

STATE OF ALABAMA  
ALABAMA SECURITIES COMMISSION

## ORDER OF BAR

The Alabama Securities Commission ("Commission"), having 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. MARLON O. COLE, ("COLE") (CRD# 5054806) is a broker dealer agent for the branch office of PRESTIGE FINANCIAL CENTER, INC ("PFC") (CRD# 30407) with a commercial business address of 1000 Franklin Avenue, Garden City, NY 11530. COLE has been registered in the State of Alabama since May 22, 2008.

STATEMENT OF FACTS

2. On or about May 8, 2009, an Alabama resident received a solicitation call from COLE and subsequently opened a brokerage account with PFC. The opening account documents disclosed that the Alabama investor made a cash stock purchase of 100 shares of Caterpillar Inc. for \$4,012.95 and transferred \$94,957.49 from his brokerage accounts with Edward Jones and Sterne Agee to PFC. Unbeknown to the 79 year old Alabama investor, Cole had placed the investor in a margin account with "speculation" listed as the investment objective with a risk tolerance of "High".

3. Upon receipt of the transferred Edward Jones and Sterne Agee accounts, COLE placed the received cash within the PFC margin account and liquidated the original stock purchases. A review of the documents obtained by the Commission revealed the securities transferred by the Alabama investor to PFC were liquidated by COLE. On May 14, 2009, COLE conducted two unauthorized sales; one of the original stock purchased on May 8, 2009 for a \$426.95 loss and then purchased \$47,764.10 of PROSHARES Ultrashort Financials ETF in a margin account for which COLE received an \$1,800.00 commission.

4. As a result of the margin account transaction mentioned in paragraph #3, the Alabama investor received two margin calls in the amounts of \$2,311.25 and \$25,675.00 on May 19, 2009. According to documents provided by the Alabama investor, COLE advised the Alabama investor to ignore the two margin calls. On May 21, 2009, COLE sold the PROSHARES Ultrashort Financials for \$46,073.81 causing an additional loss to the account in the amount of \$1,690.29.

5. On May 21, 2009, the Alabama investor mailed a certified letter to PFC which was received by PFC on May 27, 2009. The letter outlined the investor's inability to communicate with COLE, the unauthorized trading in his account by COLE and the existence of a Margin Account of which COLE informed the investor that he should not worry since it was due to a coding error. The Alabama investor further requested the closing of the account and the return of his transferred funds.

6. On May 22, 2009, COLE made two purchases within the margin PFC account of the Alabama investor. The two purchases of 7,000 shares each, of Caterpillar Inc. totaled \$518,035.52, netting COLE a \$19,600.00 commission from the margin account sale. In addition, the Alabama investor filed a written complaint with the Alabama Securities Commission indicating the excessive trading in his PFC account in what was previously a conservative investment strategy.

7. During telephonic interviews with the Commission Staff, from May 26, 2009, to June 2, 2009, the firm received and acknowledged the complaint letter from the

Alabama investor and took steps to cancel the sale activity and return the investors account as received. Furthermore, the firm canceled the commission payout to COLE and transferred the rehabilitated accounts back to Sterne Agee and Edward Jones, as per the Alabama investor's request.

8. On October 16, 2009, Show Cause Order SC 2009-0029 was issued to COLE. The Order alleged that COLE violated Sections 8-6-3(j)(7), Code of Alabama 1975, when he engaged in dishonest or unethical practices, to wit; executing unauthorized transactions in the account of the Alabama resident.

9. On November 5, 2009, the Commission staff completed an excessive trading analysis of the PFC account for the Alabama resident. The analysis from May 2009 through July 2009, revealed that trading within the account by COLE had a Turnover Rate of 36.837 and a Cost to Equity Ratio of 37.05%.

10. The frequency and size of transactions conducted in the Alabama resident's account by COLE, from May 8, 2009 to May 22, 2009, were against the interest of the client and is evidence of churning. This activity violates Rule 830-x-3-.18(3) of the Alabama Securities Commission Administrative Code.

11. On January 6, 2010, the Commission staff held a telephonic informal hearing with PFC and the RESPONDENT. The RESPONDENT acknowledged the cold calling of the Alabama client, the client's initial purchase, the transfer of and subsequent liquidation of those transferred securities and the margin purchases on May 14, 2009 and May 22, 2009. PFC further acknowledged that the two purchases of 7,000 shares each, of Caterpillar Inc. totaled \$518,035.52, "may not have been in the clients best interest". PFC further acknowledged that the Firm made the Alabama client whole, the Firm has placed COLE on heightened supervision and have withdrawn COLE's registration in Alabama.

## CONCLUSIONS OF LAW

12. The frequency and size of the transactions conducted in the Alabama resident's account by RESPONDENT COLE, from May 8, 2009 to May 22, 2009, were against the interest of the client and is evidence of churning. This activity violates Rule 830-X-3-18(3) of the Alabama Securities Commission Administrative Code.

13. Pursuant to Section 8-6-3(j)(7), Code of Alabama 1975, COLE has violated the act by engaging in dishonest or unethical practices, to wit, executing unauthorized transactions in the account of the Alabama resident.

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

**ACCORDINGLY, IT IS HEREBY ORDERED** that COLE be **BARRED** from registration in the state of Alabama for a period no less than Five (5) years, and that he be prohibited from the offer or sale of any security into, within or from the state of Alabama. Furthermore it is **ORDERED**:

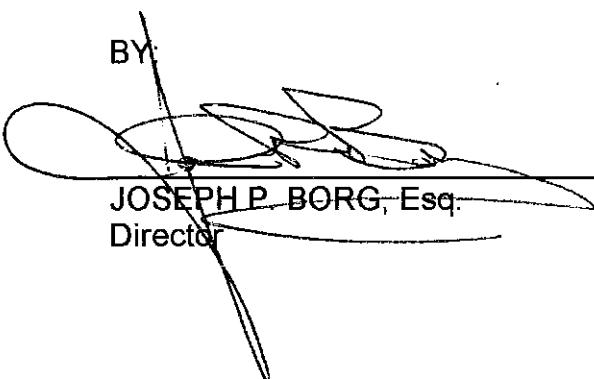
1. That COLE shall remain disciplinary free for a period of 5 years prior to reapplication for registration in the state of Alabama.

2. That in accordance with Section 8-6-19(j)(1), Code of Alabama, 1975, RESPONDENT COLE shall pay to the Alabama Securities Commission an administrative assessment in the total sum of Ten Thousand Dollars (\$10,000.00), said funds to be tendered in certified funds contemporaneously with the entry of this Order.

ENTERED at Montgomery, Alabama this the 20TH day of APRIL, 2010.

ALABAMA SECURITIES COMMISSION  
401 Adams Avenue, Suite 280  
Montgomery, Alabama 36104-4700  
(334) 242-2984

BY:

  
JOSEPH P. BORG, Esq.  
Director