

JOHN MORGAN
SECURITIES COMMISSIONER



BETH ANN BLACKWOOD
CHAIR

E. WALLY KINNEY
MEMBER

DAVID A. APPLEBY
MEMBER

ALAN WALDROP
MEMBER

MIGUEL ROMANO, JR.
MEMBER

RONAK V. PATEL
DEPUTY SECURITIES COMMISSIONER

Mail: P.O. BOX 13167
AUSTIN, TEXAS 78711-3167

Phone: (512) 305-8300
Facsimile: (512) 305-8310

Texas State Securities Board

208 E. 10th Street, 5th Floor
Austin, Texas 78701-2407
www.ssb.texas.gov

IN THE MATTER OF
THE INVESTMENT ADVISER
REGISTRATION OF
JIM POE & ASSOCIATES, INC.
AND THE INVESTMENT
ADVISER REPRESENTATIVE
REGISTRATION OF
JAMES EMORY POE

§
§
§
§
§
§
§
§

Order No. IC16-REV-05

TO: James Poe, President (CRD #5085362)
Jim Poe & Associates, Inc. (CRD #140232)
6040 Camp Bowie Blvd., Suite 3
Fort Worth, TX 76116

DISCIPLINARY ORDER

Be it remembered that Jim Poe & Associates ("Respondent JPA") and James Emory Poe ("Respondent Poe") (collectively, "Respondents") 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. This order is entered into solely for the purpose of resolving the investigation by the Texas State Securities Board, and is not intended to be used for any other purpose. For any person or entity not a party to the Order, this Order does not limit or create any private rights or remedies against Respondent, limit or create liability of Respondent, or limit or create defenses of Respondent, to any claims.

FINDINGS OF FACT

1. Respondents have waived (a) Respondents' rights to notice and hearing in this matter; (b) Respondents' rights to appear and present evidence in this matter; (c) Respondents' rights to appeal this Order; and (d) all other procedural rights granted to the Respondents by The Securities Act, Tex. Rev. Civ. Stat. Ann. arts. 581-1 to 581-43 (West 2010 & Supp. 2015)("Texas Securities Act"), and the Administrative Procedure Act, Tex. Gov't Code Ann. §§ 2001.001 to 2001.902 (West 2008 & Supp. 2015)("Administrative Procedure Act").
2. From August 31, 2006 to the present, Respondent JPA has been registered either with the Securities Commissioner or the U.S. Securities Exchange Commission ("SEC") as an investment adviser.
3. As of July 31, 2013 Respondent JPA has been registered as an investment adviser with the Securities Commissioner.

4. On August 31, 2006, Respondent Poe registered with the Securities Commissioner as an investment adviser representative of Respondent JPA. This registration is currently effective.

Fund Management Fees

5. Since 2009, Respondent JPA has acted as an investment adviser to three private funds: P&C Global, P&C Value, and P&C Dividend Capture (collectively, the "Funds").
6. After starting to advise the Funds, Respondent JPA assessed two types of fees to all clients invested in the Funds: an annual fee equal to 2% of the value of the client's holdings in the Funds (i.e., a "management fee") and a fee of 20% based on gains in the value of each client's holdings in the Funds (i.e., a "performance fee").
7. However, beginning in July 2011, Respondent JPA ceased collecting a performance fee from clients who did not meet the definition of "qualified client."¹ But at the same time, Respondent JPA increased the annual management fee for the non-qualified clients from 2% to 10% of their holdings in the Funds.
8. In or around March 2013, Respondent JPA amended the annual management fee paid by the non-qualified clients from 10% to 6%. Respondent JPA continued to charge the non-qualified clients the 6% annual asset management fee until at least January 2015.
9. Section 116.13(a) of the Rules and Regulations of the Texas State Securities Board ("Board Rules") requires that registered investment advisers charging fees amounting to 3.0% or greater of the assets under management disclose that such a fee is in excess of the industry norm and that similar advisory services can be obtained for less.
10. During the period from July 31, 2013 to November 25, 2013, Respondent did not disclose that its assessment of a 6% annual management fee to non-qualified clients was in excess of industry norms and that similar services may be available for a lower fee.

¹ Section 205(a)(1) of the Investment Advisers Act of 1940 prohibits advisers from entering into advisory contracts that provide for performance based compensation. This prohibition does not apply to "qualified clients," currently defined as a natural person: with \$1,000,000 under management with the adviser; or with a net worth (exclusive of home) of \$2,000,000; or that is an employee of the adviser. In December 2013, Respondents consented, without admitting or denying any of the findings, to the entry of an Order by the U.S. Securities and Exchange Commission ("SEC") related to Respondent JPA's assessment of a performance fee to non-qualified clients.

Life Settlements

Failures to Disclose Material Facts

11. From July 2011 through August 2015, Respondent Poe recommended that certain individuals invest in life settlements (the “LS Investors”).
12. The life settlement investments were issued by SRP-LS200, LLC (“SRP-LS200”) that is controlled by Respondent Poe and promised a seventy-five percent (75%) return to the LS Investors.
13. SRP-LS200 disclosed, in writing, that the invested funds would be used for the following purposes:
 - (a) Purchase the life insurance policies;
 - (b) Pay the premiums on the policies for the estimated life expectancies plus 24 months after the average of the life expectancies; and
 - (c) Pay “all associated costs”.
14. Neither SRP-LS200 nor Respondent Poe specified in writing what the “associated costs” included. However, Respondent Poe represents that he verbally informed LS Investors that the associated costs included a 10% commission that is effectively paid to Respondent Poe.
15. However, Respondent Poe intentionally did not disclose to the LS Investors that the “associated costs” included payments to another entity, International Alternatives PR, LLC (“International Alternatives”) for consultation on the identification and selection of the life insurance policies. The payments to International Alternatives were approximately 20% of the funds raised from LS investors.
16. Furthermore, International Alternatives was also owned and controlled by Respondent Poe, which resulted in a conflict of interest between Respondent Poe and the LS Investors. Respondent Poe intentionally did not disclose to the LS Investors that he owned and controlled International Alternatives.

Custody

17. Respondent Poe had authority over SRP-LS200’s bank account to which the LS Investors wired their funds to invest in the life settlements, and therefore Respondent JPA had custody of the assets of those LS Investors that were also investment advisory clients.
18. Section 116.17 of the Board Rules prohibits investment advisers from having custody of client funds unless certain safeguards are in place to ensure that clients are aware of the custodial arrangement and the advisers’ control of the clients’ funds.

19. Respondent JPA did not comply with the requirements of the custody rule. Specifically, Respondent JPA did not:
 - a. Provide the bank account statements to the LS Investors; or
 - b. Undergo a surprise audit by an independent public accountant to verify the funds in SRP-LS200's bank account.
20. Respondent JPA also did not meet an exception to the requirements of the custody rule.

Unregistered Activity

21. From July 2011 through August 2015, Respondent Poe received commissions in connection with his sales of the life settlements on behalf of SRP-LS200.
22. Until October 22, 2012 Respondent Poe was registered as an agent of Fox Financial Management Corporation ("Fox Financial"). However, his sales of the SRP-LS200 life settlements were not on behalf of Fox Financial, nor any other registered dealer, but were instead on behalf of SRP-LS200. Furthermore, during the relevant period, Respondent Poe was not registered as a dealer with the Securities Commissioner.

CONCLUSIONS OF LAW

1. Respondent JPA's failure to disclose, between July 31, 2013 and November 25, 2013, that its assessment of a fee equaling 6% of certain assets under management was in excess of industry norm and that similar services could be obtained for less constitutes a violation of §116.13(a) of the Board Rules.
2. The investments in life settlements constitute "securities" as the term "securities" is defined by Section 4.A of the Texas Securities Act.
3. Respondent Poe's intentional failures to disclose that approximately 20% of LS Investor funds were going to be paid to International Alternatives and that International Alternatives was owned and controlled by Respondent Poe are intentional failures to disclose material facts to the LS Investors and constitute fraudulent business practices.
4. Respondent JPA's failures to comply with the requirements of §116.17 of the Board Rules or meet an exception to the requirements is a violation of §116.17 of the Board Rules.
5. Respondent Poe's sales of the life settlement investments at a time when Respondent Poe was not registered with the Securities Commissioner as a dealer or as an agent of SRP-LS200 constitute violations of Section 12.A of the Texas Securities Act.

6. Pursuant to Section 14.A(6) of the Texas Securities Act, Respondent JPA's violations of the aforementioned Board Rules constitute bases for the issuance of an Order reprimanding Respondent JPA.
7. Pursuant to Section 14.A(3) of the Texas Securities Act, the aforementioned fraudulent business practice constitutes a basis for the revocation of Respondent Poe's registration with the Securities Commissioner.
8. Pursuant to Section 14.A(6) of the Texas Securities Act, Respondent Poe's violations of Section 12.A of the Texas Securities Act constitute bases for the revocation of Respondent Poe's registration with the Securities Commissioner.
9. Pursuant to Section 23.A of the Texas Securities Act, the Securities Commissioner may issue a cease and desist order prohibiting Respondent Poe from engaging in fraudulent business practices.
10. Pursuant to Section 23.A of the Texas Securities Act, the Securities Commissioner may issue a cease and desist order prohibiting Respondent Poe from violating Section 12.A of the Texas Securities Act by acting as an unregistered agent.

UNDERTAKING

1. Respondents undertake and agree that Respondent Poe will not act as a "dealer", "agent", "investment adviser", or "investment adviser representative" in the State of Texas (as those terms are defined by Section 4 of the Texas Securities Act).
2. Respondents further undertake and agree that Respondent Poe will not apply for registration with the Securities Commissioner as a dealer, agent, investment adviser, or investment adviser representative.
3. Respondent JPA further undertakes and agrees that within forty-five (45) days of the date this Order is entered by the Securities Commissioner, Respondent JPA will establish written supervisory procedures that are reasonably designed to ensure that Respondent Poe does not act as a dealer, agent, investment adviser, or investment adviser representative.
4. Respondent JPA further undertakes and agrees to retain 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.
5. Respondent JPA further undertakes and agrees to submit, at least ten (10) days prior to retaining the Compliance Consultant, a letter to the legal counsel for the Inspections & Compliance Division of the Texas State Securities Board ("Counsel") identifying: the Compliance Consultant, the Compliance Consultant's experience in the securities industry, and all pre-existing personal and business relationships between the Compliance Consultant and Respondent JPA.

6. Respondent JPA further undertakes and agrees to retain the Compliance Consultant to perform a review (“Review”) within sixty (60) days of the date this Order is entered by the Securities Commissioner, and at least annually thereafter for a period of two (2) years. The Compliance Consultant will perform a review of Respondent JPA’s business activities related to:
 - a) Investment advisory services provided by Respondent JPA to any private fund, including, but not limited to, the Funds;
 - b) All potential conflicts of interest between Respondent JPA and its clients and disclosures of such conflicts; and
 - c) Respondent JPA’s compliance with its written supervisory procedures, including, but not limited to, the procedures established pursuant to this Undertaking.
7. Respondent JPA further undertakes and agrees to require the Compliance Consultant to deliver to Respondent, within thirty days of each Review, a report (“Report”) describing the areas the Compliance Consultant reviewed and its findings and recommendations.
8. Respondent JPA further undertakes and agrees to submit to Counsel within fifteen (15) days of receiving each Report: (1) the Report; and (2) a statement identifying all corrective measures taken by Respondent JPA in response to the Report, and stating the reason(s) for not following any of the Compliance Consultant’s recommendations.

ORDER

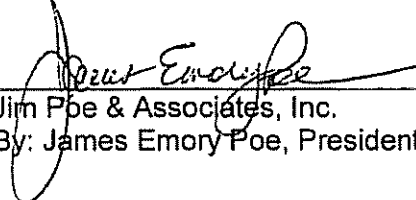
1. It is therefore ORDERED that Jim Poe & Associates, Inc. is hereby REPRIMANDED.
2. It is further ORDERED that the investment adviser representative registration of James Emory Poe with the Securities Commissioner is hereby REVOKED.
3. It is further ORDERED that James Emory Poe CEASE and DESIST from engaging in fraudulent business practices.
4. It is further ORDERED that James Emory Poe CEASE and DESIST from violating Section 12.A of the Texas Securities Act.
5. It is further ORDERED that James Emory Poe and Jim Poe & Associates, Inc. COMPLY with the terms of the Undertaking contained herein.

SIGNED AND ENTERED BY THE SECURITIES COMMISSIONER this 18th day of March, 2016.

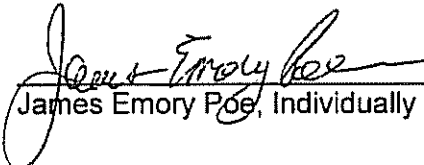


JOHN MORGAN
Securities Commissioner

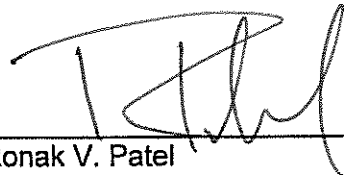
Respondent:



Jim Poe & Associates, Inc.
By: James Emory Poe, President

Respondent:


James Emory Poe, Individually

Approved as to Form:

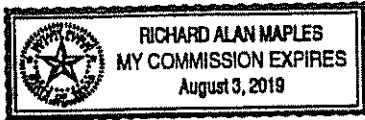

Ronak V. Patel
Deputy Securities Commissioner


Richard Roper
Attorney for Respondents
Thompson & Knight

ACKNOWLEDGMENT

On the 9th day of March, 2016, Jim Poe & Associates, Inc. ("Respondent JPA"), by and through James Emory Poe, appeared before me, executed the foregoing Order and Undertaking, and acknowledged that:

1. James Emory Poe is duly authorized to enter into the foregoing Order and Undertaking on behalf of Jim Poe & Associates, Inc.;
2. James Emory Poe has read the foregoing Order and Undertaking;
3. Respondent JPA has been fully advised of its rights under the Texas Securities Act and the Administrative Procedure Act;
4. Respondent JPA, knowingly and voluntarily consents to the entry of the foregoing Order and Undertaking and the Findings of Fact and Conclusions of Law contained therein; and
5. Respondent JPA, by consenting to the entry of the foregoing Order, has knowingly and voluntarily waived its rights as set forth therein.



[affix notary seal here]

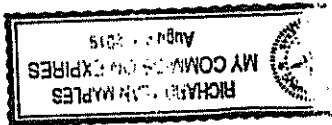
Richard Alan Maples
Notary Public in and for
the State of Texas

My commission expires on: 8/3/19

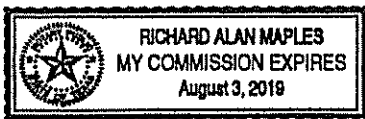
ACKNOWLEDGMENT

On the 9th day of March, 2016, James Emory Poe ("Respondent Poe") personally appeared before me, executed the foregoing Order and acknowledged that:

1. Respondent Poe has read the foregoing Order;
2. Respondent Poe has been fully advised of his rights under the Texas Securities Act and the Administrative Procedure Act;
3. Respondent Poe knowingly and voluntarily consents to the entry of the foregoing Order and the Findings of Fact and Conclusions of Law contained therein; and
4. Respondent Poe, by consenting to the entry of the foregoing Order, has knowingly and voluntarily waived his rights as set forth therein.



[affix notary seal here]



Richard Alan Maples
Notary Public in and for
the State of Texas

My commission expires on: 8/3/19