

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

STATE OF IDAHO, Department of	)	
Finance, Securities Bureau,	)	Docket No. 2007-7-08
	)	
Complainant,	)	<b>AGREEMENT AND ORDER</b>
	)	
vs.	)	
	)	
David A. Fairchild	)	
	)	
Respondent.	)	
_____	)	

The Director of the Department of Finance (“Department”) has conducted an inquiry into the securities activities of Respondent David A. Fairchild (“Fairchild”). Pursuant to said inquiry, it appears to the Director that violations of the Idaho Uniform Securities Act (2004), Idaho Code §30-14-101, *et seq.*, have occurred. The Director and Respondent have agreed to resolve this matter without a public hearing or other adjudication. 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.

**I. RESPONDENT**

1. Respondent Fairchild is an Idaho resident that has claimed residence in Idaho since at least 1994. Fairchild currently resides in Grangeville, Idaho and operates a bookkeeping and tax preparation business. Until December 2005, Fairchild operated under the DBA Fairchild Accounting and Tax Service. Thereafter, Fairchild created and operates an Idaho LLC known as Fairchild Accounting and Tax Service, LLC. Fairchild has never been licensed as a securities representative, a securities broker-dealer or an investment

advisor. The Idaho State Board of Accountancy does not have any record of Fairchild as a Certified Public Accountant or as a Licensed Practicing Accountant.

## **II. IDAHO INVESTMENT ADVISORY ACTIVITIES**

2. In association with his tax and accounting services, Fairchild has solicited multiple clients to open securities accounts for the express purpose of investing. In connection with these solicitations, Fairchild represented to his clients that he managed investment accounts for several other clients and that his investment management approach was low risk and that his investment management services had provided attractive rates of return to his clients.
3. In furtherance of his money management business, Fairchild assisted clients in setting-up securities accounts through at least one on-line discount broker-dealer. Thereafter Fairchild accessed and traded the clients' accounts by knowing and using each client's personal user name and password. The discount broker-dealer was never advised that Fairchild was managing client accounts and the broker-dealer's records reflected only that the individual clients were logging in to place trades or review their securities accounts. In this regard, no extraneous controls were in place to prevent Fairchild from having absolute control over the funds of his investment management clients.
4. In at least one instance, Fairchild recommended that two tax clients open IRA accounts. The clients accepted Fairchild's advice and funded their IRAs as directed by Fairchild. However, these clients were unaware that Fairchild would place their IRA funds at risk in marketable securities.
5. For the most part, Fairchild invoiced his money management clients on a monthly basis, charging them a fee for his services in selecting, purchasing and selling securities on behalf of each client.

### III. FINDINGS OF VIOLATIONS

6. In conjunction with its investigation, the Complainant has developed evidence sufficient to find the following violations of the Idaho Uniform Securities Act (2004) and the rules promulgated under the Act.

#### FAILURE TO REGISTER AS AN INVESTMENT ADVISOR

7. Idaho Code §30-14-102(15) defines investment adviser as a person that, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing or selling securities.
8. Idaho Code §30-14-403 states that it is unlawful for a person to transact business as an investment advisor unless the person is registered pursuant to the Idaho Uniform Securities Act (2004) or otherwise exempt from such registration.
9. Beginning on a date uncertain but at least since November 2005, Respondent has, for compensation, transacted business as an investment advisor for more than one dozen Idaho residents.
10. The Respondent has never been registered as an investment advisor in Idaho, nor is the Respondent otherwise exempt from the registration provisions of the Idaho Uniform Securities Act (2004).
11. Respondent has violated Idaho Code §30-14-403.

#### PROHIBITED CONDUCT: OMISSIONS

12. Idaho Code §30-14-501 generally states that, directly or indirectly, in connection with the offer, sale or purchase of a security, it is unlawful to omit to state a material fact necessary, in

order to make the statements made, in light of the circumstances under which they are made, not misleading.

13. In connection with the execution of securities transactions associated with his advisory services, the Respondent:

a) failed to advise prospective clients that he was not registered as an investment advisor as required by the Idaho Uniform Securities Act (2004).

b) failed to provide an investment advisory contract and failed to provide all pertinent disclosures that would be provided by such a contract.

14. Respondent has violated Idaho Code §30-14-501.

#### **IV. REMEDIES**

1. Respondent represents that the information provided to Complainant is accurate and complete.

2. Respondent neither admits nor denies the findings of violations contained in this Agreement and Order.

3. Respondent agrees to repay all compensation received in connection with the investment advisory business operated by the Respondent since 2005. Respondent agrees to pay such refunds not later than ninety (90) days from the date of this Order.

4. In addition to the return of compensation addressed in Item 3, Respondent agrees to additionally compensate the following investment advisory clients as a result of the inadequate disclosures used in soliciting such clients to retain the investment advisory services of the Respondent;

a) JM & SM in the amount of \$3,400.00.

b) KS in the amount of \$878.43.

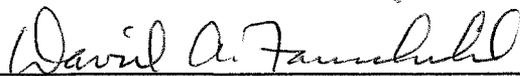
c) PB in the amount of \$1,576.81.

Respondent agrees to make the identified payments not later than ninety (90) days from the date of this Order.

5. Respondent agrees to waive his right to assert any statute of limitation defense for an additional two years from the date of this Order for any other investment advisory client that may assert a private right of action for the activities giving rise to this Order.
6. Respondent agrees to pay a fine to Complainant in the amount of seven thousand dollars (\$7,000.00). Said fine will be waived by Complainant on a dollar-for-dollar basis as Respondent complies with the terms of Items 3 and 4 above. The balance of the fine shall be waived until such time as Respondent applies for any form of registration or license with the Department of Finance.
7. Respondent agrees to comply with the provisions of the Idaho Uniform Securities Act (2004) and agrees to cease to transact any investment advisory business until such time as the Respondent is registered pursuant to the Idaho Uniform Securities Act (2004).
8. Respondent further agree that, should the Director find in the future that Respondent has committed any additional violations of the Idaho Uniform Securities Act (2004), the Complainant may use all allegations contained in this Agreement and Order, and any other allegations concerning violations of the Idaho Uniform Securities Act (2004) by Respondent, in any subsequent proceeding.
9. Whether or not registered or required to be registered with the Department of Finance, Respondent agrees to use only limited powers of attorney, or similar controls, so as to not have the absolute ability to direct the movement of funds away from the clients' or their

securities accounts.

DONE AND DATED at Boise, Idaho, this 27<sup>th</sup> day of June 2007.

  
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DAVID A. FAIRCHILD, DBA  
FAIRCHILD ACCOUNTING & TAX SERVICES

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

IT IS SO ORDERED This 27<sup>th</sup> day of June 2007.

  
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GAVIN M. GEE, Director  
Department of Finance, State of Idaho

