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2
3 BEFORE THE DIRECTOR OF THE DEPARTMENT OF FINANCE
4 OF THE STATE OF IDAHO
5

Docket No.: 2010-7-04

6 In the Matter of:)
7 STATE OF IDAHO,)
8 Department of Finance,)
9 Securities Bureau,)
10 Complainant,)
11 vs.)
12 Densmore Financial Group, Inc. (IARD No.)
13 136644) and)
Allan H. Densmore (CRD No. 2469110),)
Respondents.)

AGREEMENT AND ORDER

14
15 The Director of the Department of Finance (“Director”) has instituted an investigation
16 into the conduct of DENSMORE FINANCIAL GROUP, INC., and ALLAN H. DENSMORE
17 (collectively, “Respondents”). Pursuant to the investigation, it appears to the Director that
18 violations of the Idaho Uniform Securities Act (2004), Idaho Code Sections 30-14-101, *et seq.*
19 (the “IUSA”) have occurred. The Director and Respondents Densmore Financial Group, Inc.,
20 and Allan H. Densmore have agreed to resolve this matter without a public hearing or other
21 adjudication. Therefore, the Director deems it appropriate and in the public interest that this
22 Agreement and Order be entered. Respondents consent to the entry of this Agreement and
23 Order.
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I.

FINDINGS OF FACT

1. Densmore Financial Group, Inc. ("DFG") is an Idaho corporation with its principal place of business located at 612 3rd Street South, Nampa, ID 83651.

2. Allan H. Densmore ("Densmore") is the CEO of DFG and is and was at all relevant times a principal and control person of DFG. Densmore resides at 6868 Old Bruneau Highway, RR1 Box 812, Marsing, ID 83639.

3. Densmore was affiliated with US Allianz Securities, Inc. as a broker-dealer and investment adviser representative from March 29, 2005 to July 7, 2005.

4. DFG was established in August 2000 and was registered as an investment adviser with the Department from September 6, 2005 to November 23, 2010.

5. On June 9, 2005, the Department sent a letter to Densmore requesting documentation demonstrating that an advertising flier had been sent to US Allianz Securities, Mr. Densmore's then currently affiliated broker-dealer/investment adviser firm, for review and approval.

6. On or about June 21, 2005, Densmore responded to the Department's June 9, 2005 letter, stating, "... It was not my staff's nor my intention to send out any material that has not been approved by my new broker/dealer. It was an oversight on my staff's part that this material was not submitted to US Allianz Securities for approval (as it was an oversight on my part to ensure the submission) and was not omitted intentionally. All other material relating to our conducting business has been approved by US Allianz Securities. It appears somehow this one piece fell through the cracks."

7. On December 3-5, 2007, the Department conducted an examination of DFG and found advertising information used by DFG which had not been submitted or reviewed by the

1 Department as required. In the Department's January 8, 2008, examination report, this violation
2 was noted.

3 8. On February 5, 2008, Densmore responded to the Department's January 8, 2008,
4 examination letter, stating, "All advertising will be submitted to the Department of Finance for
5 approval as required by Rule 47 of the IUSA. We do not make any misrepresentations in any of
6 our advertising materials."

7 9. Prior to January 2010, neither Densmore nor DFG submitted any advertising or
8 sales literature for the Department's review as required by Rule 47.

9 10. In January 2010, the Department discovered that several sales literature items
10 were being used by Densmore and DFG. These items include:

- 11 • The website: <http://www.densmorefinancialgroup.com>
- 12 • The free report entitled, "What Should I Do With My Money Now?" available for
13 download on the <http://www.densmorefinancialgroup.com> website.
- 14 • A mailer invitation relating to the free seminars to be held on January 19,
15 January 21, and January 27, 2010, at the Brick 29 Bistro in Nampa, ID.
- 16 • PowerPoint presentation used at DFG's workshops.
- 17 • Radio show commercials.

18 11. The Department subsequently approved Densmore's and DFG's use of the
19 foregoing website, , power point presentation and some radio show commercials. DFG removed
20 from its website the free report entitled, "What Should I Do With My Money Now?"

21 12. On or about January 5, 2010, Danielle Morriss, a staff member of DFG, contacted
22 the Department requesting guidance regarding testimonials, specific product discussion and the
23 use of designations in connection with a proposed radio show Densmore was considering
24 hosting.

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1 13. On Thursday, January 7, 2010, via e-mail, the Department informed DFG that to
2 comply with Rule 47, “the format and known content of the radio show will need to be reviewed
3 and approved prior to use. In addition, all radio shows will need to be recorded and submitted to
4 our Department for review.”

5 14. On January 8, 2010, via e-mail, the Department further responded to DFG’s
6 request made on or about January 5, 2010. The Department’s response stated:

7 The use of testimonials in investment adviser advertising is
8 prohibited in accordance with Section 206(4) of, and Rule
9 206(4)(a)(1) under the Investment Advisers Act of 1940 (“Act”).
10 Rule 206(4)(a)(1) states, “It shall constitute a fraudulent, deceptive,
11 or manipulative act, practice, or course of business within the
12 meaning of Section 206(4) of the Act for any investment adviser
13 registered or required to be registered under Section 203 of the Act,
14 directly or indirectly, to publish, circulate, or distribute any
15 advertisement which refers, directly or indirectly, to any
16 testimonial of any kind concerning the investment adviser or
17 concerning any advice, analysis, report or other service rendered by
18 such investment adviser.

19 The Department also provided a reference to a 2005 Securities and Exchange Commission (SEC)
20 no-action letter regarding “testimonials.” The SEC no-action letter stated, “The term
21 ‘testimonial’ is not defined in the rule, but we have consistently interpreted that term to include a
22 statement of a client’s experience with, or endorsement of, an investment adviser.”

23 15. On January 18, 2010, the Department was informed that Densmore had started the
24 radio show on January 9, 2010. No filing containing the format or the known content of the
25

1 radio show was filed with the Department in accordance with Rule 47 prior to the start of
2 Densmore's radio show.

3 16. On or about January 21, 2010, the Department received a letter from Densmore
4 and a disc containing a recording of the January 16, 2010 radio show. Densmore's letter stated
5 that he did not have a copy of the January 9, 2010 radio show. On April 7, 2010, Densmore
6 provided a disc containing a recording of the January 9, 2010 radio show.

7 17. On January 8, 2010, Densmore sent a newsletter to his clients, which included his
8 clients Betty and Bernard Bufford. The newsletter states, "Next for those of you who don't
9 know, we will be starting a weekly radio show. Every Saturday from 12:00 Noon to 1:00 PM on
10 670 KBOI. KBOI is the number 1 talk radio station in the valley by a margin of three. Each
11 week I will be discussing different topics as well as taking calls. If you have the time please
12 listen and call. Also please tell your friends, family relatives about the show. I would really
13 appreciate your help in building awareness of the show. The purpose of the show is to educate,
14 enlighten, and entertain."

15 18. During the January 9, 2010 radio show, the following dialogue is heard:

16 DENSMORE: Our first caller it looks like is Betty. Hi, Betty. This is
17 Allan.

18 CALLER: Hi Allan. This is Betty Bufford. And we have been with you for
19 several years. And I do have a question. You know, we have never lost
20 any money; we've made money with you. And we have friends that just
21 don't seem to believe us when we say, you know, you don't have to lose
22 money on your investments. What can we say to these people to let them
23 know that there are ways that they can handle their retirement and
24 savings so that they don't lose --

25 DENSMORE: Well, Betty, first let me say thanks for calling in. You and
Bernie -- what'd you get my email last night telling everyone about the
show?

CALLER: Yes.

DENSMORE: Hey, thanks for calling. Thanks for calling. Um, you know,
Betty, I tell you, it is kinda tough. Everybody thinks that, you know,
when the market goes up they make money. When the market goes down they
lose money. Everybody just thinks that's kind of the way it is. And you

1 know it is hard for my clients -- you know how we work. We don't lose
2 money when the market goes down. So it is kind of hard to explain to
3 somebody -- like right now I tell people, well, we didn't -- not only
4 did we not lose money, we actually made money last year. So it is
5 really hard for you guys when you're trying to tell somebody that, they
6 always think the old saying, "if it sounds too good to be true, you
7 know it probably is."

8 CALLER: Right.

9 DENSMORE: So, you know, Betty, man, you know, I appreciate you guys,
10 and, you know, I'm glad you guys are saying something. I think probably
11 the best thing to do -- you know, I'm talking here on the radio is --
12 probably the best thing to do is just to tell somebody. You know, if
13 they're not happy with what they're doing, if it's not working, come to
14 one of our workshops. That's how you guys originally came. You came to
15 one of our workshops and you listened to what we had to say and you
16 like it a lot. And you guys have been great clients. And that way you
17 don't have to worry about trying to explain to people that you don't
18 have to lose money. You don't have to dig out of a hole. You know, we
19 just came through the worst market we've had in our lives and you guys
20 didn't lose any money. You guys have been doing terrific. So, you know,
21 I appreciate you guys calling. You know, that wasn't the, kinda of the
22 purpose of the show, but I do appreciate you guys calling. Say hi to
23 Bernie --

24 CALLER: Okay.

25 DENSMORE: -- and thanks for calling, Betty.

CALLER: Thank you, Allan.

DENSMORE: Bye, bye.

19. The dialogue set forth in paragraph 17 is a violation of Rule 104.39 of the IUSA.
Pursuant to Rule 104.39, it is a fraudulent, dishonest, and unethical practice to publish, circulate
or distribute any advertisement that does not comply with Rule 206(4)-1 under the Act. DFG's
use of this testimonial violates Rule 104.39 of the IUSA.

20. During the January 16, 2010 radio show, the following dialogue is heard:

DENSMORE: Let me give you a story real quick. I have a couple of
clients -- nice couple. When they came into my office originally they
had a substantial amount of money. All they were looking for is to pull

from their pension, their social security and \$2,000 a month out of
their retirement account. That was it. This couple was turning so many
times their investments, they were paying over \$40,000 a year just in
taxes.

1 We made a lot of changes. They're safe now. They are conservative. They
2 don't ever have to worry about their money again. They're happy.

3 21. Densmore's statement in paragraph 19 is a violation of Rule 104.39 of the IUSA.
4 Pursuant to Rule 104.39 it is a fraudulent, dishonest, and unethical practice to publish, circulate
5 or distribute any advertisement that does not comply with Rule 206(4)-1 under the Act. DFG's
6 use of this testimonial violates Rule 104.39 of the IUSA.

7 22. During the May 8, 2010 radio show, the following dialogue is heard:

8 DENSMORE: Good afternoon. My name is Allan Densmore. You are listening
9 to the Idaho Retirement Guru. We have about seven minutes so if you
10 have questions, call 336-3700, 336-3700 or if you are on Verizon call
11 #670. If you have questions, give me a call. We have about seven
12 minutes. First person on the line is Richard in Nampa. Hi Richard.

13 CALLER: Hello Allan. After getting into the stock --

14 DENSMORE: Ah --

15 CALLER: -- market with the trailing stop losses to protect from
16 investments dropping too much, when would you suggest getting back in
17 and why.

18 DENSMORE: Okay. So first I've got to tell everybody that's listening I
19 know by the voice who I'm listening to. This guy Richard -- if you meet
20 him you'll always remember him. He's like a brainiac. When I first met
21 this guy and he came to my office I thought, oh my goodness. I'm going
22 to have a problem with this guy. One of the smartest guys and, you
23 know, he's a great guy to work with. So, I'm putting that out there.

24 Richard, I know it's you. I can tell by your voice.

25 CALLER: Yes, it is.

DENSMORE: Hey. So, hey, here's what we did. If you look on, you know,
Scottrade, what we did is we had some of our positions hit the trailing
stop --

CALLER: Let's put it this way. I think all but about three of them did.

DENSMORE: I'm telling you, the market dumped hard. And so what I did is
I went on and I looked and I found out what did we have, what did we
keep. There's some, there's some disclaimers or some warnings that came
out from Scottrade and some other indices talking about what happened
for a short period of time and I called Scottrade. But anyway, what
happened is if you look you can see we've gone back in to some because
we still -- we went back in, we've still got our trailing stop, but
what we did is we focused a little bit more like you and I had talked

1 about, instead of spreading it around we actually went in and we just
2 started being a little bit more clear. You probably saw we got some MO
3 --

4 CALLER: Um-hmm.

5 DENSMORE: -- you know that's been doing pretty good for us. I think we
6 did EOS, I think we did DNP. So I went back in and I bought some more
7 stuff, put the trailing stop. You know my thinking is if the market
8 does come up, ah, we did good because the market will come back up and
9 life is good and we'll use it as a buying opportunity. If the market
10 still continues to dump, then we're going to have to look and say,
11 okay, here's what we put in, here's what we've made, here's what we're
12 down, and reevaluate it and find out what's going on, because, dawg,
13 you know, I mean, nobody knows for certain if the market will go up and
14 down. Most of us think it is only a matter of time before it is going
15 to dump, but we still at least want to participate in the gains. So,
16 you know, we took some of the stuff -- some of the stuff has to clear,
17 if you're familiar with that when --

18 CALLER: I am.

19 DENSMORE: Yeah, so some of the stuff has to clear. Once it clears we'll
20 go into some more positions again so we can take advantage of it. You
21 know, the goal is when it's going up, let's take advantage of it. You
22 know, it hit the trailing stops when it went down. And if the market
23 kept going down, you know, that's the benefit of the trailing stops. We
24 got out of it and then we would buy in at a lot lower price.

25 So we got out what I could. We went back in I think the following day
with what we could and now it's just a matter of wait and see what the
market does.

CALLER: Okay. Thank you very much.

DENSMORE: Hey, man, thanks for calling, Richard. Say hi to your wife.
Have a good week-end.

CALLER: Bye.

DENSMORE: Bye, bye.

So if you have questions, I have answers. You were actually listening
to Richard, one of my clients. Great guy to work with. Very, very
smart, I'm telling you. We have the best conversations. I actually loan
Richard books and then we set up times to get together and review our
books and see what we come up with.

23. The dialogue set forth in paragraph 21 is a violation of Rule 104.39 of the IUSA.

Pursuant to Rule 104.39, it is a fraudulent, dishonest, and unethical practice to publish, circulate

1 or distribute any advertisement that does not comply with Rule 206(4)-1 under the Act. DFG's
2 use of this testimonial violates Rule 104.39 of the IUSA.

3 24. Densmore's free report entitled "What Should I Do With My Money Now?"
4 states in part, "... So, let's look at a real life example of an index and our alternative strategy.
5 This is the market from 1966 to 1982. As you can see, we call this the peaks and the valleys.
6 What would you do if you could keep the peaks and get rid of the valleys? The red line
7 represents the market and the green line represents our alternative." Densmore later advised the
8 Department that the green line represented a "hypothetical return with a cap on the upside while
9 protecting principle from and earned interest from loss." Densmore's representation that he was
10 presenting a real life example was deceptive or misleading in violation of Rule 104.17 since the
11 information presented was actually hypothetical.

12 25. On February 5, 2010, the Department requested a complete copy of the
13 advertising records maintained by DFG in accordance with Section 204-2 of the Act. Rule 93 of
14 the IUSA requires every investment adviser to make and keep true, accurate and current books
15 and records in compliance with Section 204-2 of the Act. By letter received by the Department
16 on February 16, 2010, DFG responded, stating, "Enclosed, please find our advertising records
17 from 2007 forward." Rule 204-2 of the Act and Rule 93 of the IUSA requires books and records
18 to be maintained and preserved for a period of not less than five years. DFG's February 16, 2010
19 response did not contain:

- 20 • The free report entitled "What Should I Do With My Money Now?"
- 21 • PowerPoint Presentation used at DFG workshops located during the Department's
22 December 3-5, 2007 examination.

23 26. DFG has failed to make and keep true, accurate and current books and records in
24 compliance with the IUSA.

1 2. Respondents agree to pay a civil penalty in the amount of \$10,000 no later than 30
2 days after signature by the Director. Payment shall be made payable to the order of the “Idaho
3 Department of Finance.”

4 3. Respondents acknowledge and agree that all investment advisory activity,
5 including but not limited to advertising, conducted in connection with Densmore Financial
6 Group, Inc., when a state registered investment adviser, was regulated by Complainant.

7 4. Respondents agree that any investment advisory activity performed henceforth
8 will be done in their capacity as either:

9 A. an investment adviser representative of a federally regulated advisory firm;

10 B. an investment adviser representative of a state-regulated investment adviser firm
11 that i) has been registered in Idaho for at least five years and has no significant
12 disciplinary history and ii) agrees to perform all supervisory functions with respect to
13 Respondent(s)’s activities, including review and approval of all advertising prior to its
14 submission to the Department; or

15 C. an Idaho registered investment adviser firm, provided Respondents retain and use
16 the services of a third-party compliance professional, at their own expense, and such
17 compliance professional reviews and approves all advertising prior to its submission to
18 the Department.

19 5. Respondents agree to comply with the requirements of Rule 47 under the IUSA.

20 6. Respondents agree to comply with Rule 104 under the IUSA.

21 7. Respondents agree to comply with Rule 93 under the IUSA.

22 8. Respondents may file applications (Form ADV) for investment adviser
23 registration with the Complainant and the entry of this Agreement and Order and the facts and
24 conclusions contained herein shall not be the basis for denial of the applications.

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1 9. Respondents agree not to conduct securities or investment advisor-related radio or
2 television programs until they become an investment adviser representative of a federally
3 covered investment adviser, or of a state-regulated investment adviser firm that agrees to perform
4 all supervisory functions with respect to Respondent(s)'s activities, including review and
5 approval of all advertising prior to its submission to the Department. If after six months
6 Respondents have been unable to become so affiliated, the Department agrees to reevaluate the
7 necessity of this requirement.

8 10. Respondents shall not hereafter offer investment advisory services unless
9 registered with the Department as required by the IUSA or unless such services are exempt from
10 registration as provided in the IUSA.

11 11. Respondents agree that failure to comply with this Agreement and Order may
12 result in the Director bringing further legal proceedings.

13 12. Respondents attest and avow that all information provided to the Department
14 directly or through their legal representatives is true, accurate and complete.

15 13. Respondents waive notice and opportunity for a hearing under Idaho Code
16 Section 30-14-604(b) and (c), and under the contested case provisions of the Idaho
17 Administrative Procedures Act, Idaho Code Sections 67-5240, *et. seq.* 10. The terms contained
18 in this Agreement and Order constitute the entire agreement between Complainant and
19 Respondents.

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ALLAN H. DENSMORE
ALLAN H. DENSMORE

DENSMORE FINANCIAL GROUP, INC.

ALLAN H. DENSMORE
By: ALLAN H. DENSMORE
Title: President and CEO

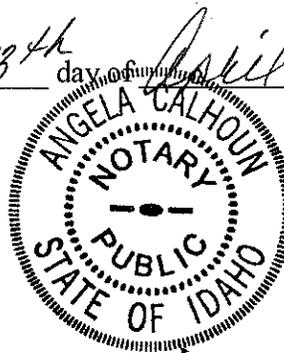
State of Idaho

County of Canyon

SUBSCRIBED AND SWORN to before me this 13th day of April, 2011

ANGELA CALHOUN
NOTARY PUBLIC

My Commissions Exp: 9-2012

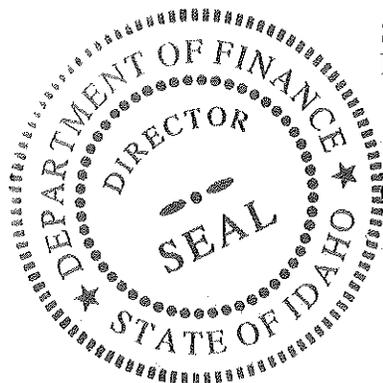


MARILYN T. CHASTAIN

MARILYN T. CHASTAIN
Bureau Chief, Securities Bureau
Department of Finance
State of Idaho

IT IS SO ORDERED

DATED this 15th day of April, 2011.



STATE OF IDAHO
DEPARTMENT OF FINANCE

GAVIN M. GEE
GAVIN M. GEE, Director