

TRAVIS J. ILES
SECURITIES COMMISSIONER



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DEPUTY SECURITIES COMMISSIONER

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Texas State Securities Board

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IN THE MATTER OF THE
INVESTMENT ADVISER
REPRESENTATIVE REGISTRATION
OF SCOTT MALONE

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§

Order No. REG21-CAF-02

TO: Scott Malone, Managing Member & Chief Compliance Officer (CRD No. 5847339)
Rincon Wealth Management
2802 Flintrock Trace, Suite 283
Austin, TX 78738

DISCIPLINARY ORDER

Be it remembered that Scott Malone ("Respondent"), appeared before the Securities Commissioner of the State of Texas ("Securities Commissioner") and consented to the entry of this order ("Order") and the Findings of Fact and the Conclusions of Law contained herein.

OVERVIEW

On November 23, 2020, Respondent applied for registration with the Securities Commissioner as an investment adviser representative of Rincon Wealth Management ("Rincon"). Prior to applying as an investment adviser representative of his own firm, Respondent worked as an investment adviser representative of Partnervest Advisory Services, LLC ("Partnervest") and conducted investment advisory services under the d/b/a Rincon Wealth Management. In connection with his investment advisory services, Respondent recommended that clients purchase interests in Olive1, LLC ("Olive1"), a special purpose vehicle Respondent created with the intention of investing in third-party private placement opportunities identified by Respondent. However, Respondent never disclosed to Partnervest that he was soliciting Partnervest clients to invest in Olive1 or that he was being compensated for the investments. Respondent also failed to update his Form U4 to accurately disclose Olive1 as an outside business activity.

As such, as a condition of the granting of his registration, Respondent has consented to the entry of this Order finding that Respondent violated Section §116.9 (a)(6) of the Rules and Regulations of the Texas State Securities Board ("Board Rules") and engaged in

inequitable practices in connection with rendering services as an investment adviser¹. Respondent has also agreed to pay a fine of \$20,000 and to comply with the terms of an undertaking incorporated by reference herein in which Respondent and Rincon have agreed to retain a Compliance Consultant to conduct reviews of Respondent and Rincon's business practices and to notify legal counsel for the Inspections & Compliance Division at least ten (10) business days before recommending, or otherwise offering, a private placement investment sponsored by Respondent or Rincon or any affiliates of either. Respondent has not acted as an investment adviser or investment adviser representative for a period of five (5) months.

FINDINGS OF FACT

1. Respondent has waived (a) Respondent's rights to notice and hearing in this matter; (b) Respondent's rights to appear and present evidence in this matter; (c) Respondent's right to appeal this Order; and (d) all other procedural rights granted to the Respondent by The Securities Act, Tex. Rev. Civ. Stat. Ann. arts. 581-1 to 581-45 (West, Westlaw through 2019 R. Sess.) ("Texas Securities Act"), and the Administrative Procedure Act, Tex. Gov't Code Ann. §§ 2001.001 to 2001.902 (West, Westlaw through 2019 R. Sess.).
2. On November 23, 2020, Respondent applied for registration with the Securities Commissioner as an investment adviser representative of Rincon Wealth Management ("Rincon"). This application is currently pending.
3. On February 12, 2020, Respondent applied for registration with the Securities Commissioner as an agent of MIT Associates, LLC ("MIT"). This registration is currently effective.
4. Prior to applying as an investment adviser representative of Rincon, Respondent worked as an investment adviser representative of Partnervest Advisory Services, LLC ("Partnervest") from October 2018 through October 2020.
5. On October 28, 2020, Respondent was permitted to resign from Partnervest at a time Partnervest alleged he was "in breach of the firm's written supervisory procedures due to his failure to seek and obtain approval prior to commencing an investment-related outside business activity."

¹ This Order shall not disqualify Malone, Rincon, or any of their affiliates or registered representatives from any business that they otherwise are qualified or licensed to perform under the applicable state securities laws and this Order is not intended to form the basis for any disqualification or suspension in any state. Further, this Order is not intended to and shall not form the basis for any disqualifications contained in the federal securities law, the rules and regulations thereunder, the rules and regulations of self-regulatory organizations, or various states' securities laws including but not limited to any disqualifications from relying upon the registration exemptions or safe harbor provisions.

Outside Business Activity

6. Partnervest is registered as an investment adviser with the U.S. Securities & Exchange Commission.
7. Partnervest's structure was that of an "independent contractor" business model whereby investment adviser representatives could conduct business out of their own branch office through the use of a d/b/a. While investment advisory services were conducted through Partnervest, investment adviser representatives could engage in certain other activities such as insurance sales, as approved by Partnervest.
8. Respondent conducted business under the d/b/a Rincon Wealth Management.
9. In addition to providing investment advisory services to clients under the name Rincon Wealth Management, Respondent also engaged in the sale of securities in his capacity as a registered agent of MIT.
10. Partnervest's written supervisory procedures required that all outside business activities be reported and pre-approved by Partnervest prior to engaging in the business. Partnervest describes outside business activities as including investment-related and for compensation activity.
11. In July 2020, Respondent created Olive1, LLC ("Olive1"), a special purpose vehicle ("SPV"), with the intention of "achieving significant, long-term capital appreciation for its members through investing in [third-party] private placement opportunities selected by the [Respondent] and presented to each investor."
12. In particular, Respondent's intention in forming an SPV like Olive1 was to enable clients who are interested in a third-party private placement opportunity and who meet the criteria to invest in the opportunity without having to invest the minimum amount required to invest directly into the third-party private placement. In other words, the SPV concept is intended to pool investment funds to invest in a third-party opportunity while reducing the amount of exposure to the risks of the opportunity.
13. Respondent notified MIT of the fact that he had formed Olive1 and would be using the funds raised in Olive1 to invest in a third-party investment through MIT. MIT did not require Respondent to disclose Olive1 on Respondent's Form U4.
14. However, Respondent did not report the creation of Olive1 to Partnervest.
15. Through routine email surveillance Partnervest discovered Respondent was soliciting Partnervest clients to invest in his, Olive1.

16. On September 10, 2020, Partnervest subsequently launched an internal investigation (the "Internal Investigation") into Respondent's outside business activities.
17. On September 14, 2020, Respondent, during the course of the Internal Investigation, reported Olive1 to Partnervest.
18. And on October 6, 2020, Respondent's outside business activity in connection with Olive1 was denied by Partnervest and Respondent was given the opportunity to resign.
19. Pursuant to Texas regulations, Respondent was required to submit and keep current an application form (the "Form U4").²
20. Section 13 of the Form U4 requires the disclosure of other business activities.
21. Respondent submitted a total of three (3) Form U4 filings from April 28, 2020 through October 13, 2020 in connection with his registrations as an investment adviser representative of Partnervest and an agent of MIT. However, Respondent did not disclose his outside business activities related to the SPV, Olive1, until the October 13, 2020 filing.
22. From August 18, 2020 through September 9, 2020, Respondent raised \$605,000 for Olive1 from investment advisory clients from Partnervest.
23. Respondent received commissions totaling \$13,570.00 from MIT as a result of Olive1's investment in a third-party private placement.
24. On December 17, 2020, during the course of an investigation by the Staff of the Texas State Securities Board, Respondent returned the commissions to MIT, the broker-dealer through which he sold the investments.

CONCLUSIONS OF LAW

1. Respondent engaged in an inequitable practice in rendering services as an investment adviser by not disclosing to Partnervest the business activities related to Olive1.
2. Respondent's failure to update his Form U4 within thirty (30) days of beginning to sell Olive1 interests constitutes a violation of §116.9 (a)(6) of the Rules and Regulations of the Texas State Securities Board ("Board Rules").
3. Respondent also engaged in an inequitable practice in rendering services as an investment adviser by recommending that Partnervest clients invest in Olive1 when such activity was not authorized or approved by Partnervest.


² The Form U4 is the Uniform Application for Securities Industry Regulation or Transfer.

4. Pursuant to Section 14.A(3), of the Securities Act, the aforementioned inequitable practices in the rendering of services as an investment adviser representative constitute a basis for the issuance of an order reprimanding Respondent.
5. Pursuant to Section 14.A(6) of the Securities Act, the aforementioned violation of the Board Rules constitutes a basis for the issuance of an order reprimanding Respondent.
6. Pursuant to Section 23-1 of the Texas Securities Act, Respondent's violation of a Board Rule constitutes a basis for the assessment of an administrative fine against Respondent.

ORDER

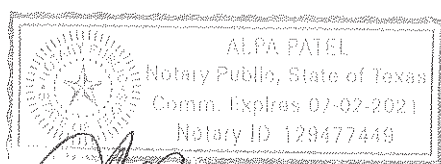
1. It is therefore ORDERED that the registration of Scott Malone as an investment adviser representative of Rincon Wealth Management with the Securities Commissioner is hereby GRANTED.
2. It is further ORDERED that Scott Malone is hereby REPRIMANDED.
3. It is further ORDERED that Scott Malone shall pay an ADMINISTRATIVE FINE in the amount of twenty thousand dollars (\$20,000.00). Payment shall be made by delivery of a cashier's check to the Securities Commissioner in the amount of twenty thousand dollars (\$20,000.00), payable to the State of Texas, contemporaneously with the delivery of this Order.
4. It is further ORDERED that Scott Malone and Rincon Wealth Management COMPLY with the terms of the undertaking incorporated by reference herein in which Rincon and Malone agree and undertake to retain a Compliance Consultant to conduct reviews of Malone and Rincon's business practices and to notify legal counsel for the Inspections & Compliance Division at least ten (10) business days before recommending, or otherwise offering, a private placement investment sponsored by Rincon or Malone or any affiliates of either.

SIGNED AND ENTERED BY THE SECURITIES COMMISSIONER this 15th
day of April, 2021.



TRAVIS J. ILES
Securities Commissioner

Respondent:



Alpa Patel
April 12th, 2021

Scott Malone
Individually

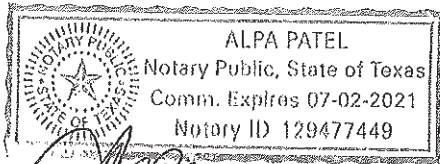
Approved as to Form:

Clinton Edgar,
Deputy Securities Commissioner

Ronak Patel
Winstead PC
Attorney for Respondent

Cristi Ramón Ochoa,
Attorney
Inspections and Compliance Division

Respondent:



Alpa Patel
April 12th, 2021

Scott Malone
Individually

Approved as to Form:

Clinton Edgar,
Deputy Securities Commissioner

Ronak Patel
Winstead PC
Attorney for Respondent

Cristi R. Ochoa

Cristi Ramón Ochoa,
Attorney
Inspections and Compliance Division