

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

IN THE MATTER OF: DAVID J. HACKNEY)
CRD # 2301416)
_____)

No. C1400117

NOTICE OF HEARING

TO THE RESPONDENT : DAVID J. HACKNEY
206 W. Division St.
Unit 2R
Chicago, IL
60610

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 25th day of February, 2015, at the hour of 10:00 a.m. or as soon as possible thereafter, before George Berbas, 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.I of the Act, payable within ten (10) business days of the entry of the Order.

The grounds for such proposed action are as follows:

1. Respondent David J. Hackney ("Hackney") is a resident of Illinois with a last known address of 206 West Division Street, unit 2R, in Chicago, Illinois.
2. From March 2006 through February 7, 2014, Hackney was a representative for LPL Financial, LLC. ("LPL"), a Broker/Dealer and Investment Advisor registered with Illinois in coordination with the Securities Exchange Commission.
3. Hackney held Illinois licensure as a securities salesperson and as an investment advisor representative.

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4. On February 7, 2014, LPL terminated Hackney's employment with the firm due to Hackney having effected a high trading volume and frequency in at least three LPL customer accounts during 2012 through 2013.
5. In March of 2014, the Illinois Securities Department issued a Temporary Order of Revocation and Suspension against Hackney, of which he requested a hearing on the merits.
6. In May of 2014 the Financial Industry Regulatory Industry ("FINRA"), a private corporation that serves the investment industry and of which registered brokers and dealers are members, issued an "Intent to Suspend Letter" against Hackney which became a permanent bar for Hackney to be associated with any of FINRA's members in any capacity.

**HACKNEY CHURNED THE ACCOUNT OF
TWO SENIOR CITIZEN CUSTOMERS**

7. Two LPL customers ("Customers 1 and 2"), both residents of Illinois, married to each other, and for who Hackney was the advisor, were identified as having an LPL brokerage account that had been subjected to excessive trading.
8. Customers 1 and 2 were born in 1917 and 1929, respectively, and were retired at the time their account at LPL was opened.
9. Customers 1 and 2 are conservative investors, seeking a preservation of their retirement savings with some income.
10. In April of 2011 Customers 1 and 2 opened a joint LPL brokerage account with Hackney and placed approximately \$200,000.00 into the account.
11. Despite Customers 1 and 2s' ages and investment objectives Hackney listed "growth" on their LPL account opening application form, which he had filled out.
12. In March of 2012 Hackney began aggressively buying and selling securities in Customers 1 and 2s' account, excessively trading their securities.
13. Excessive trading, often called "churning," occurs when a securities broker or advisor representative effectuates trades in a customer's account that are excessive in size or frequency in light of that customer's investment objectives and risk tolerance and is done for the purpose of generating commissions at the detriment of the customer.
14. Oft times, as here, when churning an account the representative buys and sells the same, or similar, securities repeatedly and in short order to garner commissions on the transaction at the detriment of the account owner. For instance:

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- a. On December 28 of 2012 Hackney purchased 3,000 units of Advisor Shares' Ranger Equity Bear ETF, and then Hackney sold them a few days later, on January 2, 2013, costing Customers 1 and 2 \$1,620.00.
 - b. On March 26, 2013 Hackney would purchase 4,000 units of Advisor Shares' Ranger Equity Bear ETF, and then sell them on April 11, at a cost of \$1,947.00 to Customers 1 and 2.
15. The trades Hackney effectuated in Customer 1 and 2's account as described in paragraph 11. above. are by themselves not suitable for Customers 1 and 2. but they are not isolated trades. rather. they are only two of numerous transactions that when taken as part of a whole as more fully explained below. constitute churning.
 16. Hackney's excessive trading activity in Customers 1 and 2s' account was also unauthorized, that is, Hackney's trading activity was done without Customers 1 and 2s' consent and without their knowledge.
 17. Hackney purchased, and sold, penny-stocks, gold-oriented and mining funds. as well as other energy/petroleum based securities in Customers 1 and 2s' account.
 18. Those securities were not suitable for a senior retired couple.
 19. During 2012 Hackney effectuated approximately 128 trades in Customers 1 and 2s' account, taking \$40,669.00 in commissions from their account and, in conjunction with Hackney's risky trading, also caused the account's equity to fall from \$212,731.85 to \$142,342.55.
 20. During 2013 Hackney effectuated approximately 228 trades in Customers 1 and 2s' account, taking \$84,727.77 in commissions, and causing the account's equity to fall to \$38,481.25 by the end of that year.
 21. The churning of an investment portfolio by a representative, such as Hackney, is evidenced by the Turnover Ratio.
 22. The Turnover Ratio is computed by dividing the total cost of purchases by the average account value during the same time frame.
 23. Thus, the Turnover Ratio is a measurement of how often the holdings in a portfolio are sold and purchased (replaced) during a period of time, with a "1", or 100% when represented as a percentage. meaning the total equity of the portfolio was sold and re-purchased in that time-frame.
 24. Customers 1 and 2, as stated above. are both retired and well into their retirement. They have extremely low risk tolerances and did not seek an aggressive investment strategy.

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25. During 2012, Hackney's unauthorized trades in Customers 1 and 2s' account resulted in a turnover ratio of 7.28. That is, Hackney bought and sold the holdings of the account over seven times.
26. During 2013, Hackney's unauthorized trades in Customers 1 and 2s' account resulted in a turnover ratio of 23.46.
27. A second measure to evidence churning is the Cost to Equity ratio which measures what the return the investments would have to obtain to cover the commissions and fees charged to the client.
28. 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 for a representative 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 equity.
29. The Cost to Equity ratio is computed by dividing the total commissions and fees paid by the average account equity during the same period of time.
30. Hackney's unauthorized trading in Customer 1 and 2s' account during 2012 resulted in a Commission to Equity ratio of 24%, that is, Hackney's trades would have had to garner a 24% return just for the account to keep its current value.
31. Hackney's unauthorized trading in Customer 1 and 2s' account during 2013 resulted in a Commission to Equity ratio of 101%.
32. In neither 2012 nor 2013 did Hackney's unauthorized trades in Customer 1 and 2s' account have any chance to produce returns in excess of 24% or 101%.
33. Furthermore, as stated above, Customers 1 and 2 are conservative investors and the securities Hackney churned in their account were not suitable for their risk tolerances and investment objectives.
34. LPL paid Customers 1 and 2 \$200,000.00 to address the losses caused by Hackney.

HACKNEY CHURNED THE ACCOUNT OF
A SENIOR CITIZEN OF INDIANA

35. Customer 3 is a resident of Fort Wayne, Indiana, who was born in 1924 and became a widower in 2009 when his wife passed.
36. In April of 2011 Customer 3 opened a new brokerage account, held in trust, with LPL and funding it with approximately \$170,000.00.
37. Hackney was the LPL representative managing the account.

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38. Customer 3's account lost some value during 2011, and Customer 3 made some modest withdrawals from the account during that time, it is the activity of Hackney, beginning in early 2012, that would result in the unjust losses to Customer 3 and the value of his account.
39. Customer 3's account value in January of 2012 was \$132,898.46.
40. By the end of 2012 the value had dropped to \$83,185.23.
41. In March of 2012 Hackney began to purchase and sell securities in Customer 3's account at a whirlwind pace, selling almost \$100,000.00 of the securities in the account and purchasing over \$80,000.00 worth.
42. Hackney's purchasing and selling of Customer 3's securities would continue unabated throughout the year, and like Customers 1 and 2, Hackney would purchase securities in Customer 3's account only to sell them a few weeks, if not days, later:
 - a. On October 10, 2012 Hackney sold 3,000 units of the Advisor Shares Active Bear ETF;
 - b. On October 18, 2012 Hackney then purchased 3,000 shares of the same;
 - c. Only to sell them all on November 14, 2012;
 - d. Costing Customer 3 \$1,707 in commissions.
43. The transactions effectuated by Hackney in Customer 3's account as described in paragraph 41. above, represents only a fraction of the many transactions Hackney initiated.
44. To better illustrate Hackney's churning of Customer 3's account, the turn-over ratios and cost/equity ratios were calculated.
45. Hackney's trading resulted, in 2012, in a turn-over ratio of 6.66.
46. Hackney's trading activity in Customer 3's account garnered \$26,064.00 in commissions during 2012.
47. Hackney's trading resulted in a cost/equity ratio of 23.8% for 2012.
48. Hackney's churning continued through 2013.
49. Hackney's unauthorized trading resulted in a turn-over ratio of 15.51 in 2013.

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50. Hackney caused \$34,090.00 in commissions to be charged to Customer 3, and resulted in a cost/equity ratio of 72.5% for that year.
51. By the end of 2013 Customer 3's account value was \$22,135.78.
52. LPL paid Customer 3 \$122,000.00 to address the losses caused by Hackney.

**HACKNEY CHURNED THE ACCOUNT
OF A MARYLAND CUSTOMER**

53. Customer 4 resides in Maryland and opened a brokerage account at LPL in the late summer or early fall of 2011.
54. Customer 4 funded the account in early 2012, depositing approximately \$81,819.00 into it.
55. Hackney was the LPL representative managing the account.
56. Hackney, beginning in May of 2012, began aggressively trading Customer 4's account.
57. As with his other victims, Hackney purchased securities in Customer 4's account, and sold them within a few weeks or days:
 - a. On October 15, 2013 Hackney purchased 1,600 shares of the Central Fund of Canada only to sell them on October 28th at a cost of \$990.00 to Customer 4.
58. Again, as before, the trade illustrated in paragraph 54, above, is not isolated, but rather, illustrative of the trades Hackney effectuated in Customer 4's account.
59. By the end of 2012 Hackney's trading activity in Customer 4's account resulted in a turn-over ratio of 5.68.
60. Hackney had cost Customer 4 \$12,845.92 in commissions in 2012, and Hackney's trading resulted in a cost/equity ratio of 19%.
61. Customer 4's account lost over \$11,000.00 in value during 2012.
62. Hackney's trading activity continued through 2013, resulting in a turn-over ratio of 9.11 for that year.
63. Hackney caused Customer 4 to lose \$20,940.68 in commissions in 2013, and resulted in a cost/equity ratio of 44%.
64. Customer 4's account value to fall from \$70,178.95 to \$30,230.55 by December of 2013.

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65. LPL paid Customer 4 \$72,000.00 to settle any claim he may have against LPL due to Hackney's misconduct.

VIOLATIONS

66. Section 12.A of the Act states that it shall be a violation of the provisions of the Act to offer or sell any security except in accordance with the provisions of this Act.
67. Section 12.F of The Illinois Securities Law of 1953, 815 ILCS 5/1 *et seq.* (The "Act") states that it shall be a violation of the provisions of this 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." 815 ILCS 5/12.F.
68. Hackney's excessive trading that he effected in Customers' account was done without Customers' 1-4's knowledge and without full disclosure of the impact that the costs, fees, and commissions that Hackney's trades would cause to Customers' accounts. Moreover, the excessive trades were not suitable for Customers 1-4, respectively, and constitute a violation of Section 12.F of the Act for **each** of the over 500 trades Hackney effectuated in Customers 1-4s' accounts during 2012 and 2013.
69. Section 130.850 of the Rules and Regulations Under the Illinois Securities Law of 1953 (the "Rules") states in pertinent part that no dealer or salesperson shall effect transactions for any customer's account which are excessive in size or frequency or unsuitable in view of the financial resources of the customer.
70. Hackney's excessive trading in Customers' brokerage accounts constitute a violation of Section 130.850 of the Rules.
71. Section 12.G of the Act states that it shall be a violation of the provisions of this 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 light of the circumstances under which they were made, not misleading." 815 ILCS 5/12.G.
72. Hackney's unauthorized trades in the Customers 1 and 2s' constitute a violation of Section 12.G of the Act for each of the 356 trades Hackney effectuated in that account during 2012 and 2013.
73. Section 11E.(2) of the Act states in pertinent part that should the Secretary of State find that any person has violated subsection F or subsection G of Section 12 of the Act the Secretary of State may by written order permanently prohibit the person from offering or selling any securities in Illinois.
74. Section 8.E(1)(b) of the Act states in pertinent part that the registration of a salesperson of securities or an investment advisor representative may be suspended or revoked if that

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registrant has engaged in any unethical practice in connection with any security, the offer or sale of securities or in any fraudulent business practice. 815 ILCS 5/8.E (1)(b).

75. Section 8.E(1)(g) of the Act states in pertinent part that the registrations of a salesperson of securities or an investment advisor representative may be suspended or revoked if that registrant has violated any of the provisions of the Act.
76. Section 8.E(1)(j) of the Act states in pertinent part that the registration of a salesperson of securities or an investment advisor representative may be suspended or revoked if that registrant has had membership or association with any self regulatory organization registered under the Federal 1934 Act or the Federal 1974 Act suspended, revoked, refused, expelled, cancelled, barred, limited in any capacity, or otherwise adversely affected in a similar manner arising from any fraudulent or deceptive act or practice in violation of any rule, regulation or standard duly promulgated by the self-regulatory organization.
77. Section 8.E(3) of the Act states that the Secretary of State may institute a revocation or suspension proceeding within two years after the withdrawal of the registration became effective and enter a revocation and suspension order as of the last date on which registration became effective.
78. Hackney's employment with LPL was terminated on February 7, 2014, and his registrations as a salesperson of securities and as an investment advisor representative were terminated on February 21, 2014.

The Department requests that after a hearing on the merits, a Recommendation be entered that:

- 1) Revokes Hackney's registrations as an investment adviser representative and as a salesperson of securities in Illinois retroactively to the date of February 21, 2014;
- 2) Permanently prohibits Hackney from offering investment advice and from offering to buy or sell securities in Illinois;
- 3) Imposes a statutory fine, for each trade in the accounts described above, against Hackney in an amount not less than \$100,000.00

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.

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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.

Dated: This 8th day of January, 2015.

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JESSE WHITE
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