

STATE OF ILLINOIS  
SECRETARY OF STATE  
SECURITIES DEPARTMENT

\_\_\_\_\_  
IN THE MATTER OF: PHILLIP S. EGGERS )  
\_\_\_\_\_) )

FILE NO. 0800340

CONSENT ORDER OF WITHDRAWAL

TO THE RESPONDENT: Phillip S. Eggers (CRD#:2064151)  
5001 Pinehurst  
Frisco, Texas 75034

C/o Peter W. Gillies  
Vice-President & Associate Counsel  
LPL Financial Corporation One Beacon Street  
22<sup>nd</sup> Floor  
Boston, Massachusetts 02108-3106

WHEREAS, Respondent on the 8<sup>th</sup> day of October 2008 executed a certain Stipulation to Enter Consent Order of Withdrawal (the "Stipulation"), which hereby is incorporated by reference herein.

WHEREAS, by means of the Stipulation, Respondent has admitted to the jurisdiction of the Secretary of State and service of the Notice of Hearing of the Secretary of State, Securities Department dated August 22, 2008 in this proceeding (the "Notice") and Respondent has consented to the entry of this Consent Order of Withdrawal ("Consent Order").

WHEREAS, by means of the Stipulation, the Respondent acknowledged, without admitting or denying the truth thereof, that the following allegations contained in the Notice of Hearing shall be adopted as the Secretary of State's Findings of Fact:

The grounds for such proposed action are as follows:

1. That at all relevant times, the Respondent was registered with the Secretary of State as a salesperson in the State of Illinois pursuant to Section 8 of the Act.

2. That on June 2, 2008 FINRA entered a Letter Of Acceptance, Waiver And Consent (AWC) submitted by the Respondent regarding File No. E062004027401 Which sanctioned the Respondent as follows:
  - a. fined \$25,000.00 jointly and severally with another entity; and
  - b. suspended, in all capacities, for a period of fifteen business days.
3. That the AWC found:

#### OVERVIEW

This matter involves unsuitable recommendations of securities in 1999 and 2000 by the Respondent, a registered representative of Linsco/Private Ledger Corp., to six customers who had retired from their jobs at Procter & Gamble, rolled over their profit sharing plan accounts to Individual Retirement Accounts, and set up these accounts for systematic withdrawals under the provisions of Section 72(t) of the Internal Revenue Code. At times, the Respondent used discretion, without written authority, to effect sales to fund certain of these withdrawal transactions. He also distributed misleading sales literature to the customers. The Respondent's employing member firm, Linsco/Private Ledger Corp., failed to reasonably supervise him.

#### FACTS AND VIOLATIVE CONDUCT

- a. During 1999, the Respondent, a registered representative with Linsco/Private Ledger Corp., conducted two seminars that were attended by employees of Procter & Gamble ("P & G") The employees maintained company-sponsored profit sharing plan accounts with their employer, which were principally invested in P & G stock. At the seminars, the Respondent presented certain investment strategies, including a program under which they could retire from their jobs, withdraw their cash and P & G stock from their company-sponsored Profit Sharing Trust Plan retirement accounts and deposit the funds/stock into Individual Retirement Accounts at Linsco/Private Ledger Corp. for the purchase of investments recommended by the Respondent.

The Respondent told the attendees that Section 72(t) of the Internal Revenue Code allowed for withdrawals from qualified retirement plans by persons under the age of 59 1/2 without the ordinary ten-percent penalty. Such withdrawals generally must be taken as "substantially equal periodic payments" that must last for five years or until the individual reaches age 59 'A, whichever is

longer. The amount of the payments must be calculated according to one of three methods, two of which result in amounts that are fixed for the term of the withdrawals. The Respondent told the attendees that they could elect this option by taking early retirement from the employer, rolling over their profit sharing plan accounts to IRA accounts, and investing in portfolios that would be intended to generate returns to fund the withdrawals. Seminar attendees who expressed an interest then met individually with the Respondent to discuss how this election could be applied to their particular financial situation and objectives.

For the individual meetings, the Respondent utilized a return projection program to prepare projected return spreadsheets that calculated returns on the basis of two assumptions: a 12% average annual rate of return, and a withdrawal rate of approximately 8%. During late 1999 through mid-2000, six customers elected to retire from their jobs with P & G, roll over the balance in their profit sharing plan accounts to IRA accounts, and invest in securities recommended by the Respondent.

The six customers ranged in ages from 39 to 57. All six customers elected to set up their Section 72(t) withdrawal schedules for the maximum withdrawal amount permitted by Internal Revenue Service regulations.

The Respondent recommended that the six customers principally allocate their IRA accounts to mutual funds, unit investment trusts, and to allocate a relatively small amount to individual equities. Many of the mutual funds that the Respondent recommended were heavily allocated to growth securities. During the market decline that began at approximately the same time as the six customers' initial investments, the six customers' IRA accounts declined substantially in value.

This decline was exacerbated by the relatively large allocation to "growth" mutual funds, and by the systematic withdrawals the six customers were required to take under Section 72(t). The six customers invested a total of \$2,841,000 with the Respondent. By 2004, the six customers' accounts had sustained investment losses of \$597,000. As a result of these investment losses, and the customers' withdrawals pursuant to Section 72(t), the total decline in the value of their accounts was approximately \$1,425,133.

The Respondent's recommendations to the six customers were not suitable for them because he did not have reasonable grounds for believing that his portfolios of mutual funds, unit investment trusts, and equities could achieve consistent annual rates of return that would be necessary to fund the 72(t) withdrawals without invading investment principal. The Respondent knew, or should have known, that a portfolio allocated to growth investments likely would sustain periodic losses and be unable to generate the returns necessary to fund the systematic withdrawals. During the market decline that occurred from 2000 to 2003, the Respondent encouraged the six customers to remain invested in the portfolios, believing that they would be in a better position to benefit from a market recovery.

Periodically, if there was insufficient cash in any of the six customers' accounts to fund their systematic withdrawals under Section 72(t), the Respondent utilized discretion to determine which securities to sell to raise the proceeds necessary to fund the systematic withdrawals. The Respondent never received written authorization from the customers to use discretion, and moreover, his firm never approved the accounts as discretionary. Such acts, practices, and conduct constitute separate and distinct violations of NASD Conduct Rules 2110, 2310 and 25 10 by the Respondent.

- b. During the period from May 1999 to June 2000, the Respondent, while associated with member firm Linsco/Private Ledger Corp, gave the six customers referenced above a document he had prepared which reflected a 12% annual growth rate for their respective accounts; however, his document failed to include a basis for the 12% annual growth rate.

The Respondent gave one customer a document he had prepared which reflected an inflation rate of 0%; however, he failed to include with this document his basis for the 0% inflation rate. Such acts, practices, and conduct constitute separate and distinct violations of NASD Conduct Rules 2110 and 2210(d)(1)(A) by the Respondent.

4. That Section 8.E (1)(j) of the Act provides, inter alia, that the registration Of a salesperson may be revoked if the Secretary of State finds that such Salesperson has been suspended by any self-regulatory organization Registered under the Federal 1934 Act or the Federal 1974 Act arising from Any fraudulent or deceptive act or a practice in violation of any rule, regulation or standard duly promulgated by the self-regulatory Organization.

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- 5 That FINRA is a self-regulatory organization as specified in Section 8.E(1)(j) of the Act.

WHEREAS, by means of the Stipulation Respondent has acknowledged, without admitting nor denying the averments, that the following shall be adopted as the Secretary of State's Conclusion of Law:

That by virtue of the foregoing, the Respondent's registration as a salesperson in the State of Illinois is subject to revocation pursuant to Section 8.E(1)(j) of the Act.

WHEREAS, by means of the Stipulation Respondent has acknowledged and agreed that he shall cause to have his registration as a salesperson in the State of Illinois withdrawn within three (3) days from the entry of this Consent Order and will not re-apply for registration for a period of two (2) years from the entry of this Consent Order.

WHEREAS, by means of the Stipulation Respondent has acknowledged and agreed that he shall be levied costs incurred during the investigation of this matter in the amount of One Thousand Five Hundred dollars (\$1,500.00). Said amount is to be paid by certified or cashier's check, made payable to the Office of the Secretary of State, Securities Audit and Enforcement Fund.

WHEREAS, by means of the Stipulation Respondent has acknowledged and agreed that he has submitted with the Stipulation a certified or cashier's check in the amount of One Thousand Five Hundred dollars (\$1,500.00) to cover costs incurred during the investigation of this matter. Said check has been made payable to the Office of the Secretary of State, Securities Audit and Enforcement Fund.

WHEREAS, the Secretary of State, by and through his duly authorized representative, has determined that the matter related to the aforesaid formal hearing may be dismissed without further proceedings.

NOW THEREFORE IT SHALL BE AND IS HEREBY ORDERED THAT:

1. The Respondent shall cause to have his registration as a salesperson in the State of Illinois withdrawn within three (3) days from the entry of this Consent Order and will not re-apply for registration for a period of two (2) years from the entry of this Consent Order.
2. The Respondent is levied costs of investigation in this matter in the amount of One Thousand Five Hundred dollars (\$1,500.00), payable to the Office of the Secretary of State, Securities Audit and Enforcement Fund, and on October 8, 2008 has submitted One Thousand Five Hundred dollars (\$1,500.00) in payment thereof.

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3. The formal hearing scheduled on this matter is hereby dismissed without further proceedings.

ENTERED This *5<sup>th</sup>* day of *February* 2009.



JESSE WHITE  
Secretary of State  
State of Illinois

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