STATE OF OKLAHOMA
DEPARTMENT OF SECURITIES
FIRST NATIONAL CENTER, SUITE 860
120 NORTH ROBINSON
OKLAHOMA CITY, OKLAHOMA 73102

In the Matter of:

David B. Auer (CRD No. 1495370),

Respondent.

ODS File No. 07-055

NOTICE OF SERVICE ON THE ADMINISTRATOR
AND
AFFIDAVIT OF COMPLIANCE

STATE OF OKLAHOMA)
) ss.
COUNTY OF OKLAHOMA)

The undersigned affiant, of lawful age, being first duly sworn upon oath deposes and states:

1. That he is the Administrator of the Oklahoma Department of Securities ("Administrator").

2. That a copy of the Notice of Opportunity for Hearing ("Notice") with Enforcement Division Recommendation ("Recommendation") attached was delivered to Affiant in the office of the Administrator pursuant to Section 1-611 of the Oklahoma Uniform Securities Act ("Act"), Okla. Stat. tit. 71, §§ 1-101 through 1-701 (Supp. 2004).

3. That the Administrator has received service of process on behalf of Respondent, pursuant to Section 1-611 of the Act.

4. That a copy of the Notice, with the Recommendation attached, and a copy of this Notice of Service on the Administrator and Affidavit of Compliance are being sent this 28th day of May, 2009, by certified mail, return receipt requested, delivery restricted to addressee, to the last known address of Respondent, in compliance with Section 1-611 of the Act.

5. That this Affidavit of Compliance is declared filed of record as of the date set forth below in compliance with Section 1-611 of the Act.

FURTHER AFFIANT SAYETH NOT.

Dated this 28th day of May, 2009.

(SEAL)

IRVING L. FAUGHT, ADMINISTRATOR OF THE
OKLAHOMA DEPARTMENT OF SECURITIES

Subscribed and sworn to before me this 28th day of May, 2009.

NOTARY SEAL PUBLIC
BRENDA LONDON
Notary Public
State of Oklahoma
Commission # 05009046 Expires 09/28/09

Notary Public

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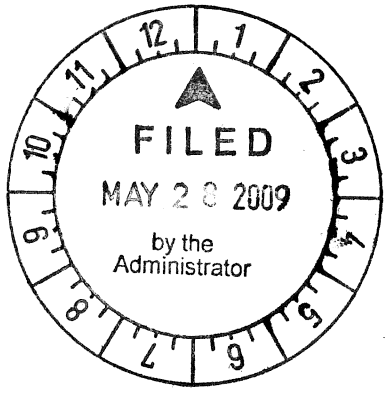

In the Matter of:

David B. Auer (CRD No. 1495370),

Respondent.

ODS File No. 07-055

NOTICE OF OPPORTUNITY FOR HEARING

1. On the 27th day of May, 2009, the attached Enforcement Division Recommendation ("Recommendation") was left in the office of the Administrator of the Oklahoma Department of Securities ("Department").

2. Pursuant to 660:2-9-1 of the Rules of the Oklahoma Securities Commission and the Administrator of the Department of Securities (as amended July 1, 2007) ("Rules") and Section 1-411 of the Oklahoma Uniform Securities Act of 2004 ("Act"), Okla. Stat. tit. 71, §§ 1-101 through 1-701 (Supp. 2004), the Administrator hereby gives notice to Respondent of his obligation to file an answer and his right to request a hearing to show why an order based on the Recommendation should not be issued.

3. The answer must be in writing and received by the Administrator within fifteen (15) days after service of this Notice. As required by 660:2-9-2 of the Rules, the answer shall indicate whether Respondent requests a hearing and shall specifically admit or deny each allegation contained in the Recommendation or state that Respondent does not have, and is unable to obtain, sufficient information to admit or deny each allegation.

4. Failure to file an answer in compliance with 660:2-9-2 of the Rules, to include a request for a hearing as provided for herein, shall result in the issuance of an order censuring Respondent, pursuant to Section 1-411 of the Act and 660:2-9-2 of the Rules.

5. Upon receipt of a written request, pursuant to 660:2-9-2 of the Rules, a hearing on the Recommendation shall be promptly scheduled or a written order denying hearing shall be issued.

6. Notice of the date, time and location of the hearing shall be given to Respondent not less than forty-five (45) days in advance thereof, pursuant to 660:2-9-2 of the Rules.

Witness my Hand and the Official Seal of the Oklahoma Department of Securities this 28th day of May, 2009.

(SEAL)

IRVING L. FAUGHT, ADMINISTRATOR OF THE
OKLAHOMA DEPARTMENT OF SECURITIES

CERTIFICATE OF MAILING

The undersigned hereby certifies that on the 28th day of May, 2009, a true and correct copy of the above and foregoing *Notice of Opportunity for Hearing and Enforcement Division Recommendation* was mailed by certified mail, return receipt requested, delivery restricted, with postage prepaid thereon, addressed to:

David B. Auer
4906 E. 114th Place
Tulsa, OK 74137

David B. Auer
Charles Schwab & Co., Inc.
101 Montgomery Street
San Francisco, CA 94104

The undersigned also hereby certifies that on the 28th day of May, 2009, a true and correct copy of the above and foregoing *Notice of Opportunity for Hearing and Enforcement Division Recommendation* was mailed by first-class mail, with postage prepaid thereon, addressed to:

Daniel B. Graves
Chad McLain
Graves & Barkett, PLLC
1010 Boulder Towers
1437 South Boulder Avenue
Tulsa, OK 74119
Attorney for David Auer

Beverly Neilson
Charles Schwab & Co., Inc.
120 Kearny Street
MS:SF120KNY-12-345
San Francisco, CA 94104

Brenda London, Paralegal

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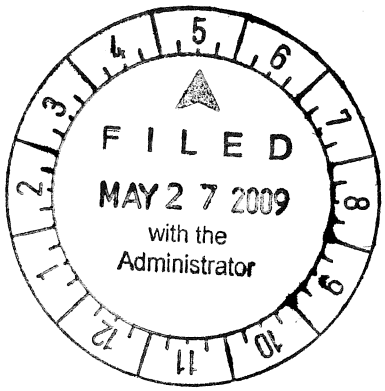

In the Matter of:

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Respondent.

ODS File No. 07-055

ENFORCEMENT DIVISION RECOMMENDATION

Pursuant to the Oklahoma Uniform Securities Act of 2004 ("Act"), Okla. Stat. tit. 71, §§ 1-101 through 1-701 (Supp. 2004), the following Findings of Fact, Authorities, and Conclusions of Law are submitted to the Administrator of the Oklahoma Department of Securities ("Department") in support of sanction(s) against David B. Auer ("Respondent").

Findings of Fact

1. Respondent was registered as an investment adviser representative of FWC Wealth Advisors, LLP, under the Act from October 22, 2004, until March 14, 2007, based on his filing of a Form U4, Uniform Application for Securities Industry Registration or Transfer, with the Central Registration Depository.

2. Respondent was a named defendant in *Carballo Ventures, Ltd., et al. v. David B. Auer, et al.*; CJ-2006-7155, initiated in the District Court of Tulsa County, Oklahoma, on November 13, 2006 ("Tulsa Case").

3. The plaintiffs in the Tulsa Case were investors in National Equity Partners, LP ("NEP"), a Delaware limited partnership. NEP was formed by Respondent to hold investment capital contributed by the limited partners for purposes of investment in securities or investment ventures.

4. In Plaintiff's First Amended Petition filed in the Tulsa Case on December 19, 2006, and mailed to Respondent's attorneys of record on the same date, the plaintiffs alleged, *inter alia*, that the NEP units sold to the plaintiffs were securities and that Respondent sold the securities to the plaintiffs by means of untrue statements and omissions of material fact.

5. Section 1-501, the anti-fraud provision of the Act, prohibits untrue statements of material fact and omissions of material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, in connection with the offer and/or sale of a security.

6. At all times material hereto, question 14I of Form U4 asked, in part:

> (1) Have you ever been named as a respondent/defendant in an *investment-related,* consumer-initiated arbitration or civil litigation which alleged that you were *involved* in one or more *sales practice violations* and which:
>
> (a) is still pending, or;
>
> (b) resulted in an arbitration award or civil judgment against you, regardless of amount, or;
>
> (c) was settled for an amount of $10,000 or more?

7. Under the subheading "Explanation of Terms," the Instructions to the Form U4 states, in pertinent part:

> The following definitions apply to terms that are italicized in Form U4.
>
> * * *
>
> ***INVESTMENT-RELATED*** pertains to securities, commodities, banking, insurance, or real estate (including, but not limited to, acting as or being associated with a broker-dealer, issuer, investment company, investment adviser, futures sponsor, bank, or savings association).
>
> ***INVOLVED*** means doing an act or aiding, abetting, counseling, commanding, inducing, conspiring with or failing reasonably to supervise another in doing an act.
>
> * * *
>
> ***SALES PRACTICE VIOLATIONS*** shall include any conduct directed at or involving a customer which would constitute a violation of: any rules for which a person could be disciplined by any *self-regulatory organization*; any provision of the Securities Exchange Act of 1934; or any state statute prohibiting fraudulent conduct in connection with the offer, sale or purchase of a security or in connection with the rendering of investment advice.

8. The Tulsa Case was investment-related, consumer-initiated civil litigation in which Respondent was alleged to have been involved in one or more sales practice violations.

9. Respondent should have promptly amended his Form U4 to disclose the pending Tulsa Case.

10. During the time he was registered under the Act, Respondent never amended his Form U4 to disclose the pending Tulsa Case.

11. In or around February, 2009, the Tulsa Case was resolved through settlement.

To the extent any of these Findings of Fact are more properly characterized as Conclusions of Law, they should be so considered.

Authorities

1. Section 1-406 of the Act states, in pertinent part:

> A. A person shall register as a broker-dealer, agent, investment adviser, or investment adviser representative by filing an application that contains:
>
> > 1. The information required for the filing of a uniform application, a consent to service of process complying with Section 49 of this act [Section 1-611 of this title], the fee specified in Section 50 of this act [Section 1-612 of this title] and any reasonable fees charged by the designee of the Administrator for processing the filing; and
> >
> > 2. Upon request by the Administrator, any other financial or other information that the Administrator determines is appropriate.
>
> B. If the information contained in an application that is filed under subsection A of this section is or becomes inaccurate or incomplete in any material respect, the registrant shall promptly file a correcting amendment.

2. Section 1-411 of the Act states, in pertinent part:

> C. If the Administrator finds that the order is in the public interest and paragraphs 1 through 6, 8, 9, 10, 12, or 13 of subsection D of this section authorizes the action, an order under this act may censure, impose a bar, impose a civil penalty in an amount not to exceed a maximum of Five Thousand Dollars ($5,000.00) for a single violation or Two Hundred Fifty Thousand Dollars ($250,000.00) for multiple violations on a registrant, and/or recover the costs of the investigation from a registrant and if the registrant is a broker-dealer or investment adviser, from any partner, officer, or director, any person having a similar function or any person directly or indirectly controlling the broker-dealer or investment adviser.
>
> D. A person may be disciplined under subsections A through C of this section if the person:
>
> * * *

2. Has willfully violated or willfully failed to comply with this act or the predecessor act or a rule adopted or order issued under this act or the predecessor act within the previous ten (10) years . . . .

Conclusions of Law

1. Respondent violated Section 1-406 of the Act by failing to amend his Form U4 to disclose the pending Tulsa Case.

2. Section 1-411 of the Act authorizes the Administrator to censure Respondent.

3. It is in the public interest for the Administrator to censure Respondent.

To the extent any of these Conclusions of Law are more properly characterized as Findings of Fact, they should be so considered.

WHEREFORE, it is recommended that the Administrator censure Respondent and impose any other sanction(s) deemed appropriate and authorized by law.

Dated this 27th day of May, 2009.

Respectfully submitted,

Terra Shamas Bonnell

Terra Shamas Bonnell
Enforcement Attorney
Oklahoma Department of Securities
120 North Robinson, Suite 860
Oklahoma City, OK 73102
Tel.: 405.280.7715; Fax: 405.280.7742