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Attorney for Securities Department

BEFORE THE STATE AUDITOR;  
EX-OFFICIO COMMISSIONER OF SECURITIES AND INSURANCE  
HELENA, MONTANA

IN THE MATTER OF:	)	Case No.: I 11-28-06-238
	)	
TROY ALLEN BRUCE, individually and in his	)	NOTICE OF PROPOSED AGENCY
capacity as a registered securities salesperson and	)	DISCIPLINARY ACTION and
investment advisor representative,	)	OPPORTUNITY FOR HEARING
Respondent.	)	
	)	
	)	

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Staff of the Securities Department (Department) of the office of the State Auditor as Commissioner of Securities of the state of Montana (Commissioner), pursuant to the authority of the Securities Act of Montana, §§30-10-101, *et seq.*, MCA (2005), is proposing to the Commissioner that he take specific action against TROY ALLEN BRUCE, individually and in his capacity as a registered securities salesperson 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, 30-10-301, 30-10-304, 30-10-305, 30-10-309, and 30-10-321, MCA (2005).

In particular, the Department's staff is recommending specific action against Troy Allen Bruce including imposition of appropriate fines, imposition of appropriate restitution, with interest, and denial, suspension or revocation of his registration as a securities salesperson and as an investment advisor representative, pursuant to the provisions of the Montana Securities Act.

Service of process is pursuant to Section 30-10-107 (8), (2005) MCA.

### **REASONS FOR ACTION**

There is probable cause to believe that the following facts, if true, justify and support such specific action.

### **ALLEGATIONS**

1. The time period relevant to this action is November 22, 2001 through November 21, 2006.

2. Troy Allen Bruce (Bruce) was registered as a securities salesperson for UBS Financial Services (formerly known as PaineWebber) in Montana beginning on March 3, 1999. Bruce became registered as an investment advisor representative in Montana for UBS Financial Services (UBS) beginning on May 27, 1999. During this period Bruce worked for UBS in its Billings, Montana branch office. On or about November 22, 2006, Bruce resigned his employment with UBS, terminating his registration as a securities salesperson and an investment advisor representative in Montana.

3. During the entire period of his employment with UBS, Bruce worked as a member of the Cladis Investment Group, beginning as an intern and eventually becoming a financial advisor and partner.

4. The Department conducted an investigation into Bruce's activities after the receipt of information that indicates Bruce may have engaged in the unethical practices of

lending money to a customer, failing to report a customer complaint and for knowingly providing substantial assistance to the previously alleged Patrick Davison (Davison) Ponzi scheme. Additionally, the information indicated Bruce may have transacted unauthorized trades in UBS customer accounts.

5. The Department's investigation revealed that on or about May 27, 2004 Bruce loaned Davison \$42,000. Bruce told the Department that Davison approached him and stated Davison desperately needed money. Bruce indicated that although Bruce did not actually have \$42,000 in his account, he wrote Davison a \$42,000 check. Davison promised that he would write Bruce a check in the amount of \$43,000 a few days following receipt of Bruce's check, thereby paying Bruce \$1,000 for Bruce's "trouble", and that the \$43,000 check would "cover" the insufficient funds check for \$42,000 before it reached Bruce's bank.

6. On or about June 1, 2004, Davison paid Bruce \$43,000 from Davison's First Security Bank account in Fort Benton. The money Davison used to cover the \$43,000 check to Bruce was transferred to Davison's First Security Bank account from a bank account that was owned or controlled by a victim identified in Case Number I-08-18-06-236.

7. On or about December 22, 2005 Bruce loaned Davison \$8,000. Bruce told the Department that Davison had requested \$100,000 but Bruce was unwilling to lend him this amount of money. Bruce subsequently wrote Davison an insufficient funds check for \$8,000 under a similar agreement whereby Davison would get funds into Bruce's account before Bruce's check reached the bank. In this case, Bruce's \$8,000 check was returned NSF. Davison never repaid Bruce the \$8,000 Bruce loaned him.

8. Bruce provided funds to Davison to assist Davison in his promotion of the previously alleged Ponzi scheme through a check-kiting (also called "paper hanging") scheme.<sup>1</sup> Additionally, during the time period Bruce was lending Davison money, Davison was a UBS customer and Bruce was a salesperson for Davison's accounts.

9. In or near early 2002 Bruce failed to enter a stop loss order for his customer, identified by the Department herein as Customer A. The stop loss order was for Customer A's holdings in Micromuse, Inc. (symbol MUSE). Bruce's failure to enter the stop loss order resulted in Customer A suffering a loss from the position in the security in excess of \$50,000.00. Bruce did not immediately inform Customer A of this error. Bruce informed Customer A of the error several weeks after the fact of the error. Customer A indicated unhappiness with the situation to Bruce. Customer A did not report the error to UBS.

10. Instead of properly reporting the error, Bruce proposed to Customer A that Bruce would repay the loss over a period of time. Bruce indicated to Customer A that Bruce would lose his job if Customer A reported the error to UBS.

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<sup>1</sup> Check-kiting is a fraud that involves drawing out money from one bank account that does not have sufficient funds to cover a check written on another insufficiently funded account. Check kitters typically write a check on one account, then deposit into a second bank account (this type of check is referred to as a *kite*). Just before the check is submitted to the first bank for payment, the kiter then deposits a check written off the second bank account, which also has insufficient funds. This is possible due to the delay created by the collection of funds by one bank from the other (known as *float time*), which creates an artificial balance. In accounts with interest that compounds frequently, this can provide a significant amount of profit for interest over time on top of other funds.

Float occurs when there is a delay in the clearing of payments between banks. It is most obvious in the time delay between when you write a check and when the funds to cover that check are deducted from your account.

Once the holder of your check deposits it in his account, his bank immediately credits (increases) his account, assuming that your bank will ultimately send the funds to cover the check. Until your bank actually sends the funds, both you and the holder of the check have the "same" money in both of your accounts.

11. Davison wrote a \$10,000 check to Bruce on November 17, 2003, for the alleged purpose of assisting Bruce with repayment to Customer A. The \$10,000 check was funded by donations from Bruce's co-workers. Bruce only remitted \$5,000 of this amount to Customer A. Bruce has made no further payments to Customer A for the loss resulting from Bruce's error. Bruce did not report the incident to the UBS branch manager and Bruce's disclosure on the CRD does not reflect this matter.

12. The Department learned from a former sales assistant to the Cladis Investment Group, that after Davison was no longer employed by UBS he would often contact the firm to enter trades on behalf of former clients as well as other investment-related matters. The Department learned that Bruce would execute the trades Davison requested. The Department also learned that often Davison's instructions were for trades in customer accounts for which Davison did not have proper power-of-attorney to transact business. Bruce would execute the requested trade and then create power-of-attorney forms for Davison. These trades were not properly authorized prior to execution.

#### CONCLUSIONS OF LAW

1. The Montana State Auditor is the Commissioner of Securities (Commissioner) pursuant to §§ 30-10-107, 2-15-1901, 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, 30-10-309, and 30-10-321, MCA.

3. The administration of the Securities Act of Montana, § 30-10-101, *et seq.*, MCA, and is under the supervision and control of the Securities Commissioner, pursuant to § 30-10-107, MCA.

4. The Commissioner shall administer the Securities Department to protect investors, pursuant to § 30-10-102, MCA.

5. Bruce was a Montana registered salesperson as defined at § 30-10-103(20), MCA, and was so registered pursuant to § 30-10-201, MCA, during the relevant time period until November 22, 2006.

6. Bruce was a Montana registered investment advisor representative as defined at § 30-10-103(12)(a), MCA, and was so registered pursuant to § 30-10-201, MCA, during the relevant time period until November 22, 2006.

7. Bruce engaged in dishonest and unethical practices by lending money to his client, Davison when Bruce wrote checks from Bruce's personal funds to Davison on two occasions, in violation of §30-10-201 (13) (g), MCA and ARM §6.10.126 (2) (a).

8. Bruce engaged in dishonest and unethical practices by executing transactions on behalf of a customer without authorization when he accepted instructions from Davison on behalf of clients Davison did not have authority to transact business for in the form of a properly executed power-of-attorney, in violation of §30-10-201 (13) (g), MCA and ARM §6.10.126 (2) (f).

9. Bruce engaged in dishonest and unethical practices by failing to report the complaint and error involving Customer A, in violation of §30-10-201 (13) (g), MCA and ARM §6.10.126 (2) (g).

10. Bruce knowingly provided substantial assistance to Davison's fraudulent activities in Davison's promotion of a Ponzi scheme when Bruce kited checks to Davison and then accepted remuneration for the insufficient checks, in violation of §30-10-321, MCA.

**RELIEF SOUGHT**

1. Order Bruce to pay restitution to Customer A in this case, including 10% interest from the date of the wrongdoing, pursuant to § 30-10-309, MCA;
2. Order Bruce to pay restitution to Customers 1-9 identified in Case Number I-08-18-06-236, including 10% interest from the date of the wrongdoing, pursuant to §30-10-309, MCA;
3. Order Bruce to pay fines not to exceed \$5,000 for each identifiable violation of § 30-10-321, MCA, pursuant to § 30-10-305(3), MCA;
4. Order Bruce to pay fines not to exceed \$5,000 for each identifiable violation of § 30-10-201 (13) (g), MCA, and ARM § 6.10.126, pursuant to §§ 30-10-201 (18) and 30-10-305(3), MCA;
5. Order Bruce to pay a fine not to exceed \$5,000 for violating § 30-10-201, MCA, pursuant to § 30-10-201 (18), MCA; and
7. 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 Bruce from further violations of the Act;
2. Order Bruce 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 Bruce to pay restitution to Complainants in an amount and upon such terms and conditions, including the statutory 10% per annum interest on the losses Complainants incurred, as supported by the evidence and determined at hearing of this matter; and

4. Take such other 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, sections 2-4-601, MCA, and following, including Section 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 fifteen (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 Section 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 on the matters raised in this Notice, a hearing must be held within 45 days of the request, unless postponed by mutual consent of the parties, pursuant to § 33-1-701 (2), MCA.

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.

**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 fifteen (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, Administrative Rules of Montana and the Attorney General's Model Rule 10, 1.3.214.

DATED this 8<sup>th</sup> day of December, 2006.

JOHN MORRISON  
State Auditor and ex-officio  
Commissioner of Securities

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

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Notice of Proposed Agency Disciplinary Action was sent by US postal service, first-class postage paid, to the following:

Mr. Troy Bruce  
105 Merion Road  
Billings, MT 59101

Roberta Cross Guns