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Attorney for Securities Department

BEFORE THE STATE AUDITOR,
EX-OFFICIO COMMISSIONER OF SECURITIES FOR MONTANA

IN THE MATTER OF:)	
)	CASE NO.: C-08-07-06-235
JAMES A. ANDREWS, JR., individually,)	
40692 N. Ancona Court)	NOTICE OF PROPOSED AGENCY
Queen Creek, AZ 85242;)	DISCIPLINARY ACTION AND
and)	OPPORTUNITY FOR HEARING
INVESTX, Inc., an Arizona corporation,)	
40692 N. Ancona Court)	
Queen Creek, AZ 85242)	
)	
Respondents.)	

Staff of the Securities Department of the office of the State Auditor as Commissioner of Securities of the state of Montana (Department), pursuant to the authority of the Securities Act of Montana, § 30-10-101, *et seq.*, Montana Code Annotated (2005), proposes to the Commissioner that he take specific action against JAMES A. ANDREWS JR. (ANDREWS) and INVESTX, INC. (INVESTX) for violations of the Montana Securities Act. The Commissioner has authority to take such action under the provisions of §§ 30-10-102, 30-10-107, 30-10-201, and 30-10-301, MCA.

In particular, the Department's staff is recommending specific action against Andrews and InvestX including denial of any future application for registration as a securities salesperson and investment advisor representative by Andrews, imposition of appropriate restitution amounts, imposition of appropriate fines pursuant to the provisions of the Montana Securities Act, and an immediate cease and desist order, as well as any equitable relief deemed appropriate.

Service of process is made pursuant to § 30-10-107 (8), MCA.

REASONS FOR ACTION

There is reason to believe that the following facts, if true, justify and support specific disciplinary action.

ALLEGATIONS

1. Andrews is an Arizona resident. Andrews is not now nor has he ever been registered as a securities salesperson in Montana as defined at § 30-10-103 (20), MCA. Additionally, Andrews is not now nor has he ever been registered in Montana as an investment adviser or investment adviser representative as defined at § 30-10-103 (11), MCA and § 30-10-103 (12), MCA.
2. InvestX is an Arizona corporation, incorporated on May 4, 2006. Andrews is listed as the President and Agent for InvestX. InvestX is not now nor has it ever been registered as an investment adviser as defined at § 30-10-103 (11), MCA, or as a broker-dealer as defined at § 30-10-103 (1), MCA.
3. On or about August 2006 the Department received a complaint from a Montana citizen identified herein as "Complainant." Complainant indicated a loss to Complainant's E*Trade account of over \$280,000 incurred by trading Andrews effected in the account.

4. The Department conducted an investigation, including review of documents and interviews with Complainant, Andrews and others.

5. The relevant time period for this matter is January 2006 through September 2006.

6. The Department's investigation is the basis of the following allegations of fact.

7. In early 2006 Andrews met Complainant at a business meeting. Andrews and Complainant became friends.

8. During the relevant time period Andrews informed Complainant that Andrews had an investment business named InvestX. Andrews told Complainant that InvestX offered a wide variety of investment services. In several emails sent by Andrews, he identified himself as an "InvestX Investment Manager." Further, Andrews used an investx.net email address for communications with Complainant.

9. During the relevant time period, the company had a website at www.investx.net. On its website, InvestX stated "InvestX is an online learning center focused on empowering men and women to learn how to invest for themselves by providing the best online investment experience possible." The company claimed it provided various services to individuals and corporate clients worldwide.

10. On or about March 2006 Andrews told Complainant that Andrews was a sophisticated investor and could make Complainant money in the stock market. Andrews convinced Complainant to open an account at E*Trade.

11. Through email communication Andrews provided Complainant with information and instructions on opening an E*Trade account. Attached to this email communication were two documents: E*Trade's Online Account Application and E*Trade's Non-IRA Options Account Upgrade Form.

12. Andrews instructed Complainant to choose the account option of a “margin account with options trading” on the E*Trade Online Account Application. Further, Andrews instructed Complainant to list the investment knowledge and experience as “excellent” and to list the options knowledge as “excellent”. Andrews further instructed Complainant to create a user name and password for the account, and to “send [Andrews] this information.”

13. Andrews instructed Complainant to complete the E*Trade Non-IRA Options Account Upgrade Form to match an already completed form done by Andrews. This completed form instructed Complainant to indicate the following options trading experience: covered calls, covered puts, purchases, spreads, uncovered calls, and uncovered puts. Further, Andrews instructed Complainant to list investment experience in stocks, bonds, futures, and options as seven years, and to mark the options investment knowledge as “excellent.” After completion of the form, Andrews instructed Complainant to fax the form to E*Trade.

14. In the same email to the Complainant wherein Andrews instructed Complainant regarding the completion of the forms, Andrews indicated he would be placing trades in the account without Complainant’s prior knowledge. Further, Andrews indicated he would not be liable for any losses in the account, and that there should not be any presumed or expected rate of return on the account.

15. According to documents provided by E*Trade, Complainant’s account was opened on March 30, 2006.

16. On or about March 31, 2006, Complainant emailed Andrews to confirm that Complainant would be the only person allowed to place money into Complainant’s new E*Trade account. Andrews replied “to confirm, you are the only one authorized to deposit and withdraw money into and out of your brokerage account.”

17. On or about April 3, 2006, \$5,000 was transferred from Complainant's personal checking account and deposited into the newly created E*Trade account.

18. On or about April 19, 2006, Andrews emailed Complainant and informed Complainant that Andrews had completed his first trade in Complainant's account.

19. The Department's analysis indicates the first trade in this account was the purchase of an options call for Mid America Apartment Communities, Inc. on or about April 12; the option was sold on or about April 19, 2006 for a gain. As a result of this gain, Complainant became more comfortable with Andrews and deposited an additional \$5,000 into the E*Trade account on or about April 24, 2006.

20. On or about April 25, 2006, Andrews emailed Complainant to inform Complainant of a margin call in the account. Further, Andrews states that "we have an unbelievable opportunity with the stock we are in." Andrews told Complainant that Complainant had a couple of options: Complainant could have Andrews pay the \$1,250 to meet the margin call, or Complainant could "choose to take advantage" of the great investment opportunity and invest more money immediately. Complainant chose to invest more money, and deposited an additional \$10,000 on or about April 26 into the E*Trade account. This was Complainant's last deposit into the E*Trade account. Complainant's personal investment at E*Trade totaled \$20,000.

21. On or about June 16, 2006, Andrews changed the contact email for Complainant's E*Trade account. All E*Trade email notices after this date were sent to this new email address owned and controlled by Andrews.

22. On or about June 29, 2006, there was a deposit of \$78,000 into Complainant's E*Trade account. This deposit was made from a checking account owned or controlled by

Andrews. These funds were used to purchase 1,956 various call and put options. On July 5, 2006 this deposit was returned for non-sufficient funds. Complainant was not aware of this activity because the email alert for this activity was sent to Andrews' email address.

23. On or about July 12, 2006, there was a second deposit into Complainant's E*Trade account of \$98,000. This deposit was made from a checking account owned or controlled by Andrews. These funds were used to purchase 3,500 various call options. This deposit was returned due to non-sufficient funds on or about July 17, 2006. Complainant was not aware of this activity because the E*Trade email alert for this activity was sent to Andrews' email address.

24. On or about July 13, 2006, there was a third deposit into Complainant's E*Trade account of \$98,000. This deposit was made from a checking account owned or controlled by Andrews. These funds were used to purchase 5,115 various call options. This deposit was returned due to insufficient funds on or about July 18, 2006. Complainant was not aware of this activity because the E*Trade email alert for this activity was sent Andrews' email address.

25. On or about July 14, 2006, there was fourth deposit into Complainant's E*Trade account of \$98,000. This deposit was made from a checking account owned or controlled by Andrews. These funds were used to cover the losses that had occurred in Complainant's account. This deposit was also returned due to insufficient funds on or about July 19, 2006. Complainant was not aware of this activity because the E*Trade email alert for this activity was sent to Andrews email address.

26. On or about July 14, 2006, E*Trade received an email requesting an update to Complainant's mail address and phone number. The home contact phone number and business contact phone number were Arizona numbers. The mailing address remained the same.

27. On or about July 17, 2006, there was a fifth deposit into Complainant's E*Trade account of \$98,000. This deposit was made from a checking account owned or controlled by Andrews. These funds were used to cover the losses that had occurred in the account. This deposit was returned due to insufficient funds on or about July 20, 2006. Complainant was not aware of this activity because the E*Trade email alert for this activity was sent to Andrews' email address.

28. On or about July 13, 2006, Complainant sent an email to Andrews saying, among other things, "Right now it says I have a balance of \$180K, but I don't think that can be true because it is way too high." Andrews responded to Complainant's email on or about July 13, 2006, saying "We've been doing very well lately." Further, Andrews answered Complainant's questions of the high account balance by stating "You are seeing high fluctuations in the account value because I am depositing money out of my account to cover the margin calls for the trading we are doing. My deposits will be automatically be (sic) refunded by E*Trade 7 days after I stop trading on your account." Andrews stated that he would stop trading on the account on July 21, 2006, and that by July 30, 2006, Complainant could log-in to the E*Trade account to see the actual balance.

29. On or about July 14, 2006, Andrews emailed Complainant and stated "this is definitely a once in a year (actually once in a 5 year) opportunity. I have never seen the stock market set up this well." Andrews then solicited Complainant to deposit additional funds into the E*Trade account by stating "Whatever amount you deposit will be very liquid to where you will be able to withdraw the full amount plus any profits before the end of the month" Complainant did not deposit any additional funds.

30. In a letter dated on or about July 26, 2006, E*Trade notified Complainant that the E*Trade account had a negative balance of (\$278,111.11). E*Trade further stated that the negative account balance was due to returned electronic deposits and that the full \$278,111.11 was due upon receipt of the letter.

31. Between on or about April 12, 2006, to on or about July 22, 2006, there were approximately 109 trades executed in this account, all of which were options trades. Account log-in information indicates that these trades were placed by Andrews by tracking the user's IP address. Approximately 63 of these trades occurred in July, when the account had an artificial balance due to Andrews' non-sufficient funds deposits. The trading loss in this account was approximately (\$298,229). Approximately \$294,624 in losses occurred as a result of options purchases on or after about June 29, 2006, the date of the first deposit of sham funds placed by Andrews into Complainant's account.

32. Although Complainant only deposited \$20,000 into the E*Trade account, extreme losses occurred as a result of the artificial balance created by Andrews' sham deposits using non-sufficient fund checks. During the "float time", the time between when funds were deposited into Complainant's account and the time the deposits were rejected, Andrews executed very large and extremely speculative options trades.

33. The trading in Complainant's account was of an extremely speculative nature, large option purchases just before their expiration. For example, Andrews placed several orders in the futures market for Diamonds Trust. The Diamonds Trust is an exchange traded fund that represents the 30 stocks in the Dow Jones Industrial Average. Between July 11 and July 12, 2006, Andrews purchased 3,000 options with a strike price of \$112 totaling \$102,279.97. These options were purchased approximately ten days before they expired. The Diamonds Trust never

reached the strike price of \$112 before the expiration date of July 22, 2006, and, as a result, the options expired as worthless and the loss in this investment was the entire investment of \$102,279.97.

Based on the foregoing allegations, the Department submits the following:

CONCLUSIONS OF LAW

1. The State Auditor is the Commissioner of Securities (Commissioner) pursuant to § 30-10-107, MCA
2. The Commissioner has jurisdiction over this matter pursuant to §§ 30-10-102, 30-10-107, 30-10-201, 30-10-301, 30-10-304, 30-10-305, 30-10-307, MCA.
3. Andrews violated §30-10-201(3), MCA, when he offered investment advisory services when he was not registered to do so in the state of Montana.
4. Andrews violated § 30-10-201(1), MCA, when he offered securities salesperson services when he was not registered to do so in the state of Montana.
5. InvestX violated § 30-10-201(1) and (3), MCA, when the company offered investment advisory services and broker-dealer services when it was not registered to do so in the state of Montana.
6. Andrews violated § 30-10-301(1)(b), MCA, when he failed to disclose to Complainant that he was not registered to provide investment advisory business in the state of Montana.
7. Andrews violated § 30-10-301(1)(b), MCA, when he failed to disclose to Complainant that he was not registered to provide securities salesperson business in the state of Montana.

8. Andrews violated § 30-10-301(1)(b), MCA, when he failed to disclose that he was depositing insufficient funds checks into Complainant's account and using these insufficient funds to trade highly speculative securities.

9. Andrews violated § 30-10-301(1)(c), MCA, when he engaged in an act, practice and course of business that acted as a fraud when on five occasions he deposited bad funds into Complainant's account, creating an artificially high account balance that he used to execute highly speculative trading, resulting in Complainant losing more than Complainant's entire personal investment after the sham deposits were returned.

10. Andrews violated § 30-10-201 (13) (g), MCA, and ARM § 6.10.127 (1) (b), when he exercised discretionary power in Complainant's account without obtaining written permission.

11. Andrews violated § 30-10-201 (13) (g), MCA, and ARM § 6.10.127 (1) (g), when he loaned money to Complainant by making deposits into the Complainant's accounts. These deposits were later returned due to insufficient funds.

12. Andrews violated § 30-10-201 (13) (g), MCA, and ARM § 6.10.127 (1) (h), when he misrepresented his qualifications as an investment adviser and investment adviser representative.

13. InvestX violated § 30-10-201 (13) (g), MCA, and ARM § 6.10.127 (1) (h), when the company misrepresented its qualifications as an investment adviser.

14. Andrews violated § 30-10-201 (13) (g), MCA, and ARM § 6.10.126 (2) (f), when he exercised discretionary power in Complainant's account without obtaining written permission.

15. Andrews violated § 30-10-201 (13) (g), MCA, and ARM § 6.10.127 (2) (a), when he loaned money to Complainant by making deposits into the Complainant's accounts. These deposits were later returned due to insufficient funds.

16. Andrews violated § 30-10-201 (13) (g), MCA, and ARM § 6.10.126 (2) (c), when he established and maintained the E*Trade account with fictitious information in order to execute transactions which would otherwise be prohibited.

17. Andrews violated § 30-10-201 (13) (g), MCA, and ARM § 6.10.126 (2) (g), when he shared in other deceitful conduct, including non-disclosure, incomplete disclosure, misstatements of material facts and manipulative and deceptive practices.

18. InvestX violated § 30-10-321, MCA, by knowingly providing substantial assistance to Andrews when Andrews committed securities fraud.

RELIEF SOUGHT

1. An Order for Andrews to pay restitution to Complainant and/or E*Trade, pursuant to § 30-10-309, MCA;

2. An Order for Andrews to pay fines not to exceed \$5,000 for each identifiable violation of §§ 30-10-301 and 201, MCA, ARM §§ 6.10.126 and 127, pursuant to § 30-10-305(3), MCA;

3. An Order for Andrews to pay fines not to exceed \$5,000 for violations of § 30-10-201 (13) (g), MCA, and ARM §§ 6.10.126 and 127, pursuant to §§ 30-10-201 (18) and 30-10-305(3), MCA;

4. An Order for InvestX to pay restitution to Complainant and/or E*Trade pursuant to § 30-10-309, MCA.

5. An Order for InvestX to pay fines not to exceed \$5,000 for each violation of § 30-10-301, MCA, based on its violation of § 30-10-321, MCA, pursuant to § 30-10-305, MCA.

6. An Order for InvestX to pay fines not to exceed \$5,000 for each identifiable violation of § 30-10-201, MCA, pursuant to § 30-10-305, MCA.

7. An Order for InvestX to pay a fine of \$5,000 of § 30-10-201, MCA pursuant to §§ 30-10-201 and 305, MCA.

8. An Order permanently banning Andrews from applying for registration as a securities salesperson or as an investment advisor or investment advisor representative.

9. An Order permanently banning InvestX from applying for registration as a securities broker-dealer firm or an investment advisor.

10. An Order for Andrews and InvestX to immediately cease and desist any activities in which he has engaged in violation of Montana's Securities Act.

11. Any other such relief allowed by law or required by justice.

PUBLIC INTEREST

For any and all of the reasons set forth above, it is in the public interest and will protect Montana investors to:

1. Issue a cease and desist order barring Andrews and InvestX from further violations of the Act;

2. Order Andrews and InvestX to pay administrative fines in an amount and upon such terms and conditions as supported by the evidence and determined at hearing of this matter;

3. Order Andrews and InvestX to pay restitution to Complainant and/or E*Trade in an amount and upon such terms and conditions, as supported by the evidence and determined at hearing of this matter; and

4. Take other such actions which may be in the public interest and necessary and appropriate for the protection of Montana investors.

STATEMENT OF RIGHTS

You are entitled to a hearing to respond to this notice, present evidence and arguments on all issues involved in this case. You have a right to be represented by an attorney at any and all stages of this proceeding. You may demand a formal hearing before a hearing examiner appointed by the Commissioner pursuant to the Montana Administrative Procedure Act, §§ 2-4-601, MCA, *et seq.*, including § 2-4-631, MCA. If you demand a hearing, you will be given notice of the time, place and the nature of the hearing.

If you want to contest the proposed action under the jurisdiction of the Commissioner, you must advise the Commissioner within 15 days of the date you receive this notice. You must advise the Commissioner of your intent to contest the proposed action by writing to Roberta Cross Guns, Special Assistant Attorney General, State Auditor's Office, 840 Helena Avenue, Helena, Montana 59601. Your letter must clearly indicate whether you demand a hearing, or whether you waive formal proceedings and, if so, what informal proceedings you prefer for disposition of this case. Pursuant to § 2-4-603(2), MCA, you may not request to proceed informally if the action could result in suspension, revocation or any other adverse action against a professional license.

Should you request a hearing, you have the right to be accompanied, represented, and advised by counsel. If the counsel you choose has not been admitted to practice law in the state of Montana, he or she must comply with the requirements of *Application of American Smelting and Refining Co.*, (1973), 164 Mont. 139, 520 P.2d 103.

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CONTACT WITH SECURITIES COMMISSIONER'S OFFICE

If you have questions or wish to discuss this matter, please contact Roberta Cross Guns, legal counsel for the State Auditor, at 840 Helena Avenue, Helena, MT, 59601, (406)444-2040 or, within Montana, (800)332-6148. If an attorney represents you, please make any contacts with this office through your attorney.

POSSIBILITY OF DEFAULT

Failure by Respondent to give notice or to advise of Respondent's demand for a hearing or informal procedure within 15 days will result in the entry of a default order imposing the disciplinary sanctions against Respondent, without further notice to Respondent, pursuant to 6.2.101, A.R.M. and the Attorney General's Model Rule 10, 1.3.214.

DATED this 25th day of April 2007.

JOHN MORRISON
State Auditor and ex-officio
Commissioner of Securities

By: Roberta Cross Guns
Roberta Cross Guns
Special Assistant Attorney General

CERTIFICATE OF SERVICE

This is to certify that on this ____ day of April, 2007, a copy of the foregoing was served upon the following persons by depositing a copy of the action in the U.S. Mail, certified, return receipt requested, postage prepaid, addressed to:

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Brooklyn, NY 11238

InvestX, Inc.
40692 N. Ancona Court
Queen Creek, AZ 85242

State Auditor's Office