



## II. TIMELINESS OF APPEAL

1. Date judgment, decree or order appealed was filed: December 22, 2014
2. *If decision was taken under advisement*, date judgment decree or order was mailed to parties:  
\_\_\_\_\_
3. Does the judgment or order on appeal dispose of *all* claims by and against *all* parties?  
 X  Yes \_\_\_\_\_ No.  
If not, did district court direct entry of judgment in accordance with 12 O.S. Supp. 1995 § 994? \_\_\_\_\_ Yes \_\_\_\_\_ No.  
When was this done? \_\_\_\_\_
4. If the judgment or order is not a final disposition, is it appealable because it is an Interlocutory Order Appealable by Right? \_\_\_\_\_ Yes \_\_\_\_\_ No.
5. If none of the above applies, what is the *specific* statutory basis for determining the judgment or order is appealable? \_\_\_\_\_
6. Were any post-trial motions filed? N/A
7. This Petition is filed by:  X  Delivery to Clerk, or  
\_\_\_\_\_ Mailing to Clerk by U.S. Certified Mail, Return Receipt  
Requested on \_\_\_\_\_

## III. RELATED OR PRIOR APPEALS

List all prior appeals involving same parties or same trial court proceeding: \_\_\_\_\_  
List all related appeals involving same issues: NONE

(Identify by Style, Appeal Number, Status, and Citation, if any. If none, so state.)

## IV. SETTLEMENT CONFERENCE

Is appellant willing to participate in an attempted settlement of the appeal by predecisional conference under Rule 1.250?  X  Yes \_\_\_\_\_ No.

**V. RECORD ON APPEAL**

- A Transcript will be ordered.
- No Transcript will be ordered because no record was made and/or no transcript will be necessary for this appeal
- A Narrative Statement will be filed
- Record is concurrently filed as required by Rule 1.34 (Driver's License Appeals, etc.) or Rule 1.36 (Summary judgments and motions to dismiss granted).
- Record is to be filed by clerk of the OSC in accordance with Supreme Court Rule 1.76. (Designation of Record filed with Clerk of the OSC)**

**VI. JUDGMENT, DECREE OR ORDER APPEALED - EXHIBIT "A"**

Attached as Exhibits "A" to this Petition in Error is a file stamped copy of the OSC order from which the appeal is taken.

**VII. SUMMARY OF CASE - EXHIBIT "B"**

Attached as Exhibit "B" is a brief summary of the case.

**VIII. ISSUES TO BE RAISED ON APPEAL - EXHIBIT "C"**

Attached as Exhibit "C" are the issues proposed to be raised on appeal.

## IX. NAMES OF COUNSEL

### ATTORNEYS FOR APPELLANTS

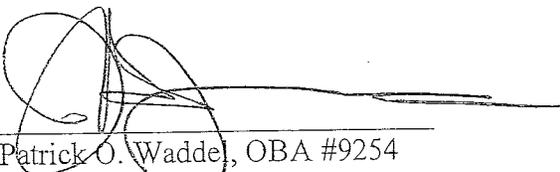
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### ATTORNEYS FOR APPELLEES

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Oklahoma Department of Securities  
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Phone: (405) 280-7700

DATE: January 20, 2015

Verified by:



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Facsimile: (918) 588-1314

**X. CERTIFICATE OF MAILING TO ALL PARTIES AND OSC CLERK**

I hereby certify that a true and correct copy of the Petition in Error was mailed this 20<sup>th</sup> day of January, 2014, to:

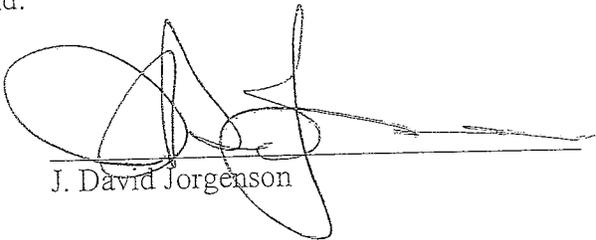
Z. Faye Martin Morton  
Oklahoma Department of Securities  
120 North Robinson, Suite 860  
Oklahoma City, OK 73102

by depositing it in the U.S. Mails, postage prepaid.

I further certify that a true and correct copy of the Petition in Error was mailed this 20<sup>th</sup> day of January, 2015, to:

Brenda London  
Oklahoma Department of Securities  
120 North Robinson, Suite 860  
Oklahoma City, OK 73102

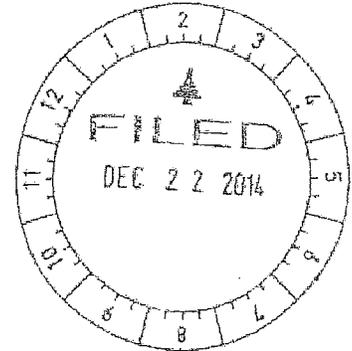
by depositing it in the U.S. Mails, postage prepaid.



J. David Jorgenson

# EXHIBIT A

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



IN THE MATTER OF:

SOUTHEAST INVESTMENTS, N.C. INC. and  
FRANK H. BLACK,

Appellants,

v.

OSC 15-001

OKLAHOMA DEPARTMENT OF SECURITIES  
*ex rel.* IRVING L. FAUGHT, ADMINISTRATOR,

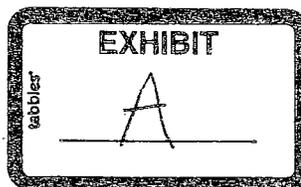
Appellee.

COMMISSION'S FINAL ORDER

On March 26, 2013, the Enforcement Division of the Oklahoma Department of Securities (Department) filed a recommendation under the Oklahoma Uniform Securities Act of 2004 (Act), Okla. Stat. tit. 71, §§ 1-101 through 1-701 (2011), alleging that Rodney Larry Watkins, Jr. (Watkins) violated a previous order of the Administrator of the Department (Administrator) by transacting business in and/or from the state of Oklahoma as an agent without the benefit of registration under the Act and that Frank H. Black (Black) and Southeast Investments, N.C. Inc. (Southeast) failed to supervise Watkins in violation of 660:11-5-42 of the Rules of the Oklahoma Securities Commission and the Administrator of the Department of Securities (Rules), Okla. Admin. Code §§ 660:1-1-1 through 660:25-7-1 (2013 Recommendation).

On June 20, 2014, the Department supplemented its 2013 Recommendation to allege that Southeast failed to establish, maintain and enforce written procedures that enable Southeast to properly supervise the activities of Southeast's registered agents and associated persons to assure compliance with applicable securities laws, rules, and regulations.

On October 10, 2014, the Administrator issued a final order against Southeast and Black (Administrator's Order). The Administrator ordered Southeast and Black to cease and desist from violations of the Act, to wit: failing to establish, maintain and/or enforce supervisory procedures to enable Southeast to assure compliance with applicable



securities laws. The Administrator further ordered Southeast and Black to pay a monetary penalty in the amount of \$5,000 to the Department within ninety (90) days of the date of the Administrator's Order.

On October 24, 2014, Southeast and Black (collectively, the "Appellants") filed a petition for review by the Oklahoma Securities Commission (Commission) of the Administrator's Order pursuant to Section 1-609 of the Act and 660:1-5-1 of the Rules (Petition). On November 20, 2014, Appellants filed their brief in support of their petition and requested oral argument before the Commission. The Administrator filed his brief on December 5, 2014. With proper notice having been given, the Commission heard oral argument by Appellants and the Administrator commencing at 10:00 a.m. on December 18, 2014.

After reviewing the Petition, the record on which the Administrator's Order was issued, and the written briefs submitted by the Appellants and the Administrator, the Commission makes the following Findings of Fact and Conclusions of Law:

#### FINDINGS OF FACT

1. Southeast became registered under the Act as a broker-dealer on May 8, 2009, and has been a member of the Financial Industry Regulation Authority (FINRA) since July 1, 1997.
2. Black, a South Carolina resident, is the owner and control person of Southeast. In addition to these duties, Black is Southeast's Chief Compliance Officer, Financial and Operations Principal, and "Designated Supervisory Principal" (the title used to designate particular authority and responsibilities in Southeast's written supervisory procedures dated August 2013 (WSPs)). Black is not and has not been registered under the Act in any capacity.
3. Watkins was first registered as an agent under the Act in December 1998. From March 2009 until October 2011, Watkins was registered as an agent of Ameriprise Financial Services, Inc. (AFS). Watkins was allowed to resign as a result of an internal AFS investigation. AFS filed a Uniform Termination Notice for Securities Industry Registration (Form U-5) with the Central Registration Depository (CRD) stating that Watkins had violated the firm's policies relating to "discretionary power; unacceptable activities/transactions; pre-signed forms and applications; forgery, signature stamps and other signature issues; [and] annuity overview." Watkins became an agent of Southeast in February of 2012 and designated an address in Tulsa, Oklahoma, as his business address.
4. Southeast's principal place of business located in Charlotte, North Carolina, is designated as Watkins' office of supervisory jurisdiction.
5. Black is responsible for directly supervising all of Southeast's approximately one hundred and forty-five (145) agents as well as its associated persons from Southeast's principal place of business.

6. The Southeast agents are geographically dispersed throughout the United States, mostly in one or two-agent offices. Many of the agents are held out to be independent contractors who conduct outside business activities.

7. For purposes of supervision, Southeast does not maintain a system of branch offices or regional offices of supervisory jurisdiction, but instead relies entirely on Black, individually, to supervise all agents other than himself.

8. The WSPs provide that Southeast and Black must report to CRD any disclosable event, including administrative actions, within ten (10) days of the event.

9. Southeast and Black did not timely report the proceeding on the 2013 Recommendation on CRD with regards to Watkins.

10. When Southeast and Black did report the 2013 Recommendation, the filing was inaccurate as to the date, the basis and the conditions of the action.

11. In June 2013, Watkins directed Southeast to update his business and residential addresses on CRD. Neither Southeast nor Black updated Watkins' business and residential addresses until November 2013, leaving Watkins' CRD profile inaccurate during this period.

12. The WSPs provide that Southeast's agents shall complete order tickets and submit them to Black for approval.

13. Contrary to the WSPs, Southeast's agents do not complete order tickets, but instead call in orders over the phone to one or more of Southeast's employees in the firm's Charlotte, North Carolina office.

14. The WSPs provide that Southeast will conduct annual compliance interviews with each of its agents and maintain a record of all interviews. Appellants have not submitted any record of compliance interviews with Watkins and Lamar Guillory, a Southeast agent located in Oklahoma, even though there were two separate discovery requests for such records.

15. Watkins should have been under heightened supervision during the period in which Southeast and Black failed to enforce the WSPs as to: (a) the timely update of business and residential addresses on CRD; (b) the timely and accurate disclosure of administrative actions on CRD; (c) the completion of order tickets; and (d) the annual compliance interviews.

#### CONCLUSIONS OF LAW

1. Associating with an agent who should be under heightened supervision requires a higher standard of oversight and supervision by the broker-dealer and its principals.

2. Southeast failed to establish, maintain and/or enforce supervisory procedures to enable the firm to assure compliance with applicable securities laws in violation of 660:11-5-42(b)(22) of the Rules.

3. Black failed to enforce supervisory procedures to assure compliance with applicable securities laws in violation of 660:11-5-42(b)(22) of the Rules.

4. Southeast and Black failed to promptly file a correcting amendment of Watkins' change of address and the filing of the 2013 Recommendation on March 26, 2013.

5. Southeast and Black willfully failed to comply with the Act and with a rule adopted under the Act. Such conduct constitutes dishonest and unethical practices in the securities business.

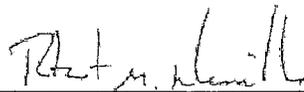
6. It is proper, just and equitable that Southeast and Black be required to take the necessary steps to come into compliance with the Act and Rules.

7. It is proper, just and equitable that a civil penalty be imposed against Southeast and Black.

#### ORDER

IT IS HEREBY ORDERED under Section 1-609 of the Act that Southeast and Black cease and desist from their violations of failing to establish, maintain and/or enforce supervisory procedures to enable the firm to assure compliance with applicable securities laws, and that Southeast and Black jointly pay a monetary penalty in the amount of \$5,000 to the Department, by cashier's check or money order within ninety (90) days of the date of the Administrator's Order.

WITNESS My Hand and the Official Seal of the Oklahoma Securities Commission this 22<sup>nd</sup> day of December, 2014.



Robert M. Neville, Chairperson  
Oklahoma Securities Commission

CERTIFICATE OF SERVICE

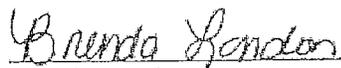
The undersigned hereby certifies that on the 22nd day of December, 2014, true and correct copies of the above and foregoing *Commission's Final Order* were sent in the following manner to the specified individuals:

By electronic mail, and by mail with postage prepaid thereon, to:

Patrick O. Waddel, OBA #9254  
J. David Jorgenson, OBA #4839  
1700 Williams Center Tower  
One W. 3rd St.  
Tulsa OK 74103-3522  
pwaddel@sneedlang.com  
**Attorneys for Appellants**

By electronic mail to:

Irving L. Faught, Administrator  
Oklahoma Department of Securities  
120 North Robinson, Suite. 860  
Oklahoma City OK 73102  
ifaught@securities.ok.gov

  
\_\_\_\_\_  
Brenda London

# EXHIBIT B

## EXHIBIT "B" TO PETITION IN ERROR

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The Oklahoma Department of Securities ("ODS") commenced proceedings against Appellants and broker Rodney L. Watkins by its Recommendation of March 26, 2013 ("3-26-13 Rec."). The 3-26-13 Rec. erroneously alleged that Watkins had violated a previous ODS order by executing securities orders from Oklahoma for customers in other states. The facts adduced in the proceedings below showed that no such Oklahoma transactions had occurred and that, indeed, the ODS attempt to exercise extraterritorial jurisdiction exceeded its constitutional and statutory powers (and indeed was inconsistent with the putatively-violated order itself). When these constitutional, statutory and factual infirmities became apparent, the ODS, rather than dismissing its *ultra vires* proceedings, filed a "Supplemental Enforcement Division Recommendation" -- leveling entirely new and unrelated charges against Appellants -- at the eleventh hour (just 8 days before the hearing on the original recommendation). The new charges were unsupported by any Oklahoma statute or regulation, but instead were predicated on putative violations of rules promulgated by the Financial Industry Regulatory Authority ("FINRA"). Yet FINRA itself and the S.E.C. had audited Appellant Southeast numerous times (which audits included on-site inspection, in contrast to the ODS's "due diligence" consisting of *no* on-site inspection) and had never cited Southeast for any violation of FINRA rules.

On October 10, 2014, the ODS Administrator issued a cease-and-desist order and imposed a \$5,000.00 monetary penalty on Appellants. The full Commission ("OSC") affirmed on December 22, 2014. The OCS Final Order appealed from is reversible on multiple grounds specified by 75 O.S. § 322(1) (such grounds being listed in Ex. B to this Petition), including exceeding constitutional authority and plain errors of law. The cease and desist order is appealable to the District Court, but the monetary penalty, on the face of the applicable appeal statute (71 O.S. § 1-609(B)) must be appealed directly to this Court.

# EXHIBIT C

## EXHIBIT "C" TO PETITION IN ERROR

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1. Whether the Oklahoma Securities Commission's Final Order (Ex. A to this Petition in Error) ("the Final Order") is affected by error of law within the meaning of 12 O.S. § 322(1)(d) and hence must be reversed.
2. Whether the Final Order violates provisions of the United States and Oklahoma Constitutions and hence must be reversed under 12 O.S. § 322(1)(a).
3. Whether the Final Order exceeds the Commission's statutory authority and jurisdiction and hence must be reversed under 12 O.S. § 322(1)(b).
4. Whether the Final Order was made upon unlawful procedure and hence must be reversed under 12 O.S. § 322(1)(c).
5. Whether the Final Order was arbitrary and capricious and hence must be reversed under 12 O.S. § 322(1)(f).
6. Whether the Final Order, insofar as it concludes that Appellant Southeast Investments, N.C. Inc. failed to exercise sufficient "heightened supervision" of Rodney L. Watkins was clearly erroneous in view of the reliable, material, probative, and substantial competent evidence presented to the OSC and hence must be reversed under 12 O.S. § 322(1)(f).