

STATE OF ALABAMA
ALABAMA SECURITIES COMMISSION

IN THE MATTER OF:)
)
DAVID E. LIVINGSTON) ADMINISTRATIVE ORDER
) NO. CO-2012-00¹²
RESPONDENT)

CONSENT ORDER OF SUSPENSION

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, into, within or from the state of Alabama, has determined as follows:

RESPONDENT

1. During all times relevant to the transactions referenced in this order, **DAVID EDWARD LIVINGSTON** ("LIVINGSTON"), central registration depository number 2035043, was registered in Alabama as an investment advisor representative and a broker-dealer agent with Proequities, Inc. ("Proequities"). **LIVINGSTON** has a residential address of 415 Yorkshire Drive, Birmingham, Alabama, 35209.

STATEMENT OF FACTS

2. The Commission received information from the Financial Industry Regulatory Authority ("FINRA") alleging that between October 15, 2008, and January 29, 2011, **LIVINGSTON** executed Alabama resident client signatures to Proequities, Incorporated account document forms without the knowledge and consent of the clients.

3. The investigation revealed that between the above identified dates, **LIVINGSTON**, without written authority and/or permission, forged the signatures of no less than thirteen (13) clients' to documents whose accounts were held by ProEquities.

The forging of the client signatures allowed unauthorized trading in the client accounts by **LIVINGSTON**.

4. At the request of the Commission, FINRA provided the written statement of **LIVINGSTON** dated June 8, 2011. In that statement **LIVINGSTON** admitted to signing clients' names to "Switch Letters" and/or "Mutual Fund Investor Acknowledgement Forms" for twelve of his clients. **LIVINGSTON** said he signed the clients' names without client authorization because he had fallen behind in obtaining the necessary signed documents.

5. On August 15, 2011, representatives of FINRA deposed **LIVINGSTON**. Subsequent to the deposition, FINRA provided the Commission with a copy of the transcript. During the deposition **LIVINGSTON** admitted forging the signatures of the clients identified in paragraph number three (3) without their prior permission and/or authority. In addition, **LIVINGSTON** admitted his failure to freeze the account of the deceased client and confirmed trading activity occurred within the account after **LIVINGSTON** was aware of the client's death.

6. Responding to findings of its compliance personnel, ProEquities discharged **LIVINGSTON** on March 7, 2011 citing, "The representative acknowledged signing client's signatures to various customer account forms; representative also transacted business for approximately 10 months in a deceased client's account after having knowledge of death; and rep provided misleading information to the firm during investigation of deceased's accounts".

7. On June 20, 2012, **LIVINGSTON**, represented by counsel, met with the Commission staff and set forth the circumstances giving rise to the FINRA action and **LIVINGSTON'S** subsequent termination from ProEquities. **LIVINGSTON** admitted to the misconduct relating to the unauthorized execution of client signatures and provided documentation showing that, while a breach of ethical conduct, such actions did not unduly prejudice or adversely affect the client's in question. **LIVINGSTON** provided information to the Commission staff which indicates that the transactions for which

LIVINGSTON effected the unauthorized execution of client signatures were not detrimental to the interests of the clients and were done to reduce client expense following a ProEquities review of **LIVINGSTON** client files.

8. By letter dated July 5, 2012, **LIVINGSTON'S** counsel set forth proposed conditions for settlement of this action. In such proposal **LIVINGSTON** agreed to a suspension of eight months and heightened supervisory standards upon return to the securities industry.

CONCLUSIONS OF LAW

9. Pursuant to § 8-6-3(j)(7), Code of Alabama 1975, the Commission may by order suspend any person in this State from employment with a dealer or investment advisor if the Commission finds the order is in the public interest and that the person has engaged in dishonest and unethical business practices in the securities business. **LIVINGSTON** engaged in dishonest and unethical business practices by the unauthorized execution of client signatures on documents. **LIVINGSTON'S** actions constitute dishonest and unethical practices in the securities business are grounds to suspend him from transacting business as a dealer, dealer's agent, investment advisor or investment advisor representative in this state.

WHEREAS, **LIVINGSTON** admits to the jurisdiction of the Commission and that the information and assertions presented to the Commission during its investigation of this matter are true and correct; that **LIVINGSTON** understands the Commission's reliance upon such information and assertions in its determination to accept this Order, and that should this information or these assertions prove to be incorrect or misrepresented, the Commission may seek such other administrative, civil, or criminal remedies that may be available to it under the provisions of the Act.

WHEREAS, **LIVINGSTON** has voluntarily waived all rights to a hearing upon entry of this Order, and has consented to the entry of this Order, and

WHEREAS, the Commission finds this Order necessary and appropriate in the public interest for the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act, and

WHEREAS, the Commission and **LIVINGSTON** are desirous of settling this matter as hereafter set forth and agree to the entry of this Order.

ACCORDINGLY, IT IS HEREBY ORDERED:

1. That RESPONDENT **LIVINGSTON** is **Suspended** from engaging in any securities activities into, within or from the state of Alabama for a period of eight (8) months, such period to be served concurrently with the suspension issued by FINRA.

2. That, subsequent to the suspension referenced above, RESPONDENT **LIVINGSTON** shall not be allowed to participate in any capacity in the Securities industry in Alabama that would require registration unless the firm requesting registration for **LIVINGSTON** enters into an agreement of heightened supervision as outlined in Counsel's letter of July 5, 2012 (incorporated by reference). Such agreement must be between the registering firm and the Commission staff. Such firm will not seek release from the provisions of such agreement before the expiration of three (3) years from the date of **LIVINGSTON**'s initial registration following this suspension. If **LIVINGSTON** changes firms during such three year period or before release, by the Commission, from the provisions of such agreement, such subsequently registering firm will be required to enter into a substantially similar heightened supervisory agreement, as it relates to **LIVINGSTON** with the Commission staff.

3. This Consent Order of Suspension shall not solely constitute a future disqualification from registration pursuant to Sections 8-6-3(j)(5) or (6), Code of Alabama 1975. However, this proceeding along with **LIVINGSTON**'s overall disciplinary history will be used to determine eligibility for future registration.

4. That in accordance with Section 8-6-19(j)(1), Code of Alabama 1975, RESPONDENT **LIVINGSTON** shall pay to the **State of Alabama** an administrative assessment in the total sum of Two Thousand Five Hundred Dollars (\$2,500), said funds to be tendered in certified funds contemporaneously with the entry of this Order.

5. That in accordance with Section 8-6-19(k)(1), Code of Alabama 1975, RESPONDENT **LIVINGSTON** shall pay to the **Alabama Securities Commission**, as partial reimbursement for the Commission's cost for investigating this matter, the sum of Two Thousand Five Hundred Dollars (\$2,500), said funds to be tendered in certified funds contemporaneously with the entry of this Order.

AGREED AND CONSENTED to on dates indicated:

RESPONDENT:
DAVID LIVINGSTON

BY: D. Livingston
DATE: 10.4.12

APPROVED AND ORDERED this 12th day of October, 2012

ALABAMA SECURITIES COMMISSION
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(334) 242-2984

BY:
JOSEPH P. BORG
Director

