

STATE OF ARKANSAS
SECURITIES DEPARTMENT

IN THE MATTER OF
INVESTORS TRADING CORPORATION, d/b/a
OXFORD FINANCIAL GROUP, JAMES WILLARD
CLARK, and DANIEL FORREST BARRETT

No S-03-026-04-CO01

CONSENT ORDER

This consent order is entered pursuant to the Arkansas Securities Act, codified at Ark. Code Ann. §§ 23-42-101, *et seq.* (Repl. 2000), (the Act), the Rules of the Arkansas Securities Commissioner promulgated under the Act (the Rules) and the Arkansas Administrative Procedures Act, codified at Ark. Code Ann. §§ 25-15-201, *et seq.* (Repl. 2002) in accordance with an agreement by and between the Staff of the Arkansas Securities Department (the Staff) and JAMES WILLARD CLARK (Clark) in full settlement of all claims brought against Clark by the Staff in its complaint, which was filed on 30 January 2004. Clark waives his rights to a formal hearing and, without admitting or denying the allegations of the Staff's complaint, consents to the entry of this order and agrees to abide by its terms.

FINDINGS OF FACT

1. OFG, the fictitious name of Investors Trading Corporation, a Texas corporation formed on 8 January 1996, is a broker dealer whose primary office is now at 5085 Westheimer, Suite 4520, Houston, Texas 77056. Its Central Registration Depository (CRD) number is 40700. During the time in question herein, its primary office was at 15660 North Dallas Parkway, Suite 900, LB6, Dallas, Texas 75249-3349.

2. Clark is presently registered as an agent with Promark Securities, Inc., a broker-dealer owned primarily by Clark. At all times relevant to this complaint, Clark was registered in Arkansas as a general securities principal and president of OFG. His CRD number is 1225726.
3. Clark was the supervisor of Daniel Forrest Barrett (Barrett), a registered agent of OFG working in Nocona, Texas.
4. Barrett was at all times mentioned herein a registered agent of OFG working in Nocona, Texas, but supervised from OFG's office in Dallas, Texas. Clark was Barrett's direct supervisor from January, 2001 until October, 2002. Barrett's CRD number is 1789580.
5. AR is an unnamed 66 year old Arkansas resident who works part time as a secretary at her church and takes care of her husband, who has been totally disabled due to Alzheimer's disease since 1994. Her income was \$12,000 per year from the church job and \$557 per month social security. Her husband's income was \$1,193 per month in social security retirement and disability benefits and \$126 per month pension from a private employer. All told, AR and her disabled husband earned a total of approximately \$34,512 per year at all relevant times. In February, 2001, AR and her husband had a total of \$119,446.40 in savings, which consisted of \$92,643.33 in mutual funds, \$25,000 in a certificate of deposit with their bank and \$1,803.07 in a savings account at their bank.
6. In February, 2001, Barrett, a friend of one of AR's two sons, met AR and recommended that she liquidate all of her and her husband's savings and invest in three annuities. AR took this advice. She filled out a Mutual Fund Transfer Form ordering the mutual funds to be liquidated and transferred to the insurance company from which the annuities would be purchased. Because Barrett was not licensed as an insurance agent in Arkansas, he filled out

this form to reflect that it was completed in Broken Bow, Oklahoma, where he was licensed as an insurance agent. Clark, who was not present for this transaction and who has never met AR, guaranteed AR's signature on the form. Between 20 February 2001 and 8 May 2001, AR invested \$116,186.76— all but \$3,259.64 of AR's and her husband's savings— in the three annuities Barrett recommended.

7. A few days after the last annuity was purchased, Barrett contacted AR and told her about some stock issued by ORG, OFG's parent firm, which was being offered on a limited basis. Barrett stated that he was offering this stock to her because of his friendship with her son. It was a good and safe investment, he said, saying nothing about the possibility that AR could lose her money in this investment. Some time in the future, Barrett said, it would be listed on a stock exchange. In reliance on Barrett's assertions, on 10 May 2001 AR purchased 3,000 shares of common stock in ORG @ \$2.00 per share (1,500 shares for each of her two sons), a total investment of \$6,000. AR was never provided with a prospectus or disclosure statement by Barrett, Clark, ORG or OFG.
8. On or about 5 November 2001, Barrett contacted AR and told her there was more ORG stock available. He said that it would pay dividends and that it was a good and safe investment. Barrett recommended that AR sell one of the annuities she had purchased and use that money to invest in ORG stock. On 26 November 2001, AR sold one of her annuities valued at \$25,959.80 and realized \$24,440.76 in her Sterling Trust IRA, suffering a \$1,519.04 penalty for selling it early. At Barrett's urging, AR purchased 1,000 shares of ORG 9% Cumulative Convertible Preferred Stock @ \$9.00 for a total of \$9,000 on 29 November 2001. Again, AR was never provided a prospectus or disclosure statement.

9. On or about 4 December 2001, Barrett persuaded AR to purchase 20,000 shares of ORG common stock @ \$.50 for a total of \$10,000. No prospectus or disclosure statement was provided to AR.
10. Barrett filled out the following forms and signed them with AR's signature:
 - a. Sterling Trust Company Optional Authorization change Form, dated 27 November 2001;
 - b. Sterling Trust Company Investor Direction and Certification for Privately-Offered Investments, dated 27 November 2001;
 - c. Sterling Trust Company Investor Direction and Certification for Privately-Offered Investments, dated 4 December 2001;
 - d. Oxford New Customer Account Application Client Receipt/Agreement dated 2/9/01, referencing the purchase of an annuity for \$29,000;
 - e. Oxford New Customer Account Application Client Receipt/Agreement dated 2/9/01, referencing the purchase of an annuity for \$25,000;
 - f. Oxford New Customer Account Application Client Receipt/Agreement dated 2/9/01, referencing the purchase of an annuity for \$64,000;
 - g. Oxford Subscription Agreement and Subscriber Questionnaire for the purchase of \$9,000 of ORG preferred stock;
 - h. Sterling Trust Investor Direction and Certification for Privately-Offered Investments dated 11/5//01 for the purchase of \$9,000 of ORG preferred stock;
 - i. Sterling Trust Investor Direction and Certification for Privately-Offered Investments dated 12/4/01 for the purchase of \$10,000 of ORG common stock;
 - j. Sterling Trust Traditional Individual Retirement Custodial Account Adoption Agreement

dated 11/5/01;

- k. Sterling Trust Optional Representative Designation dated 11/5/01; and
- l. Sterling Trust Company Optional Authorization Change Form, AR's purported signature dated 11/20/01.

AR did not authorize Barrett or anyone else to sign her name or to fill these forms out as they were completed.

11. The sales of ORG stock to AR detailed in ¶¶ 7, 8 and 9 ,above, were three separate stock issues. In connection with each of those issues, private placement memoranda (PPMs)were issued. According to these PPMs, there was no market for the shares, which made them “highly illiquid;” the offering price of the stock was arbitrarily set by ORG and bore no relationship to the assets or book value of ORG; and the offering would cause immediate and substantial dilution in the book value of the stock. The PPMs concerned with the sales detailed in ¶¶ 7 and 8, above, limited sales to accredited investors. AR was never given copies of these PPMs or informed of their contents either before, or after she made these purchases.

CONCLUSIONS OF LAW

12. Ark. Code Ann. § 23-42-507(2) (Repl. 2000) provides that it is unlawful for any person in connection with the offer or sale of any security to make any untrue statement of a material fact or to omit a material fact when to omit it would make the positive statement made misleading.
13. Ark. Code Ann. § 23-42-308(g) (Repl. 2000) provides that upon notice and opportunity for a hearing, the Arkansas Securities Commissioner may fine any broker-dealer or agent up to

\$5,000 for each separate violation of the Arkansas Securities Act.

14. Ark. Code Ann. §§ 23-42-308(a)(1) and 23-42-308(a)(2)(J) (Repl. 2000) provides that the Arkansas Securities Commissioner (the Commissioner) may suspend or revoke the registration of any registrant if he finds:
 - 1) the order is in the public interest, and
 - 2) the registrant has failed to reasonably supervise the agents of a broker-dealer.
15. Rule 308.01(B), Rules of the Arkansas Securities Commissioner, includes the subsection entitled Misrepresentations as one of several misleading and unethical practices of a broker-dealer or agent, the commission of which can be considered grounds for denial, suspension or revocation of broker-dealer or agent registration. Misrepresentation is defined in pertinent part as guaranteeing a customer against loss in any securities transaction effected by the broker-dealer or agent, making representations that securities sold will subsequently become listed or traded, making representations that a market will be established or making representations that the securities will be subject to an increase in value.
16. Rule 308.01(V), Rules of the Arkansas Securities Commissioner, includes this subsection, entitled Other Unfair, Misleading and Unethical Practices, as one of several misleading and unethical practices of a broker-dealer or agent, the commission of which can be considered grounds for denial, suspension or revocation of broker-dealer or agent registration. In this last subsection of Rule 308.01, it is stated that the list of unfair, misleading or unethical practices set out in the previous subsections of the rule is not exclusive and includes other such activities, including, *inter alia*, “manipulations and various deceptions.”
17. Rule 308.01(D), Rules of the Arkansas Securities Commissioner, includes this subsection,

entitled Recommendations to Customers, as one of several misleading and unethical practices of a broker-dealer or agent, the commission of which can be considered grounds for denial, suspension or revocation of broker-dealer or agent registration. This practice is defined as recommending to a customer the purchase of any security without reasonable grounds for believing that the recommended security is suitable for the customer based on facts disclosed by the customer concerning the customer's other securities holdings and financial situation and needs or encouraging a customer to invest beyond her immediate financial resources.

OPINION

18. The statements Barrett made to AR set out in ¶¶ 7 and 8 that an investment in ORG stock would be a good and safe investment, that it would be listed on a stock exchange soon and that it would pay dividends were misrepresentations of fact made in connection with the offer or sale of a security in violation of Ark. Code Ann. § 23-42-507(2) (Repl. 2000).
19. Barrett's failure to furnish AR with the three PPMs issued in connection with the three issues of ORG stock detailed in ¶ 11, above, were omissions of material facts that were necessary to make the statements and recommendations made and set out in ¶¶ 7 and 8, above, not misleading in violation of Ark. Code Ann. § 23-42-507(2) (Repl. 2000).
20. Barrett's filling out and signing of AR's signature without AR's permission on various forms needed to purchase shares of ORG stock and for other purposes, as set out in ¶ 10, above, and Clark's guaranteeing of AR's signature when he has never met AR and did not witness the signature as set out in ¶ 6, above, were manipulations and deceptions in violation of Rule 308.01(V), Rules of the Arkansas Securities Commissioner.

21. Barrett's recommendations to AR to purchase ORG stock, as set forth in ¶¶7 and 8, above, were wholly unsuitable in light of AR's financial status and needs, as set forth in ¶ 5, above, and the attributes of this stock, which is set forth in the three PPM's discussed in ¶ 11, above, and constituted a violation of Rule 308.01(D), Rules of the Arkansas Securities Commissioner.
22. In all of these transactions and in Barrett's professional relationship with AR in general, Clark failed to reasonably supervise Barrett, a violation of Ark. Code Ann. §§ 23-42-308(a)(2)(J) (Repl. 2000).

ORDER

IT IS THEREFORE ORDERED, pursuant to the agreement of the Staff and Clark, that

- A. Clark pay restitution to AR in the amount of \$10,682.34 to AR as follows: Restitution due AR as of 8 June 2004, the date of agreement between the Staff and Clark, in total would amount to \$32,047.01, which represents \$26,019.04 plus 6 % interest per annum from the dates AR purchased ORG stock and the date AR realized a penalty of \$1,519.04 for selling an annuity in order to invest in ORG stock, all as detailed in ¶¶ 6, 7 and 8. Clark agrees to pay one-third of that amount to AR as follows: a down payment of \$2,000 upon the execution of this consent order on or before 15 June 2004 in bankable funds delivered to the Staff, and \$725.00 per month, payable on or before the fifteenth day of each month, beginning on 15 July 2004, and delivered to AR by the fifteenth of each month for the next twelve months, the last payment being in the amount of \$707.34 and which will be delivered to AR on or before 15 June 2005;
- B. Clark pay a fine of \$5,000 to the Arkansas Securities Department, payable within three

months after all restitution is made, i.e, on or after 15 June 2005, but no later than 15 September 2005;

- C. Clark withdraw his registration and the registration of any broker-dealer of which he is a control person in Arkansas and not re-apply for registration for a period of six (6) months from the date of this order, i.e., withdraw registrations on 15 June 2004 and not re-apply for registration until after 15 December 2004; and
- D. Should AR notify the Staff that a monthly payment was not received by the fifteenth day of any month, a hearing shall be held before the Commissioner within fifteen days solely on the question of whether the payment had been made and, if it is determined that the payment was not made by the date it was due, Clark agrees to immediate revocation of his registration and the registration of any broker-dealer of which he might be a control person or owner and additional fines of \$10,000.

WITNESS MY HAND AND SEAL this 15th day of June, 2004.



Michael B. Johnson
SECURITIES COMMISSIONER

STATE OF ARKANSAS
SECURITIES DEPARTMENT

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INVESTORS TRADING CORPORATION, d/b/a
OXFORD FINANCIAL GROUP, JAMES WILLARD
CLARK, and DANIEL FORREST BARRETT No S-03-026-04-AC01

CONSENT TO ENTRY OF CONSENT ORDER
BY JAMES WILLARD CLARK

James Willard Clark (Clark), hereby acknowledges that he has been served with a copy of this Consent Order reflecting his settlement of the matters raised in the complaint filed in this matter, has read the Consent Order, is aware of his rights to a hearing and appeal and has waived those rights.

Clark admits the jurisdiction of the Arkansas Securities Commissioner, but neither admits, nor denies the Findings of Fact and Conclusions of Law contained in the Consent Order and consents to the entry of the Consent Order by the Arkansas Securities Commissioner as settlement of the issues contained in the Consent Order.


James Willard Clark

6-11-2004
Date