absurd.

4. *NASD Rule 3010(b) (maintaining written procedures)*

The Department notes that "NASD Rule 3010 also requires that the firm's supervisory system must be set forth in written supervisory procedures." Department Motion at 11. Southeast has done that. As discussed herein, the Department's real beef here is not that Southeast has failed to comply with any statute, any regulation, or even any FINRA/NASD rule. It is that Southeast has (allegedly) failed to comply with the letter of its own WSPs. Not only has Southeast's substantial compliance with the WSPs been shown, the very promulgator of the very rule requiring "establishment and maintenance" of WSPs has reviewed Southeast's compliance. The review has encompassed not just compliance with Southeast's own WSPs, but with the underlying rules that the WSPs are meant to implement. That agency, FINRA, has taken *no action* against Southeast and certainly has not taken the harsh actions that the Department urges here. The rule itself -- NASD Rule 3010(b) -- requires only that WSPs be "*reasonably designed to achieve* compliance with applicable securities laws and regulations, and with the applicable Rules of NASD."

If the Department claims that a broker-dealer may be suspended *in the complete absence* of any statutory, regulatory or (via “incorporation”) FINRA/NASD rule -- on the grounds that the broker-dealer failed to adhere (to the letter) to its own WSPs -- then Respondents respectfully suggest this: the Department has failed to state a claim upon which any Commission action can be taken.

**RESPONSE TO DEPARTMENT’S
REQUEST FOR SANCTIONS AND CONCLUSION**

The Department’s discussion of the standards for sanctions amounts to the suggestion that the Administrator has such authority and power that he can impose just about any sanction he chooses and for just about any reason that his own Department suggests, like “failing to implement an effective and meaningful supervisory system.” Department Motion at 18. As shown herein, there has been no such failure, no violation of any statute, regulation or regulation, and not even a material violation of Southeast’s own WSPs, which do not have the force of law. To grant the Department Motion here would not be “within the law” or “justified in fact,” but rather “arbitrary and capricious.”¹²

For the reasons set forth herein, no relief of any kind is appropriate here, except in favor of Respondents. The Supplemental Recommendation finds no support in the very

¹² Respondents would like to think that the Administrator and this Commission set a higher standard for taking coercive actions against regulated businesses and individuals than acting without arbitrariness and caprice.

statutes and regulations that provide the supposed foundation for the recommended sanctions.

The proceeding hence should be dismissed forthwith.

Respectfully submitted,

Dated: August 4, 2014



Patrick O. Waddel, OBA #9254

J. David Jorgenson, OBA #4839

SNEED LANG PC

One West Third Street, Suite 1700

Tulsa, OK 74103

(918) 588-1313

(918) 588-1314 Facsimile

*Counsel for Rodney L. Watkins, Jr.,
Frank H. Black and Southeast Investments,
N.C. Inc.*

EXHIBIT A

Lamar Guillory
April 16, 2014

In Re: Rodney Watkins vs.
Case No. 12-058

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

In the Matter of:
RODNEY WATKINS
ODS FILE NO. 12-058

DEPOSITION OF LAMAR GUILLORY

TAKEN ON BEHALF OF THE DEPARTMENT OF SECURITIES

IN TULSA, OKLAHOMA

ON APRIL 16, 2014

WORD FOR WORD REPORTING, LLC
111 HARRISON AVENUE, STE. 101
OKLAHOMA CITY, OK 73104
(405) 232-9673

REPORTED BY: JODI D'VOREE HORVATH, CSR, RPR

EXHIBIT

A

1 may have been -- I would have, but something -- you
2 know, if it was something that was innocuous or
3 something like that I would have deleted, I mean, in
4 terms of -- but the answer is yes, I would have but
5 under what? I mean, if it was just me to him about
6 something from me, unless the question got answered it
7 might have been okay at that time.

8 Q. Okay. Do you communicate with your
9 clients through e-mail?

10 A. Very, very rarely.

11 Q. All right.

12 A. Very rarely.

13 MR. JORGENSEN: That is the answer.

14 Q. (By MR. JORGENSEN) You communicate
15 mostly just verbally with them?

16 A. Yes.

17 Q. No written correspondence?

18 A. No.

19 Q. Okay.

20 A. Can I --

21 Q. Is Southeast aware that you have two
22 separate e-mail accounts?

23 A. Yes.

24 Q. All right. Do they ask you why you have
25 two separate e-mail accounts?

J U R A T

STATE OF OKLAHOMA)

) ss:

COUNTY OF TULSA)

I, Lamar Guillory, do hereby state under oath that I have read the above and foregoing deposition in its entirety and that the same is a full, true and correct transcription of my testimony so given at said time and place, except for the corrections noted.

Lamar Guillory

Subscribed and sworn to before me, a Notary Public in and for the State Of Oklahoma by said witness _____, on this, the ____ day of _____.

My Commission Expires: _____

EXHIBIT B

Frank Black
May 14, 2014

In Re: Rodney Watkins vs.
Case No. 12-058

Page 1

STATE OF OKLAHOMA
DEPARTMENT OF SECURITIES

IN RE:)
RODNEY LARRY WATKINS, JR.)
ODS FILE NO. 12-058)
_____)

DEPOSITION
OF
FRANK H. BLACK

Taken by Oklahoma Department of Securities

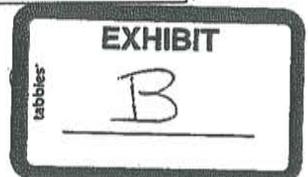
Charlotte, North Carolina

May 14, 2014

COPY

* * * * *

Reported by: Mary L. Labonte, RPR



1 Plexico and Jonathan doing branch offices in
2 addition to me.

3 Q. Okay. So there's three individuals
4 that do branch office onsite exams?

5 A. Right.

6 Q. What's the difference between a branch
7 office and a non-branch office?

8 A. Go back to FINRA regs which are pretty
9 doggone specific, you meet with clients, you
10 know, you do over 25 transactions. Again a heck
11 of a lot of our agents -- I'm going to emphasize
12 I don't push production. I really truly don't.
13 I know it sounds kind of funny from somebody in a
14 commission business. I just don't it. I don't
15 believe in it. I don't believe in pressure.

16 So FINRA rule is -- and most of our
17 guys make a living from the insurance business.
18 They're insurance agents. They want the ability,
19 in most cases, to write a variable annuity for
20 example. So if they do less than 25
21 transactions, they're not considered a branch.
22 And they don't advertise to the public and don't
23 meet with the public, so forth.

24 Q. Who makes the decision on whether the
25 office is considered a branch versus a

1 non-branch?

2 A. I do.

3 Q. And how frequently do you do exams of
4 non-branch offices?

5 A. Well, of course according to FINRA
6 rule. It depends on whether I feel like it's
7 required. I've got one guy that does -- I mean,
8 he literally does about -- the good news is he
9 told me up front what he did. Like I say, I'll
10 never have a production requirement. He does
11 \$7,500 a year. But that's what he told me. He's
12 an insurance agent. And I do that one just as I
13 feel the need, which is very infrequently because
14 he puts in so few orders, he's got basically
15 nothing to supervise.

16 And you have to understand the way we
17 operate, everything comes here. So the new
18 account forms end up being opened in this office,
19 the variable annuity paperwork is required to be
20 sent to this office. They can't send it direct
21 to the carrier. The mutual fund paperwork is
22 required to come to my office to be approved and
23 then sent on to the carrier.

24 Q. Do you approve business websites for
25 your agents?

1 Q. Can they see their new account
2 information?

3 A. I'm honestly not sure. I've never
4 logged in as a client.

5 Q. As a matter of fact, to clarify my last
6 question when I said can they see, can the client
7 see their new account?

8 A. Well, the point is, in the meantime,
9 they've seen it because they got a printed copy
10 of it. And just so you know, any changes of
11 address have to be in writing, signed by the
12 client. A broker can't call in and say change
13 the client's address, change the name, do
14 anything. It's got to be signed by the client.
15 They're going to get a copy from -- they're going
16 to get a letter from National Financial that says
17 we have a new account or change of address, they
18 send it to the old address and the new address,
19 if there's anything wrong with this, please let
20 us know. They issue all checks. We don't issue
21 checks out of the Charlotte office.

22 Q. What documents are required to place an
23 order?

24 A. What documents are required? A broker
25 calls in and says, I want to buy 100 shares of

1 General Motors. So we've got to have who's the
2 client, what is the account number, what's the
3 commission, solicited unsolicited, shares, price
4 you want it executed at, just regular fill out an
5 account form -- or I'm sorry, an order form.

6 Q. Does the broker fill out the order
7 form?

8 A. No. We fill it out.

9 Q. Is there a different process for
10 different types of products? For example a
11 mutual fund versus a stock, is there a different
12 process to complete an order?

13 A. There's a different form.

14 Q. And --

15 A. There's a mutual fund form -- and not
16 to confuse you, but -- so there's a mutual fund
17 order, there's a stock form. And I say stocks,
18 it covers stocks, options, preferred stocks, I
19 mean everything but a mutual fund. But that's
20 separate from a variable annuity or an away
21 business. So those literally come to us in
22 writing with a new account form. Okay.

23 So a broker wants to buy a variable
24 annuity, here's the new account form, here's the
25 disclosure form, here's the filled-out form from

1 the variable annuity company.

2 Q. Were brokers ever -- brokers agents of
3 Southeast ever required to complete mutual fund
4 order tickets?

5 A. Required? They can do it if they want
6 to. The point is we're required to have records,
7 they're required to have records. And the rule
8 basically says you have to have access to the
9 records. If they need a copy of anything, we can
10 maintain them. So I say you're free to keep
11 them, but are you required to keep them? No.

12 Q. So it is possible that an order ticket
13 could be completed by the agent and not
14 Southeast?

15 A. The way you're asking the question, the
16 implication is that he can complete an order
17 ticket and we haven't. We -- he may complete an
18 order ticket, but we are definitely going to
19 complete an order ticket.

20 Q. Okay. If a broker, an agent, fills out
21 an order ticket and sends it to Southeast, do you
22 accept that order ticket or do you copy the
23 information and complete your own order ticket at
24 that point?

25 A. We complete our own order ticket.

1 That's what I'm trying to say to you. You know,
2 we take the orders, we fill them out.

3 Q. Is there a suitability check when the
4 order is placed?

5 A. I'd say suitability occurs every day.
6 It's called I review the orders, I know who the
7 clients are in general, I go on Streetscape and
8 see what the suitability is.

9 Q. So for each order, do you go to
10 Streetscape to check suitability?

11 A. No. You know better than that.

12 Q. How do you reflect your review of the
13 order tickets?

14 A. Initial them, initial the blotter.

15 Q. You initial the blotter?

16 A. Yeah.

17 Q. Is the blotter initialled each day?

18 A. It is.

19 Q. Who creates the trade blotter?

20 A. In general, operations manager.
21 Jeannette did do it. I think now Craig does it.

22 Q. Are you the only one that would review
23 the trade blotter?

24 A. Well, again, I want every eye we can
25 get on it so they've looked at it and now the

1 final approval is mine.

2 Q. Your initials would be the only one on
3 the trade blotter?

4 A. Yeah, yeah, sure. And I say that, you
5 know, if I'm absent, obviously David Plexico can
6 do it in my absence. By the way, he is a
7 partner. He's got five percent supposedly.

8 Q. Is an agent ever required to confirm
9 that an order was placed?

10 A. Is an agent ever required? I don't
11 understand the question.

12 Q. If an agent calls in an order that day,
13 the order ticket is completed by Southeast, the
14 order is approved, does the agent have to follow
15 up on that order to make sure it was completed?

16 A. Does -- I honestly don't understand the
17 question. Now, if you're using Streetscape, they
18 can go online to see the order's been completed.
19 You know, it used to be you called all the agents
20 back and said we executed the order. Now you got
21 computers and you've got access to them, just got
22 to go on there and, you know, see that it's been
23 done.

24 Q. Is the agent required to go onto
25 Streetscape and see that the orders been placed?

1 A. They're sitting in an office or
2 wherever, and I say look if you don't, dummy,
3 you're stupid because if an error occurs, it's
4 your error, okay, if you told us the wrong amount
5 or whatever. So if you're smart, what you're
6 going to do is go on there and make darn sure
7 that if you asked us to buy 100 shares of General
8 Motors, we bought 100 shares of General Motors
9 because if by accident you told us to sell it,
10 ultimately you're going to be responsible. If
11 it's our error, we're going to take it; but if
12 it's his error, guess what, he's going to take
13 it.

14 Q. Who at the Southeast main office
15 reviews agent correspondence?

16 A. I do.

17 Q. What is reviewed?

18 A. What -- did you ask what is reviewed?

19 Q. Yes.

20 A. Letters, faxes, e-mails, anything
21 correspondence.

22 Q. How frequently do you review it?

23 A. Obviously -- by the way, one of the
24 things I do is personally open the mail so if
25 there's ever a complaint, I see it right now. If

RECEIVED MAY 30 2014

Frank Black
May 14, 2014

In Re: Rodney Watkins vs.
Case No. 12-058

Page 81

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

S I G N A T U R E P A G E

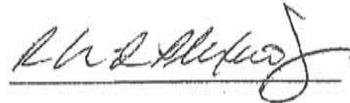
IN RE: RODNEY LARRY WATKINS, JR.
DEPOSITION OF: FRANK H. BLACK

I, FRANK H. BLACK, do hereby certify that I have read the foregoing deposition and that the foregoing transcript is a true and correct record of my testimony, subject to the attached changes, if any, on the amendment page.



FRANK H. BLACK

Subscribed and sworn to before me this 22 day of May 2014.



Notary Public

My commission expires: 8-26-2021

RONALD DAVID PLEXICO JR
NOTARY PUBLIC
SOUTH CAROLINA
MY COMMISSION EXPIRES
AUGUST 26, 2021

EXHIBIT C

inspections including a 2014 inspection. During the same time period, the SEC has inspected Southeast four times.

4. No NASD, FINRA or SEC inspection has ever resulted in any sanction of Southeast of any kind.

5. Southeast, in the seventeen years of its existence, has never had a valid customer complaint lodged against the firm.

Further Affiant saith not.

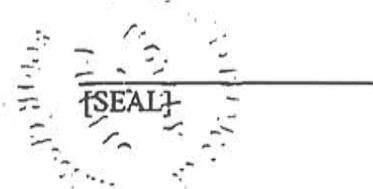

Frank H. Black

SUBSCRIBED and SWORN to before me this 4th day of August, 2014.

RONALD DAVID PLEXICO JR
NOTARY PUBLIC
SOUTH CAROLINA
MY COMMISSION EXPIRES
AUGUST 26, 2021


Notary Public

My commission expires: 8-26-2021



Brenda London

From: Brenda London
Sent: Monday, August 04, 2014 4:09 PM --
To: Irving Faught; pwaddel@sneedlang.com
Cc: Jennifer Shaw; Amanda Cornmesser; David Jorgenson (djorgenson@sneedlang.com); Holly Fisher (hfisher@sneedlang.com); Martha Welker (mwelker@sneedlang.com); Gerri Kavanaugh; Faye Morton
Subject: Rodney Watkins ODS 12-058
Attachments: RespondentsRespToODSMSD-RenewedMotionToDismissSuppRecommendation_12-058.pdf; RespondentsMotionForRecusal_12-058.pdf

Attached are filed stamped copies of the following: *Respondents' Response to Department's Motion for Summary Disposition and Renewed Motion to Dismiss Supplemental Recommendation*; and *Respondents' Motion for Recusal of Administrator and for Appointment of Neutral Hearing Officer*.

Thank you,

Brenda London, Paralegal
Oklahoma Department of Securities
First National Building Suite 860
120 North Robinson
Oklahoma City OK 73102
(405) 280-7700
(405) 280-7742 Facsimile
blondon@securities.ok.gov