

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

STATE OF IDAHO, DEPARTMENT OF )  
FINANCE, SECURITIES BUREAU, )

Docket No. 2001-7-48

Complainant, )

**AGREEMENT AND ORDER**

vs. )

SUNAMERICA SECURITIES, INC. )  
Respondent. )

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The Director of the Department of Finance, State of Idaho (Director) has investigated the activities of Respondent SunAmerica Securities, Inc. (SunAmerica). Pursuant to said investigation, it appears that violations of the Idaho Securities Act (the Act), Idaho Code § 30-1401, *et seq.*, and NASD Rule 3010 have occurred. The Director and SunAmerica 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. SunAmerica neither admits nor denies the violations contained herein, and consents to the entry of this Agreement and Order.

## BACKGROUND

1. Richard M. Budwee (Budwee) was registered in Idaho as a broker-dealer representative with SunAmerica from October 1, 1999 to December 14, 2001.
2. On April 18, 2000, Richard M. Budwee, dba Budwee Financial Planning Services, Inc. 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)(d), requiring Budwee to register as an investment adviser. Budwee was informed of the Complainant'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 was approved by the Department on February 25, 2002.

## 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. The agreement reflects that 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. SunAmerica was not aware of Budwee’s unregistered investment adviser activity.

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, registered representative, and by Richard M. Budwee, 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.

8. The Department's examination also revealed the continued use of non-compliant letterhead and business cards. Approximately 8 months earlier, a SunAmerica compliance examination had uncovered this problem. Nonetheless, the problem was not corrected.

#### VIOLATIONS


9. SunAmerica failed to enforce procedures pertaining to the activities of Budwee, in violation of NASD Rule 3010 and Rule 119.01 of the Idaho Securities Act.

#### REMEDIES

10. Idaho Code § 30-1413(2) 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.
11. SunAmerica agrees to refund to Linda A. Cole \$651.91, the amount of the deferred sales charge improperly charged to her account.
12. SunAmerica agrees to reimburse the Department for investigation costs in the amount of \$2,500 within thirty (30) days of the date of this order.
13. SunAmerica agrees to comply with all provisions of the Act, and all rules promulgated under the Act, at all times in the future.

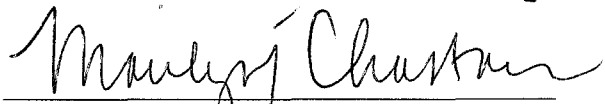
14. If the Respondent fails to timely meet all terms and conditions set forth in this agreement, this agreement shall be null and void, and the Department may seek all remedies allowed by law which arise from the violations referenced in paragraph 9 above.

DATED this 5<sup>th</sup> day of August, 2002.

  
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JAMES CANNON  
SunAmerica Securities, Inc.  
President

DATED this 12<sup>th</sup> day of August, 2002.

STATE OF IDAHO, DEPARTMENT OF  
FINANCE, SECURITIES BUREAU

  
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MARILYN T. CHASTAIN  
Bureau Chief, Securities Bureau

**IT IS SO ORDERED**

  
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GAVIN M. GEE

Director, Department of Finance

