

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



In the Matter of:

Anthony L. Cross (CRD #3155726), and  
The O.N. Equity Sales Company (CRD #2936),

Respondents.

ODS File No. 11-017

**DEPARTMENT'S REPLY TO RESPONDENT CROSS' RESPONSE TO ODS'**  
**OBJECTION TO HIS REQUESTED SUBPOENA DUCES TECUM TO**  
**THERESA HUGHES**

The Oklahoma Department of Securities ("Department") submits the following reply to *Respondent Cross' Response to ODS' Objection to His Requested Subpoena Duces Tecum to Theresa Hughes*, filed on June 14, 2012 ("Response").

In his Response, Respondent Cross argues that the Department lacks standing to object to the issuance of the requested Subpoena Duces Tecum to Theresa I. Hughes ("Requested Subpoena") because the Department does not represent Ms. Hughes. Admittedly, the Department does not represent Ms. Hughes; yet, the Administrator of the Department ("Administrator"), or an appointed hearing officer, has the authority to require a party seeking a subpoena to show the general relevance and reasonable scope of the evidence sought as a condition precedent to the issuance of the requested subpoena. Okla. Admin. Code § 660:2-9-4(a). If the Administrator or hearing officer "determines that the subpoena or any of its terms are unreasonable, oppressive, excessive in scope, unduly burdensome or not relevant," after considering all the circumstances, "he may refuse to issue the subpoena, or issue the subpoena

only upon such conditions as fairness requires.” *Id.* The Department’s objection to the issuance of the Requested Subpoena puts the Administrator and/or appointed hearing officer on notice that the Department believes the Requested Subpoena to be unreasonable, excessive, and unduly burdensome and seeking irrelevant evidence.

Respondent Cross also argues in his Response that various documents sought in Items 1 through 4 of Exhibit “A” to the Requested Subpoena, relating to any purchase or sale of any securities Ms. Hughes has ever made through any person or firm other than Respondents, are relevant to determine Ms. Hughes’ investment experience and understanding of market risk. What Respondent Cross *knew* about Ms. Hughes’ investment experience *at the time he made the recommendations at issue* is relevant to this proceeding – *not* what Respondent Cross learns six years after he made the recommendations. See Okla. Admin. Code § 660:11-5-42(b)(2). Respondent Cross was required to make “reasonable efforts” to obtain such information *prior* to making any recommendation to Ms. Hughes. *Id.* Further, Respondent Cross’s own records relating to Ms. Hughes’ account should indicate what he knew about Ms. Hughes’ investment experience when he made the recommendations at issue in 2006. See *The O.N. Equity Sales Company Supervisory Procedures*, § 1.09.32 (“A Registered Representative affiliated with . . . (ONESCO) is advised that he/she may . . . [n]ot make recommendations of individual general securities without documented files of research and due diligence regarding each recommendation.”), attached hereto as Exhibit “A”. In June 2011, Respondent Cross testified in a deposition taken by the Department that he was not aware of Ms. Hughes or her husband investing in any securities in accounts

outside of Respondent ONESCO. Cross Dep. 37:9-12, attached hereto as Exhibit "B". It is irrelevant what Respondent Cross learns *after* he made the recommendations.

Ms. Hughes financial situation and needs changed when her husband died. Respondent Cross testified to the Department that Mr. Hughes conducted most of the couples' business decisions, and that Ms. Hughes "was somewhat unsure and fearful" after her husband passed away. Cross Dep. 37:15-17, attached hereto as Exhibit "B". These facts diminish any relevance her prior investment experience may have had.

The U.S. Securities Exchange Commission ("SEC") and the Financial Industry Regulatory Authority ("FINRA"), formerly known as the "National Association of Securities Dealers, Inc." or "NASD", have established that a customer's understanding of an agent's recommendation and its risks does not relieve the agent of his obligation to make recommendations consistent with the customer's financial situation and needs. See *Clinton Hugh Holland, Jr.*, Release No. 36621, 60 S.E.C. Docket 2507 (Dec. 21, 1995); *Stephen Thorlief Rangen*, Release No. 38486, 64 S.E.C. Docket 628 (Apr. 8, 1997). As a result, Ms. Hughes' understanding of the securities recommended by Respondent Cross and their risks is not relevant to this proceeding.

Respondent Cross asserts that the monthly account statements for Ms. Hughes' bank account at First Fidelity Bank and any other bank account she has maintained from 2006 through 2011, as requested in Items 5 and 6 of Exhibit "A" to the Requested Subpoena, are relevant to determine Ms. Hughes' financial condition and credibility/truthfulness. Again, it is what Respondent Cross *knew* about Ms. Hughes' financial situation and needs *at the time the recommendations were made in 2006* that is relevant for purposes of this proceeding. See Okla. Admin. Code § 660:11-5-

42(b)(2). Respondent Cross' rational that the bank statements must be relevant because the Department requested and obtained some of them is flawed. The Department obtained certain bank statements from Ms. Hughes' to track specific funds in connection with its investigation into Respondent Cross' activities. Those funds are no longer at issue. Respondent Cross has not demonstrated how Ms. Hughes' bank statements are relevant to this proceeding.

In conclusion, the Requested Subpoena is unreasonable, excessive in scope, and unduly burdensome, and seeks irrelevant evidence. The Requested Subpoena should not be issued in its proposed form.

Respectfully,



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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 19th day of June, 2012, a true and correct copy of the above and foregoing reply was emailed and mailed by first-class mail with postage prepaid thereon, to the following:

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**The O.N. Equity Sales Company**

# Supervisory Procedures

April 2005



and NASD Branches.

### **1.08-Compliance**

ONESCO's principals and designated supervisors are responsible for the supervision of securities activities. However, compliance is the responsibility of each individual involved with securities sales and administration. The cooperation of each RR and associate is imperative, and it is essential that each fully understand his or her own role and responsibilities, and those of all others involved in the supervision and administration of the securities business. ONESCO's principals and supervisors must be familiar with the Compliance and Operations Manual and other compliance material distributed to the RRs in order to communicate and supervise RR responsibilities and activities.

### **1.09-General Prohibitions**

*When contracted, RRs are given this list of general prohibitions by ONESCO to review and acknowledge. These prohibitions are reconfirmed annually by RRs via the Annual Compliance Questionnaire as a means of reinforcing the importance of such prohibitions. An ONESCO supervisor must diligently monitor for violations and report any such violations to ONESCO Compliance immediately.*

### **ONESCO General Prohibitions**

A Registered Representative affiliated with The O. N. Equity Sales Company (ONESCO) is advised that he/she may:

1. Not engage in a securities transaction with members of the public except on behalf of ONESCO. A Registered Representative may not sell any securities to any members of the public unless the sales are placed through ONESCO. This prohibition does not preclude a Registered Representative from buying or selling securities for his own account at any securities firm, provided ONESCO receives advance written notice of such activity on form ONESCO-146.
2. Not guarantee a customer against loss in any securities account of such customer carried by ONESCO.
3. Not receive any form of payment i.e., remuneration, commissions, compensation, finder's fee, etc. related to securities transactions of any kind from any source other than ONESCO without prior written approval of ONESCO (submit request on Other Business Reporting Page).
4. Not make recommendations of securities inconsistent with a customer's situation, needs, investment objectives, or risk tolerance.
5. Not publish, circulate or broadcast any advertisement related to securities business without the prior written approval of ONESCO.

securities firm for the purpose of inducing the employee to channel his employer's business to the Registered Representative's firm).

27. Not maintain other employment or receive other forms of compensation without giving advance written notice to ONESCO (submit request on Other Business Disclosure Reporting Page).
28. Not fail to inform the firm in writing when subject to regulatory proceedings, criminal actions, or securities violations.
29. Not fail to notify the firm in writing of the establishment, or existence, of a personal account with another securities firm.
30. Not participate in any private transactions of a nature which could be interpreted in any manner to involve the creation, sale or marketing of a security without having first obtained the written approval and consent of ONESCO. Effectively, a Registered Representative is prohibited from (1) participating in any investment program, partnership or venture as a partner, officer, director, or sponsor if not previously approved in writing by ONESCO; (2) marketing, selling, recommending or in any manner promoting an investment program, partnership or venture if not previously approved in writing by ONESCO; (3) allowing any customer or member of the public to believe that the Registered Representative is involved in any manner with a private securities transaction which has not been previously approved in writing by ONESCO. All securities, whether public, private, exempt, non-exempt, open, closed, limited or general, must be approved in advance and in writing by ONESCO. If any doubts or questions exist about whether or not an investment is a "security" as defined under federal or state law, you are required to obtain ONESCO's advance written approval before you may proceed (submit request on Other Business Disclosure Reporting Page).
31. Not share any securities commissions with a person not registered with ONESCO. If sharing commissions with an ONESCO representative, appropriate licenses and registrations must be held by all ONESCO representatives at the time of sale.
32. Not make recommendations of individual general securities without documented files of research and due diligence regarding each recommendation.



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1 two times I've done business with Sharyn on my own personal  
2 real estate. My personal residence was refinanced on two  
3 occasions. And I believe she did a mortgage for me on a  
4 property that I purchased in a joint arrangement with my son  
5 when he was going to college.  
6 Q. Has Sharyn Williams referred any clients to you?  
7 A. She had recommended a friend or two, I think.  
8 Pardon me, but I need to look at the phone because  
9 I'm on a meter down there, I may have to get down and put some  
10 change in that thing. Yes, I do.  
11 MS. BONNELL: We can take a break.  
12 (Short break)  
13 Q. (By Ms. Bonnell) Mr. Cross, are you ready to  
14 proceed?  
15 A. Yes.  
16 Q. Do you remember that you're under oath just like you  
17 would be in a courtroom?  
18 A. Yes.  
19 Q. Do you have a client named Theresa Hughes?  
20 A. Currently or in the past?  
21 Q. Do you currently have a client named Theresa Hughes?  
22 A. You know, I think she still has her investment  
23 account active, and I know it was up until just a -- just a  
24 month or two ago cause I remembered seeing it and having to  
25 call my compliance office to get advice on how to handle it.

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1 Q. How long has Ms. Hughes been your client?  
2 A. Both her and her husband, Ted, were clients and had  
3 been clients since, I'd say, the late eighties.  
4 Q. What type of services have you provided the Hughes  
5 in the past?  
6 A. Both insurance and securities.  
7 Q. What sort of insurance?  
8 A. Medicare supplement coverage. I believe they both  
9 had life insurance coverage.  
10 Q. What securities have you sold them in the past, type  
11 of securities have you sold them in the past?  
12 A. They -- they both had annuities and an IRA.  
13 Q. Annuities and an IRA?  
14 A. Yes, and I think we used mutual funds, bond funds  
15 for their portfolio.  
16 Q. Were they variable annuities?  
17 A. They were, yes.  
18 Q. Was the variable annuity actually set up as an IRA?  
19 A. They had one nonqualified annuity that was on Ted  
20 and then they had -- each had one IRA that was an annuity as  
21 well, yes.  
22 Q. So is it your testimony that between the two of  
23 them, they had three variable annuities, one was qualified  
24 and -- or two were qualified and one was not?  
25 A. I believe that's accurate.

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1 Q. And in those variable annuities, were they invested  
2 in mutual funds?  
3 A. Well, the variable annuity uses subaccounts that  
4 mimic or mirror a mutual fund, but it's not specifically  
5 called a mutual fund. They're subaccounts.  
6 Q. Is Mr. Hughes still living?  
7 A. No.  
8 Q. Do you recall when he passed away?  
9 A. I would approximately say 19 -- or 2005 or 2006,  
10 somewhere in that vicinity. I'm guessing, but I think that's  
11 pretty close.  
12 Q. And Mrs. Hughes is still living, isn't she?  
13 A. Haven't had any contact with Mrs. Hughes for --  
14 well, since this investigation was initiated, so I'm not sure.  
15 Q. Other than their IR -- or excuse me. Other than  
16 their variable annuities, did you sell any other securities to  
17 the Hughes?  
18 A. I did for Theresa Hughes, we set up a brokerage  
19 account for her that she wanted to contribute some money to,  
20 and individual mutual funds were purchased in that account.  
21 Q. Was that brokerage account set up after her husband  
22 passed away?  
23 A. Yes, I believe it was.  
24 Q. Now, other than that brokerage account and the  
25 variable annuities, have you sold any other securities to the

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1 Hughes?  
2 A. Not that I can recall.  
3 Q. Are you aware of any other securities that the  
4 Hughes' have owned?  
5 A. The Hughes' were very private, they didn't disclose  
6 to me everything they had, so the only information I had was  
7 what information they disclosed to me, but I'm not aware of  
8 any.  
9 Q. So would that mean that you're not aware of -- of  
10 Mrs. or Mr. Hughes investing in any securities in accounts  
11 outside of your company?  
12 A. Yeah, I'm not aware of any, yeah.  
13 Q. And in general, how would you describe Mrs. Hughes?  
14 A. I think she's a very gracious lady, very -- very  
15 kind, a very gentle lady. I think that Mr. Hughes pretty much  
16 conducted most of the business decisions, so she was somewhat  
17 unsure and fearful after he passed.  
18 Q. Has Mrs. Hughes had any changes in her health in the  
19 last few years that you're aware of?  
20 A. She -- now, we haven't done any insurance  
21 underwriting, so I'm not aware of any health changes and she  
22 hasn't disclosed to me any condition.  
23 Q. Now, when you -- when you said that she was un --  
24 that she seemed unsure and fearful, what -- what makes you  
25 believe that she was unsure and fearful after her husband