

**ADMINISTRATIVE PROCEEDING
BEFORE THE
SECURITIES COMMISSIONER OF SOUTH CAROLINA**

IN THE MATTER OF:)
)
LEGEND SECURITIES, INC.)
CRD # 44952 ,)
)
 Respondent.)

**ADMINISTRATIVE ORDER
File Number 14108**

WHEREAS, the Securities Division of the Office of the Attorney General of the State of South Carolina (the “Division”) has been authorized and directed by the Securities Commissioner of South Carolina (the “Securities Commissioner”) to administer the provisions of S.C. Code Ann. § 35-1-101, *et seq.*, the South Carolina Uniform Securities Act of 2005 (the “Act”); and

WHEREAS, based on the information received, the Division decided it was necessary and appropriate to open an examination of Legend Securities, Inc., CRD Number 44952, pursuant to the Act in order to determine whether the Respondent had violated, was violating, or was about to violate the Act; and

WHEREAS, in connection with its examination, the Division has determined that evidence exists to support the following findings of fact and conclusions of law:

I. JURISDICTION

1. The Securities Commissioner has jurisdiction over this matter pursuant to S.C. Code Ann. Section 35-1-601.

II. RESPONDENT

2. Legend Securities, Inc. (the “Respondent”) is a broker-dealer firm with a last known business address of 45 Broadway, 32nd Floor, New York, New York 10006.

III. STATEMENT OF FACTS

3. At all times relevant to this order, the Respondent was registered as a broker-dealer in South Carolina.
4. The Respondent employs or associates with agents who are licensed to sell securities in South Carolina.
5. Since 2012, approximately thirty agents have effected the purchase or sale of securities for South Carolina residents.

UNREASONABLE FEES

6. Among other fees and commissions, the Respondent charges a \$50 annual fee on each account.
7. The Respondent, in at least five South Carolina accounts, sold securities in order to produce sufficient cash in the account to cover the \$50 annual fee.
8. In at least those five accounts, the Respondent charged the South Carolina clients an additional \$49 fee¹ to sell the securities in order to pay the annual fee.
9. On April 8, 2014, a South Carolina client ("Client A") purchased fifty shares of stock at \$9.49 a share totaling \$474.50. Client A paid the Respondent \$523.50 for the purchase, which included a fee of \$49.00, a total transaction expense of 10.33%.
10. On two occasions, Respondent sold stock out of Client A's account. First, Respondent sold 11 shares at \$9.16, imposing another \$49.00 fee, or a total transaction expense of 48.63%. On the other occasion, Respondent sold 13 shares of stock out of Client A's

¹ The \$49.00 fee, which on occasion varied in amount, may hereafter be referred to as the "Fee" and is \$49.00 unless otherwise specified.

account at \$14.11, imposing a \$40 commission and another \$49.00 fee, a total transaction expense of 48.52%.

11. Assuming Client A liquidated his remaining holdings, 26 shares, and no commission or other fee was charged, Client A would need the stock to appreciate to \$14.512, a 53% increase in price over its purchase price, to merely break even, i.e., to cover the \$138.00 in fees.²
12. On or about March 11, 2014, another South Carolina client (“Client B”) opened an account to purchase 100 shares of Opko Health, Inc. (“Opko”) stock.
13. Thereafter, the Respondent purchased not only Opko stock but also 100 shares of Ocean Power Technologies, Inc. (“Ocean Power”) stock within Client B’s account.
14. The purchase of Ocean Power stock was done without authorization from Client B.
15. Over a one hour and three minute period, the Ocean Power stock allegedly increased in value \$1.0209 per share. The Respondent sold the Ocean Power stock at a profit of \$102.09.
16. The Respondent charged Client B a \$49.00 fee for the unauthorized purchase of Ocean Power stock and a \$49.02 fee to sell the unauthorized Ocean Power stock.
17. The total expenses associated with the Ocean Power stock transaction were \$98.02. This includes a total transaction cost of 9.25% on the purchase and 7.76% on the sale.
18. Respondent purchased for Client B 100 shares of Opko stock at \$9.2399 a share. The Respondent charged Client B a \$49.00 fee to execute this transaction, a total transaction expense of 5.303%.

² If the Fee was charged on the sale of the remaining holdings, Client A would need the stock to appreciate to \$16.40, a 72% increase in price over its purchase price, to merely break even, i.e., to cover the \$187.00 in fees.

19. On June 10, 2014, the Respondent sold 11 shares of Client B's Opko stock at a loss at \$9.13 a share to cover the \$50 annual fee. The Respondent charged Client B an additional \$49.00 fee to perform this transaction, a total transaction expense of 48.79%.
20. Therefore, Client B now needed Opko stock to improve 12.06% over the purchase price to break even and cover: (1) the two \$49.00 fees the Respondent imposed on Client B on the purchase and on the forced sale to cover the annual fee; and (2) the \$1.2089 loss the Respondent imposed on Client B through the sale of Opko stock at a loss.
21. In October of 2014, Client B sold the remainder of his Opko stock, 89 shares, at \$8.3801 per share, a further loss of \$0.8598 per share. The Respondent charged Client B another \$49.00 fee to perform this transaction, a total transaction expense of 6.57%.
22. Between January 1, 2014, and December 31, 2015, the Fee was charged on around 422 transactions executed by the Respondent for South Carolina clients.
23. The Fee was not properly disclosed to clients prior to effecting trades, resulting in non-disclosure, incomplete disclosure, or a misstatement of a material fact.
24. The effect of the Fee on the possibility of profitability was not properly disclosed to clients prior to effecting trades, resulting in non-disclosure, incomplete disclosure, or a misstatement of a material fact.
25. The Fee was listed as a "handling fee" on confirmations sent to the customers after the execution of the trade.
26. The Fee was entered as a postage fee when submitted to the clearing broker.
27. The Fee is not associated with any cost imposed on the Respondent or incurred by the Respondent.

28. The Fee was mischaracterized on the confirmations sent to the customer, the information sent to the clearing broker, or both.
29. Further, the Fee was assessed differently to different customers, with some customers being charged no fees, some customers differing amounts, and others the \$49.00 fee discussed above.
30. The Fee is unreasonable.
31. Further, imposing such a fee to liquidate securities for the sole purpose of producing cash sufficient to pay a different \$50.00 fee is dishonest and unethical.

SUITABILITY AND KNOW YOUR CUSTOMER VIOLATIONS

32. When requested by the Division, the Respondent was unable to provide the investment objectives for at least 71 South Carolina accounts.
33. When requested by the Division, the Respondent was unable to provide a client birthdate for at least 64 South Carolina accounts.
34. After a sampling of five South Carolina accounts' "know your customer" information, it was determined that the information in three of those five accounts was materially inaccurate.
35. The Respondent recommended securities transactions in at least thirty-six accounts referred to in paragraphs 32 through 34.
36. For the accounts referenced in paragraphs 32-34, the Respondent failed to obtain sufficient and/or accurate customer information to determine if the securities transactions the Respondent recommended were suitable for those clients.
37. The Division asked the Respondent to provide all documents evidencing suitability reviews of trades in Client B's accounts.

38. In its response, Respondent failed to provide documents from which a sufficient suitability review could have been made regarding trades in Client B's account.

39. The Respondent failed to obtain information necessary to determine if reasonable grounds existed to believe the securities transactions it recommended and/or effected in Client B's account were suitable for the customer.

WRITTEN SUPERVISORY PROCEDURES DEFICIENCIES

40. The Respondent's written supervisory procedures ("WSP") state, "[r]ecommendations to purchase or sell short OTC equity securities require completion of Legend's OTC Equity Securities Suitability Form **prior to making the recommendation**" (emphasis in original).

41. The Respondent defines an OTC equity security as "any non-exchange-listed security," among other things.

42. The Division asked the Respondent to provide all "Legend OTC Equity Securities Suitability" forms completed for recommendations to South Carolina residents.

43. The Respondent responded, "Please be advised we consider OTC Equity Securities as Pink Sheet pr [sic] Bulletin Board stocks, all others are listed. We only accept unsolicited transactions in Pink Sheet and Bulletin Board stocks."

44. GTAT is a non-exchange-listed security and is a pink sheet or bulletin board stock.

45. GTAT was recommended to Client B and an OTC Equity Securities Suitability Form was not completed prior to the transaction.

46. In addition to the sale in Paragraph 45 above, at least twelve other solicited buy orders in GTAT stock were made by the Respondent for South Carolina clients and no suitability forms were submitted.

47. The events above demonstrate that in at least 13 instances, the Respondent failed to enforce their WSPs concerning sales of OTC equity securities made to South Carolina clients.

FRAUD IN CONNECTION WITH THE OFFER AND SALE OF A SECURITY

48. According to disclosures made on the OTC Market, GTAT declared bankruptcy on October 6, 2014.

49. In the days following GTAT's bankruptcy declaration, the Respondent solicited 1,000 share buy orders from two South Carolina clients on October 7, 2014, and October 9, 2014.

50. In connection with the offer and sale of the GTAT securities to the South Carolina clients above, the Respondent failed to disclose GTAT's bankruptcy.

51. GTAT's bankruptcy is a material fact as it relates to decisions to invest in GTAT.

52. The Respondent's failure to disclose GTAT's bankruptcy during the solicitation of buy orders of GTAT stock constitutes an omission of a material fact and thus, securities fraud.

IV. CONCLUSIONS OF LAW

53. Pursuant to S.C. Code Ann. Section 35-1-412(c), if the Commissioner finds that the order is in the public interest and subsection (d)(1) through (6), (8), (9), (10), or (12) and (13) authorize the action, an order under the Act may censure, impose a bar, and/or impose a civil penalty in an amount not to exceed \$10,000 for each violation, on a registrant.

54. Pursuant to S.C. Code Ann. Section 35-1-412(d)(13), a person may be disciplined under subsection (c) if the person has engaged in dishonest or unethical practices in the securities business within the previous ten years.

55. S.C. Code of Regulations R. 13-501(A) requires each broker-dealer to observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business.
56. On five or more occasions, the Respondent charged an unreasonable \$49.00 handling fee to execute a securities transaction intended to generate cash in order to pay a \$50 annual fee, and thus failed to observe high standards of commercial honor and just and equitable principles of trade in violation of S.C. Code of Regulations R. 13-501(A).
57. Further, S.C. Code of Regulations R. 13-501(A)(3) defines dishonest or unethical practices to include recommending to a customer the purchase, sale or exchange of any security without reasonable grounds to believe that such transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other relevant information known by the broker dealer.
58. On thirty-six or more occasions, the Respondent failed to obtain reasonable grounds to believe that recommended securities transactions were suitable for the customer by failing to obtain basic information about South Carolina clients including birthdate, investment objectives, and risk tolerance, in violation of S.C. Code of Regulations R. 13-501(A)(3).
59. On three or more occasions, the Respondent failed to obtain reasonable grounds to believe that securities transactions were suitable for South Carolina clients by obtaining and retaining materially misstated "know your customer" information, in violation of S.C. Code of Regulations R. 13-501(A)(3).

60. S.C. Code of Regulations R. 13-501(A)(11) defines dishonest or unethical practices to include charging unreasonable and inequitable fees for services performed, including miscellaneous services such as collection of monies due for principal, dividends or interest, exchange or transfer of securities, appraisals, safekeeping, or custody of securities and other services related to its securities business.
61. On at least four hundred occasions, the Respondent charged an unreasonably high handling fee that was unassociated with any costs being imposed on the Respondent in violation of S.C. Code of Regulations R. 13-501(A)(11).
62. Further, S.C. Code of Regulations R. 13-501(A)(21) defines dishonest or unethical practices to include violating any rule of the Securities and Exchange Commission, or of a national securities exchange or national securities association or self-regulatory association of which it is a member.
63. The Financial Industry Regulatory Authority (“FINRA”) is a self-regulatory association of which the Respondent is a member.
64. FINRA Rule 2122 requires charges, if any, for services performed, including, but not limited to, miscellaneous services such as collection of monies due for principal, dividends, or interest; exchange or transfer of securities; appraisals, safe-keeping or custody of securities, and other services to be reasonable and not unfairly discriminatory among customers.
65. Pursuant to FINRA policy as stated in NASD IM-2440-1 (currently restated in the supplemental materials to FINRA Rule 2121), for most transactions, a markup of 5% or less would fall within the fair and reasonable standard. However, charging markups of

less than 5% may be considered unfair or unreasonable. This has been interpreted to be a guideline and not a rule.

66. On at least four hundred occasions, the Respondent charged an unreasonably high handling fee that was unassociated with any costs being imposed on the Respondent in violation of FINRA Rule 2122 and S.C. Code of Regulations R. 13-501(A)(21).
67. On more than one occasion, the Respondent charged handling fees which, alone or in conjunction with additional commissions, resulted in charges or markups in excess of 5% in violation of FINRA Rule 2122 and S.C. Code of Regulations R. 13-501(A)(21).
68. On more than one occasion, the Respondent charged different customers different handling fees in violation of FINRA Rule 2122 and S.C. Code of Regulations R. 13-501(A)(21).
69. Pursuant to S.C. Code of Regulations R. 13-501(C), engaging in conduct such as non-disclosure, incomplete disclosure or misstatement of material facts or manipulative or deceptive practices is grounds for denial, suspension or revocation of registration, imposition of administrative fines, or such other action authorized by statute.
70. On more than one occasion, the Respondent failed to properly disclose the existence of and the effect on potential profitability of the Fee, constituting non-disclosure, incomplete disclosure, or misstatement of material fact in violation of S.C. Code of Regulations R. 13-501(C).
71. FINRA Rule 3110 requires each member to establish, maintain, and enforce written procedures to supervise the types of business in which it engages and the activities of its associated person that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules.

72. On more than one occasion, the Respondent failed to enforce the Respondent's written supervisory procedures regarding OTC Securities suitability in violation of FINRA Rule 3110 and S.C. Code of Regulations R. 13-501(A)(21).
73. Pursuant to S.C. Code Ann. Section 35-1-501, it is unlawful for a person, in connection with the offer, sale, or purchase of a security, directly or indirectly, to make an untrue statement of material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.
74. On at least two occasions, the Respondent failed to disclose material facts, specifically the fact that the company had declared bankruptcy, in connection with the offer and sale of GTAT stock, in violation of S.C. Code Ann. Section 35-1-501.

V. CONCLUSION

75. Based on the foregoing statement of facts and conclusions law, it is in the public interest that the Respondent should be sanctioned for its violations of the Act, as set forth above.

NOW THEREFORE, it is hereby **ORDERED**, that

- a. The Respondent shall immediately cease and desist from violating the Act;
- b. The Respondent is hereby censured for its violations of the Act described above;
- c. The Respondent shall pay a fine in the amount of three hundred thousand dollars (\$300,000); and
- d. This Order shall become final by operation of law thirty (30) days after the date of this Order if the Respondent does not request a hearing on the findings of fact and conclusions of law set forth herein.

VI. REQUIREMENT OF ANSWER AND NOTICE OF OPPORTUNITY FOR HEARING

The Respondent is hereby notified that it has the right to a hearing on the matters contained herein. To schedule such a hearing, a Respondent must file a written Answer specifically requesting a hearing with the Securities Division, Post Office Box 11549, Rembert C. Dennis Building, Columbia, South Carolina, 29211-1549, attention: Thresechia Navarro, within thirty (30) days after the date of this Administrative Order. If a Respondent requests a hearing, the Division, within fifteen (15) days after receipt of a request in a record from a Respondent, will schedule the hearing for the requesting Respondent(s).

In the written Answer, a Respondent, in addition to requesting a hearing, shall admit or deny each factual allegation in this Order, shall set forth specific facts on which the Respondent relies, and shall set forth concisely the matters of law and affirmative defenses upon which the Respondent relies. A Respondent without knowledge or information sufficient to form a belief as to the truth of an allegation shall so state.

Failure by a Respondent to file a written request for a hearing in this matter within the thirty-day (30) period stated above shall be deemed a waiver by that Respondent of the right to such a hearing. Failure of a Respondent to file an Answer, including a request for a hearing, shall result in this Order, including the stated civil penalty and any assessed costs, becoming final as to that Respondent by operation of law.

This Order does not prevent the Division or any other law enforcement agency from seeking additional civil or criminal remedies that are available under the Act, including remedies related to the offers and sales of securities by the Respondents set forth above.

ENTERED, this the 18th day of March, 2016.

ALAN WILSON
SECURITIES COMMISSIONER

By: Tracy Meyers
TRACY A. MEYERS
Deputy Securities Commissioner

ISSUANCE REQUESTED BY:



JORDAN CRAPPS
Assistant Attorney General
Securities Division
Office of the Attorney General
Columbia, South Carolina

STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL
SECURITIES DIVISION

CERTIFICATE OF SERVICE AND
AFFIDAVIT OF COMPLIANCE
File Number 14108

I hereby certify that I served upon the individual/entity listed below a copy of the document indicated below and dated March 18, 2016, by serving a copy of said document upon the Securities Commissioner of the State of South Carolina and by placing a copy of said document in the United States mail, certified mail, return receipt requested, first class postage prepaid and addressed to:

Mr. Frank Fusco
Chief Compliance Officer
Legend Securities, Inc.
45 Broadway, 32nd Floor
New York, NY 10006

Document(s): Administrative Order

Mailed March 18, 2016 from Columbia, South Carolina.

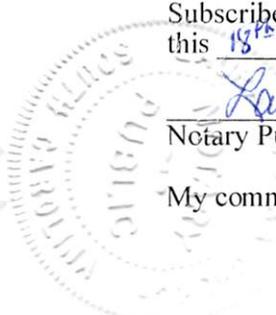
I further hereby certify, swear and affirm that, service of the above-listed entity is in compliance with Section 35-1-611, Code of Laws of South Carolina.

By: Thresechia P. Navarro
Thresechia P. Navarro
South Carolina Attorney General's Office
Securities Division
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-4731

Subscribed and sworn to before me on
this 18th day of March, 2016.

Laura Blotter
Notary Public for South Carolina

My commission expires: 3-10-18



REPUBLICAN PARTY
STATE OF TEXAS
COUNTY OF [illegible]

BY [illegible]
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