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Texas State Securities Board

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SOAH DOCKET NO. 312-11-8406 SSB DOCKET NO. IC11- 06

IN THE MATTER OF THE
INVESTMENT ADVISER
REGISTRATION OF
SELECT ASSET MANAGEMENT, LLC
AND THE INVESTMENT ADVISER
REPRESENTATIVE REGISTRATION
OF BRIAN ANTHONY BJORK

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BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS

NOTICE OF HEARING

This is your OFFICIAL NOTICE that a hearing will be held at the State Office of Administrative Hearings, in the William P. Clements Building, 300 W. 15th Street, 4th Floor, Austin, Texas 78701, before an Administrative Law Judge beginning on **October 18, 2011 at 9:00 AM Central Time** for the purpose of determining whether the investment adviser registration of Select Asset Management, LLC ("Respondent SAM") and the investment adviser representative registration of Brian Anthony Bjork ("Respondent Bjork")(collectively "Respondents") with the Securities Commissioner of Texas ("Securities Commissioner") should be REVOKED.

This hearing will be held pursuant to The Securities Act, Tex. Rev. Civ. Stat. Ann. art. 581-1 et seq. (West 2010) ("Texas Securities Act"); the Rules and Regulations of the Texas State Securities Board, 7 Tex. Admin. Code Chapter 101 et seq. (Supp. 2011)("Board Rules"); the Administrative Procedure Act, Tex. Gov't Code Ann. § 2001.001 et seq. (West 2008 & Supp. 2010); and the Rules of Practice and Procedure of the State Office of Administrative Hearings, 1 Tex. Admin. Code Chapter 155 (Supp. 2011) ("SOAH Rules").

IF YOU DO NOT FILE A WRITTEN ANSWER OR OTHER WRITTEN RESPONSIVE PLEADING TO THIS NOTICE OF HEARING ON OR BEFORE THE 20TH DAY AFTER THE DATE ON WHICH THIS NOTICE WAS MAILED TO YOU OR PERSONALLY SERVED ON YOU, THE FACTUAL ALLEGATIONS IN THIS NOTICE WILL BE DEEMED ADMITTED, AND THE SECURITIES COMMISSIONER MAY DISPOSE OF THIS CASE WITHOUT A HEARING AND GRANT THE RELIEF SOUGHT IN THIS NOTICE.

THE RESPONSE MUST BE FILED IN AUSTIN, TEXAS, WITH THE STAFF OF THE STATE SECURITIES BOARD AND THE STATE OFFICE OF ADMINISTRATIVE HEARINGS.

IF YOU FAIL TO ATTEND THE HEARING, EVEN IF A WRITTEN ANSWER OR OTHER RESPONSIVE PLEADING HAS BEEN FILED, THE FACTUAL ALLEGATIONS IN THIS NOTICE WILL BE DEEMED ADMITTED, AND THE SECURITIES COMMISSIONER MAY DISPOSE OF THIS CASE WITHOUT A HEARING AND GRANT THE RELIEF SOUGHT IN THIS NOTICE.

CONTACT INFORMATION

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Docketing Office

State Office of Administrative Hearings

300 W. 15th Street, Suite 504

Austin, Texas 78701

Telephone: (512) 475-3445

Facsimile: (512) 475-4994

Pursuant to § 105.9 of the Board Rules, all documents filed by any party, other than business records and transcripts, and all documents issued by the Administrative Law Judge must be contemporaneously served upon the Securities Commissioner's representative as identified below:

Kara Kennedy

General Counsel

Securities Commissioner's Representative

Texas State Securities Board

208 E. 10th Street, 5th Floor

Austin, Texas 78701

Telephone: (512) 305-8300

Facsimile: (512) 305-8336

Legal authority and jurisdiction for this matter exist under Sections 14 and 28 of the Texas Securities Act, Section 2003.021(b) of the Texas Government Code, and Section 155.51 of the SOAH Rules.

The staff of the Texas State Securities Board ("Staff") will present evidence in support of its request that Respondents' registrations with the Securities Commissioner be REVOKED. The evidence presented by the Staff will prove the following:

I. Respondents

1. Respondent SAM is a Texas limited liability company and its last known business address as shown by records of the Texas State Securities Board is 4000 Washington, Suite 200, Houston, Texas 77007. On July 23, 2008, Respondent SAM registered with the Securities Commissioner as an investment adviser. This registration is currently effective.
2. Respondent Bjork is a natural person whose last known business address as shown by records of the Texas State Securities Board is 4000 Washington, Suite 200, Houston, Texas 77007. On July 23, 2008, Respondent Bjork registered with the Securities Commissioner as an investment adviser representative of Respondent SAM. This registration is currently effective.
3. Respondents maintained significant affiliations with an individual named Joel David Salinas, the J. David Group of Companies, Inc. ("J. David Group"), and the J. David Salinas Family Trust (later SFT Partners, LLC)("Salinas Family Trust"). The J. David Group included, among other entities, the J. David Financial Group, L.P. ("JDFG"). Mr. Salinas served as the President of the J. David Group until his death, apparently by suicide, on July 17, 2011.
4. In addition to acting as an officer of the J. David Group, Respondent Bjork worked primarily for the J. David Group and JDFG for a number of years and engaged in insurance and securities business on behalf of the J. David Group and JDFG. Furthermore, the Salinas Family Trust maintained a significant ownership interest in Respondent SAM.

II. Summary

5. Respondents represented to clients that they were involved in the purchase of corporate bonds through JDFG for the clients' respective accounts. As a result, Respondents' clients invested millions of dollars believing that Respondents and/or Respondents' affiliates were buying corporate bonds with the clients' investments. Unfortunately, Respondents and Respondents' affiliates did not buy the corporate bonds as represented to clients.
6. Respondents also recommended and sold interests in private funds that are affiliated with Respondents at a time when Respondents knew or should have known that the funds had engaged in undisclosed loans to the funds' affiliates. Ultimately, Respondents' clients invested millions of dollars in the funds while the funds loaned millions to affiliates of the funds.
7. In 2008, the Respondents were found in violation of Section 12 of the Texas Securities Act and to have engaged in inequitable practices in rendering services as an investment adviser. To that end, the Securities Commissioner issued a disciplinary order against the Respondents. In connection with that order, the Respondents undertook and agreed to retain an independent consultant. However, the Respondents failed to adhere to the agreement with the Securities Commissioner.

8. Finally, Respondent Bjork filed application documents with the Securities Commissioner that misrepresented the nature of his business activity with the J. David Group.

III. Purported Investments with JDFG

A. Misrepresentations by Respondents

9. From at least as early as 2004 through December 2006, Respondent Bjork represented to clients that he was purchasing corporate bonds for their accounts with JDFG.
10. After Respondent SAM started doing business in January 2007, Respondent Bjork continued to represent to clients that he was purchasing corporate bonds through JDFG for the clients' accounts at Respondent SAM.
11. However, Respondent Bjork did not purchase the bonds. Furthermore, Salinas, the J. David Group, and JDFG did not purchase bonds for clients. Respondent Bjork knew or was reckless in not knowing that the bonds were not purchased for the clients.
12. Respondent Bjork's representations to clients were misrepresentations of a relevant fact and constitute a fraudulent business practice.
13. In addition to Respondent Bjork's representations, Respondent SAM furthered the impression that client accounts held bonds through JDFG by listing these purported holdings on Respondent SAM's client account statements ("SAM account statements").
14. The SAM account statements only listed very general information about each purported bond holding – the issuer name; the interest rate; and the maturity date. Notably, the SAM account statements did not list a CUSIP number for each bond, which is necessary to identify the exact bond held.
15. Respondents were responsible for the creation of the SAM account statements. In fact, the SAM account statements listed Respondent Bjork as the "Financial Advisor".
16. As stated above, the bonds were not purchased as was represented to clients. Therefore, Respondents' creation and dissemination of the SAM account statements was a fraudulent business practice.

B. Respondents' Failures to Disclose

17. The J. David Group and JDFG have never been registered broker-dealers or investment advisers. Accordingly, the J. David Group and JDFG would have to conduct all transactions associated with the purported bonds at a third-party broker-dealer firm. As registered securities professionals, Respondents knew these facts.

18. Nonetheless, Respondents did not verify the purported bond holdings with any registered broker-dealer. In connection with the sale of the purported bonds, Respondents intentionally did not disclose to clients the material fact that Respondents had not verified the holdings as represented on the SAM account statements.
19. The J. David Group and JDFG needed to be registered with the Securities Commissioner to engage in the sale of the bonds to the clients in Texas. However, in connection with the sale of the purported bonds, Respondents intentionally did not disclose to clients the material fact that Respondents were dealing with entities that were not registered as required.
20. Respondents' intentional failures to disclose material facts constitute fraudulent business practices.

IV. Loans to Affiliates by Investment Funds

21. Respondents were involved in the creation of two private funds and the sale of interests in those private funds. The funds, named Select Asset Fund I, LLC ("Fund I") and Select Asset Prime Index Fund ("Index Fund"), were to be managed by an affiliated company, Select Capital Management, LLC ("Select Capital"). Select Capital is a wholly-owned subsidiary of Respondent SAM, and Respondent Bjork is identified as an officer of Select Capital.
22. Fund I opened in or about August 2007 and raised at least \$8.6 million from investors, including Respondents' clients. The Index Fund opened in September 2009 and raised about \$5.3 million from investors.
23. The private placement memorandum ("PPM") for Fund I stated that Fund I would build a "portfolio of commercial loans primarily by purchasing loan participations and syndications and investing in other commercial loan funds commonly referred to as collateralized debt obligations (CDOs)."
24. The PPM for the Index Fund indicated a similar purpose, and further indicated that the Index Fund could "originate short-term secured commercial loans" and "invest in municipal bonds".
25. Respondents provided the PPMs to clients and other investors in connection with the sale of interests in the respective funds.
26. Neither PPM disclosed that Fund I or the Index Fund could enter into loan arrangements with affiliates of the funds.
27. Yet, both Fund I and the Index Fund loaned money to affiliates. For example, beginning in March 2008, Fund I began to loan money to Selected Market Insurance Group, LLC ("Selected Market"). Selected Market was an affiliate of Fund I because its majority owner was Salinas, whose family trust was also the majority owner of Respondent SAM. Ultimately, Fund I loaned \$2 million to Selected Market.

28. Furthermore, the Index Fund loaned \$780,000 to Selected Market and \$400,000 to the J. David Group from investor funds placed into the Index Fund.
29. Respondents knew or should have known about these loans to affiliates. However, they continued to recommend and sell interests in each fund after the loans were made without informing the clients of the loans or that the PPMs failed to disclose the loans to affiliates.
30. Respondents' recommendations and sales of Fund I and the Index Fund after Respondents knew or should have known about the undisclosed loans to affiliates constitute fraudulent business practices, or in the alternative, inequitable practices in the sale of securities and rendering of services as an investment adviser.

V. Failure to Comply with Undertaking and Prior Order

31. On July 23, 2008, the Securities Commissioner entered a Disciplinary Order ("Order") against Respondents. The Order was based primarily on Respondents' violation of Section 12.B of the Texas Securities Act. Section 12.B requires registration or notice-filing with the Securities Commissioner, unless otherwise exempt, prior to rendering services as an investment adviser in Texas. Additionally, the Order concluded that Respondents had also engaged in inequitable practices in rendering services as an investment adviser.
32. In addition to assessing a fine against Respondent SAM, the Order required Respondents to comply with an Undertaking.
33. The Undertaking required Respondents to retain an independent outside compliance specialist (the "Consultant") to fully review at least one (1) time every six (6) months from the date that this Undertaking is entered for a period of twenty four (24) months from the date that this Undertaking is entered, the following areas for compliance with all applicable securities laws and regulations:
 - a. All advertisements and form correspondence used by [Respondent] Select Asset Management and/or [Respondent] Bjork;
 - b. The registration status of each employee of [Respondent] Select Asset Management to ensure that all necessary registrations have been obtained and are being properly maintained; and
 - c. All paper and electronic filings with the Securities Commissioner on behalf of [Respondent] Select Asset Management and/or any of [Respondent] Select Asset Management's investment adviser representatives.
34. However, the Respondents failed to retain an independent outside consultant as required by the Undertaking.

35. Respondents' failures to retain an independent outside consultant are violations of an Undertaking with the Securities Commissioner.
36. Furthermore, because the July 23, 2008 Order mandated that Respondents comply with the Undertaking, Respondents' failures to comply with the Undertaking are violations of an order issued by the Securities Commissioner.

VI. Misrepresentations to Securities Commissioner

37. In connection with each application for registration as an agent or investment adviser representative, an individual must submit the Uniform Application for Securities Industry Registration or Transfer ("Form U-4"). Among other key information about applicants and registrants, the Form U-4 requires disclosure of other businesses engaged in by the individual. Notably, the information on the Form U-4 is deemed by the Securities Commissioner as necessary to determine the business repute or qualifications of an agent or investment adviser representative.
38. Specifically, Item 13 of the Form U-4 requires the disclosure of any other business conducted by the individual, either as proprietor, partner, officer, director, employee, trustee, agent or otherwise.
39. Furthermore, for each business activity disclosed, the Form U-4 requires the individual to disclose whether the activity is "investment related".
40. On Form U-4s filed with the Securities Commissioner from December 16, 2003 through April 26, 2011, Respondent Bjork represented that his business activity on behalf of the J. David Group was "not investment related".
41. However, as described above, Respondent Bjork was conducting investment related business on behalf of the J. David Group. Therefore, Respondent Bjork's representations on the Form U-4s filed with the Securities Commissioner between December 16, 2003 and April 26, 2011 are material misrepresentations in connection with any information deemed necessary by the Securities Commissioner to determine the business repute or qualifications of an agent or investment adviser representative.

VII. Legal Authority

42. Section 4.F of the Texas Securities Act states:

The terms "fraud" or "fraudulent practice" shall include any misrepresentations, in any manner, of a relevant fact; any promise or representation or prediction as to the future not made honestly and in good faith, or an intentional failure to disclose a material fact; the gaining, directly or indirectly, through the sale of any security, of an underwriting or promotion fee or profit, selling or managing commission or profit, so gross or exorbitant as to be unconscionable; any scheme, device or other artifice to obtain such profit, fee or commission; provided, that nothing herein shall limit or diminish the full meaning of the terms "fraud," "fraudulent," and

“fraudulent practice” as applied or accepted in courts of law or equity.

43. Section 14 of the Texas Securities Act states in part:

(A) The Commissioner may ... revoke a registration issued under this Act, ...if the person:

(3) has engaged in any inequitable practice in the sale of securities or in rendering services as an investment adviser, or in any fraudulent business practice;

(7) has made any material misrepresentations to the Commissioner or Board in connection with any information deemed necessary by the Commissioner or Board to determine...a dealer's, agent's, investment adviser's or investment adviser representative's business repute or qualifications...; and

(11) has violated any provision of any order issued by the Commissioner or has violated any provision of any undertaking or agreement with the Commissioner.

44. Pursuant to Section 14.A(3) of the Texas Securities Act, the inequitable practices in the sale of securities, the inequitable practices in the rendering of services as an investment adviser, and the fraudulent business practices described above are bases for the revocation of the Respondents' registration with the Securities Commissioner.

45. Pursuant to Section 14.A(7) of the Texas Securities Act, Respondent Bjork's material misrepresentations in connection with the Form U-4 constitute bases for the revocation of Respondent Bjork's registration with the Securities Commissioner.

46. Pursuant to Section 14.A(11) of the Texas Securities Act, Respondents' violations of the Undertaking and the Order constitute bases for the revocation of Respondents' registrations with the Securities Commissioner.

VIII. Relief Requested

Based on the foregoing allegations, the Staff requests that the Securities Commissioner issue an Order REVOKING the Respondents' registrations with the Securities Commissioner.

Pursuant to § 105.14 of the Board Rules, the Staff respectfully requests that the State Office of Administrative Hearings order that all costs charged to the Texas State Securities Board by any court reporting service involved in this matter be assessed against Respondents.

You are invited to appear personally, with, without, or through counsel, and to present any and all evidence relating to the matters set forth in this Notice.

Signed this 1st day of August, 2011.



Ronak V. Patel
Director
Inspections & Compliance Division

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing have been sent via certified mail to the Respondents at the addresses listed below, and to the Securities Commissioner's Representative by hand-delivery, done on this, the 1st day of August, 2011.

Select Asset Management, LLC
4000 Washington, Suite 200
Houston, Texas 77007

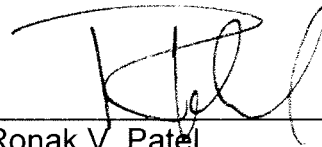
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VIA HAND DELIVERY



Ronak V. Patel
Director
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