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Special Assistant Attorney General
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Helena, MT 59601
406-444-2040

Attorney for Securities Department

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

IN THE MATTER OF:)	
)	CASE NO.: SEC-2007-58
THE CONCORD EQUITY GROUP, LLC)	(C-04-24-06-210)
485 Rt 1 South)	
Building C, Suite 210)	NOTICE OF PROPOSED AGENCY
Iselin, NJ 08830)	DISCIPLINARY ACTION AND
)	OPPORTUNITY FOR HEARING
CONCORD EQUITY GROUP ADVISORS)	
100 Matawan Road)	
Matawan, NJ 07747)	
)	
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., Mont. Code Ann. (2005), proposes to the Commissioner that he take specific action against CONCORD EQUITY GROUP, LLC (CEG) and CONCORD EQUITY GROUP ADVISORS (CEGA) 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 and 30-10-309, Mont. Code Ann. (2005).

In particular, the Department's staff is recommending specific action against CEG and CEGA including suspension or revocation of CEG's registration as a broker-dealer firm, denial of CEGA's notice filing as a federally covered adviser, 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), Mont. Code Ann. (2005).

REASONS FOR ACTION

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

ALLEGATIONS

1. CEG has been registered in Montana as a broker/dealer firm pursuant to § 30-10-201, MONT. CODE ANN., since July 21, 2000.
2. CEGA has been a registered investment advisor with the SEC since April 14, 1994 and a notice filed federal covered advisor with the State of Montana since January 2, 2001.
3. On April 27, 2007 CEGA terminated its registration with the SEC, and reregistered with the SEC on May 1, 2007, with a new CRD number. Until April 27, 2007, CEG and CEGA shared the same CRD number.
4. Leo Lapito (Lapito) was a registered securities salesperson for CEG as defined at § 30-10-103 (20), Mont. Code Ann., for the period September 1, 2000 through July 17, 2007. Additionally, Lapito was registered as an investment advisor representative of CEGA as defined at § 30-10-103 (12), Mont. Code Ann., from on or about January 22, 2003 through April 27, 2007. Lapito was employed at CEG/CEGA's Billings, Montana branch office.
5. On or about August 24, 2005, the Department received a complaint from a Montana citizen identified herein as "Complainant". Complainant indicated CEG, CEGA and Lapito put Complainant's accounts in investments in which CEG, CEGA and Lapito benefited due to high commissions and excessive fees. Further, Complainant alleged that CEG, CEGA

and Lapito failed to disclose fees and charges associated with annuities and mutual funds, including surrender charges and contingent deferred sales charges (CDSC).

6. On or about August 29, 2005, the Department requested several documents from CEG/CEGA relating to the Complainant's accounts. CEG and CEGA failed to timely provide the Department with the requested information despite the Department's three subsequent requests for the information. The Department did not receive the requested documents until in or about November 2005.

7. The Department reviewed the documentation provided by CEG, CEGA and Lapito and made findings consistent with the allegations set out below.

8. In 2003, approximately \$250,000 in cash from Complainant's deceased spouse's investment accounts and life insurance proceeds was deposited into Complainant's accounts at CEG/CEGA. Between the spring of 2003 and summer of 2005 this cash was used to purchase approximately \$131,036 in Class B mutual funds, \$27,006 in Class C mutual funds, and \$20,006 in Class A mutual funds. These purchases included several different fund families, including ING, Pioneer, Calamos, and others.

9. During the time period January 1, 2002 through the present Lapito solicited the purchase of three equity-indexed annuities for Complainant. Approximately \$140,000 was invested into these annuities. Two of these annuities had a surrender charge period of 14 years, while the third had a surrender charge period of 12 years.

10. On or about July 20, 2005, Complainant requested in writing that Lapito liquidate all of Complainant's mutual funds and annuities and reverse any sales charges incurred. On or about July 27, 2005 Lapito responded in writing that the mutual funds had been sold. Further,

Lapito indicated to Complainant that the fund companies set the sales charges and that Lapito did not have control over them.

11. As a result of this customer complaint, on or about November 15, 2005, the Department conducted a for-cause exam of the CEG/CEGA Billings, Montana branch office. The exam process included the review of 12 customer files and an interview with Lapito. The exam revealed the following deficiencies:

- a. Customer investment objectives identified on new account forms did not accurately reflect customer desires;
- b. CEG and CEGA failed to maintain a customer complaint file in the branch office;
- c. There were no controls on incoming or outgoing correspondence, including electronic correspondence, for detecting violations, including fraudulent activity;
- d. There was no current supervisory manual maintained at the Billings office;
- e. No internal branch exam had occurred in the past year;
- f. The majority of mutual fund purchases solicited by Lapito were Class B and Class C mutual funds instead of class A mutual funds.¹
- g. There was mutual fund switching that resulted in customers paying additional fees and charges;
- h. Clients were placed into advisory accounts when it was not in their best interests.

12. In continuing with its investigation on April 27, 2007, the Department requested a list of all trades and all corresponding trade confirmations for trades executed by the Billings branch office for the five year time period from May 1, 2002 to May 1, 2007. Due to insufficient or unusable information provided by CEG/CEGA's clearing house for the period from May 1,

¹ Class B and class C shares generally include higher expense ratios, contingent deferred sales charges, and no entitlements to breakpoints.

2002 to September 1, 2003, the Department did a complete analysis on all trades executed in customer accounts from the time period September 1, 2003 to May 1, 2007.

13. Between September 1, 2003 and May 1, 2007, approximately 132 of CEG/CEGA's client's accounts had approximately 233 mutual fund switches. As a result of switching one or more mutual funds for another mutual fund, the customer either incurred additional commissions and fees, or was subjected to CDSC. CEG/CEGA failed to disclose these additional fees or changes in fees to the customers.

14. Page 57, of CEG/CEGA's written Supervisory Procedures Manual (dated 01/2005) instructs salespersons to

never exchange shares of one investment company for another without the specific approval of a supervising principal, except in funds of the same management company when an exchange does not generate a sales change. After the approval of a supervising principal, a switch letter should be sent to the client, which always includes the following paragraph:

Switching from the securities of one investment company to another, or from one class of security of an investment company to another, involves a sales charge on each such transaction, for details see the prospectus. The prospective purchaser should measure these costs against the claimed advantage of the switch.

15. CEG/CEGA failed to have adequate policies in place to ensure that such commissions, fees and expenses were properly disclosed to the customer. Further, CEG/CEGA failed to enforce its own policies and procedures.

16. On or about April 27, 2007 the Department requested a copy of any and all mutual fund switch letters for CEG/CEGA's Billings clients. CEG/CEGA indicated there were no such letters for any of the 233 switches. Further, there is no indication CEG/CEGA had any type of exception report or other mechanism to detect and correct any unsuitable mutual fund switches in clients' accounts.

17. The Department's analysis indicates clients paid a total of \$108,634.55 in additional fees, commissions and expenses as a result of mutual fund switches.

18. Between September 1, 2003 and May 1, 2007, approximately 101 of CEG/CEGA's client's accounts missed breakpoints² either because Lapito solicited Class B or Class C shares or solicited purchases of multiple families of funds.³ It appears CEG/CEGA failed to disclose the differences between Class A, Class B, and Class C mutual funds, including differences in expense ratios, CDSC and breakpoints to the customer.

19. CEG/CEGA did not have policies in place to ensure that such commissions, fees and expenses were disclosed to the customer. Although CEG/CEGA's written Supervisory Manual instructs salespersons to inform clients about breakpoints, letters of intent and rights of accumulation, the Department's exam was unable to identify any method CEG/CEGA used to disclose to customer's breakpoint eligibility.

20. CEG/CEGA's breakpoint policies do not mention the differences between classes of mutual funds, nor do they mention missed breakpoints due to purchases in multiple unrelated families of funds. Further, the Department's exam found CEG/CEGA had no policies and procedures in place, including an exception report or other mechanism, to detect and investigate when a customer has missed breakpoints due to over-diversification in families of mutual funds.

21. The Department's analysis indicates clients paid additional fees and commissions of approximately \$25,243.24 as a result of missed breakpoints.

²Breakpoints represent the level at which your account balance in a mutual fund company or the size of a new investment in the company's funds qualifies you to pay a reduced sales charge. Fund companies that charge a percentage of the amount you invest as a front-end load, or sales charge, may offer this cost saving. They are not required to do so, but if they do use breakpoints, they must ensure that all clients who qualify get the discount. In calculating breakpoints, some fund companies will combine the value of all of your investments in the mutual funds they offer. Other companies count the investments of all the members of your household or give you credit for purchases you intend to make in the future.

³ Because breakpoints are credited within families of mutual funds, the power of the breakpoint is lost where numerous unrelated families of mutual funds are purchased.

22. Between September 1, 2003 and May 1, 2007, approximately 113 of CEG/CEGA's client's accounts paid a CDSC on either the sale of a Class B or Class C mutual fund. It appears CEG/CEGA failed to disclose to customers the differences between classes of mutual fund shares, including differences in expense ratios, CDSC, and breakpoints and did not have adequate policies in place to ensure that such commissions, fees and expenses were disclosed to the customer.

23. Further, four clients purchased Class A mutual funds which, according to the trade confirmation notice, had a "sales load = 0.00%"⁴. The confirmation notice failed to provide any disclosure that there were CDSC associated with the fund. However, the Department's analysis indicates that, when these funds were sold, the client did incur a CDSC.

24. The Department's analysis indicates clients paid approximately \$36,604.39 in CDSC as a result of selling Class A, Class B and Class C mutual funds.

25. Between September 1, 2003 and May 1, 2007, approximately 88 of CEG/CEGA's clients' accounts had an activity level that was unsuitable for an advisory account. With the level of activity in these accounts, these clients would have paid much less in fees and commissions had their account been strictly commission-based. It appears CEG/CEGA had no policies and procedures in place to ensure and detect whether a fee-based advisory account was in the client's best interest.

26. The Department's analysis indicates that in these accounts with minimal activity, clients paid advisory fees of \$232,453.52.

⁴ If you buy a mutual fund through a broker or other financial professional, you pay a sales charge or commission, also called a load. If the charge is levied when you purchase the shares, it's called a front-end load. If you pay when you sell shares, it's called a back-end load or contingent deferred sales charge. And with a level load, you pay a percentage of your investment amount each year you own the fund.

27. Between September 1, 2003 and May 1, 2007, approximately 101 of CEG/CEGA's client's advisory accounts were charged both commissions and a quarterly advisory fee. These clients purchased Unit Investment Trusts (UIT's). The client was charged a front-end load⁵ on the purchases of UIT's. Where a large number of the purchases in an account are UIT's, the client is better served by being placed in a commission-based account. Where purchases of UIT's make up a smaller portion of the account, the client is better served by being placed in an advisory account.

28. It appears neither CEG nor CECA had policies or procedures in place to detect when advisory clients were being charged both commissions and quarterly advisory fees. Clients that should have been placed in a commission-based account or those that were charged commissions on UIT while in an advisory account were overcharged \$212,047.17.

29. Three CEG/CEGA clients paid front-end load charges on mutual funds and commissions on equities of \$4,112.23 while at the same time paying quarterly advisory fees. It appears neither CEG nor CECA had policies or procedures in place to detect when advisory clients were being charged both commissions and quarterly advisory fees.

30. One CEG/CEGA client who appeared to be a commission-based client was charged a quarterly advisory fee of \$1,071.12 in April 2005.

31. Between September 1, 2003 and May 1, 2007, approximately 17 of CEG/CEGA's clients' accounts had approximately 20 UIT switches. Similar to mutual fund switches, when a client sold one or more UIT and subsequently purchased a new UIT, the client incurred additional commissions and fees. CEG/CEGA failed to have adequate policies in place to ensure that such commissions and fees were properly disclosed to the client. Further, it does not appear CEG/CEGA had an exception report or any other mechanism to detect UIT switching.

⁵ See footnote (4).

32. The Department's analysis indicates that clients paid approximately \$5,782.23 in additional commissions and fees as a result of UIT switching.

33. The Department's initial examination revealed a CEG/CEGA customer had an agreement from on or about September 23, 2003, to pay a management fee of 1% of the customer's assets under management. CEG/CEGA charged this customer advisory fees of approximately \$12,305 in 2005. Approximately \$2,000 of these fees was returned to the customer on or about May 25, 2003. CEG/CEGA represented to the customer that these returned funds represented an overcharge on the annual fee. According to CEG/CEGA the customer had been charged 1.75% of the assets under management, rather than 1.25% of assets under management. It appears CEG/CEGA continues to owe this customer additional refunds for charging .25% above the agreed 1%.

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 and 2-15-1901, Mont. Code Ann.
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 30-10-309, Mont. Code Ann.
3. CEG/CEGA are "persons" as defined at § 301-10-103 (16), Mont. Code Ann., (2005).
4. CEG is a broker-dealer pursuant to § 30-10-103 (1), Mont. Code Ann.
5. CEGA is a federal covered advisor pursuant to § 30-10-103 (1), Mont. Code Ann.
6. CEG/CEGA violated § 30-10-301(1)(b), Mont. Code Ann., when they failed to disclose to clients on approximately 233 occasions that by selling one or more mutual funds and

purchasing another they would incur additional fees or commissions and/or be subject to CDSC and higher annual expenses.

7. CEG/CEGA violated § 30-10-301(1)(b), Mont. Code Ann., when they omitted the material fact to their customers that by purchasing Class A mutual funds instead of Class B or Class C shares, the customers may have been eligible for breakpoints and a reduction in commissions.

8. CEG/CEGA violated § 30-10-301(1)(b), Mont. Code Ann., when they omitted the material fact to their customers that class B and class C mutual funds generally include higher expense ratios and CDSC, and no entitlements to breakpoints.

9. CEG/CEGA violated § 30-10-301(1)(c), Mont. Code Ann., when they engaged in an act, practice and course of business that acted as a fraud or deceit on their customers by failing to disclose on approximately 233 occasions that by selling one or more mutual funds and purchasing another they would incur additional fees or commissions and/or being subject to CDSC and higher annual expenses.

10. CEG/CEGA violated § 30-10-301(1)(c), Mont. Code Ann., when they engaged in an act, practice and course of business that acted as a fraud or deceit on their customers by soliciting clients purchase Class B and Class C share mutual funds and/or multiple families of funds, resulting in missed breakpoints in approximately 101 clients accounts.

11. CEG/CEGA violated § 30-10-301(1)(c), Mont. Code Ann., when they engaged in an act, practice and course of business that acted as a fraud or deceit on their customers by placing clients in fee based accounts, when it was unsuitable based upon the clients' level of activity.

12. CEG/CEGA violated § 30-10-301(1)(c), Mont. Code Ann., when they engaged in an act, practice and course of business that acted as a fraud or deceit on their customers by failing to perform suitability analyses and by charging fees for both advisory services and broker-dealer services for managing the same assets, resulting in excessive fees being charged to the customers.

13. CEG/CEGA violated § 30-10-201 (13) (g), Mont. Code Ann., and ARM §§ 6.10.126 (1) (c), and 6.10.127 (1) (a), when they made unsuitable recommendations to switch mutual funds that resulted in customers paying additional commissions and fees, and/or being subject to CDSC and higher annual expenses.

14. CEG/CEGA violated § 30-10-201 (13) (g), Mont. Code Ann., and ARM §§ 6.10.126 (1) (c), and 6.10.127 (1) (a), when CEG/CEGA made unsuitable recommendations to purchase Class B or Class C shares and/or multiple families of funds, resulting in clients missing breakpoints, and thus paying higher fees.

15. CEG/CEGA violated § 30-10-201 (13) (g), Mont. Code Ann., and ARM §§ 6.10.126 (1) (k), and 6.10.127 (1) (j), when CEG/CEGA charged fees for both advisory services and broker-dealer services for managing the same assets, resulting in excessive fees being charged to the customers.

16. CEG/CEGA violated § 30-10-201 (13) (k), Mont. Code Ann., by failing to reasonably supervise their agent Lapito when they:

- a. allowed Lapito to execute approximately 233 mutual fund switches without following CEG/CEGA's policy of providing the client a switch letter disclosing the fees associated with the switch;
- b. did not have a procedure to detect and correct any unsuitable mutual fund switch;

- c. allowed Lapito to purchase large amounts of Class B and Class C mutual funds and multiple families of funds resulting in the client missing breakpoints;
 - d. did not have a procedure to detect and correct when clients missed breakpoints;
17. CEG/CEGA violated § 30-10-201 (13) (k), Mont. Code Ann., by failing to reasonably supervise Lapito when they:
- a. allowed Lapito to place clients in advisory accounts when it was unsuitable based on the level of activity by the client;
 - b. did not have a procedure in place to detect when a fee based account was unsuitable for a client based on the clients' level of trading activity;
 - c. allowed Lapito to charge both commissions and a quarterly advisory fee to advisory clients, resulting in clients paying excessive and unreasonable fees;
 - d. did not have a procedure in place to detect and correct when clients were paying both commissions and quarterly advisory fees.
18. CEG/CEGA violated § 30-10-201 (13) (i), Mont. Code Ann. by failing to respond to the Department's request for information pursuant to its investigation of the complaint against Lapito.

RELIEF SOUGHT

1. Order CEG and CEGA to pay restitution to their Montana customers who were harmed by the actions of CEG and CEGA in violation of the Montana Securities Act, including 10% interest from the date of the wrongdoing, pursuant to § 30-10-309, Mont. Code Ann.
2. Order CEG and CEGA to pay fines not to exceed \$5,000 for each identifiable violation of § 30-10-301, Mont. Code Ann., pursuant to § 30-10-305(3), Mont. Code Ann.

3. Order CEG and CECA to pay fines not to exceed \$5,000 for each identifiable violation of § 30-10-201 (13) (g), Mont. Code Ann., and ARM §§ 6.10.126, 6.10.127, pursuant to §§ 30-10-201 (18) and 30-10-305(3), Mont. Code Ann.

4. Order CEG and CECA to pay a fine not to exceed \$5,000 for violating § 30-10-201, Mont. Code Ann., pursuant to § 30-10-201 (18), Mont. Code Ann.

5. Order CEG and CECA to pay a fine not to exceed \$5,000 for each identifiable violation of § 30-10-201 (13) (i) and (k), pursuant to § 30-10-305 (3), Mont. Code Ann. and

6. 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 CEG and CECA from further violations of the Act;

2. Order CEG and CECA 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 CEG and CECA to pay restitution to their Montana customers harmed by the actions of CEG and CECA in violation of the Montana Securities Act in an amount and upon such terms and conditions, including the statutory 10% per annum interest on the losses 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, §§ 2-4-601, Mont. Code Ann. and following, including § 2-4-631, Mont. Code Ann. 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), Mont. Code Ann., 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.

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

DATED this _____ day of August 2007.

JOHN MORRISON
State Auditor and ex-officio
Commissioner of Securities

By: _____
Roberta Cross Guns
Special Assistant Attorney General

CERTIFICATE OF SERVICE

This is to certify that on this ____ day of August, 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:

THE CONCORD EQUITY GROUP, LLC
485 Rt 1 South
Building C, Suite 210
Iselin, NJ 08830

CONCORD EQUITY GROUP ADVISORS
100 Matawan Road
Matawan, NJ 07747

State Auditor's Office

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

DATED this 13th day of August 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 13th day of August, 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:

THE CONCORD EQUITY GROUP, LLC
485 Rt 1 South
Building C, Suite 210
Iselin, NJ 08830

CONCORD EQUITY GROUP ADVISORS
100 Matawan Road
Matawan, NJ 07747

Arson Paulson - Davis
State Auditor's Office