STATE OF ILLINOIS
SECRETARY OF STATE
SECURITIES DEPARTMENT

IN THE MATTER OF : JAMES B. MARKOSKI	)
JAMES B. MARKOSKI (CRD 133615)	) **File No. 1300323**

TO THE RESPONDENT: JAMES B. MARKOSKI
678 SHERIDAN ROAD
WILMETTE, IL 60091

JAMES B. MARKOSKI
FOREST SECURITIES
105 WEST ADAMS STREET
SUITE 3700
CHICAGO, IL 60603

NOTICE OF HEARING

You are hereby notified that pursuant to Section 11.F of the Illinois Securities Law of 1953 [815 ILCS 5] (the "Act") and 14 Ill. Adm. Code 130, Subpart K, a public hearing will be held at 69 West Washington Street, Suite 1220, Chicago, Illinois 60602, on the 6th day of November, 2014 at the hour of 10:00 a.m. or as soon as possible thereafter, before James Kopecky Esq., or such other duly designated Hearing Officer of the Secretary of State.

Said hearing will be held to determine whether an Order shall be entered pursuant to Section 11.E of the Act prohibiting the Respondent from selling or offering for sale securities in the State of Illinois and/or granting such other relief as may be authorized under the Act including but not limited to the imposition of a monetary fine in the maximum amount pursuant to Section 11.E of the Act, payable within ten (10) business days of the entry of the Order.

The grounds for such proposed action are as follows:

NATURE OF THE CASE

James B. Markoski has a storied history of securities fraud, having victimized at least eight customers during his employment at Merrill Lynch which resulted in millions in losses to his victims and for which Merrill Lynch paid restitution. Markoski, more recently, victimized three elderly widows while employed at David A. Noyes & Company, resulting in losses to those victims in excess of a quarter million dollars. Markoski's method to defraud his victims is to churn the accounts of senior citizens so he can obtain commissions at the detriment of his employers' customers. And as with his prior employer, David A. Noyes & Company was left to clean up the mess Markoski created, providing restitution to Markoski's latest elderly victims.

Statement of Evidence

1. Respondent James B. Markoski ("Markoski") is a resident of Illinois currently employed as a registered representative for Forest Securities, Inc. in Chicago, Illinois.

2. Markoski was previously employed as a representative for Birkelbach Investment Securities, Inc. from June of 2010 to April of 2012, when the firm went out of business due to its numerous violations of various securities laws and rules.

3. Prior to his employment at Birkelbach Investment Securities, Inc., Markoski was a representative for David A. Noyes & Company ("DAN") beginning in August of 1991 and lasting until June of 2010 when his employment ended for reasons more fully described below.

4. Prior to his association with DAN, Markoski was a representative for Merrill Lynch, Pierce, Fenner & Smith, Incorporated ("Merrill") until June of 1991 when his employment was terminated for reasons more fully explained below.

5. Markoski has a storied history of churning customer accounts.

6. The churning of a securities brokerage or advisory account occurs when a representative recommends to a customer the purchase and sale of securities for the purpose of generating commissions for the representative and the employing firm at the detriment of the customer.

MARKOSKI HAS AN EXTENSIVE HISTORY OF CHURNING CUSTOMER ACCOUNTS

7. During Markoski's association with Merrill numerous customers complained and instituted legal actions against Merrill and Markoski for causing significant losses in their respective portfolios due to Markoski's churning of their accounts. For instance:

a. A Merrill customer complained of Markoski's unsuitable and excessive trades in 1984, resulting in a loss of $83,000.00 to that customer. Merrill settled that claim.

b. In 1986, a Merrill customer and member of the clergy complained of $27,000.00 in damages in his account due to Markoski's unsuitable recommendations and unnecessary trades Markoski initiated in the account for the purpose of generating commissions to the detriment of the customer. Markoski and Merrill settled the complaint for $23,000.00.

c. In 1987, a Merrill customer and another member of the clergy complained of $100,000.00 in losses due to Markoski's excessive and unsuitable trades initiated in the Priest's account. Merrill settled that matter as well.

d. The following year, in 1988, Markoski initiated unauthorized trades, often on margin, in a Merrill account held by a husband and wife. Not only had the customers not authorized the trades, but they had not authorized the use of margin, nevertheless Markoski extracted $91,010.81 from the account, much of it in commissions. Merrill settled that matter.

e. In 1990 a Merrill customer complained of Markoski's unauthorized and excessive trading in the customer's account resulting in losses of $508,000.00. Merrill settled that matter.

f. In 1990, a sixth Merrill customer, a senior citizen, complained of $185,000.00 in losses caused by Markoski's excessive trading. Merrill settled that matter.

g. Attempting to make 1990 a lucrative year for himself, but at the detriment of his customers, a Merrill customer who held an account for herself and her son complained of damages in excess of $787,000.00 caused by Markoski's excessive trading. Merrill settled that matter.

h. In 1991 yet another Merrill customer complained of $60,000.00 in losses in her Merrill account caused by Markoski's excessive trading. Merrill settled that complaint.

8. Merrill terminated Markoski's employment in February of 1991.

9. Six months later Markoski became a representative for DAN.

10. However, Markoski's proclivity to churn customer accounts had not abated:

    a. In March of 2003 a DAN customer complained of Markoski's excessive and unsuitable trades resulting in a loss of $200,000.00, for which DAN settled.

MARKOSKI TARGETED THREE ELDERLY WIDOWS TO VICTIMIZE FOR HIS OWN FINANCIAL GAIN

11. This current matter arose out of another investor complaint ("Customer 1") whose original representative at DAN retired and after which DAN then placed Customer 1's account with Markoski.

12. Customer 1 is a 76 year old woman who resides in Illinois.

13. In 1999 Customer 1's ex-husband opened an account for her at DAN. DAN representative Bill Ring was the advisor on the account.

14. Customer 1 was, in 1999, and is currently, a conservative investor: having a low risk tolerance and investing for tax reduction. Bill Ring made recommendations and advised Customer 1 pursuant to that investment strategy: placing approximately 70% of Customer 1's investible assets into fixed income and the balance into low-risk mutual funds and securities.

15. Customer 1, having not personally managed her own, or anyone else's investment portfolio, relied on her advisor for investment advice and always assented to Mr. Ring's recommendations.

16. The fixed investments were in government, utility, and corporate bonds that paid periodic dividends when their respective coupons became due, and would have continued such payments until their maturation, whereupon Customer 1 would have realized the totality of her principal investment and all the dividend payments made thereon.

17. The dividend payments from the bonds accounted for most of the money Customer 1 needed as income to pay her bills.

18. Mr. Ring had suitably managed Customer 1's portfolio.

19. However, early in 2004 Ring retired and in February of that year Customer 1's account was assigned to Markoski.

20. Despite Customer 1 being a conservative investor seeking income, Markoski began aggressively trading Customer 1's account: liquidating the fixed investments and purchasing mutual funds, subjecting Customer 1's account to more market risk than her investment objectives and risk tolerance would allow.

21. Markoski contacted Customer 1 to solicit his recommendations and Customer 1, just as she had with Mr. Ring, trusted Markoski and relied on his

recommendations as she trusted him and relied on what she then believed to be Markoski's professional recommendations made in her best interest.

22. By January of 2005 Markoski had sold much of Customer 1's fixed income securities holdings, resulting in Customer 1's portfolio assets to hold less than 4% fixed income securities. All of the bonds Markoski sold had not reached maturity, that is, they had yet to be called, resulting in Customer 1 not realizing the expected gains including dividend payments as well as a loss of some of her principal on those bonds, for instance:

    a. In April of 2004 Markoski had sold 2,000 units of Customer 1's Hartford Capital III preferred stock, due in October of 2050. The stock would be called in November of 2006, however, Markoski's early sale resulted in a loss of $10,243.75 of income to Customer 1;

    b. That same month Markoski sold Customer 1's 1,200 units of St. Paul Capital Trust I, due in October of 2050. That stock would be called in November of 2006, however, Markoski's early sale resulted in a loss of $6,270.00 in income to Customer 1;

    c. In July 2004, Markoski sold 35,000 units of Customer 1's Nevada State Municipal Bond, due in May of 2019. This bond was called in May of 2008, thus Markoski's early sale resulted in a loss of $7,875.00 of income to Customer 1;

    d. In August 2004, Markoski sold 200,000 units of Customer 1's General Motors Smart Notes, Semi-Annual pay, that were due in December of 2006. Markoski's early sale resulted in a loss of $37,200.00 of income to Customer 1;

    e. In September 2004, Markoski sold 15,000 units of Customer 1's Lucent Technology Notes, due in July, 2006. Markoski's early sale resulted in a loss of $2,718.75 of income to Customer 1;

    f. In November 2004, Markoski sold 50,000 units of Customer 1's Seattle, Washington Water System bonds, due in October of 2023. Markoski's early sale resulted in a loss of $16,250.00 of income to Customer 1;

    g. In January 2005, Markoski sold 50,000 units of Customer 1's Dallas, Texas Area Rapid Transit Bond, due in December of 2026. Markoski's early sale resulted in a loss of $20,000.00 in income to Customer 1;

23. These transactions evidence the beginning of Markoski's abject disregard of his fiduciary duty to Customer 1 as the fixed income securities provided Customer 1 a stream of income, and Markoski's wrongful sale of them resulted in a loss of

approximately $175,000.00 in income to Customer 1, as well a loss to her principal due to the commissions Markoski extracted which averaged $550.00 to $660.00 for each wrongful sale.

24. While selling off Customer 1's fixed income holdings, Markoski used the proceeds to purchase close-end mutual funds for which he would begin selling, at times within a matter of weeks, and then purchase back, for the sole purpose of obtaining higher commissions to the detriment of Customer 1.

25. For example, during 2006 when Markoski's trading activity in Customer 1's account reached its highest turnover ratio, explained more fully below, some of Markoski's trading activities included:

    a. The purchase of 10,100 units of the Nuveen PFD and Convertible Income Fund 2 on September 11, 2006, and an additional purchase of 5,000 units on the 29th of that same month, only to sell 10,100 units one month later on October 27, 2006 and 5,000 units on January 8, 2007. Markoski's purchase and sale of this fund in Customer 1's portfolio resulted in his acquiring $3,136.00 in commissions, which nearly negated the $3,960.10 in profits Customer 1 would have realized.

    b. The sale of 3,200 units of Nuveen Municipal Advantage Fund, Inc. on October 19, 2005 and purchase of 3,250 units of the Pimpco Municipal Income Fund II, followed by additional purchase of 5,700 and 2,900 units of the same on November 17 and 28, 2005, respectively, and then 3,250 and 5,700 units of the same sold the next month on January 6 and 20, 2006, respectively. Markoski then purchased 8,500 units of the same fund on February 22, 2006 only to sell them in August of the same year. Markoski's buying and selling of this fund resulted in his obtaining $4,632.08 in commissions.

26. Markoski's buying and selling of Customer 1's securities for the purpose of garnering higher commissions is referred to as "churning", it is the same illegal activity for which Markoski indulged in at Merrill Lynch resulting in losses of millions of dollars to his victims and required Merrill to reimburse their customers for the massive losses Markoski caused to their accounts.

27. The churning of an investment portfolio by an Advisor, such as Markoski, is evidenced by the Turnover Ratio.

28. The Turnover Ratio is computed by dividing the total cost of purchases by the average account value during the same time frame.

29. Thus, the Turnover Ratio is a measurement of how often the securities in a portfolio are sold and purchased (replaced) during a period of time, with a "1", or

100% when represented as a percentage, meaning all the holdings of the portfolio were sold and re-purchased in that time-frame.

30. A conservative investor seeking to derive income from a retirement account, such as Customer 1, typically holds the securities for a long period of time, and through maturity where the holdings involve bonds, and therefore, should have an extremely low turnover ratio with very little, and only for purposes of rebalancing the portfolio, trading occurring in the portfolio.

31. Markoski's aggressive and excessive trading of Customer 1's holdings resulted in turnover ratios as high as 2.85 in 2009, meaning that Markoski turned-over, or bought and sold, the total value of Customer 1's account almost three times during that year.

32. The annual turnover ratios for Customer 1's account during the time it was under Markoski's dominion are:

    a. April through December of 2004: .865
    b. 2005: 1.01
    c. 2006: 2.587
    d. 2007: 1.779
    e. 2008: 1.901
    f. 2009: 2.8588
    g. 2010: .9087

33. A second measure to evidence churning is the Commission to Equity ratio which measures what the return on the investments would have to be to cover the commissions charged to the client associated with the purchase and sale of the investments.

34. It is because commissions and fees associated with the purchase and sale of securities reduce an investor's possible return on an investment, it is incumbent on an advisor to minimize the number of trading recommendations so as to not eliminate any gains made, or, as in this case, cause losses to the investor's account value.

35. The Commission to Equity ratio is computed by dividing the amount of commissions and fees paid by the average account equity during the same period of time.

36. Markoski's unsuitable trading recommendations resulted in extremely high Commission to Equity ratios of 10.28% for 2009, 5.79% for 2008, 4.46% for 2007, and 4.24% for 2006.

37. While not exhaustive, the above-listed Commission to Equity Ratios evidence that Markoski's trades in Customer 1's account were not made in the best interests of Customer 1: the commissions Markoski derived from churning Customer 1's account could not be recouped with a conservative investment strategy, let alone that Markoski should not have sold Customer 1's fixed investments in the first place.

38. When Markoski took dominion over Customer 1's account in 2004 it held $668,548.80 in equity.

39. Six years later, on or about May of 2010, when Markoski's relationship with DAN was terminated and he was no longer able to churn DAN's customers' accounts, Customer 1's account held $328,255.74 in equity.

40. Markoski's churning of Customer 1's account generated $154,141.08 in commissions for himself and DAN.

41. The balance of the equity loss in Customer 1's account was due to the market exposure Markoski caused by selling Customer 1's bonds and purchasing the mutual funds.

42. In or around June of 2010 DAN confronted Markoski about the churning of Customer 1's account and Markoski, in response, quit.

43. Had Markoski not churned Customer 1's account and had left the account holding the securities that Bill Ring had recommended the account's equity would be $772,630.63 at the time Markoski's relationship with DAN was terminated, and $825,390.03 through November of 2013.

44. While investigating Markoski's malfeasance towards Customer 1, two additional DAN accounts that were assigned to Markoski were also identified as having been subject to a high volume of unsuitable trading.

45. The two additional victims of Markoski's proclivity to churn customer accounts, like Customer 1, were widowed seniors.

46. Customer 2, who resided in Illinois, was born in 1921, and at the time she opened her DAN account in 2007 was eight-five (85) years old.

47. In May of 2007, Customer 2 opened her account at DAN and placed $77,000.00 into it, with an additional $200,000.00 throughout 2008, and $62,000.00 in late 2009.

48. Despite Customer 2's age and modest risk tolerances, Markoski began churning her account, as he did to Customer 1, by buying and selling the same or similar securities repeatedly over a three year period.

49. In 2007 Markoski's trading in Customer 2's account resulted in a turn-over ratio of 1.04; 2.35 in 2008, 1.42 in 2009, and in mid-2010 the account was closed.

50. Markoski took approximately $10,500.00 from Customer 2 in the form of commissions by churning her account for little more than two years.

51. Customer 2 passed away in 2011.

52. Customer 3 resides in Illinois and is a widowed senior

53. Customer 3 maintained a brokerage account at DAN since 2006.

54. Customer 3 is a conservative investor seeking to maintain her life savings to provide for her during her retirement.

55. Markoski was the representative assigned to the DAN account.

56. In 2009 Markoski began calling Customer 3 often, sometimes several times a week, to solicit securities sales.

57. Despite Customer 3's investment objectives and risk tolerances, Markoski relentlessly called her to use high-pressure sales tactics so he could aggressively trade her securities and garner commissions for himself.

58. Markoski's excessive trading in Customer 3's account resulted in turn-over ratios of 1.94 in 2009.

59. Markoski's relentless calls forced Customer 3 to close her account at DAN and move to a different brokerage firm in early 2010.

VIOLATIONS OF THE ILLINOIS SECURITIES LAW OF 1953

60. Markoski's activities described above, namely the recommendations to Customers 1,2 and 3 to sell and buy certain securities in their brokerage accounts held at DAN, constitute the activities of a salesperson as defined under Section 2.9 of the Illinois Securities Law of 1953 (the "Act").

61. Section 12.A of the Act states in pertinent part that it shall be a violation of the Act for any person to offer or sell any security except in accordance with the provisions of the Act.

62. Section 12. F. of the Act states in pertinent part that it is a violation of the Act for any person to engage in any transaction, practice or course of business in

connection with the sale or purchase of securities which works or tends to work a fraud or deceit upon the purchaser or seller thereof.

63. Section 130.850 (a) of the Rules and Regulations Under the Illinois Securities Law of 1953 states that:

> **No dealer or salesperson shall effect transactions for any customer's account which are excessive in size or unsuitable in view of the financial resources of the customer.**

64. Markoski's recommendations that Customer 1 sell the bonds in her account, all prior to maturity, were without a reasonable basis in light of Investor's age and investment objectives, and therefore, constitutes a violation of Sections 12. A. and F, for each unit of bond sold prior to its actual call date.

65. Markoski's recommendation that Customer 1 used the proceeds of the bond sales to purchase closed-end mutual funds, and subsequently sell them, and purchase them again, were recommendations that were excessive in size and frequency and unsuitable in view of the financial resources and character of the account, and in particular, were diametrically opposed to the investment objectives of Customer 1, constituted acts, practices, and a course of business that was fraudulent, deceptive and manipulative, and therefore, constituted a violation of Sections 12. A. and F, for **each** purchase and sale of the mutual funds, which is in excess of 350 transactions.

66. Markoski's recommendations to Customer's 2 and 3, as described above, were recommendations that were excessive in size and frequency and unsuitable in view of the financial resources and character of the respective accounts, constitutes a violation of Section 12.A and F for **each** purchase and sale of securities in each account.

67. Section 8. E. (1)(b) of the Act provides in pertinent part that, subject to the provisions of sub-section F of the Act, the registration of a salesperson may be denied, suspended or revoked if that salesperson has engaged in any unethical practice in connection with any security, the offer and sale of securities or in any fraudulent business practice.

68. Section 8. E. (1)(g) of the Act provides in pertinent part that, subject to the provisions of sub-section F of the Act, the registration of a salesperson may be denied, suspended or revoked if that salesperson has violated any of the provisions of the Act.

69. Section 11 E.(2) of the Act provides that the Secretary of State may prohibit any person from offering and selling securities in the State of Illinois if there is a finding that the person violated subsection C, D, E, F, G, H, I, J or K of Section 12 of the Act.

70. Section 11 E.(4) of the Act provides that in addition to any other sanction or remedy contained in Section 11 E. of the Act, the Secretary of State, after finding that any provision of the Act has been violated, may impose a fine not to exceed $10,000.00 per violation and may charge as costs of investigation all reasonable expenses including attorney's fees and witness fees.

71. Markoski's registration to offer and sell securities in Illinois is subject to revocation.

72. Markoski is subject to a permanent prohibition from offering and selling securities in Illinois.

73. Markoski is subject to a fine of $10,000.00 per violation of the Act: his liquidation of Customer 1's Bonds and subsequent churning of Customer 1's account constitutes not less than 350 violations of the Act for a fine of $3,500,000.00 (THREE MILLION, FIVE HUNDRED THOUSAND DOLLARS).

PRAYER FOR RELIEF

The Department requests that the Hearing Officer, after an administrative hearing wherein the above allegations will be proven true, enter a Recommendation that:

1) Suspends and Revokes Respondent Markoski's registrations to offer and sell securities, and to provide investment advice, in Illinois;

2) Permanently prohibits Respondent Markoski from offering and selling securities, and from providing investment advice in Illinois; and

3) Fines Respondent Markoski an amount of not less than $3,500,000.00.

You are further notified that you are required pursuant to Section 130.1104 of the Rules and Regulations (14 ILL. Adm. Code 130)(the "Rules"), to file an answer to the allegations outlined above within thirty (30) days of the receipt of this Notice of Hearing. A failure to file an answer within the prescribed time shall be construed as an admission of the allegations contained in the Notice of Hearing.

Furthermore, you may be represented by legal counsel; may present evidence; may cross-examine witnesses and otherwise participate. A failure to so appear shall constitute default, unless any Respondent has upon due notice moved for and obtained a continuance.

A link of the Rules, promulgated under the Act and pertaining to hearings held by the Office of the Secretary of State, Securities Department, is included with this Notice. http://www.cyberdriveillinois.com/departments/securities/lawrules.html

Delivery of Notice to the designated representative of any Respondent constitutes service upon such Respondent.

Entered this ~~26th~~ 29th day of September, 2014

Jesse White

JESSE WHITE
Secretary of State
State of Illinois

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