

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

STATE OF IDAHO, Department of Finance,
Securities Bureau,
Complainant,

vs.

MULTI-FINANCIAL SECURITIES
CORPORATION; JAMES A. BATTEN, AND
JAMES E. LODGE
Respondents.

Docket No. 2002-7-17

AGREEMENT AND ORDER

The Director of the Department of Finance has instituted an investigation into the conduct of Multi-Financial Securities Corporation, James A. Batten and James E. Lodge. Pursuant to said investigation, it appears to the Director that violations of the Idaho Securities Act, Idaho Code §30-1401 et seq., have occurred. The Director and the named Respondents have agreed to resolve this matter without a public hearing or court proceedings. Therefore, the Director deems it appropriate and in the public interest that this Agreement and Order be entered. Respondents consent to the entry of this Agreement and Order.

Respondents

1. Respondent Multi-Financial Securities Corporation (MFSC) is a Colorado Corporation that is regularly engaged in the securities industry. MFSC has been registered as a broker-dealer in Idaho since 1985.

2. Respondent James A. Batten (Batten) is an Idaho resident and an NASD registered representative for MFSC. Batten has been licensed as a securities salesperson associated with MFSC in Idaho since 1989.

3. Respondent James E. Lodge (Lodge) is an Idaho resident and an NASD registered representative for MFSC. Batten has been licensed as a securities salesperson associated with MFSC in Idaho since 1993. At all times pertinent to this Order, Lodge was the branch manager of a Boise branch office of MFSC and the direct supervisor of Respondent Batten.

Background

4. For an unknown period of time preceding the date of this Order, Respondent Batten marked numerous securities transactions as “unsolicited” when, in fact, he had recommended, or originally recommended the stock to the clients. Although Respondent MFSC and Batten’s immediate supervisor, Respondent Lodge, questioned Batten on multiple occasions about this practice, they provided no written directives to Batten regarding this business practice. Batten’s business practices did not change as a result of his communications with Lodge or other MFSC personnel.

5. For an unknown period of time preceding the date of this Order, Batten or his family purchased and/or sold some of the same securities that Batten recommended to his clients. As a practical matter, Batten did not inform all of his clients that he had or might purchase or sell the same securities that he was recommending to them. For an unknown period time preceding the date of this Order, MFSC compliance personnel and Batten’s immediate supervisor, Respondent Lodge, on multiple occasions, questioned Batten regarding his practice of trading the same securities he recommended to his clients and whether he disclosed this practice to his clients. No written directives were provided to Batten regarding this business practice. Batten’s business practices did not change as a result of his communications with Lodge or other MFSC personnel. Although Respondents Lodge and MFSC were aware of such practices, they did not effectively supervise such activity.

6. Beginning on a date uncertain, but at least since January 2000, Respondent Batten offered and sold securities in the form of stock in Eagle Wireless International, Inc. (Eagle) to residents of Idaho. A significant number of solicitations for the purchase of Eagle occurred after Batten had purchased Eagle securities in his own account.

7. In connection with making recommendations, offers and sales of stock in Eagle to some of his clients in Idaho, Respondent Batten misled some investors to believe that he was in possession of material non-public information that could have materially and beneficially impacted the price performance of Eagle stock.

8. Respondent Batten led some Idaho investors to believe that by purchasing shares of Eagle, they would realize significant returns on their purchase of Eagle when the contract information was

released to the public. Respondent Batten represented to some investors that stock in Eagle would climb to between \$45.00 and \$65.00 per share upon release of the contract information. The MFSC Registered Representative's Compliance Manual (Compliance Manual) specifically prohibits registered representatives from personally making price predictions.

9. When the price of Eagle was below \$5 per share, Batten recommended or otherwise induced some clients to reduce their cost basis in Eagle by "averaging down" and purchasing additional shares of Eagle. Purchases of securities below \$5 per share invoke MFSC's rules and policies pertaining to low priced securities. Although the transactions were recommended or otherwise solicited, Batten marked some order entry tickets unsolicited and obtained non-solicitation letters from these clients as required by MFSC and Lodge. The MFSC Compliance Manual specifically prohibits registered representatives from recommending or soliciting the purchase of low priced securities (shares trading below \$5 per share) for customer accounts.

10. For an unknown period of time preceding the date of this order, securities representatives of the Boise branch office of MFSC had occasion to communicate and accept securities orders from MFSC clients whose representative of record was away from the office. In an unknown number of instances, securities orders were phoned in and executed in a timely manner for these clients. However, the actual order ticket of record for these transactions was executed sometime later by the representative of record for said client. This practice ultimately provided the creation and retention of a record that falsely identified, or otherwise failed to identify the licensed agent who actually accepted the order from the client.

11. For an unknown period of time preceding the date of this order, Respondent Lodge routinely reviewed and approved order entry tickets and his office's daily trading blotter on the morning after such transactions occurred. The MFSC Compliance Manual specifically states that "OSJ Branch Manger's must review and approve "Unsolicited Transactions" prior to entering the trade". Respondent Lodge, as the OSJ Branch Manger, routinely failed to approve unsolicited transactions in advance of the execution of these transactions.

Violations

Violations By Respondent Batten

12. In connection with the offer and sale of securities to Idaho investors, Respondent Batten engaged in deceptive or manipulative acts or practices as defined under Rule 111(01) and (02) of the Rules Pursuant to the Idaho Securities Act (Idaho IDAPA 12.01.08.111). Deceptive or manipulative acts or practices are further defined as dishonest or unethical acts or practices which may operate as a fraud or deceit as enumerated in Idaho Code §30-1403(3).

13. Batten's deceptive or manipulative acts or practices include, but are not limited to:

- a) Failing to disclose to clients or prospective clients that Batten or his family had taken positions in a security in advance of recommending it to said client.
- b) Inducing clients to execute "non-solicitation letters" in order to effect transactions in securities priced below \$5.00 as required by MFSC.
- c) Engaging in conduct with customers that violated the MFSC Compliance Manual.
- d) Improperly marking trade order entry tickets that were solicited or recommended as "unsolicited", thereby reducing the amount of supervisory scrutiny and investor protection afforded to such transactions.
- e) Inappropriately marking order entry tickets unsolicited, when, in fact, Batten had recommended, introduced or otherwise induced the purchase of the securities to Idaho residents.
- f) falsely leading some securities customers to believe that he (Batten) was in possession of material, non-public information that could have materially and beneficially impacted the price performance of Eagle Stock.

14. Respondent has violated Idaho Code §30-1403(3).

Violations By Respondent Lodge And MFSC

15. As set forth in Rule 119 of the Rules Pursuant to the Idaho Securities Act (Idaho IDAPA 12.01.08.119) every broker-dealer shall exercise diligent supervision of the securities activities of all salesmen, representatives and employees. Further, as a part of their responsibility under this rule, every broker-dealer shall establish, maintain and enforce written procedures adopted by the broker-dealer to ensure compliance with the supervisory obligations dictated by the Rules Pursuant to the Idaho Securities Act.

16. Respondents Lodge and MFSC failed to diligently supervise the securities activities of Respondent Batten and have violated Rule 119(01) and (03) of the Rules Pursuant to the Idaho Securities Act (Idaho IDAPA 12.01.08.119).

Remedies

Complainant and Respondents hereby agree as follows:

1. Respondents represent that the information provided to Complainant in its investigation of this matter is accurate and complete.

2. Respondents neither admit nor deny the assertions of fact or the violations as stated in this Order.

3. Respondent MFSC agrees to amend its policies and procedures to ensure that MFSC policies and procedures are adhered to by its sales representatives and branch supervisory personnel. Respondent MFSC agrees to enforce its written policies and procedures such that problem activities are not only identified but corrected.

4. Regarding Batten securities clients GB&TB, SJ&JJ, DPR and RST, Respondents agree to offer to pay to said clients the amounts agreed upon by and between Respondent MFSC and the Department in exchange for tender of shares of Eagle Wireless International, Inc. and a release of any and all liability regarding transactions in said securities between the clients and any of the Respondents. Respondent agrees to promptly pay the agreed sum to each such client who accepts the offer, tenders the stock and provides a release of liability. Respondent MFSC agrees to make such offer in writing no later than thirty (30) days after the date of this Order.

5. Respondent Batten agrees to a five-day suspension of his securities salesperson license in the State of Idaho. Said suspension will run from the opening of business August 25, 2004 through the close of business August 31, 2004. Respondent Batten further agrees to pay Complainant a fine in the amount of five thousand dollars (\$5,000.00). Said fine shall be paid not later than sixty (60) days after the date of this Order.

6. Respondents Lodge and MFSC agree to pay Complainant a fine in the total amount of three thousand dollars (\$3,000.00) and investigative costs in the amount of two thousand dollars (\$2,000.00). Said fine and investigative costs shall be paid not later than sixty (60) days from the

date of this Order.

7. Respondents agree to abide by the Idaho Securities Act in the future. In the event that Respondents commit future violations of the Idaho Securities Act or fail to adhere to the terms of this Order, Respondents agree that Complainant can incorporate the allegations giving rise to this Order in any future proceeding.

8. Respondents acknowledge that Complainant may distribute substantially all of its investigative file in this matter to other Batten clients currently engaged in arbitration proceedings with the firm. Complainant agrees to provide Respondents with duplicate copies of any information so provided.

9. This Agreement and Order is in lieu of civil litigation or other proceedings.

DONE AND DATED at Boise, Idaho, this 1st day of ~~May~~ ^{June} 2004.

BY: MULTI-FINANCIAL SECURITIES CORP.
NAME: Patrick McEvoy
Title: President

JAMES A. BATTEN

JAMES E. LODGE

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

IT IS SO ORDERED this 7th day of ~~May~~ ^{JUNE} 2004.

GAVIN M. GEE
Director, Idaho Department of Finance

