

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

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

vs.

SET ADVISORS, LLC;  
Respondent,

Docket No. 2007-7-39

AGREEMENT AND ORDER

The Director of the Department of Finance has instituted an investigation into the conduct of Respondent. Pursuant to said investigation it appears to the Director that violations of the Idaho Uniform Securities Act (2004) ("IUSA") 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 of this matter. Therefore, the Director deems it appropriate and in the public interest that this Agreement and Order be entered, and the Respondent consents to the entry of the Agreement and Order.

RESPONDENT

1. Respondent has been registered as an investment adviser with the Department of Finance since March 21, 2006.
2. On April 23-26, 2007, the Complainant conducted a routine examination of Respondent's office located at 403 Blaine Street, Caldwell, Idaho. During the examination, Complainant noted compliance deficiencies in the Respondent's establishment, maintenance and enforcement of its written procedures. Books and records, supervision, contract, fee assessment and suitability deficiencies were also noted.

## FINDINGS

### Investment Adviser Fee Assessment- Count I

3. Complainant's examination revealed that Respondent had systemic deficiencies with its client billing system that resulted in fee related errors occurring in client accounts. Fee related errors in client accounts included duplicative fees, fees charged to the wrong client account, fees charged on client deposits in violation of the client contract, and overcharges to clients.
4. Rule 104.35 pursuant to the IUSA provides that it is a fraudulent, dishonest, and unethical practice to misrepresent to any advisory client, or prospective advisory client, the qualification of the investment adviser, the investment adviser representative or any employee of the investment adviser, or to misrepresent the nature of the advisory services being offered or fees to be charged for such service, or to omit to state a material fact necessary to make the statements made regarding qualifications, services, or fees, in light of the circumstances under which they are made, not misleading.
5. Section 30-14-412(d)(13) of the IUSA provides grounds for revocation, suspension, or denial of broker-dealer or investment adviser registration in the event a person has engaged in dishonest and unethical practices in the securities, commodities, investment, franchised, banking, finance or insurance business within the previous ten (10) years.

### Books and Records Requirements- Count II

6. Complainant's examination revealed Respondent failed to maintain complete, written client agreements with respect to the Linsco Private Ledger client accounts that had

transferred to the Respondent. Respondent failed to maintain the client agreements required in 17 CFR 275.204(2)(10) under the Investment Adviser Act of 1940.

7. Respondent was unable to produce a current balance sheet or income statement during the examination. Respondent failed to maintain the financial records required in 17 CFR 275.204-2(6) under the Investment Adviser Act of 1940.
8. Rule 93 pursuant to the IUSA requires every investment adviser registered or required to be registered under the Act to make and keep true, accurate and current books and records in compliance with 17 CFR 275.204-2 under the Investment Advisers Act of 1940, as currently amended.
9. Section 30-14-412(d)(2) of the IUSA provides grounds for revocation, suspension or denial of investment adviser or broker-dealer registration in the event a person willfully violated or willfully failed to comply with this chapter.

Investment Adviser Brochure Requirement- Count III

10. Respondent's advisory brochure was deficient in that it did not contain all of the information required by Part II of the Form ADV. The Firm's brochure did not address client referrals, participation or interest in client transactions, or conditions for managing accounts.
11. Rule 95 pursuant to the IUSA requires an investment adviser to furnish each advisory client and prospective advisory client with a written disclosure statement that may be either a copy of Part II of its Form ADV or a written document containing at least the information then so required by Part II of Form ADV.
12. Section, 30-14-412(d)(2) of the IUSA provides grounds for revocation, suspension or

denial of investment adviser or broker-dealer registration in the event a person willfully violated or willfully failed to comply with this chapter.

Investment Adviser Procedures- Count IV

13. Complainant's examination revealed Respondent's written compliance and procedure manual failed to establish certain of the written procedures and requirements set forth in Rule 105.04 of the IUSA. After the examination, Respondent promptly took steps to ensure that all of the written procedures set forth in Rule 105.04 of the IUSA were included in Respondent's written compliance and procedure manual.
14. Rule 105.04 of the IUSA requires every investment adviser to establish, maintain and enforce written procedures, a copy of which shall be kept in each business office, which shall set forth the procedures adopted to comply with the following duties as applicable to the business of the investment adviser:
  - a. The review and written approval by the designated supervisor of the opening of each new customer account;
  - b. The frequent examination of all customer accounts to detect and prevent irregularities or abuses, including a review for unsuitable recommendations and recommendation of unregistered securities;
  - c. The prompt review and written approval by the designated supervisor of all securities recommendations and all correspondence pertaining to the solicitation or execution of all securities recommendations;
  - d. The review of form, content and filing of all correspondence related in any way to the recommendation of the purchase of any securities;

e. The prompt review and written approval of the handling of all customer complaints.

15. Section, 30-14-412(d)(2) of the IUSA provides grounds for revocation, suspension or denial of investment adviser or broker-dealer registration in the event a person willfully violated or willfully failed to comply with this chapter.

Unsuitable Recommendations- Count V

16. Complainant's examination revealed Respondent failed to document client suitability information needed to establish reasonable grounds for the Respondent's recommendations. Respondent failed to document clients' "specific investment objectives" as set forth in the Capital Appreciation definition used by the Respondent.

17. Rule 104.33 pursuant to the IUSA provides that it is a fraudulent, dishonest, and unethical practice to recommend to a client to whom investment management or consulting services are provided the purchase, sale, or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known by the investment adviser.

18. Section 30-14-412(d)(13) of the IUSA provides grounds for revocation, suspension, or denial of broker-dealer or investment adviser registration in the event a person has engaged in dishonest and unethical practices in the securities, commodities, investment, franchised, banking, finance or insurance business.

### Failure to Supervise - Count VI

19. Complainant's examination revealed the Respondent failed to enforce its procedures and failed to supervise its representatives in documenting client suitability information as required by the Respondent's procedures.
20. Rule 105.01 pursuant to the IUSA requires every broker-dealer, investment adviser, and designated supervisor to exercise diligent supervision over the securities activities of all of his agents, investment adviser representatives and employees.
21. Section 30-14-412(d)(9) of the IUSA provides grounds for revocation, suspension, or denial of broker-dealer or investment adviser registration in the event a person has failed to reasonably supervise an agent, investment adviser representative or other individual, if the agent, investment adviser representative or other individual was subject to the person's supervision and committed a violation of this chapter.

### REMEDIES

Complainant and Respondent hereby agree as follows:

22. Respondent neither admits nor denies the respective violations contained in the Order.
23. Respondent agrees to correct all fee errors referenced in paragraph 3 and refund to clients any fees collected as a result of the fee errors referenced in paragraph 3.
24. Respondent agrees to remit a fine of \$ 3,000 to the Complainant within thirty (30) days of the date of this Agreement and Order. The Respondent's fine shall be used for financial literacy outreach purposes.
25. Respondent agrees to complete all remedies set forth in this Agreement and Order no later than thirty 30 days from the entry of this Agreement and Order.

26. Respondent agrees to comply with all the provision of the IUSA and Rules promulgated thereunder in the future. In the event that Respondent commits future violations of the IUSA or the rules promulgated thereunder or fails to adhere to the terms and conditions of the Agreement and Order, Respondent acknowledges that Complainant can incorporate the allegations giving rise to this Agreement and Order in any future proceeding.

DONE AND DATED at Boise, Idaho, this 1<sup>st</sup> day of July 2008.

SET ADVISORS, LLC

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

Marilyn T. Chastain  
MARILYN T. CHASTAIN

Bureau Chief, Securities Bureau  
Department of Finance, State of Idaho

IT IS SO ORDERED this 28<sup>th</sup> day of July 2008.

Gavin M. GEE  
GAVIN M. GEE

Director, Idaho Department of Finance

