

BRETT OLIN

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Attorney for the CSI

**BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
MONTANA STATE AUDITOR**

IN THE MATTER OF:

WOODSTOCK FINANCIAL GROUP INC., a Montana licensed broker-dealer; ANTHONY D. BRANCA, individually and in his capacity as Chief Compliance Officer of Woodstock Financial Group Inc.; JOSEPH L. DERRICO (a/k/a Joseph Edwards), dually and in his capacity as Woodstock Financial Group Inc. employee; and RYAN MURNANE, individually and in his capacity as a Woodstock Financial Group Inc. employee.

Respondents.

CASE NO. SEC-2017-80

**NOTICE OF PROPOSED
AGENCY ACTION AND
OPPORTUNITY FOR HEARING**

Staff of the Office of the Commissioner of Securities and Insurance, Montana State Auditor (CSI), pursuant to the authority of the Securities Act of Montana, Mont. Code Ann. § 30-10-101 et seq. (Act), is proposing to the Commissioner of Securities and Insurance, Montana State Auditor (Commissioner), that he take specific action against Woodstock Financial Group Inc., Anthony D. Branca, Joseph L. Derrico (a/k/a Joseph Edwards), and Ryan Murnane (collectively Respondents) for violations of the 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, and 30-10-309. Service of process is pursuant to § 30-10-107(8).

In particular, the CSI recommends specific action against Respondents including, but not limited to, the imposition of appropriate fines, restitution, and licensure suspension or revocation pursuant to the provisions of the Act.

REASONS FOR ACTION

The following facts, if true, justify and support such specific action.

ALLEGATIONS OF FACT

1. Respondent Woodstock Financial Group Inc. (Woodstock), is a CSI registered broker-dealer, Central Registration Depository (CRD) #38095.

2. Respondent Anthony D. Branca (Branca) is a CSI registered salesperson and Chief Compliance Officer at Woodstock during the relevant time period, CRD #0078639.

3. Respondent Joseph L. Derrico (a/k/a Joseph Edwards) (Derrico) is a CSI registered broker/dealer representative, CRD #4852293. He was employed as a Woodstock salesperson during the relevant time period.

4. Respondent Ryan Murnane (Murnane) applied to become a CSI registered broker/dealer representative, but Woodstock withdrew his application at the CSI's request. This request was made because Murnane was the subject of multiple customer complaints, liens, and judgments against him. His CRD # is 4617772.

5. On or about January 11, 2017, A.S., a Montana resident, submitted a written complaint to the CSI. In that complaint, A.S. alleged that his account, valued in January 2016 at \$70,000.00, was now worth \$7,000.00. He also stated Murnane was the salesperson on the account.

6. As a result of this complaint, the CSI requested information from Woodstock. Included in that request were:

a) copies of the new account form(s) and amendments to these forms for any account owned or controlled by A.S. for the period January 1, 2012, to the present;

- b) copies of all monthly statements generated for the above account(s) for the same period;
- c) copies of all confirmations generated for every transaction for the above account(s) for the same period;
- d) copies of all communications, including e-mail, directed to and received from A.S.;
- e) copies of all desk notes, journals, or other form of memorialization used by Murnane in regards to communications with A.S.;
- f) copies of the new account forms and amendments, as well as year-end statements, for all other Montana clients of Woodstock during the period January 1, 2012, to the present;
- g) a copy of Woodstock's supervisory policies and procedures manual;
- h) the name and CRD number of Ryan Murnane's direct supervisor;
- i) copies of all exception reports generated for any accounts identified in (a) and (f) above;
- j) copies of the branch office audits for the branches occupied by Murnane for the years 2015 and 2106;
- k) copies of all state registration correspondence, compliance memorandums, e-mails, or other internal correspondence generated regarding Murnane and the resolution of such inquiries, if applicable;
- l) a summary of compensation received by Woodstock, Murnane, or any other Woodstock agents for the business transacted with the clients identified in items (a) and (f) above for the period January 1, 2012, to the present.

7. As a result of this request and A.S.' complaint, the CSI discovered that Murnane had been conducting business in A.S.' account without being properly registered in Montana.

Murnane did this by directing Derrico to place trades in A.S.'s account. Sometimes Murnane would place the trades himself using Derrico's agent information.

8. Once Murnane became aware of the A.S.' complaint, he attempted to have A.S. cut and paste a retraction to his CSI complaint form which had listed Murnane as the salesperson. The retraction, which A.S. forwarded to the CSI, stated Murnane had nothing to do with his account and that Derrico had handled it. It also stated that Murnane was an "honest good guy when we were allowed to do business in my state. It's a shame he's not allowed to register in Montana."

9. Derrico provided a response to Murnane's proposed email in which he stated he maintained a joint rep with Murnane and that he spoke with A.S. along with Murnane. Derrico stated he entered trades for A.S., but only with A.S.' permission. Derrico also stated the following:

- a) He and Murnane maintained a joint rep number as well as individual rep numbers;
- b) Split commissions between them to share in the overall revenue;
- c) Shared A.S.' commissions between himself and Murnane;
- d) Emailed Woodstock instructing them to ACH to each for an equal amount after reviewing total monthly commissions.

10. Derrico indicated he had A.S.' authorization to conduct other trades, though phone records indicate Derrico never personally communicated with A.S. until Murnane left Woodstock in January 2017.

11. A CSI analysis of A.S.' account revealed that Derrico was the salesperson of record and that the following occurred over the 18-month period:

- a) A.S. invested \$124,197.00 with Woodstock;
- b) Murnane and/or Derrico initiated 44 transactions in 10 securities in A.S.' account, all of which were marked solicited even though A.S.' was not contacted about many of the trades;

c) The total of all trades resulted in \$2,397,257.46 in securities purchases and \$2,668,059.93 in securities sales, with corresponding Looper turnover rates of 22.29 and 16.74 respectively;

d) The average hold period for a securities position in A.S.' account was 33.16 days;

e) A.S. paid Respondents Woodstock, Murnane, and Derrico an aggregate total commission of \$86,856.12, with an average commission of \$1,974 per trade;

f) A.S.' account's net trading loss was \$99,475.27 for an average loss of \$2,260.80 per trade.

12. Branca was the designated supervisor for Murnane and Derrico during the relevant period of time. It is unclear who, if anybody at Woodstock actually reviewed the commission sharing agreements and trades affiliated therewith, though it appears it was Branca's responsibility from the corporate structure.

13. Woodstock's policy and procedures include the requirements/prohibitions:

- a) The Designated Principal is responsible for the designation of appropriately registered principals for each type of business the firm engages in...;
- b) The Designated Principal is responsible for the assignment of each registered person to an appropriately registered representative and/or principal who will be responsible for supervising that person's activities;
- c) The firm prohibits any individual from serving in a role requiring principal registration without adequate licensure;
- d) The firm prohibits discretionary trading of any sort;
- e) The Designated Principal is responsible for daily review of transactions of associated persons;
- f) Associated persons must have a reasonable belief that trading and activity levels are appropriate and suitable in nature based on information about the customer;

- g) Commissions should be reasonable and based on expense, value of service, and market conditions.

14. Woodstock's response to the CSI did not include any discussion or assertion related to churning or account turnover. Industry standards indicate churning as entering transactions for a client primarily to generate commission income and without regard for the financial objectives of the client. Churning may be evidenced by frequent in-and-out trading or by repeated, rapid turnover of the portfolio and high commissions in relation to the equity in the account. Churning is likely to be found where there is excessive activity and a registered representative controlled the account.

CONCLUSIONS OF LAW

1. The Montana State Auditor is the Commissioner of Securities and Insurance (Commissioner) pursuant to §§ 30-10-107, 2-15-1901, and 2-15-1903.
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, and 30-10-307.
3. The Commissioner administers the Act, pursuant to §§ 2-15-1901 and 30-10-107.
4. The Commissioner shall administer the Act to protect the investor, persons engaged in securities transactions, and the public interest, pursuant to § 30-10-102(1).
5. At all times relevant to this action, Respondents Derrico and Branca, were registered salespersons pursuant to § 30-10-201.
6. At all times relevant to this action, Respondent Woodstock was a registered broker-dealer pursuant to § 30-10-201.
7. Respondent Murnane was not registered with the CSI as a salesperson for Woodstock during the relevant time period.
8. Section 30-10-301 states a person may not participate in fraudulent and other prohibited practices.

9. Fraudulent and other prohibited practices include any act, practice, or course of business that operates or would operate as a fraud or deceit upon any person. § 30-10-301(1)(c). Admin. R. Mont. 6.10.401 defines such practices. Each unethical practice is a separate violation of § 30-10-301(1)(c).

10. Admin. R. Mont. 6.10.401(1)(b) states that it is fraudulent and unethical for a broker-dealer or salesperson to induce trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account.

11. Rule 6.10.401(1)(d) states that it is fraudulent and unethical to execute a transaction on behalf of a customer without authorization to do so.

12. Respondents Murnane and Derrico violated Rule 6.10.401(1)(d) when they engaged in excessive trading and traded on margin without explicit permission to do so.

13. Admin. R. Mont. 6.10.401(1)(d) states that it is fraudulent and unethical for a broker-dealer or salesperson to execute a transaction on behalf of a customer without authorization to do so.

14. Respondents Murnane and Derrico violated 6.10.401(1)(d) when they executed trades without consulting clients and failed to document such trading.

15. Admin. R. Mont. 6.10.401(1)(e) states that it is a fraudulent and unethical for a person to exercise discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer.

16. Respondents Murnane and Derrico violated 6.10.401(1)(e) when they made discretionary trades without authorization to do so.

17. Admin. R. Mont. 6.10.401(1)(k) states that it is fraudulent and unethical for a broker-dealer or salesperson to charge unreasonable and inequitable fees for services performed.

18. Respondents Woodstock, Murnane, and Derrico violated 6.10.401(1)(k) when they charged total commissions of \$98,476.30 by A.S, or 79% of his total investment.

19. Admin R. Mont. 6.10.401(2)(e) prohibits a salesperson from splitting commissions with an unregistered agent for the same broker-dealer.

20. Respondent Derrico split his commissions in the A.S. account with Respondent Murnane despite the fact that Murnane was not registered in any capacity with the CSI.

21. Cumulatively, these violations also constitute a business practice that operated as a fraud or deceit upon a person or persons under § 30-10-301(1)(c).

22. Section 30-10-201(13)(k) states a person who fails to reasonably supervise the person's salespersons or employees has violated the Act.

23. Respondents Woodstock and Branca violated § 30-10-201(13)(k) by failing to supervise salespersons when they failed to adequately review commission sharing agreements, failed to follow Woodstock procedures by reviewing daily transactions on behalf A.S. (or failed to highlight concerns associated with the excessive and unauthorized transactions), and failed to contact Derrico about his trading in A.S.' account;

24. Section 30-10-321 states that for purposes of any action brought by the Commissioner under § 30-10-301, any person that knowingly provides substantial assistance to another person in violation of a provision of this part or of any rule or regulation issued under this part must be considered to be in violation of that provision to the same extent as the person to whom the assistance is provided.

25. Respondents Woodstock, Derrico, and Branca violated § 30-10-321 when they ignored the excessive transactions in, and the excessive commissions charged in, A.S.' account, neglected to report actions to the CSI and CRD, and allowed trades to go through without contacting Montana clients, thereby providing substantial assistance to fraudulent actions as defined in the administrative rules, which work in conjunction with § 30-10-301.

26. It is unlawful for a person to transact business as a broker-dealer salesperson in Montana without proper registration § 30-10-201(1). To transact a security also means to offer a security. § 30-10-103(24). To offer a security includes each attempt or offer to dispose of or solicitation of an offer to buy a security or interest in a security for value.

27. Respondent Murnane violated § 30-10-201(1) when he solicited a Montana resident and conducted business using Derrico's credentials or agent number. Woodstock's

insufficient policies and failure to follow its own supervision procedures allowed for Respondent Murnane to sell securities while not being registered.

RELIEF REQUESTED

WHEREFORE, the CSI seeks the following relief:

1. Order Respondents severally to pay fines not to exceed \$5,000 for each identifiable violation of the Act, pursuant to § 30-10-305(3).
2. Order Respondents to pay restitution jointly and severally pursuant to § 30-10-309(1).
3. Order Respondent Woodstock's registration as a broker-dealer in Montana be revoked for violating provisions of the Act, pursuant to § 30-10-201(13).
4. Order Respondent Derrico and Branco salesperson licenses in Montana to be revoked.
5. Order Respondent Murnane be permanently barred from conducting business in Montana.
6. Any other remedy the Commissioner deems appropriate.

PUBLIC INTEREST

For any and all of the reasons set forth above, it is in the public interest and will protect Montana investors to take the actions listed in the relief requested, and to take any other action necessary to ensure Montana investors are protected.

STATEMENT OF RIGHTS

You are entitled to a hearing to respond to this notice, and to 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 et seq. including § 2-4-631. If you demand a hearing, you will be given notice of the time, place, and the nature of the hearing.

If you wish 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 Brett O'Neil, 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), 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 a reasonable period of time unless postponed by mutual consent of the parties, pursuant to § 30-10-305.

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, and *Montana Supreme Court Commission on the Unauthorized Practice of Law v. O'Neil*, 2006 MT 284, 334 Mont. 311, 147 P.3d 200.

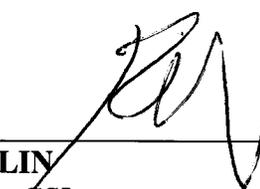
CONTACT WITH COMMISSIONER'S OFFICE

If you have questions or wish to discuss this matter, please contact Brett Olin, legal counsel for the CSI, at 840 Helena Avenue, Helena, MT, 59601, 406-444-2040. If an attorney represents you, please make any contacts with the CSI through your attorney.

POSSIBILITY OF DEFAULT

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

DATED this 19th day of December, 2017.



BRETT OLIN
Attorney for CSI

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served on the 19th
day of December, 2017, by US mail, certified first-class postage paid, to the following:

Woodstock Financial Group, Inc.
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