

**STATE OF ILLINOIS
SECRETARY OF STATE
SECURITIES DEPARTMENT**

IN THE MATTER OF: John F. Kavalec
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FILE NO. 0600386

ORDER OF PROHIBITION AND SUSPENSION

TO RESPONDENTS: John Kavalec
(CRD#: 1309961)
611 Ridgelawn Trail
Batavia, IL 60510

WHEREAS, a Temporary Order of Prohibition and Suspension was issued by the Secretary of State on September 24, 2007, temporarily prohibiting Respondent from offering or selling securities and acting as an investment adviser representative, and suspending his registration as a salesperson and investment advisor representative in the State of Illinois until further order of the Secretary of State.

WHEREAS, pursuant to Section 11.F of the Illinois Securities Law of 1953 [815 ILCS 5] (the "Act"), the failure to request a hearing within thirty (30) calendar days of the entry of a Temporary Order shall constitute an admission of any facts alleged therein and constitute a sufficient basis to make the Temporary Order final.

WHEREAS, Respondent has failed to request a hearing on the matters contained in the Temporary Order within thirty (30) calendar days of the entry of said Temporary Order and Respondent is hereby deemed to have admitted the facts alleged in the said Temporary Order.

WHEREAS, the Secretary of State, by and through his duty authorized representatives, has adopted the Findings of Fact contained in the said Temporary Order as the Secretary of State's Final Findings of Fact as follows:

BACKGROUND FACTS

1. Respondent, John F. Kavalec (hereinafter "Respondent") has a last known address of 611 Ridgelawn Trail, Batavia, IL 60510.

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2. Respondent was registered as a salesperson with the Secretary of State, Securities Department ("the Department") from January of 1987 to October 4, 2005.
3. Respondent was registered as an investment adviser representative with the Secretary of State, Securities Department ("the Department") from January of 1987 to October 4, 2005.
4. Respondent, from January 7, 1997 to September 29, 2005 was employed by SII Investments Inc. (hereinafter "SII") as an investment adviser representative and salesperson.
5. Respondent was terminated by SII for refusing to respond to inquiries made by SII regarding the fact that a securities client of Respondent's informed SII that he had entered into a promissory note arrangement with Respondent, in which Respondent agreed to repay a loan for \$25,000 plus interest.
6. Since December of 2003, Respondent has been Managing Partner of REMCO, LLP.
7. REMCO LLP, is in the business practice of buying real estate, making needed repairs and improvements to the property, and reselling it for a higher price, thus making a profit.
8. Respondent, on or about December 30, 2003, solicited Investor #1 to purchase a promissory note (hereinafter "Note #1") issued by Respondent in the amount of \$10,000.
9. On December 30, 2003, Respondent sold Note #1 to Investor #1.
10. Respondent represented to Investor #1 that the funds received by Respondent from Investor #1 were to be used by REMCO LLP for the purchase, rehabilitation and sale of a real estate property for investment purposes.
11. The terms of Note #1 were that Investor #1 in exchange for \$10,000 would receive the greater of the sum of her principal plus a rate of 5% interest per month, or the profit of the proceeds gained from the sale of the real estate purchased by Respondent.
12. The terms of Note #1 also stated that the money owed to Investor #1 would be paid within two days of the closing date for the sale of the investment property.
13. Respondent failed to report the sale of Note #1 to Investor #1 to his employer, SII.
14. Since 1997 Respondent has been owner of American Retirement Services.

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15. American Retirement Services is in the business of selling insurance products including but not limited to fixed annuities, equity indexed annuities and life insurance products.
16. Respondent, on December 13, 2001 sold a promissory note issued by Respondent to Investor #2 for \$25,000.00 (Hereinfter "Note #2").
17. The terms of Note #2 were that Investor #2 in exchange for \$25,000 would receive semiannual interest payments of \$875.00 beginning on June 15, 2002, and that the principal amount of \$25,000 was callable on demand.
18. Respondent represented to Investor #2 that the funds received by Respondent for Note #2 were to be used to build up American Retirement Services by purchasing leads, hiring employees, and training employees.
19. Respondent failed to report the sale of Note #2 to Investor #1 to his employer, SII.

COUNT I:
FAILURE TO DISCLOSE MATERIAL FACTS

Paragraphs 1-19 are realleged and incorporated by reference.

20. Respondent in 2004, in accordance with the terms of Note #1, rehabbed and sold a home (hereinafter "the Home") located in Midway, Illinois with the proceeds of Note #1.
21. Investor #1, after the Home was sold, made her demand to Respondent for the return of the principal owed to her on Note #1.
22. To date, Respondent has failed and refuses to pay the principal owed to Investor #1 on Note #1.
23. Respondent at the time Note #1 was sold failed to disclose to Investor #1 the risks involved in the purchase of Note #1 that could prevent payment of the stated interest payments and principal.
24. On or about September 16, 2005 Investor #2 demanded the return of the principal owed to him on Note #2.
25. To date, Respondent has failed and refuses to pay the principal owed to Investor #2 on Note #2.

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26. Respondent failed to disclose to Investor #2 the risks involved in the purchase of Note #2 that could prevent payment of the Investor #2's principal.
27. Section 12. F of the Act provides, *inter alia*, that it shall be a violation of the Act for any person to engage in any transaction, practice or course of business in conjunction with the sale or purchase of securities, which works or tends to work a fraud or deceit upon the purchaser or seller thereof.
28. By virtue of the foregoing, Respondents violated 12.F of the Act.
29. Section 12.G of the Illinois Securities Law of 1953, 815 ILCS 5/1 *et seq.*, ("the Act") provides, *inter alia*, that it shall be a violation of the Act for any person to obtain money or property through the sale of securities by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.
30. By virtue of the foregoing, Respondents violated 12.G of the Act.
31. Section 8.E(1)(g) of the Act provides, inter alia, that the registration of a salesperson or investment advisor representative may be suspended or revoked if the Secretary of State finds that such salesperson or investment advisor representative has violated any of the provisions of this Act.
32. Section 8.E(3) of the Act provides, *inter alia*, that the Secretary of State may institute a suspension or revocation proceeding within two years after withdrawal became effective and enter a suspension or revocation order as of the last date on which registration was effective.
33. By virtue of the foregoing, the Respondent's registration as a salesperson and investment advisor representative in the State of Illinois is subject to suspension or revocation effective October, 4 2005 pursuant to Section 8.E(1)(g) and 8.E(3) of the Act.

COUNT II:**MAKING FALSE STATEMENTS TO THE SECRETARY OF STATE**

Paragraphs 1-19 are realleged and incorporated by reference.

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20. Respondent, since December of 2003 and thereafter on May 25, 2004, failed to update his U-4 form so that it would indicate that he was engaged in outside business activity as managing member of REMCO, LLP.
21. Respondent, while employed by SII since January of 1997 and repeatedly thereafter on May 25, 2004, May 4, 2000 and February 29, 2000, failed to update his U-4 form so that it would indicate that he was engaged in outside business activity as owner of American Retirement Services.
22. Pursuant to Section 8.C of the Illinois Securities Law of 1953 as amended (815 ILCS 5/1 et seq. the "Act"), any registered dealer desiring to register a salesperson shall file an application with the Secretary of State, which the salesperson is required by this Section to execute, verify or authenticate and to provide to the dealer.
23. Pursuant to Section 130.810 of the Rules and Regulations under The Illinois Securities Law, in order for the salesperson to be properly registered in the State of Illinois, the application that is executed, verified or authenticated by the salesperson must be in the form of an NASD U-4 form, and then filed by the dealer with the NASD utilizing the CRD System.
24. Pursuant to Section 8.C of the Act, the U-4 form must be amended whenever a change occurs that renders inaccurate any information contained in the initial application.
25. Since he first started working at SII Respondent has repeatedly answered "No" to the following question in his U-4 form:
 - a. Are you currently engaged in any other business either as a proprietor, partner, officer, director, employee, trustee, agent or otherwise? If YES, please provide the following details: the name of the other business, whether the business is *investment-related*, the address of the other business, the nature of the other business, your position, title, or relationship with the other business, the start date of your relationship, the approximate number of hours/month you devote to the other business, the number of hours you devote to the other business during securities trading hours, and briefly describe your duties relating to the other business.
26. Respondent's U-4 form continued until October 4, 2005, the last date he was registered, to falsely state that he was not engaged in any outside business activity.
27. Section 12.E of the Act provides, *inter alia*, that it shall be a violation of the Act for any person to make, or cause to be made, (1) in any application, report or document filed under this Act or any rule or regulation made by the Secretary of State pursuant to this Act, any statement which was false or misleading with respect to any material fact.

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28. By virtue of the foregoing, Respondent violated Section 12.E of the Act.
29. Section 8.E(1)(g) of the Act provides, *inter alia*, that the registration of a salesperson or investment advisor representative may be suspended or revoked if the Secretary of State finds that such salesperson or investment advisor representative has violated any of the provisions of this Act.
30. Section 8.E(3) of the Act provides, *inter alia*, that the Secretary of State may institute a revocation or suspension proceeding within two years after withdrawal became effective and enter a revocation or suspension order as of the last date on which registration was effective.
31. By virtue of the foregoing, the Respondent's registration as a salesperson and investment advisor representative in the State of Illinois is subject to revocation or suspension pursuant to Section 8.E(1)(g) and 8.E(3) of the Act.

COUNT III:**MAKING FALSE STATEMENTS TO THE SECRETARY OF STATE**

Paragraphs 1-19 are realleged and incorporated by reference.

20. On March 29, 2007 Respondent gave a sworn statement before the Illinois Securities Department at 69 W. Washington Street, Suite 1220, Chicago, IL 60602.
21. During the sworn statement, Respondent was asked to identify a copy of Note #2.
22. During the sworn statement Respondent positively identified Note #2 as a note he had sold to Investor #2.
23. Respondent was asked whether Investor #2 ever demanded the return of the principal owed to him on Note #2.
24. Respondent testified that Investor #1 had never demanded the return of his principal owed to him on Note #2.
25. Respondent in fact signed and memorialized the bottom of Note #2 on September 16, 2005, acknowledging that Charles Lyon had called in Note #2 in the amount of \$25,000 plus three months interest in the amount of \$437.50 on September 16, 2005.
26. Section 12.E of the Act provides, *inter alia*, that it shall be a violation of the Act for any person to make, or cause to be made, (1) in any application, report or document filed under this Act or any rule or regulation made by the Secretary of State pursuant

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to this Act, any statement which was false or misleading with respect to any material fact.

27. By virtue of the foregoing, Respondent violated Section 12.E of the Act.
28. Section 8.E(1)(g) of the Act provides, *inter alia*, that the registration of a salesperson or investment advisor representative may be suspended or revoked if the Secretary of State finds that such salesperson or investment advisor representative has violated any of the provisions of this Act.
29. Section 8.E(3) of the Act provides, *inter alia*, that the Secretary of State may institute a suspension or revocation proceeding within two years after withdrawal became effective and enter a suspension or revocation order as of the last date on which registration was effective.
30. By virtue of the paragraphs 46-54, the Respondent's registration as a salesperson and investment advisor representative in the State of Illinois is subject to revocation or suspension pursuant to Section 8.E(1)(g) and 8.E(3) of the Act.

**COUNT IV:
RESPONDENT WAS BARRED BY THE NASD**

Paragraphs 1-4 are realleged and incorporated by reference.

5. On May 2, 2007 NASD entered a Decision regarding Disciplinary Proceeding No. 2005002707301 and No. 20060048428 (consolidated), which sanctioned the Respondent as follows:
 - a. Respondent is barred from associating with any NASD member in any capacity.
6. The Decision found:
 - a. That while registered with SII, on or about August 6, 2004, Respondent borrowed funds from customer CL by accepting a check made payable to him in the amount of \$15,000 and on or about May 31, 2005, borrowed additional funds from customer CL by accepting a check made payable to him in the amount of \$10,000.
 - b. That SII's written supervisory procedures specifically prohibited borrowing money from customers.
 - c. That as a result Respondent violated NASD Rule 2370, which prohibits registered representatives from borrowing from customers unless the firm's written

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procedures allow the borrowing and the borrowing meets certain specified conditions. A violation of Rule 2370 is also a violation of Rule 2110.

- d. That on or about December 13, 2005 and January 23, 2006 NASD staff sent Respondent letters, pursuant to Rule 8210, requesting that he provide certain information regarding Respondent's borrowing funds from customers.
 - e. That Respondent did not respond in any manner to these requests.
 - f. That on or about July 5 and July 25, 2006, NASD staff sent additional letters to Respondent requesting information pursuant to NASD Rule 8210 regarding a complaint from a customer that Respondent had borrowed money from.
 - g. That Respondent did not respond in any manner to the July 5 and July 25, 2006 requests.
 - h. That Respondent's failure to respond to the above-mentioned requests pursuant to Rule 8210 is a violation of NASD Rules 8210 and 2110.
7. Section 8.E(1)(j) of the Act provides, *inter alia*, that the registration of a salesperson or investment advisor representative may be suspended or revoked if the Secretary of State finds that such salesperson or investment advisor representative has been barred 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.
 8. The NASD is a self-regulatory organization as specified in Section 8.E(1)(j) of the Act.
 9. Section 8.E(3) of the Act provides, *inter alia*, that the Secretary of State may institute a revocation proceeding within two years after withdrawal became effective and enter a revocation order as of the last date on which registration was effective.
 10. By virtue of the foregoing, the Respondent's registration as a salesperson and investment advisor representative in the State of Illinois is subject to revocation pursuant to Section 8.E(1)(j) and 8.E(3) of the Act.

WHEREAS, the Secretary of State, by and through his duly authorized representative, has adopted the Conclusions of Law contained in the said Temporary Order as the Secretary of State's Conclusion of Law as follows:

1. The Respondent violated 12.E of the Act
2. The Respondent violated 12.F of the Act.

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3. The Respondent violated 12.G of the Act.
4. The Respondent's registration as a salesperson is subject to revocation pursuant to Section 8.E(1)(g), 8.E(1)(j) and 8.E(3) of the Act.
5. The Respondent's registration as an investment advisor representative is subject to revocation pursuant to Section 8.E(1)(g), 8.E(1)(j) and 8.E(3) of the Act.


NOW THEREFORE IT IS HEREBY ORDERED THAT: pursuant to the authority granted by Section 11.F of the Act, Respondent **John F. Kavalec is permanently PROHIBITED** from offering or selling securities in or from the State of Illinois.

NOW THEREFORE IT IS HEREBY ORDERED THAT: pursuant to the authority granted by Section 11.F of the Act, Respondent **John F. Kavalec is permanently PROHIBITED** from acting as an investment adviser representative in the State of Illinois.

NOW THEREFORE IT IS HEREBY ORDERED THAT: pursuant to the authority granted by Section 11.F of the Act, Respondent **John F. Kavalec's registration as a salesperson is REVOKED** effective October 4, 2005 in the State of Illinois.

NOW THEREFORE IT IS HEREBY ORDERED THAT: pursuant to the authority granted by Section 11.F of the Act, Respondent **John F. Kavalec's registration as an investment adviser representative is REVOKED** effective October 4, 2005 in the State of Illinois.

Dated: This 6th day of December 2007.


JESSE WHITE
Secretary of State
State of Illinois

NOTICE: Failure to comply with the terms of this Order shall be a violation of Section 12.D of the Act. Any person or entity who fails to comply with the terms of this Order shall be a violation of Section 12.D of the Act. Any person or entity who fails to comply with the terms of this Order of the Secretary of State, having knowledge of the existence of this Order, shall be guilty of Class 4 felony.

This is a final order subject to administrative review pursuant to the Administrative Review Law, 735 ILCS 5/3-101 et seq. And the Rules and Regulations of the Illinois Securities Act (14 Ill. Admin. Code, Ch. I, Sec. 130.1123). Any action for judicial review must be commenced within thirty-five (35) days from the date a copy of this Order is served upon the party seeking review.

Attorney for the Secretary of State:
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