

STATE OF ALABAMA
ALABAMA SECURITIES COMMISSION

IN THE MATTER OF:

DANIEL G. ELCAN
RICHARD MARK FOSTER
PAUL D. ELCAN
PAMELA L. ELCAN
CLEARPOINT CAPITAL MANAGEMENT LLC
ELCAN WEALTH CONSULTING

RESPONDENTS

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) **ADMINISTRATIVE ORDER**
) **NO. SC 2015-00** ²²
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SHOW CAUSE 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. **DANIEL G. ELCAN ("D ELCAN") CRD # 6158507**, at all times relevant, was a managing member and owner of **CLEARPOINT CAPITAL MANAGEMENT, LLC.**, with a principal business address of Springhill Business Park, Suite 201, Mobile, AL 36608.

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

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

4. **PAMELA L. ELCAN ("P.L. ELCAN")**, CRD #5023637, at all times relevant, was a registered investment advisor with **CLEARPOINT CAPITAL MANAGEMENT, LLC.**, and **ELCAN WEALTH CONSULTING**, 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. **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.

6. **ELCAN WEALTH CONSULTING ("EWC")**, is a subsidiary of **CLEARPOINT CAPITAL MANAGEMENT, LLC.**, 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 and Senior Registered Client Associate.

STATEMENT OF FACTS

7. On September 30, 2015, the Commission received information that **CCM** was using an unregistered investment advisor representative to manage client accounts.

8. As of the date of this order, according to the **EWC** website, Clarence "Cal" Elcan is the "Portfolio Manager" and a "registered investment advisor" for **EWC**, a subsidiary of **CCM**. Clarence "Cal" Elcan is the brother of **D. ELCAN**, uncle to **P. ELCAN** and spouse of **P.L. ELCAN**. On September 2, 2015, a review of the Commission's records indicated that Clarence "Cal" Elcan's registration status for Alabama was termed on May 02, 2014.

9. On September 2, 2015, a review of the Commission's files revealed no current registration for Clarence "Cal" 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 Clarence "Cal" 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. Clarence "Cal" Elcan's broker dealer agent registration was terminated May 2, 2014.

10. On June 27, 2014, Clarence "Cal" Elcan pled guilty in Davidson County, Tennessee Circuit Court to felony Money Laundering and felony Conspiracy to commit a drug related charge in Nashville, Tennessee. Clarence "Cal" Elcan is currently serving in a court mandated three year Pre-Trial Diversion Program.

11. On September 30, 2015, information received from two previous employees of **CCM** revealed that all **RESPONDENTS** were advised that Clarence "Cal" Elcan could not be allowed to access TD Ameritrade brokerage accounts using other **CCM** registered investment advisors' credentials. Red Oak Compliance Solutions, an outside compliance firm utilized by **CCM**, also advised the **RESPONDENTS** that Clarence "Cal" Elcan could not access or actively manage any **CCM** clients' accounts.

12. On October 28, 2015, a review of the files of the Commission indicated **P. ELCAN** became a registered investment advisor representative April 10, 2013, and registration was termed July 13, 2015, in the state of Alabama. **P. ELCAN** had knowledge that his assigned user name and password was being utilized by Clarence "Cal" Elcan to access the online brokerage account used by **CCM** to manage and trade inside clients' accounts. **P. ELCAN** also had knowledge that Clarence "Cal" Elcan was not registered to conduct the transactions.

13. On October 28, 2015, a review of the Commission's files indicated **P.L. ELCAN** became a registered investment advisor with **CCM** June 11, 2015. The Commission's records also indicate **P.L. ELCAN** was employed with **CCM** beginning April 30, 2015, to the present. According to the website, **P.L. ELCAN** is also listed as the "Vice-President"

and "Senior Registered Client Associate" with **EWC**. **P.L. ELCAN** is also the spouse of Clarence "Cal" Elcan.

14. On October 28, 2015, a review of the Commission's files indicated **FOSTER** has been a registered investment advisor since March 6, 2013, in the state of Alabama. On October 22, 2015, **FOSTER**, who is an owner and Compliance Officer for **CCM**, stated that Clarence "Cal" Elcan, from May 2, 2014 to the present, was allowed to access and trade in clients' accounts held at an online brokerage firm using the name and password of another registered **CCM** employee with the knowledge of **FOSTER** and others that Clarence "Cal" Elcan was unregistered. **FOSTER** stated that Clarence "Cal" Elcan was the only member of **CCM** who actively managed and traded clients' accounts. **FOSTER** also stated that Clarence "Cal" Elcan was compensated 85 Basis points based on the 1% of management fees for total client assets with **CCM**.

15. According to Iberia Bank records for **CCM**, statements show between the dates of 8/21/2014 to the present, two wire transfers totaling \$85,053.91 and seven checks totaling \$162,565.70 were paid to Clarence "Cal" Elcan. Based on total amount paid to Clarence "Cal" Elcan, the total is consistent with the 85 basis points represented as paid to Clarence "Cal" Elcan on the reported assets under management. During the date of transfers, Clarence "Cal" 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.

16. On October 2, 2015, **CCM** client accounts were accessed through TD 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 during the times in which the accounts were accessed.

17. Records obtained by the Commission on October 29, 2015, indicate Clarence "Cal" Elcan was accessing TD Ameritrade brokerage accounts using the name and password assigned to **FOSTER**.

CONCLUSIONS OF LAW

1. Pursuant to Code of Alabama, 1975, Section 8-6-2(19), the definition of Investment Adviser Representative includes any person or individual employed by, or associated with, an investment adviser, who manages accounts or portfolios of clients. Clarence "Cal" Elcan managed client portfolios for **CCM** and was compensated at the rate of 85 basis points of the assets under management. Clarence "Cal" Elcan managed client accounts of an investment advisor for compensation and is an investment adviser representative under the act.

2. Pursuant to Code of Alabama, 1975, Section 8-6-3(b), it is unlawful for any person to transact business in this state as an investment adviser representative unless he is registered under the Act. Clarence "Cal" Elcan transacted business in Alabama as an investment adviser representative while not being registered with the Commission in violation of the Act.

3. Pursuant to Code of Alabama, 1975, Section 8-6-3(c), it is unlawful for any Investment Adviser, required to be registered under the Act, to employ an Investment Adviser Representative unless he is registered under the Act. Clarence "Cal" Elcan transacted investment advisory business in Alabama for **CCM**, with the knowledge of **D. ELCAN, FOSTER** and **P ELCAN**, while not being registered with the Commission in violation of the Act.

4. Pursuant to Code of Alabama, 1975, Section 8-6-3(j)(2), the Commission may bar any person from registration or employment with a dealer or investment advisor 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 provisions of the Act. **RESPONDENTS** actively concealed and knowingly allowed Clarence "Cal" Elcan to act in the capacity of an unregistered investment adviser representative, to use representative numbers and passwords not belonging to him, to trade in and manage client accounts. **RESPONDENTS** participated in such activity knowing it to be unlawful and knowing that Clarence "Cal" Elcan was otherwise ineligible to register as an

investment adviser representative under the Act. **RESPONDENTS** performed such conduct in willful violation of the Act.

ACCORDINGLY, IT IS HEREBY ORDERED that **RESPONDENTS SHOW CAUSE** to the Commission, within 28 days of the date of this Order, why **RESPONDENTS** should not be suspended, revoked, censored or barred from the securities industry in the state of Alabama.

Entered at Montgomery, AL this 2nd day of November, 2015.

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



BY:

A handwritten signature in black ink, appearing to read "Joseph P. Borg", is written over a horizontal line. The signature is stylized and fluid.

Joseph P. Borg
Director