

STATE OF ALABAMA
ALABAMA SECURITIES COMMISSION

IN THE MATTER OF:

ClearPoint Capital Management LLC
Elcan Wealth Consulting LLC
Clarence "Cal" Elcan
Pamela L. Elcan
Daniel G. Elcan
Richard Mark Foster
Paul D. Elcan

)
ADMINISTRATIVE ORDER
NO. CO-2015-0021

RESPONDENTS

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

RESPONDENTS

1. **CLEARPOINT CAPITAL MANAGEMENT, LLC.** ("CCM"), CRD #166527, is a Florida company that has a listed address of 3601 Springhill Business Park, Suite, 210 Mobile, AL, 36608. CCM was formed September 28, 2012, and registered with the state of Alabama as a foreign limited liability company on February 19, 2013.
2. **ELCAN WEALTH CONSULTING** ("EWC"), is a subsidiary of CCM, with a business address of 3601 Springhill Business Park, Suite 201, Mobile, AL 36608. CLARENCE "CAL" ELCAN is listed as Senior Vice- President, Senior Portfolio

Manager, and a registered investment advisor. **PAMELA L. ELCAN** is listed as Vice-President.

3. **CLARENCE "CAL" ELCAN, ("C. ELCAN") CRD# 4006999**, at all times relevant, was listed as portfolio manager with **CCM**, with a principal business address of 3601 Springhill Business Park, Suite #201 Mobile, AL 36608. **C. ELCAN** was also listed as Senior Vice-President and was purported to be a registered investment advisor of **EWC**, with an address of 125 Taggart Avenue, Nashville, TN 37205.

4. **PAMELA L. ELCAN ("P.L. ELCAN")**, CRD #5023637, at all times relevant, was a registered investment advisor with **CCM**, and **EWC**, each with a principal business address of 3601 Springhill Business Park, Suite 201, Mobile, AL 36608, and a home address of 125 Taggart Avenue, Nashville, Tennessee.

5. **DANIEL G. ELCAN ("D. ELCAN") CRD # 6158507**, at all times relevant, was a member and owner of **CCM**, with a principal business address of 3601 Springhill Business Park, Suite 201, Mobile, AL 36608. **D. Elcan** has never been registered as an investment advisor.

6. **RICHARD MARK FOSTER ("FOSTER") CRD # 6105738**, at all times relevant, was an owner, President, chief compliance officer and registered investment advisor with **CCM**, with a principal business address of 3601 Springhill Business Park, Suite 201, Mobile, AL 36608.

7. **PAUL D. ELCAN ("P. ELCAN")**, CRD #6158532, at all times relevant, was a registered investment advisor with **CCM**, with an principal business address of 3601 Springhill Business Park Suite 201 Mobile, AL 36608.

STATEMENT OF FACTS

8. On September 30, 2015, the Commission received information that **CCM**

was using an unregistered investment advisor representative, **C. ELCAN**, to manage client accounts.

9. According to the **EWC** website, **C. ELCAN** is the "Portfolio Manager" and is purported to be a "registered investment advisor" for **EWC**, a subsidiary of **CCM**. **C. ELCAN** is the brother of **D. ELCAN**, uncle to **P. ELCAN** and spouse of **P.L. ELCAN**.

10. On September 2, 2015, a review of the Commission's files revealed no current registration for **C. ELCAN** as a broker dealer, broker-dealer agent, investment advisor (IA) or investment advisor representative (IAR) in the state of Alabama. Commission records also indicated that **C. ELCAN** was previously registered in the state of Alabama as a broker dealer agent between the dates of July 25, 2000, through May 2, 2014, while he was employed with UBS Financial Inc. **C. ELCAN'S** broker dealer agent registration was terminated May 2, 2014. **C. ELCAN'S** investment advisor registration was terminated September 5, 2014 in the state of Tennessee, after it was reinstated on August 8, 2014.

11. On June 27, 2014, **C. ELCAN** entered a conditional guilty plea in Davidson County, Tennessee Circuit Court to felony Money Laundering and felony Conspiracy to commit a drug related charge in Nashville, Tennessee. **C. ELCAN** is currently enrolled in a court mandated three year Pre-Trial Diversion Program. No judgment of conviction has been entered against **C. ELCAN**, and all proceedings are deferred. The Commission is advised by **C. ELCAN'S** counsel that if **C. ELCAN** successfully completes probation, the charge will be expunged.

12. Because of the conditional plea, **C. ELCAN** resigned from his position with UBS. The investigation revealed that subsequent to his plea and acceptance into Pre-Trial Diversion Program, **D. ELCAN** reached out to **C. ELCAN** to transfer to **CCM**. **CCM** used T.D. Ameritrade as its trading platform; however, because of **C. ELCAN'S** legal issues, T. D. Ameritrade would not allow him access on the trading platform.

13. The investigation revealed that **C. ELCAN** used the T.D. Ameritrade access numbers of **P. ELCAN** and **FOSTER** to access the trading platform on behalf of **CCM** clients. ASC personnel subsequently interviewed **FOSTER** who stated that **C. ELCAN** was the only member of **CCM** who actively managed and traded clients' accounts. **FOSTER** also stated that **C. ELCAN** was compensated 85 basis points based on the 1% of management fees for total client assets with **CCM**.

14. All **RESPONDENTS** knew, or should have known due to their positions, that **C. ELCAN** was not registered as an IA or IAR in the state of Alabama, where **CCM** was domiciled; all **RESPONDENTS** allowed **C. ELCAN** to trade and manage **CCM**'s client accounts.

15. According to Iberia Bank records for **CCM**, between the dates of 8/21/2014 and 8/18/2015, two wire transfers in the amount of \$85,053.91, and seven checks totaling \$162,565.70, for a combined total of \$247,619.61, were paid to **C. ELCAN**. Based on total amount paid to **C. ELCAN**, this total is consistent with the 85 basis points that were represented to be paid to **C. ELCAN** on the reported assets under management. During the date of transfers, **C. ELCAN** was not registered to act as a broker dealer, broker-dealer agent, investment advisor (IA) or investment advisor representative (IAR) in the state of Alabama or Tennessee. After the payment of trading fees, the net fees received by **C. ELCAN** during this time period totaled \$237,026.24.

16. The information obtained by the investigators from third parties and the information provided by **RESPONDENTS** indicate that the client accounts managed by **C. ELCAN** on behalf of **CCM** were managed consistent with representations made by **RESPONDENTS** to the clients of **CCM**.

17. On October 2, 2015, **CCM** client accounts were accessed through T.D. Ameritrade's account using the name and password assigned to **FOSTER**. The internet protocol address used to gain online access was listed for Nashville, Tennessee. **FOSTER** and **P.L. ELCAN** were present with Commission staff in Mobile,

AL, at an audit, during the times in which the accounts were accessed. **RESPONDENTS** admit that **C. ELCAN** was the person accessing the online accounts at that time.

18. Since the issuance of the administrative orders CD 2015-0021 and SC 2015-0022, **C. ELCAN** has ceased investment adviser activities.

19. An informal hearing was conducted in the offices of the Alabama Securities Commission on December 23, 2015. **RESPONDENTS** and their attorney, J. Randall McNeill of Webb & Eley P.C., attended and represented their interests. Subsequent to the hearing, **RESPONDENTS** agreed to waive any further administrative proceedings available to them and instead to resolve this matter by way of this Consent Order.

CONCLUSIONS OF LAW

20. Code of Alabama 1975 § 8-6-2(18) defines an Investment Adviser as: Any person, who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning 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. **CCM** is an Investment Adviser under the Act.

21. Code of Alabama 1975, § 8-6-2(19) defines an Investment Adviser Representative as: Any partner, officer, director of (or a person occupying a similar status or performing similar functions) or other individual employed by or associated with an investment adviser, except clerical or ministerial personnel, who:

- a. Makes any recommendation or otherwise renders advice regarding securities,

- b. Manages accounts or portfolios of clients,
- c. Determines which recommendation or advice regarding securities should be given,
- d. Solicits, offers, or negotiates for the sale of or sells investment advisory services, unless the solicitation, offering, or selling activities are solely incidental to his or her profession and such person is a dealer or salesman registered under Section 8-6-3 and the person would not be an investment adviser representative except for the performance of activities described in subdivision (18)d. of this section, or
- e. Supervises employees who perform any of the foregoing.

C. ELCAN is an investment adviser representative under the Act.

22. Pursuant to Code of Alabama 1975, § 8-6-3(b), it is unlawful for any person to transact business in this state as an investment adviser representative unless such person is registered with the Commission. **C. ELCAN** operated as an investment adviser representative in Alabama while not registered with the Commission in violation of the Act.

23. Pursuant to Code of Alabama 1975, § 8-6-3(b), it is unlawful to employ an unregistered investment adviser representative for any investment advisory activity requiring registration under the ACT. **RESPONDENTS** employed or caused the employment of **C. ELCAN** with **CCM** to perform investment advisory services in Alabama while **C. ELCAN** was not registered with the Commission, in violation of the Act.

24. Pursuant to Code of Alabama 1975, § 8-6-3(j)(2), the Commission may by rule or order censor or bar any applicant or registrant, or officer, director, partner, if the Commission finds that such action is in the public interest and that the person has willfully violated or willfully failed to comply with any provision of the Act. **RESPONDENTS** knowingly allowed an unregistered investment advisor to perform investment advisory functions requiring registration in violation of the Act.

WHEREAS, RESPONDENTS admit that **C. ELCAN** was an investment adviser representative employed by **CCM** and that **C. ELCAN** was not registered as an investment adviser representative in the state of Alabama. Further, **RESPONDENTS** state that the information and assertions presented to the Commission during its investigation of this matter are true and correct; that **RESPONDENTS** understand the Commission relied 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, RESPONDENTS have voluntarily waived all rights to a hearing upon entry of this Order, and have 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 **RESPONDENTS** 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 **CCM** and **EWC** shall cease business within ninety (90) days of this Order. **CCM** shall immediately notify its clients to transfer their accounts to other registered investment advisers of the clients' choice. If any clients fail to transfer their accounts by the date which **CCM** is scheduled to cease business, **CCM** shall transfer the remaining accounts to a registered investment advisor.

2. That RESPONDENT **C. ELCAN** is barred from registration as an investment adviser, an investment adviser representative, or as a broker dealer agent in the state of Alabama;

3. That RESPONDENT **D. ELCAN** shall not seek registration as an investment adviser, an investment adviser representative, or as a broker dealer agent and will not serve as a principal in any broker dealer or investment adviser;

4. That RESPONDENT **FOSTER** shall not seek registration as an investment adviser, an investment adviser representative, or as a broker dealer agent and will not serve as a principal in any broker dealer or investment adviser;

5. That RESPONDENT **P. ELCAN** shall not seek registration in Alabama as an investment adviser, an investment adviser representative, or as a broker dealer agent for a period of two (2) years;

6. That RESPONDENT **P. L. ELCAN** shall terminate her Alabama securities registrations upon closing of **CCM** and **EWC** and shall not seek registration in Alabama as an investment adviser, an investment adviser representative, or as a broker dealer agent for a period of two (2) years;

7. Those **RESPONDENTS** restricted from registration for a period of time by this order may reapply for registration upon the expiration of the time specified in this order. Registration will be reviewed based on the applicant's current disciplinary history to include this order and the events giving rise to this administrative proceeding. Any decision to register or deny registration shall be at the Commission's sole discretion.

8. That **CCM** agrees that the net fees, totaling \$237,026.24, paid to **C. ELCAN** during the time that he transacted business as an investment adviser representative within the state of Alabama were improperly paid. This sum and an additional \$75,000.00, totaling \$302,026.24, shall be disgorged, to the Alabama Securities Commission, upon the execution of this order, to be used for partial reimbursement of Commission's costs in accordance with Section 8-6-19(k)(1), Code of Alabama 1975;

9. That **CCM** agrees to donate \$20,000, upon the execution of this Order, to Investor Protection Trust for the specific use of IPT approved programs in Alabama at the direction of the Commission;

10. That **CCM** agrees to donate \$5000, upon the execution of this Order, to the Alabama Counsel on Economic Education for its use in economic education programs in this State.

11. That **CCM** is liable for any and all financial liabilities created by this agreement;

12. All checks shall be delivered to the Commission contemporaneously with the entry of this Order.

13. That the entry of this Order and subsequent completion of all conditions of this Order resolve the Cease and Desist Order, Administrative Order No. CD-2015-0021 and Show Cause Order, Administrative Order No. SC-2015-0022, said orders issued October 30, 2015 and November 2, 2015, respectively, as it relates to RESPONDENTS.

AGREED AND CONSENTED to on dates indicated:

RESPONDENT:

CCM;

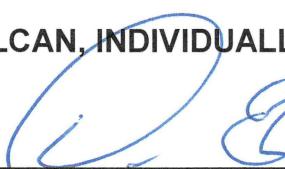
BY; R. Sh. Dotz
ITS; MANAGEN

EWC;

BY: 

ITS: President, Portfolio Manager

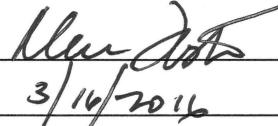
DAN ELCAN, INDIVIDUALLY;

BY: 

DATE: 3/14/16

RESPONDENT:

MARK FOSTER, INDIVDUALY;

BY: 

DATE: 3/16/2016

RESPONDENT:

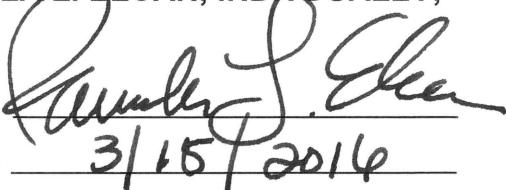
CLARENCE "CAL" ELCAN, INDIVDUALY;

BY: 

DATE: 3-15-16

RESPONDENT:

PAMELA L. ELCAN, INDIVDUALY;

BY: 

DATE: 3/15/2016

RESPONDENT:

PAUL D. ELCAN, INDIVDUALLY;

BY: *Paul D. ELCAN*

DATE: *3/15/16*

APPROVED AND ORDERED this 18 th day of March, 2016

ALABAMA SECURITIES COMMISSION
401 Adams Ave. Suite 280
Montgomery, AL 36104
(334) 242-2984

BY:


JOSEPH P. BORG
Director

