



JOSEPH P. BORG
Director

J. RANDALL McNEILL
Deputy Director

EDWIN L. REED
General Counsel

ALABAMA SECURITIES COMMISSION

401 ADAMS AVENUE, SUITE 280
MONTGOMERY, ALABAMA 36104

MAIL: POST OFFICE BOX 304700
MONTGOMERY, AL 36130-4700

TELEPHONE (334) 242-2984
1-800-222-1253

FAX (334) 242-0240

E-MAIL asc@asc.alabama.gov

CHAIRMAN
MARCUS J. WOLF
Certified Public Accountant

VICE CHAIRMAN
DANIEL C. HARDMAN
Certified Public Accountant

COMMISSIONERS

TROY KING
Attorney General

JOHN D. HARRISON
Superintendent of Banks

JIM L. RIDLING
Commissioner of Insurance

ANDREW P. CAMPBELL
Attorney at Law

S. DAGNAL ROWE, SR.
Attorney at Law

Date: October 22, 2010

To: The Commissioners of the Alabama Securities Commission

From: Ricky G. Locklar
Senior Special Agent

Subject: Morgan Keegan & Co. document release to Attorney Andrew Campbell

INTRODUCTION

This report will be a summary of the events that lead up to the discovery of the inadvertent copying of non-public information and what has been done to recover said non-public information. This inquiry was conducted independent of the Director's office (Executive Division) and the General Counsel's office (Legal Division). It is divided into four (4) sections. The first section will be a brief discussion of the investigation into Morgan Keegan & Co. and the other Respondents. The second will discuss how the documents were inadvertently copied and to whom they were released. The third will discuss the extent of the exposure. The final section will be a summary of the findings of the inquiry.

MORGAN KEEGAN & CO/MORGAN ASSET MANAGEMENT INVESTIGATION

On February 11, 2008, the Alabama Securities Commission opened a joint investigation with nine other states into the way Morgan Keegan & Co/Morgan Asset Management marketed a number of its bond funds. The allegations are that Morgan Keegan & Co, Morgan Asset Management and the other Respondents used misrepresentations and fraudulent sales practices to market the seven (7) mutual (bond) funds. The funds were managed by James Kelsoe and Morgan Asset Management. A series of audits were conducted at several Morgan Keegan branch

offices as well as the home office. The investigation culminated in a release of a Notice of Intent to Show Cause Order for suspension of license issued to the Respondents by the State Regulators Task Force¹ on April 7, 2010. The Show Cause Order cited numerous violation of law in the sale of Morgan Keegan Bond Funds to retail clients.

The investigation required for the issuance of several requests for information to Morgan Keegan and its affiliates and called for the interviewing of numerous Morgan Keegan agents and investment advisers; current and former officers; and current and former clients. One document obtained was a spreadsheet which listed investors along with their account numbers, tax id numbers and realized and unrealized losses in one of the seven (7) bond funds, specifically the Morgan Keegan Intermediate Bond Fund.² This document would later be utilized as exhibit 118 in the Show Cause Order. Other documents obtained included but were not limited to, sales brochures, new account documents, investment advisory agreements, and account statements. The obtaining and retaining of this information is in the ordinary and regular course of the Commission investigative process. A number of these items are public information and would be eventually used as exhibits and would be hyperlinked to the Show Cause order. In addition to Exhibit 118, the following order exhibits contained un-redacted/non-public information:

Exhibit 58: An affidavit obtained as part of the investigation of one Mississippi resident (Name and address included but no social security number, account numbers or income range.)

Exhibit 59: One witness statement obtained as part of the investigation with identifying information (Name included but no address, social security number, account numbers or income range.)

Exhibit 60: One affidavit obtained as part of the investigation of one Georgia resident. (Name and address included but no social security number, account numbers or income range.)

Exhibit 61: One affidavit obtained as part of the investigation of a Mississippi resident. (Name, address, and account numbers included but no social security number, or income range.)

¹ Copy of each states notice of intent to show cause maybe found at:
<http://www.asc.state.al.us/Orders/2010/Admin%20Orders%202010.htm>
<http://www.kfi.ky.gov/legalresources/enforcementactions/securitiessea.htm>
http://www.sos.ms.gov/links/press_releases/morgan_keegan/MK%20Notice%20of%20Intent.pdf
<http://www.scattorneygeneral.org/securities/noticesandorders.html>

² No addresses were contained in this spread sheet, however it does contain account number, account name, tax id., annual income range, net worth range, liquid net worth range.

Exhibit 62: One affidavit obtained as part of the investigation of Alabama resident. (Name and address included but no social security number, account numbers or income range.)

Exhibit 63: One affidavit obtained as part of the investigation of an Alabama resident. (Name and address included but no social security number, account numbers or income range.)

Exhibit 64: One affidavit obtained as part of the investigation of an Alabama resident. (Name and address included but no social security number, account numbers or income range.)

Exhibit 114: One Morgan Keegan & Company, Inc. IRA agreement and new account approval form for one TN resident. (Name, address, social security number, account number and approximate income included.)

Exhibit 115: A Morgan Keegan & Company Inc. IRA new account form for one TN resident. (Name, address, social security number, account number and approximate income included.)

Exhibit 116: A Wealth Management Services Preferred Funds Non-Discretionary Investment Advisory Client Agreement. (Name, address, social security number, account number and approximate income included.)

Exhibit 121: A letter on Morgan Keegan letterhead to one South Carolina resident discussing the recipient's grandmother's account. (Name, address, and account numbers included but no social security number, or income range.)

Exhibit 123: An affidavit of a former Director of Regions Bank. (No address, account numbers, or social security number.)

Exhibit 125: A letter not on letterhead to one Georgia resident discussing the Region's/Morgan Keegan Intermediate bond fund. Attached to the letter was other material describing the bond fund. (Name, address, and account numbers included but no social security number, or income range.)

Exhibit 127: An affidavit of one Alabama resident describing his history with a Morgan Keegan financial adviser. (Name and address included but no social security number, account numbers or income range.)

Exhibit 131: One Morgan Keegan & Company Inc. new account approval form regarding one Louisiana resident's account. (Name, address, social security number, account number and approximate income included.)

Prior to the issuance of the order, the investigative documents were stored on the Mississippi Secretary of State, Division of Securities and Charities secured shared

drive for the use of State Regulators. It was secured and protected by firewalls and passwords. In order for the State Regulators Task Force to assess the data/documents, they needed the appropriate passwords. The secure shared drive is also the avenue by which the final draft of the order with the hyperlinked exhibits was distributed to the four (4) states who agreed to issue the publicly available show cause order.

As previously noted, on April 7, 2010, the Alabama Securities Commission and the states of Kentucky, Mississippi and South Carolina issued the show cause order to revoke the registration of Morgan Keegan & Company and Morgan Asset Management Inc, and to bar James C. Kelsoe, Jr., Brian B. Sullivan, Gary S. Stringer and Michele F. Wood from the securities business. The Show Cause Order alleges that due to the actions and inactions of Morgan Keegan and the other Respondents, it is believed that investors lost between one (1) billion and two (2) billion Dollars.

HOW THE DOCUMENTS WERE RELEASED

Once the final order was completed, the Enforcement Director of the Mississippi Division of Securities and Charities and the head of the Task Force contacted the Task Force representatives of Alabama, Kentucky and South Carolina and informed them that there were two versions of the exhibits. One version of the final order contained redacted³ information. The second version contained un-redacted⁴ information. The orders were downloaded by an Alabama Securities Division Special Agent in two separate electronic files on his government issued computer. The Special Agent then made copies of those files to discs to be distributed as intended by the Task Force. The intent of the Task Force was that the Morgan Keegan Respondents named in the order were to get a copy of the order as well as a copy of the un-redacted exhibits so that this order and exhibits would be fully disclosed to the Respondents and their attorneys.

The order was processed in the normal and customary process by the Enforcement Division staff to wit: copies were sent to the Respondents and the original was placed in a folder in the Alabama Securities Commission secure room. Also placed in the secure room folder were copies of two discs. One disc contained the Order and the hyperlinked exhibits, and the other disc contained only the exhibits. In clerical error, the un-redacted discs were inadvertently placed in the secure room folder. It should be noted that this is the first time the Commission has used the hyperlink technology in an order and the first time an exhibit disc accompanied an order.

It is also ordinary and customary for the Commission to post all administrative orders on the Commission's website. Once the orders were served on the Respondents, a copy of the Order and the hyperlinked redacted exhibits were given to the Information Technology Manager for posting on the website.

³ No personal identifiers or financial information included

⁴ Original information received from Morgan Keegan.

The Alabama order was served on all Respondents on April 7, 2010. The order and the correct hyperlinked exhibits were placed on the Alabama Securities Commission website on April 7, 2010. Shortly thereafter, a number of law firms contacted the Commission in order to get copies of the order. They were referred to the Commission's website. At least one firm had trouble downloading the order because of the law firms own firewall and pop up blockers. However, they eventually rectified the problem and were able to download the order and the redacted exhibits. The Commission IT staff believes that the software used by the Commission to format the hyperlinks was not compatible with some firms' computer software which may have been an older version of the same software. **No un-redacted information was published through the website.**

According to records of the Commission and affidavits supplied by staff members of Leitman, Siegal, Payne & Campbell Law Firm, on April 14, 2010, a paralegal of the firm telephoned the receptionist of the Commission and requested to speak with someone about the Morgan Keegan order.⁵ The paralegal requested a certified copy of the order and exhibits because she could not open all the exhibits from the website. It should be noted that there is no evidence that the paralegal ever sought any non-public information. As is customary in producing a certified copy of an administrative proceeding, the Commission staff made a copy of the show cause order and prepared a certificate of certification. A copy of the exhibit disc, which was located in the Secure Room orders' folder, was made to accompany the order. Unbeknownst to the clerical staff member, that disc was the un-redacted version. The case agent was out of town during the time the request was made and the copy was mailed to Leitman, Siegal, Payne & Campbell.

A review of the date and time stamp on the computer disc sent to Leitman, Siegal, Payne & Campbell revealed that the disc was made on April 14, 2010 at 4:04 pm. According to the UPS next day air mailing label, the Order and disc were sent to Leitman, Siegal, Payne & Campbell Law Firm on April 15, 2010.

EXTENT OF EXPOSURE

In order to determine to what extent un-redacted information was released, I interviewed Commission staff members, State Regulator Task Force members, and attorneys representing both the Respondents and clients who have filed arbitration claims against the Respondents that had been in contact with the Commission prior to and after the release of the Show Cause Order. In all, thirteen (13) plaintiffs' attorneys and three Morgan Keegan attorneys were contacted. The only plaintiffs firm that received the un-redacted information was Leitman, Siegal, Payne & Campbell.

The three attorneys representing the Respondents that were contacted are Peter Anderson of Sutherland, Asbell, and Brennan LP in Atlanta, GA, Terry Weiss of

⁵ ISD phone log indicates a call from Leitman, Siegal, Payne & Campbell Law Firm to the Commission's receptionist at 14:56 hours (2:56 pm) on April 14, 2010. It was the only call from that firm for the 14th and 15th.

Greenberg Traurig LLP in Atlanta, GA and Peter Fruin of Maynard Cooper & Gale in Birmingham. Mr. Anderson, who has been the primary point of contact for the Task Force; stated that he was served a copy of the order by the state of Georgia.⁶ He believed that he received a disc which contained the order and the exhibits. He stated that he believed that his clients received both paper documents and a disc. He said he would talk to his clients about what they received and get back with me. Mr. Anderson has determined that all Respondents were issued a paper document (the order) and the disc of exhibits but a number of the individual Respondents never took physical custody of the disc. Those discs, upon receipt, were immediately diverted to in house counsel of Morgan Keegan.

Terry Weiss stated that he doesn't believe he received any documents from the Commission.

Peter Fruin stated that his firm represents Regions Financial Corp, in the subpoena matter with the Commission, and it also represents Morgan Keegan in a number of arbitrations. Neither he nor his firm has received any Morgan Keegan material from the Commission. He said he received a total of six (6) discs from Andrew Campbell's office that contained the un-redacted information. He said that his firm received other discs but that they did not contain the information that caused concerns. He doesn't believe Mr. Campbell has produced the documents in an arbitration proceeding, and he represented that his firm has not produced the documents either. He doesn't know of any other firm that has possession of the un-redacted information. He asked that I review the letter sent to the Commission Director which highlighted a number of items the internal inquiry should answer. In addition to those questions, he requested confirmation that the information has been secured and the identification of the individuals who have reviewed the material.

To summarize, this writer will answer the questions proposed in Mr. Fruin's September 29, 2010 letter to Commission Director Borg:

1. How was the data obtained and used by Commissioner Campbell?

Answer: On April 14, 2010, Susan Carew, a paralegal of Leitman, Siegal, Payne & Campbell, called the Commission's general public number and spoke to the front desk receptionist. She then was transferred to the Enforcement Division staff member who processes public records requests. She requested a certified copy of SC-2010-0016 because she could not open all the exhibits she downloaded from the ASC website. A copy of the order and a copy of the exhibit disc were made and sent to Leitman, Siegal, Payne & Campbell. According to affidavits supplied by Mr. Campbell and Ms. Carew, the information was only copied and sent to Mr. Fruin and Maynard, Cooper and Gale⁷ as was required by

⁶ The process server contracted to deliver the order to Peter Anderson was Attorneys' Personal Service in Atlanta, GA.

⁷ Maynard, Cooper and Gale had independent access to this information.

the rules of the FINRA in connection with arbitration proceedings. In an affidavit, Ms. Caroline Gidiere, an attorney with Leitman, Siegal, Payne & Campbell, represents that the firm has not used the information to identify potential clients and in fact, the clients they have regarding the Morgan Keegan bond funds were their clients **before** the Show Cause Order was published on April 7, 2010.

2. Why was it released by the Commission?

Answer: The request for a certified copy of the order was processed in accordance with the way the staff had been trained. However, the case agent was not in the state during the time the request was processed and the staff was unaware the un-redacted disc was in the order file folder.

3. Has the data been secured from Mr. Campbell and is he in the position to misuse the data going forward?

Answer: As soon as the ASC became aware the problem, the Deputy Director went to Leitman, Siegal, Payne & Campbell and recovered the disc from Ms. Carew. In an affidavit, Ms. Carew states that "I have deleted from my computer the directory containing all of the documents that were on the disc I received from the Alabama Securities Commission, and we are no longer in possession of the confidential information." In an affidavit, Ms. Caroline Gidiere, an attorney with Leitman, Siegal, Payne & Campbell states "To the very best of my knowledge, the Document has only been used by our office for the purpose of our "20-day" production to Morgan Keegan in our FINRA arbitration. Specifically, the Document has been produced only to counsel for Morgan Keegan."

It should be noted that Mr. Fruin states that neither he nor his firm have sent the information out of their office. He further states that he received 6 copies of the disc from Mr. Campbell's office as part of the required arbitration production.

4. Identification of all individuals who have requested and/or received a copy of the Commission's complaint with un-redacted exhibits.

Answer: There is no evidence of other requests for hard copies of the order and/or exhibits.

5. Identification of all individuals (other than Commission employees) who have seen and/or used the un-redacted spreadsheet along with a description of how the spreadsheet and the information therein was used.

Answer: The Morgan Keegan Task Force members have seen the documents as well as Ms. Carew and Ms. Gidiere, who in preparation of discovery

opened the documents to electronically bates stamp all the material; however, they did not undertake a detail review, prepare notes or otherwise note any details of the non-public information. Mr. Campbell stated in his affidavit that at no time did he view the information. The second part of this request was answered above.

6. A description of any other RMK related documents/information containing customer information which has been disclosed to (a) Commissioner Campbell or his law firm and (b) any other attorneys handling RMK Fund cases against Morgan Keegan.

Answer: Only the exhibits which were hyperlinked to the order were released to Leitman, Siegal, Payne & Campbell. A survey of thirteen (13) law firms who represent clients against Morgan Keegan and of the three (3) respondents' law firms revealed that no other firm, individual or entity received the non-public information. Particularly, the survey of the three (3) law firms representing Morgan Keegan and the other respondents revealed that one (1) received nothing, one (1), Mr. Anderson properly received what was delivered by courier on April 7, 2010 and one (1), Mr. Fruin, received the information from Leitman, Siegal, Payne & Campbell.

7. Mr. Fruin requested the Commission supply the actual disc that the Commission staff picked up from Mr. Campbell's office as well as any other materials obtained from Mr. Campbell or his law firm.

Answer: This disc will stay in the custody of the ASC and Mr. Fruin has been invited to set a time to view the disc at the Commission office. No other materials were picked up from Leitman, Siegal, Payne & Campbell.

FINDINGS

After reviewing this matter, it has been determined that the inadvertent copy of the disc was the result of the use of new technology (hyperlinks) in an administrative order for which long standing procedures failed to address all possible security concerns. New procedures have been put in place to avoid any reoccurrence. There is no evidence that supports any allegation that Mr. Campbell used his position as a Commissioner to obtain the mistakenly copied disc. Fortunately, the copy of the information was limited, and the one disc which contained the un-redacted information was recovered without any general release of the un-redacted content to any unauthorized person or firm except as described in this report. The only known copies of that disc, a total of six (6), outside of the Commission are with Maynard, Cooper and Gale, the attorneys for the Respondents who have independent access to the information and are entitled to the information.

The affidavits and related documents supporting these findings are held with the inquiry file in the possession of this agent.