

STATE OF ARKANSAS
SECURITIES DEPARTMENT

IN THE MATTER OF

AMENDED CEASE AND DESIST ORDER

J. P. TURNER & COMPANY, L.L.C.,
STEPHEN CARCATERRA, and ALL
PERSONS EMPLOYED BY OR
OTHERWISE AFFILIATED WITH THE
RESPONDENTS WHOSE IDENTITY
IS UNKNOWN

ORDER NO. 98-045-S

AMENDED CEASE AND DESIST ORDER

In this order, entered on 13 August 1998, the respondents, ROBERT STEFANELLI, USMAN MUSHTAQ, JON DE MICHIEL, STEPHEN AIELLO, JOHN MONTEFORTE and SAMUEL CONVERY, were found liable for transacting business as agents of a broker-dealer in Arkansas without being registered as such, a violation of Ark. Code Ann. § 23-42-301(a) (Supp. 1997). It has since been determined that the records upon which these findings were made do not support those findings. Accordingly, ROBERT STEFANELLI, USMAN MUSHTAQ, JON DE MICHIEL, STEPHEN AIELLO, JOHN MONTEFORTE and SAMUEL CONVERY are hereby removed as respondents in this order.

The remaining respondents, J. P. TURNER & COMPANY, L.L.C. (Turner) and STEPHEN CARCATERA (Carcatera), remain subject to the order as amended.

FINDINGS OF FACT

An ongoing investigation has revealed the following facts:

1. Turner is a limited liability company formed under the laws of the state of Georgia. The articles of organization were executed and a certificate of organization issued on 11 April 1997. William L. Mello and Timothy W. McAfee are listed in the articles of organization as 50% owners of Turner.
2. On 16 May 1997 Turner applied for registration as a broker-dealer with the Arkansas Securities Department (the Department) in accordance with the Act. On 26 January 1998 that application was withdrawn. Turner has never been registered to do business as a broker-dealer in Arkansas.
3. Through Carcaterra, an agent of Turner, Turner effected the following trades in the account of an Arkansas customer residing in Little Rock, Arkansas:

2/18/98 Buy 2,800 shares of Cartoon Saloon @ \$2.50; total \$7,000

4/29/98 Buy 1,200 shares of Cartoon Saloon @ \$2.50; total \$3,000

4. On 5 August 1998 Turner through its agent Stephen Carcaterra offered the Arkansas customer discussed in ¶ 3, *supra*, another 4,000 shares of Cartoon Saloon for \$10,000.
5. The stock of Cartoon Saloon, discussed in ¶ 3(g) and 4, *supra*, was purported to be exempt from the registration provisions of the Act by virtue of an exemption claimed under Regulation D and Rule 504 of the Securities and Exchange Commission (SEC), promulgated under § 4(2) of the Securities Act of

1933. Such an offering is not exempt from the registration provisions of the Act unless a proof of an exemption pursuant to the Act is filed with the Department. No proof of exemption has been filed with the Department, and no filing of any kind has been filed with the SEC.
6. In connection with the investment in and offer of the stock of Cartoon Saloon, set out in ¶¶ 3(g) and 4 *supra*, it was represented to the Arkansas customer by letter dated 5 November 1997 that Strategic Risk Management, Inc. (Strategic) of New York, New York, would act as the managing underwriter of an initial public offering (IPO) of Cartoon Saloon stock sometime in the near future. A complaint was filed on 30 March 1998 by the SEC in federal district court in Manhattan naming Strategic as a relief defendant. The factual allegations were that three individuals associated with Wise Choice Discount Brokerage, Inc. (Wise Choice) had induced over \$200,000 in investments in the stock of Nichi Capital, Ltd., by misrepresenting to investors that an initial public offering (IPO) of the stock was about to take place and that, if investors were to purchase stock before then, their money would be held in an escrow fund until the IPO was made, when the investors were told their investments would sharply increase in value. In reality no escrow fund was opened, the complaint alleged, and the money raised by the sale of Nichi stock was used by one of the defendants to purchase an equity position in Strategic. A temporary restraining order was issued on that date, and certain assets of some of the defendants were frozen.

On 18 May 1998 the federal district court issued a preliminary injunction. On 1 July 1998 Strategic consented to the entry of a judgment against it ordering it to disgorge \$100,000 it obtained from Wise Choice in this scheme. Disgorgement of another \$204,000 illegally received by Strategic was waived by the SEC after it was demonstrated that it did not have the ability to pay that amount of money. On 30 July 1998 Strategic requested that its registration as a broker dealer with the National Association of Securities Dealers (FINRA) be terminated.

7. When the purchase of 1,200 shares of Cartoon Saloon took place on 29 April 1998, as set out in ¶ 3(g), *supra*, the filing of the complaint against Strategic on 30 March 1998 was not disclosed.
8. When the offer of 4,000 shares of Cartoon Saloon took place on 5 August 1998, as set out in ¶ 4, *supra*, it was not disclosed that Strategic had requested that its registration as a broker-dealer with the FINRA be terminated, that Strategic had consented to the judgment against it in the amount of \$100,000 or that the SEC had waived disgorgement of an additional \$204,000 from Strategic because of its inability to pay that amount. It was represented that the customer would quintuple his investment when the initial public offering was made. Specifically, Carcaterra represented that if the customer invested \$50,000, he would make \$250,000 when the initial public offering was made.

CONCLUSIONS OF LAW

9. Ark. Code Ann. § 23-42-501 (Supp. 1997) provides that it is unlawful for any person to offer or sell any security which is not registered or which is not exempt from registration under the terms of the Act.
10. Ark. Code Ann. § 23-42-507(2) (Repl. 1994) provides that it is unlawful for any person in connection with the offer or sale of any security to make any untrue statement or omit to state a material fact which is necessary to make the statements made not misleading in the light of the circumstances under which they are made.
11. Rule 308.01(B), Rules of the Arkansas Securities Commissioner, provides that it is an unfair, misleading and unethical practice to make unjustified or untruthful representations that securities sold will subsequently become listed or traded, that a market will be established or that the securities will be subject to an increase in value. This rule governs the activities of registered broker-dealers and agents of broker-dealers in the state and is set forth here to illustrate the nature of the securities fraud set out immediately above.

OPINION

12. This matter has been properly brought before the Arkansas Securities Commissioner in accordance with Ark. Code Ann. § 23-42-201 (Repl. 1994) and Ark. Code Ann. § 23-42-209 (Supp. 1997).

13. As set out in ¶¶ 3(g) and 4 of the Findings of Fact, *supra*, Turner and Carcaterra have sold and offered to sell stock in Cartoon Saloon without the prior registration or exemption of those securities in violation of Ark. Code Ann. § 23-42-501 (Supp. 1997).
14. As set forth in ¶¶ 5-8 of the Findings of Fact, *supra*, Turner and Carcaterra omitted material facts necessary to make the statements concerning the initial public offering of Cartoon Saloon stock not misleading and made unjustified representations that the stock would sharply increase in value when the initial public offering was made in violation of Ark. Code Ann. § 23-42-507(2) (Repl. 1994).
15. This order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that J. P. TURNER & COMPANY, L.L.C., and STEPHEN CARCATERRA, as well as others whose identities are not yet known who are in positions of control of J. P. Turner, Inc. and who are employed by or otherwise affiliated with J. P. Turner, Inc., directly or through other companies or entities, **CEASE AND DESIST** from any further actions in the State of Arkansas in connection with the offer and sale of securities, especially any securities issued by Cartoon Saloon, Inc., until such time as all registrations in accordance with the Arkansas Securities Act are effective and all issues concerning the violation of the Arkansas Securities Act and the Rules of the Arkansas Securities Commissioner set out above have been remedied.

WITNESS MY HAND AND SEAL this 24th day of February, 1999.

MAC DODSON, Securities Commissioner