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**BEFORE THE DIRECTOR OF THE DEPARTMENT OF FINANCE
OF THE STATE OF IDAHO**

STATE OF IDAHO, DEPARTMENT OF)
FINANCE, SECURITIES BUREAU,)
)
Complainant,)
)
vs.)
)
RICHARD M. BUDWEE JR.,)
dba BUDWEE FINANCIAL PLANNING)
SERVICES, INC.,)
)
Respondent.)
)
)
_____)

Docket No. 2001-7-28

AGREEMENT AND ORDER

The Director of the Department of Finance, State of Idaho (Director) has investigated the activities of Respondent Richard M. Budwee Jr., dba Budwee Financial Planning Services, Inc. (Budwee). Pursuant to said investigation, it appears that violations of the Idaho Securities Act (the Act), Idaho Code § 30-1401, *et seq.*, have occurred. The Director and Respondent have agreed to resolve this matter without a public hearing. Therefore, the Director deems it appropriate and in the public interest that this Agreement and Order be entered. Respondent consents to the entry of this Agreement and Order.

BACKGROUND

1. Richard M. Budwee, dba Budwee Financial Planning Services, Inc. (Budwee) has been licensed in Idaho as a broker-dealer representative with SunAmerica Securities, Inc. (SunAmerica) since October 1, 1999. Budwee was the broker of record for the account in which the violations occurred.
2. On April 18, 2000, Budwee notified the Idaho Department of Finance (Department) of his intent to claim an exemption from investment adviser representative registration pursuant to § 30-1406(2)(d) of the Act. On May 1, 2000, Budwee submitted to the Department a Schedule F of Form ADV outlining his proposed activities. Upon review of the Schedule F, the Department determined that the proposed activities would fall outside the parameters of the exemption from investment adviser representative registration set forth in § 30-1406(2), requiring Budwee to register as an investment adviser. Budwee was informed of the Department's findings on May 9, 2000.
3. As of November 1, 2000, the Department had not received an investment adviser application from Budwee in response to its letter of May 9, 2000. Therefore, on November 1, 2000, a follow-up letter was sent pursuant to Idaho Code § 30-1440, requesting a written description of any investment advisory services then being provided by Budwee. On November 13, 2000, the Department received Budwee's written representation that he was not, nor had he been, engaged in providing investment advisory services.
4. On March 8 and 9, 2001, the Department conducted an examination of SunAmerica's branch office located at 250 South Bobwhite Court, Suite 225, Boise, Idaho, staffed by Budwee.

5. On March 27, 2001, Budwee submitted his application for registration as an investment adviser in Idaho. Such application is currently pending with the Department and has not yet been approved. Budwee is not, and has never been, a registered investment adviser in the state of Idaho.

FINDINGS

6. During the course of the examination referenced in paragraph 4 above, a financial planning agreement dated August 24, 2000, between Budwee and Doug and Linda Vierkant, was discovered. Under the terms of that agreement, Budwee would provide financial planning services for a fee of \$600, payable upon execution of the agreement.

Idaho Code § 30-1402(6) defines “investment adviser” as follows:

...any person who, for compensation, engages in the business of advising others either directly or through publications or writings as to the value of securities or as to the advisability of investing in, purchasing or selling securities or, who for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. Investment adviser also includes financial planners and other persons who, as an integral component of other financially related services, provide the foregoing investment advisory services to others for compensation and as a part of a business or who hold themselves out as providing the foregoing advisory services to others for compensation.

Budwee’s act of executing a financial planning agreement constitutes engaging in investment advisory activities under this definition. Budwee was not properly registered as an investment adviser at the time he engaged in such investment advisory activities.

7. The Department’s examination also revealed a discrepancy between the disclosure of a deferred sales charge on an investment liquidation and the sales charged actually assessed the client. Specifically, on June 7, 2000, a “Request to Switch Investment” form, for the liquidation of AXP New Dimensions-IRA, was executed by Linda D. Cole. The switch

form was signed on behalf of SunAmerica by Richard M. Budwee, as registered representative, and by Richard M. Budwee, as OSJ Manager. According to the “Request to Switch Investment” form executed by Ms. Cole, upon liquidation of the investment there would be a “0%” deferred sales charge in connection with her investment. Nevertheless, the confirmation issued pursuant to this transaction shows that a deferred sales charge of \$651.91 was assessed. According to a Department examiner’s interview with Budwee, Karen Stadjuhar, a regional manager for SunAmerica, is responsible for reviewing customer accounts to detect account abuses such as unauthorized trading, suitability, churning and switching. As noted above, Ms. Stadjuhar did not sign the “Request to Switch Investment” form; the form was signed by Budwee.

VIOLATIONS

8. Idaho Code § 30-1406(2)(a) provides that it is unlawful to transact business as an investment adviser in Idaho without being registered as an investment adviser pursuant to Idaho Code § 30-1407.
9. Budwee violated Idaho Code § 30-1406(2) by transacting business as an investment adviser in Idaho without being registered as an investment adviser as set forth in paragraph 6 above.
10. Budwee admits to the violation set forth in paragraph 9 above.
11. Idaho Code § 30-1438 provides that it is unlawful for any person to knowingly make or cause to be made in any document filed with the Director or in any proceeding or investigation under the Idaho Securities Act any statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect.


12. Budwee violated Idaho Code § 30-1438 by providing the Department with a false, written representation that he had not engaged in investment advisory services.
13. Budwee admits to the violation set forth in paragraph 12 above.
14. Budwee failed to disclose to client Linda D. Cole the correct deferred sales charge assessed in connection with the mutual fund switch for the account of Ms. Cole.
15. Budwee admits the allegation set forth in paragraph 14 above.

REMEDIES

16. Idaho Code § 30-1413 authorizes the Director to deny, suspend or revoke the registration of an investment adviser or broker-dealer that has failed to comply with any provision of the Act or any rule promulgated under the Act, or impose an administrative penalty not to exceed ten thousand dollars (\$10,000) for each violation.
17. Budwee agrees to refund all investment advisory fees received from Idaho residents. In addition, Budwee agrees to forgo the collection of any fees from Idaho residents for investment advisory services rendered prior to becoming registered with the Department as an investment adviser. Budwee will provide a list of Idaho residents who have received the refund of their investment advisory fee by January 21, 2002.
18. Budwee agrees to obtain appropriate registration by the Department prior to transacting any business in Idaho as an investment adviser in the future.
19. Budwee agrees to disclose on the Form ADV and to the Central Registration Depository (CRD) the findings of this Agreement and Order within thirty (30) days of the date of this order.
20. Budwee agrees to pay the Department a civil penalty in the amount of \$3,500 by no later than January 21, 2002 for the violations set forth above.

21. Budwee consents to a one (1) day suspension of his broker-dealer representative registration in Idaho. The one (1) day suspension will occur on November 23, 2001.
22. Budwee agrees to comply with all provisions of the Act, and all rules promulgated under the Act, at all times in the future.
23. Upon full execution of this agreement and the Respondent's full compliance with all terms and conditions of this agreement, the Department agrees to register Budwee as an investment adviser in Idaho, if all requirements for such registration have been met in a timely fashion and no further violations of the Act by the Respondent have become known to the Department.
24. If the Respondent fails to timely meet all terms and conditions set forth in this agreement, this agreement shall be null and void, and the Department may seek all remedies allowed by law which arise from the violations referenced above.

DATED this 15 day of November, 2001.



RICHARD M. BUDWEE JR.
dba Budwee Financial Planning Services,
Inc.

DATED this 20th day of November, 2001.

STATE OF IDAHO, DEPARTMENT OF
FINANCE, SECURITIES BUREAU



MARILYN T. CHASTAIN
Bureau Chief, Securities Bureau

IT IS SO ORDERED.



GAVIN M. GEE
Director, Department of Finance

