

STATE OF ALABAMA  
ALABAMA SECURITIES COMMISSION

IN THE MATTER OF:	)	
	)	
BRIAN ALAN BLACKMON	)	ADMINISTRATIVE ORDER
	)	NO. CO-2005- <u>0002</u>
	)	
<u>RESPONDENT</u>	)	

CONSENT ORDER

The Alabama Securities Commission ("Commission"), having the power to administer and provide for the enforcement of all provisions of Title 8, Chapter 6, Code of Alabama 1975, the Alabama Securities Act ("Act"), upon due consideration of the subject matter hereof, and having confirmed information of the offers for sale and/or sale of securities into, within or from the State of Alabama, has determined as follows:

RESPONDENT

1. BRIAN ALAN BLACKMON ("BLACKMON") was registered in Alabama as an Agent of Horowitz & Associates from October 27, 2003 to November 2004, with a business address of 900 Bob Wallace Avenue, Suite 124, Huntsville, AL 35801.

STATEMENT OF FACTS

2. In November 2004, the Commission received information from an Alabama resident that BLACKMON was conducting seminars in the Huntsville, Alabama area. The Commission was informed by seminar attendees that BLACKMON focused on tax and investment related issues with specific focus on the retirement community during the seminars.

3. The Commission was informed that during at least one seminar BLACKMON passed out sales literature that falsely represented BLACKMON as a Director of an entity called the National Senior Resource Center ("NSRC"). BLACKMON was also listed on the internet website of a business entity called Piece of the Pie Marketing, Inc. ("PIE") as a director of the NSRC.

4. The Commission was informed that BLACKMON was distributing business cards that identified him as an INVESTMENT ADVISER representative. BLACKMON was not registered as an investment adviser or as a representative.

5. Horowitz & Associates terminated BLACKMON on November 5, 2004, alleging that BLACKMON had violated the firm's written supervisory policies regarding advertising and communications with the public. Horowitz claimed that from March 2004 to October 2004, BLACKMON held a series of seminars in the Huntsville, Alabama area without the firm's knowledge or consent. Horowitz & Associates also determined that BLACKMON distributed handouts to attendees of the seminars which had neither been reviewed nor approved by Horowitz compliance personnel. BLACKMON disputes the claims by Horowitz and has submitted documentation to the Commission purporting to support his position.

6. On January 4, 2005, the Commission issued an Order to Show Cause why BLACKMON's registration as an Agent should not be permanently barred in the State of Alabama (the "Show Cause Order"). The Show Cause Order was based upon the facts stated in the paragraphs above and contended that BLACKMON had violated the provisions of *Code of Alabama (1975)*, § 8-6-3(j)(7) and had engaged in dishonest or unethical practices in the securities business.

7. BLACKMON responded to the Show Cause Order in writing, initially on February 18, 2005 and on occasions thereafter, and has, through counsel, discussed the facts with the Commission staff.

8. BLACKMON admits that he distributed sales literature that represented him as a director of NSRC. However, he states through counsel that the sales literature was prepared exclusively by a third party (PIE) and that he had no knowledge of the error in the sales literature when he distributed it to seminar participants. BLACKMON states that he contacted PIE when he was informed of the error and had it corrected. PIE has acknowledged to the Commission that the foregoing facts are correct. BLACKMON admits that he failed to notice the error in a timely manner and improperly distributed information that contained an error to the investing public.

9. BLACKMON acknowledges that he was listed as a director of NSRC on the PIE internet website. Counsel for PIE advised the Commission that PIE inadvertently represented on its website that Blackmon was associated with NSRC. Blackmon's counsel states that the error was made by PIE and was immediately corrected by PIE when the error was brought to its attention. Counsel states that PIE has an affiliation with NSRC and that licensed insurance agents working with PIE Marketing have the opportunity to become associated with NSRC, at the agent's option. Counsel for PIE has informed the Commission that Blackmon opted not to be associated with NSRC.

10. BLACKMON admits that he distributed approximately 10 business cards that identified him as an investment advisor representative. BLACKMON explained that his distribution of the business cards was premature because he was applying for a license as an INVESTMENT ADVISER and was then only working in association with another representative of Horowitz who was acting as an INVESTMENT ADVISOR. BLACKMON further advised that he immediately retrieved the cards from each person to whom they had been distributed and stopped distributing them.

11. BLACKMON is no longer associated with Horowitz & Associates and is currently not licensed as a representative with any broker dealer.

## CONCLUSIONS OF LAW

12. Communications with the public by a registered agent in the State of Alabama must be fair and balanced and not misleading. All communications with the public must be based upon the principles of fair dealing and good faith. Communications with the public must not contain false, exaggerated, or unwarranted claims. These principles are based upon generally accepted principles of law such as those found in the Commission Rule 830-x-2-.06, *Advertising and Sales Literature (as to offerings)* and NASD Rule 2210, *Communications with the Public (as to members)*. These standards of professional conduct are generally accepted throughout the securities industry and apply to registered agents. The NASD guidelines provide the minimum standards of practice in the industry and are the minimum basis for Alabama's rules prohibiting dishonest and unethical conduct.

13. A registered agent may not make any false, exaggerated, unwarranted or misleading statement, claim, or representation in any communication with the public. A registered representative may not publish, circulate or distribute any public communication that he knows or has reason to know contains any untrue statement of a material fact or is otherwise false or misleading. NASD Rule 2210., *Communications with the Public (as to members)*. The use of any sales material in conjunction with any offering of securities in such a fashion as to be deceptive or misleading is prohibited. Commission Rule 830-x-2-.06, *Advertising and Sales Literature (as to applicants, registrants, principals and their agents)*.

14. Misrepresenting one's qualifications to any prospective advisory client is a practice that is deemed dishonest and unethical when done by a registered investment adviser. Commission Rule 830-x-3-.21(1)(h), *Dishonest or Unethical Practices by Investment Advisers*. Further, it is by statutory definition a fraudulent, deceptive or manipulative act, practice or course of business, within the meaning of the State of Alabama Securities Act, for any registered investment adviser to directly or indirectly publish, circulate or distribute any advertisement which contains any untrue statement

of a material fact. Commission Rule 830-x-3-.22(1)(e), *Advertisements by Investment Advisers*.

15. BLACKMON's qualifications were misrepresented to persons who attended one or more of his seminars in Huntsville. BLACKMON knew or should have known the content of the sales literature that he distributed to the public at the seminars he conducted. BLACKMON's failure to review the content of the sales material prior to distributing it to his seminar participants resulted in his distribution of sales literature that incorrectly stated his associations and qualifications. BLACKMON's distribution of the business cards representing himself as an investment advisor representative resulted in the dissemination of false or potentially misleading information to the public.

16. BLACKMON's credentials were misrepresented to the persons who accessed the PIE website during the time he was listed on it as a director of NSRC. Although BLACKMON was not responsible for the content on the PIE website, BLACKMON's failure to monitor or review the advertisement on the website of PIE contributed to PIE's misrepresentation of his associations over the internet.

17. By causing or allowing the dissemination of misleading material and false information to the investing public, BLACKMON engaged in an act, practice or course of business which operates or would operate as a fraud or deceit upon a person in violation of *Code of Alabama (1975)*, § 8-6-17(a)(3).

18. Pursuant to § 8-6-3(j)(7), *Code of Alabama (1975)*, the Commission may suspend or revoke any registration, or censor or bar any applicant or registrant from employment with a securities dealer if the Commission finds that the Order is in the public interest and that the registrant has engaged in dishonest or unethical practices in the securities business.

WHEREAS, while BLACKMON disputes certain of the Findings of Facts and Conclusions of Law set forth herein, BLACKMON has voluntarily agreed to waive all

rights to a hearing and has consented to the entry of this Order; and

WHEREAS, the Commission has determined that this Order is necessary and appropriate and in the public interest for the protection of investors and consistent with the purposes of the Alabama Securities Act; and

WHEREAS, this Order does not prevent the Commission from seeking such other civil or criminal remedies that may be available to it under the Alabama Securities Act; and

WHEREAS, the Commission and BLACKMON are desirous of settling this matter as hereafter set forth and agree to the entry of this Order;

**ACCORDINGLY, IT IS HEREBY ORDERED** as follows:

1. That BLACKMON pay to the Commission, as partial reimbursement for the Commission 's costs of investigating this matter, the sum of Five Hundred Dollars (\$500.00), said funds to be tendered in certified funds within ten (10) business days after BLACKMON signs this Order.

2. That BLACKMON pay to the Alabama Securities Commission, as an administrative assessment, the sum of Five Hundred Dollars (\$500), said funds to be tendered in certified funds within ten (10) business days after BLACKMON signs this Order.

3. In the event BLACKMON shall seek a license with a broker dealer in the future, he shall only distribute sales literature, advertisements, and publications that has been approved by his respective firm and cannot attach his name to any web site unless its content has been approved by his firm. Further, he shall submit to the Commission all sales literature and advertisements BLACKMON intends to use, distribute or publish to the public, any customer or potential customer at least 30 days

prior to his distribution thereof for the next two (2) years from the date of this Order.

4. That BLACKMON will not conduct any seminars unless approved by his firm.

5. That BLACKMON shall provide to the Commission within thirty days of his signing of this Order a listing including the name and address of his securities clients and the securities recommendations made and the securities products sold to them for the last twelve months.

6. That the entry of this Order resolves the Show Cause Order, Administrative Order No. SC-2005-0002, issued by the Commission on January 4, 2005 and the facts raised therein. This Consent Order does not address any claim that may arise from facts that are unknown to the Commission at this time or from any future conduct of Blackmon that may violate securities laws and regulations.

**AGREED AND CONSENTED** to on dates indicated:

**RESPONDENT:**

**BRIAN ALAN BLACKMON**

BY:



DATE:


7/24/06

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APPROVED AND ORDERED this 31st day of July, 2006.

ALABAMA SECURITIES COMMISSION  
770 Washington Avenue, Suite 570  
Montgomery, AL 36130-4700  
(334) 242-2984

BY:



JOSEPH P. BORG  
Director

