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Texas State Securities Board

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IN THE MATTER OF
THE INVESTMENT ADVISER
REGISTRATION OF
JIM POE & ASSOCIATES, INC.

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Order No. IC20-CAF-04

TO: Jim Poe & Associates, Inc. (CRD No. 140232)
Dauphinais Poe
6040 Camp Bowie Blvd. Suite 3
Fort Worth, TX 76116

DISCIPLINARY ORDER

Be it remembered that Jim Poe & Associates, Inc. ("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 Conclusions of Law contained herein.

OVERVIEW

Respondent failed to supervise a former representative's recommendations of investments in non-traded real estate investment trusts ("non-traded REITs") that resulted in certain clients' accounts with Respondent holding unsuitably high amounts of non-traded REITs because Respondent had not established written procedures or a supervisory system reasonably designed to ensure recommendations of non-traded REITs were suitable.

In resolving this matter, Respondent has agreed to refund the portion of investment advisory fees it was paid based on non-traded REIT investments held in excess of the investment criteria specified in the prospectuses of certain non-traded REITs held by certain clients. In addition, Respondent has also agreed to engage an independent consultant to develop a supervisory system and policies and procedures relating to the use of non-traded REITs in connection with investment advisory services. While the firm is redesigning its supervisory system, Respondent has agreed to not accept new investment advisory clients for a period of nine (9) months from the entry of this Order.

FINDINGS OF FACT

1. Respondent has waived (a) Respondent's right to notice and hearing in this matter; (b) Respondent's right 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 ("Texas Securities Act"), and the Administrative Procedure Act, Tex. Gov't Code Ann. § 2001.001 to 2001.902.
2. On July 31, 2013, Respondent became registered with the Securities Commissioner as an investment adviser. This registration is currently effective.
3. Respondent has marketed and branded itself as having a specialty in retirement planning.
4. In connection with these activities, Respondent and its representatives routinely hosted seminars and workshops focused on various aspects of a future retiree's needs, ranging from healthcare, to insurance, social security, and investments.
5. In 2014, James (Jim) Poe (the "Former Representative¹"), as principal spokesman and decision-maker for Respondent, began to highlight market volatility and promote the use of alternative investments in portfolio construction and asset allocation as a means of diversification into assets not correlated with the stock market.
6. To that end, the Former Representative routinely recommended that clients allocate a percentage of their retirement assets into non-traded REITs.
7. A non-traded REIT is a company that owns and typically operates income-producing real estate or related assets.
8. Non-traded REITs are registered with the U.S. Securities and Exchange Commission ("SEC") and state securities regulators, file regular reports with the SEC, but are not listed on an exchange and are not publicly traded.
9. A non-traded REIT is generally redeemable by investors when the non-traded REIT lists its shares on an exchange or otherwise liquidates assets to achieve liquidity. These liquidity events could occur as early as five (5) years but may also be as long as ten (10) years from the initial offering of non-traded REIT shares.

¹ Jim Poe's registration with the Securities Commissioner was revoked on March 18, 2016 for conduct unrelated to his recommendations of, and the firm's supervision of, non-traded REITs.

10. In addition, non-traded REITs usually offer investors opportunities to redeem their shares early through redemption programs. But these programs are generally subject to significant limitations, including suspensions of the programs altogether.
11. In recognition of the potential for extended periods of illiquidity, non-traded REITs generally specify investment qualifications and limitations tied to each investor's financial status.
12. Certain non-traded REITs impose heightened suitability requirements as a result of its registration with a state securities regulator.
13. Specifically, the prospectuses for certain non-traded REITs indicate that the non-traded REIT should not comprise more than 10% of an investor's net worth or liquid net worth.
14. In addition, the potential for illiquidity and other aspects of non-traded REITs are relevant to the investment suitability determination and must be accounted for by investment professionals when considering the amount a client invests in non-traded REITs irrespective of whether the non-traded REIT lists a specific requirement.
15. Until March 18, 2016, the Former Representative recommended that clients invest almost \$4,000,000 in non-traded REITs with prospectuses that specified that investments in the non-traded REIT should be limited to 10% of the client's net worth or liquid net worth.
16. Twenty-eight (28) clients held positions that exceeded the criteria established by the relevant non-traded REITs prospectus(es) for at least some portion of the period from 2014 to 2019.
17. As a registered investment adviser, Respondent earns fees on all assets under its management, including the non-traded REIT investments recommended by the Former Representative.
18. From 2014 through 2019, Respondent collected \$63,752.15 as investment advisory fees based on clients' non-traded REIT holdings in excess of the investment criteria specified in the associated prospectuses.
19. Section 116.10(a) of the Rules and Regulations of the Texas State Securities Board ("Board Rules") requires registered investment advisers to establish, maintain, and enforce a system to supervise the activities of its investment adviser representatives that is reasonably designed to achieve compliance with the Texas Securities Act, Board Rules, and all applicable securities laws and regulations.

20. During the relevant period, Respondent's written supervisory procedures required Respondent to conduct a risk-based testing program to verify the adequacy of Respondent's policies and procedures. Specifically, Respondent was to consider any new business lines or products, such as the non-traded REITs.
21. However, Respondent did not establish any written procedures or a supervisory system addressing Respondent's recommendations of non-traded REIT investments in connection with investment advisory services.

CONCLUSIONS OF LAW

1. Respondent's lack of written procedures and systems with respect to non-traded REIT investments constitutes a failure to establish and maintain a supervisory system reasonably designed to ensure compliance with applicable securities regulations, which is a violation of §116.10(a) of the Board Rules.
2. Respondent's violation of §116.10(a) of the Board Rules constitutes a basis to reprimand Respondent pursuant to Section 14.A(6) of the Texas Securities Act.
3. A violation of the terms of the Undertaking included herein would constitute a basis to suspend or revoke Respondent's registration pursuant to Section 14.A(11) of the Texas Securities Act.

UNDERTAKINGS

1. Respondent undertakes and agrees to pay a total of \$63,752.15 to Respondent's clients that held non-traded REIT positions that exceeded the 10% criteria established by the relevant non-traded REITs prospectus(es) during any part of the period from 2014 to 2019 (the "Relevant Clients"). The amount paid to each Relevant Client will be the amount of investment advisory fees collected from the Relevant Client during the period from 2014 to 2019 based on the amount by which the Relevant Client's non-traded REIT holdings exceeded the 10% criteria specified by the relevant non-traded REITs. Payments shall be made to each Relevant Client no later than July 1, 2020.
2. Respondent further undertakes and agrees to engage an independent outside consultant ("Compliance Consultant") that is not unacceptable to the staff of the Texas State Securities Board ("Staff") within thirty (30) days of the date this Order is entered by the Securities Commissioner. The Compliance Consultant shall not be a person or entity who has been previously engaged or retained by Respondent for the purpose of conducting any review of similar scope and substance.

3. Respondent further undertakes and agrees to retain the Compliance Consultant to perform two (2) reviews ("Reviews") within one (1) year of the date this Order is entered by the Securities Commissioner, with the first Review to be conducted within sixty (60) days of the date this Order, and the second Review to be conducted before the expiration of the one-year period.
4. Respondent further undertakes and agrees to retain the Compliance Consultant for the purpose of creating a supervisory system, including written policies and procedures, specifically relating to Respondent's business model and the products used in investment recommendations. To the extent that Respondent continues to recommend non-traded REITs or other illiquid, alternative investments, the Review shall include procedural requirements limiting both concentrations in non-traded REITs and the base rate on which an investment advisory fee can be assessed on non-traded REIT (and other illiquid, alternative) investments.
5. Respondent further undertakes and agrees to require the Compliance Consultant to deliver to Respondent, within thirty (30) days of each Review, a written report ("Report") describing the areas the Compliance Consultant reviewed and its findings and recommendations.
6. Respondent further undertakes and agrees to submit to Staff within fifteen (15) days of receiving each Report: (1) the Report; and (2) a statement identifying corrective measures taken by Respondent in response to the Report, and statement of the reason(s) for not following any of the Compliance Consultant's recommendations.
7. Respondent further undertakes and agrees that Respondent will not, for a period of nine (9) months from the date of this Order, enter into a new investment advisory relationship with or otherwise render services as an investment adviser to any person unless such person had entered into an investment advisory agreement with Respondent prior to the date of this Order or such person is an entity owned or otherwise controlled by a person that had entered into an investment advisory agreement with Respondent prior to the date of this Order.

ORDER

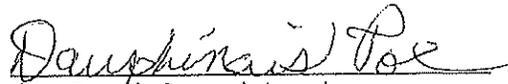
1. Respondent Jim Poe & Associates, Inc. is hereby REPRIMANDED.
2. Respondent Jim Poe & Associates, Inc. is hereby ORDERED to comply with the terms of the Undertaking included herein.

SIGNED AND ENTERED BY THE SECURITIES COMMISSIONER this 15th day of June, 2020.

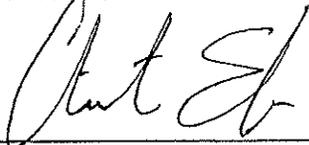


TRAVIS J. ILES
Securities Commissioner

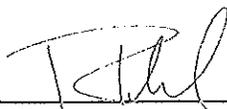
Respondent


Jim Poe & Associates, Inc.
By: Dauphinais Poe

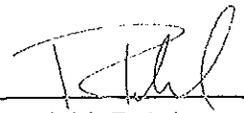
Approved as to Form:



Clinton Edgar
Deputy Commissioner

 w/permission

Toby Galloway
Winstead PC
Attorney for Respondent



Ronak V. Patel
Winstead PC
Attorney for Respondent