

**STATE OF ALABAMA  
ALABAMA SECURITIES COMMISSION**

**IN THE MATTER OF:**

**WINTEX, INC.  
WINTEX DIRECT  
WINFORD LEE TOMERLIN  
VINCENT DUNNE  
JOHN KAMPMAYER**

**RESPONDENTS**

**ADMINISTRATIVE ORDER  
NO. CD-2009-0026**

**CEASE AND DESIST ORDER**

The Alabama Securities Commission ("Commission"), having the authority 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, as well as transacting business as an unregistered Investment Adviser ("IA")/Investment Adviser Representative ("IAR") into, within or from the state of Alabama, has determined as follows:

**RESPONDENTS**

1) WINTEX, INC. is incorporated in North Carolina with a business address of 1200 Woodruff Road, Suite A-3, Greenville, SC 29607. In its corporate filings, WINTEX, INC. describes the nature of its business as "consulting – sales and management".

2) WINTEX DIRECT, has a business address of 600 Boulevard South, Room 104, Huntsville, Alabama 35802-2175. WINTEX DIRECT is the business name utilized by WINTEX, INC. to market its products, including fixed and equity indexed annuities, in the state of Alabama.

3) WINFORD LEE TOMERLIN ("TOMERLIN"), at all times relevant to this Order, has been the President of WINTEX, INC. with a business address of 1200 Woodruff Road, Suite A-3, Greenville, SC 29607.

4) VINCENT DUNNE ("DUNNE") was, at all times relevant to this Order, acting as an agent of WINTEX DIRECT with a business address of 600 Boulevard South, Room 104, Huntsville, Alabama 35802-2175.

5) JOHN KAMPMEYER ("KAMPMEYER") was, at all times relevant to this Order, the manager of WINTEX DIRECT with a business address at 600 Boulevard South, Room 104, Huntsville, Alabama 35802-2175.

#### **STATEMENT OF FACTS**

6) On October 21, 2008, the Alabama Securities Commission received an inquiry regarding WINTEX DIRECT. WINTEX DIRECT had recently started advertising in a local paper in Huntsville, Alabama. By way of their advertisement, WINTEX DIRECT was, and still is, offering twelve (12) month Certificates of Deposit with an annual yield of 4.75% to 5%<sup>1</sup>, with a minimum purchase of \$10,000.00. WINTEX DIRECT identifies itself in the advertisement as "A Financial Research Corporation." The advertisement states that the certificates of deposit are FDIC ("Federal Deposit Insurance Corporation") insured, however, neither WINTEX DIRECT nor WINTEX, INC. are identified by the FDIC website as being insured by that agency. In addition, a banner printed on the newspaper advertisement states "Ask Us About IRA Rates and 401k Transfers!"

7) Following the inquiry received on October 21, 2008, the Commission staff began receiving numerous inquiries from Huntsville, Alabama residents who had seen the WINTEX DIRECT advertisement in a local newspaper. One of the inquiries received was from the Huntsville chapter of the Better Business Bureau

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<sup>1</sup> This was the initial rate offered. However, it is hereby acknowledged that the interest rate offered has fluctuated during the time WINTEX DIRECT has been conducting business in Huntsville, Alabama.

("BBB").

8) On October 29, 2008, the manager of the Huntsville, Alabama branch of WINTEX DIRECT, KAMPMEYER, was contacted by staff of the Alabama Securities Commission. KAMPMEYER explained that WINTEX DIRECT offers two (2) products. These products are fixed annuities and certificates of deposit. KAMPMEYER disclosed that WINTEX DIRECT also offers an equity indexed annuity. Additionally, KAMPMEYER described the certificates of deposit, included in the newspaper advertisement, as a marketing tool comparable to a product known within the retail industry as a "loss leader."

9) KAMPMEYER acknowledged that WINTEX DIRECT is not insured by the Federal Deposit Insurance Corporation. KAMPMEYER explained that the certificates of deposit identified in the local newspaper advertisement are not issued by WINTEX DIRECT. KAMPMEYER further explained that WINTEX DIRECT simply matches individuals wishing to purchase certificates of deposit with banks that are insured by the FDIC and offering the best on-line rates for certificates of deposit.

10) KAMPMEYER stated that potential clients are required to come into the office to take advantage of the advertised rates on certificates of deposit, at which point, WINTEX DIRECT attempts to sell the client a fixed or equity indexed annuity, or attempts to have the client move their existing IRA or 401k investment into an annuity offered by WINTEX DIRECT. If the client demands the twelve month certificate of deposit, then a representative of WINTEX DIRECT conducts online research to determine what bank is paying the best rate for a twelve month certificate of deposit on that particular day and contacts that bank on behalf of the client.

11) According to KAMPMEYER, any checks issued by clients to purchase the certificates of deposit, as advertised by WINTEX DIRECT, are made payable to the bank issuing the certificate of deposit. The client's funds are not held in escrow by WINTEX DIRECT or WINTEX INC., nor are RESPONDENTS named as beneficiary to the certificate of deposit. A representative of WINTEX DIRECT submits the client's

check to the financial institution that is to issue the certificate of deposit. The certificates of deposit are issued directly to the client from the bank. There are no commissions, or fees paid to or otherwise collected, for the benefit of, WINTEX DIRECT or WINTEX, INC. relating to the certificates of deposit issued by FDIC insured financial institutions.

12) KAMPMEYER explained that in the event the advertised rate of return cannot be secured as advertised in the local newspaper, WINTEX DIRECT will calculate the necessary contribution to be made so that the annual yield to the client is the advertised rate. WINTEX DIRECT then pays to the client, the calculated difference in the interest rate paid by the bank on the certificate of deposit and the interest rate advertised in the local newspaper by WINTEX DIRECT.

13) KAMPMEYER stated that his title at WINTEX DIRECT is "Financial Adviser". KAMPMEYER acknowledged that he has no training, certification, or registration as a financial adviser and that the title of "Financial Adviser" was bestowed upon him by the President of WINTEX, INC., TOMERLIN. KAMPMEYER stated that he does hold a license as an insurance agent issued by the State of Alabama. During a subsequent conversation with KAMPMEYER, he told Commission staff that he is no longer employed by WINTEX, INC. or WINTEX DIRECT.

14) On February 27, 2009, the President of WINTEX, INC., TOMERLIN was contacted by the Commission staff. TOMERLIN confirmed the facts regarding the certificates of deposit as explained by KAMPMEYER, to the Commission staff, and that the Huntsville office of WINTEX DIRECT is the only office in the State of Alabama. TOMERLIN advised that as soon as the six (6) months lease for the current office space in Huntsville was fulfilled he would close that office due to lack of response to the advertisement placed in the local newspaper.

15) On March 6, 2009, the Commission staff requested, from TOMERLIN, a schedule of individuals who had purchased certificates of deposit through WINTEX DIRECT. The schedule was to include all clients during the time period when the

Huntsville, Alabama office opened in October 2008 to March 2009. On March 11, 2009, the Commission staff received the requested schedule, which identified five (5) Alabama residents as having purchased certificates of deposit through WINTEX DIRECT. Two (2) of the Alabama clients identified on the schedule were contacted by the Commission staff. These two (2) clients confirmed the facts provided to the Commission staff by KAMPMEYER and TOMERLIN. Both Alabama residents stated that they were not pressured to purchase an annuity.

16) On June 15, 2009, the Alabama Securities Commission was contacted by a representative of the Huntsville chapter of the BBB. The BBB advised that WINTEX DIRECT is continuing to place advertisements in The Huntsville Times. As a result, the BBB is receiving inquiries regarding the legitimacy of WINTEX DIRECT.

17) On June 16, 2009, the Alabama Securities Commission received an inquiry from an Alabama resident, via e-mail, concerning WINTEX DIRECT. The Alabama resident wanted to ensure that WINTEX DIRECT is registered with the State Banking Department and/or the Alabama Securities Commission.

18) On or about June 23, 2009, it came to the attention of the Alabama Securities Commission that the Alabama Department of Insurance received a complaint concerning WINTEX DIRECT. The complainant alleges that he visited the office of WINTEX DIRECT in May 2009, where complainant met with DUNNE. As a result of this meeting with DUNNE, complainant purchased what he believed to be a fixed annuity. However, upon receipt of the policy, complainant discovered that he was issued an equity indexed annuity. Furthermore, complainant noted that his application associated with the policy issued was signed by James Edward Dubeau as the producing agent. Complainant states that he has never met with Dubeau. According to the Alabama Department of Insurance, neither Dunne nor Dubeau have been appointed by the issuer of the annuity policy, Aviva Insurance Company, to produce insurance policies in the State of Alabama. The complainant further alleges that DUNNE, according to his business card, is holding himself out as a "Financial Adviser".

19) On June 24, 2009, a search of the records maintained by the Alabama Securities Commission was conducted by the Commission staff. This search revealed no registration in Alabama for WINTEX, INC., WINTEX DIRECT, TOMERLIN, DUNNE, or KAMPMEYER as a broker dealers, agents, investment advisers, or investment adviser representatives.

### CONCLUSIONS OF LAW

20) Pursuant to Section 8-6-2(10), Code of Alabama 1975, the definition of security includes any investment contract. The agreement offered by RESPONDENTS to provide a guaranteed annual interest rate on the certificates of deposit issued by FDIC insured financial institutions, falls within the definition of an investment contract and is therefore a security under the statutory definition set forth in the Act.

21) Pursuant to Section 8-6-2(2), Code of Alabama 1975, the definition of agent includes any individual who represents an issuer in effecting or attempting to effect sales of securities. RESPONDENTS are acting as agents of WINTEX DIRECT and WINTEX INC., in guaranteeing an interest rate on the certificates of deposit issued by FDIC insured financial institutions, in violation of the Act.

22) Pursuant to Section 8-6-3(a), Code of Alabama 1975, it is unlawful for any person to transact business in this state as a dealer or agent for securities unless he is registered under this article. RESPONDENTS have effected securities transactions in Alabama without proper registration in violation of the Act.

23) Pursuant to Section 8-6-2(18), Code of Alabama, 1975, the definition of an investment adviser includes any person, who, for compensation, engages in the business of advising others, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities. Investment adviser also includes financial planners and other persons who, as an integral component of other financially

related services, provide the foregoing investment advisory services to others for compensation and as part of a business or who hold themselves out as providing the foregoing investment advisory services to others for compensation. RESPONDENT, WINTEX DIRECT and WINTEX INC., are acting as an investment adviser as defined under the Act.

24) Pursuant to Section 8-6-2(19), Code of Alabama, 1975, the definition of investment adviser representative includes an individual employed by or associated with an investment adviser that makes any recommendation or renders advice regarding securities, determines which recommendation or advice regarding securities should be given, and manages accounts or portfolios involving securities. RESPONDENTS are acting as investment adviser representatives as defined in the Act.

25) Pursuant to Section 8-6-3(b), Code of Alabama 1975, it is unlawful for any person to transact business in this state as an investment adviser or investment adviser representative unless he is properly registered in Alabama. The RESPONDENTS were not registered as an investment adviser or investment adviser representatives in Alabama during anytime relevant to this Order. RESPONDENTS have transacted investment advisory business without being properly registered with the Commission in violation of the Act.

This Order is appropriate in the public interest for the protection of investors and consistent with the purposes of the Alabama Securities Act.

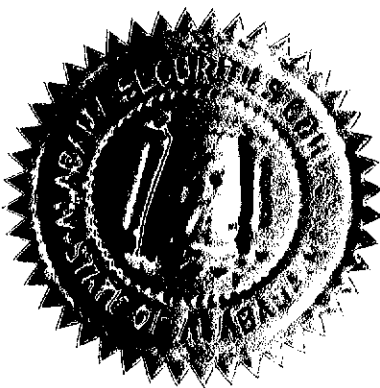
This Order does not prevent the Commission from seeking such other civil or criminal remedies that may be available to it under the Alabama Securities Act.

Additionally, if the allegations set forth herein are found to be true, through either administrative adjudication, failure of the RESPONDENTS to make a timely request for hearing, or default of the RESPONDENTS, it is the intention of the Commission to impose sanctions upon the RESPONDENTS. Such sanctions may

include, inter alia, an administrative assessment imposed on RESPONDENTS, and additional administrative assessment for investigative cost arising from the investigation of the violations described herein against RESPONDENTS, and a permanent order to bar RESPONDENTS from participation in any securities related industry in the State of Alabama.

**ACCORDINGLY, IT IS HEREBY ORDERED** that RESPONDENTS immediately **CEASE AND DESIST** from further offers or sales of any security into, within or from the State of Alabama, as well as conducting business as an unregistered investment adviser and investment adviser representatives, into, within or from the State of Alabama

Entered at Montgomery, Alabama, this 21st day of September, 2009.



ALABAMA SECURITIES COMMISSION  
770 Washington Avenue, Suite 570  
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(334) 242-2984

BY:

A handwritten signature in dark ink, appearing to read "JP Borg", is written over a horizontal line.

JOSEPH P. BORG  
Director