

BEFORE THE ARKANSAS SECURITIES COMMISSIONER
CASE NO S-12-0063

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ARKANSAS SECURITIES DEPT.

IN THE MATTER OF:
ST. BERNARD FINANCIAL SERVICES, INC., AND
ROBERT KEENAN

RESPONDENTS

**COMPLAINT FOR SUSPENSION OR REVOCATION OF REGISTRATIONS
AND IMPOSITION OF FINES**

The Staff of the Arkansas Securities Department ("Staff") by and through its attorney, Scott Freydl, for its Complaint for Suspension or Revocation of the Registrations and Imposition of Fines against St. Bernard Financial Services, Inc. ("St. Bernard") and Robert Keenan ("Keenan") for violations of the Arkansas Securities Act and the Rules of the Arkansas Securities Commissioner, states:

I. Administrative Authority

This proceeding is instituted pursuant to the Arkansas Securities Act, Ark. Code Ann. §§ 23-42-101 through 23-42-509, ("Act"), the Rules of the Arkansas Securities Commissioner promulgated thereunder ("Rules"), and the Arkansas Administrative Procedure Act, Ark. Code Ann. §§ 25-15-201 through 25-15-219.

II. Respondents

1. St. Bernard is a securities brokerage company with its main office located in Russellville, Arkansas, CRD number 36956. St. Bernard has been registered as a securities broker-dealer with the Arkansas Securities Department ("Department") since November 1, 1994.

2. Keenan, CRD number 2000976, has been registered with the Department as an agent of St. Bernard since November 1, 1994. In addition, Keenan is the chief executive officer of and the chief compliance officer for St. Bernard.

III. Facts to be Presented by the Staff

A. Failure to Supervise Unsuitable Securities Sales

3. Steele Stephens ("Stephens"), CRD number 1081772, was registered with the Department as an agent of St. Bernard from June 24, 2009 until June 20, 2013.

4. The Arkansas treasurer's office was Stephens' primary client. Beginning in 2010 Stephens began employing a new investment philosophy or strategy for conducting bond trades for the Arkansas treasurer's office. Stephens continued to use or attempted to use this bond trading philosophy or strategy with the Arkansas treasurer's office until he resigned from St. Bernard in May 2013. Stephens' new bond trading philosophy or strategy was designed to purportedly capture a profit by selling bonds for the Arkansas treasurer's office prior to the maturity or call date of the bonds. The bond trades were not made because of any liquidity needs of the Arkansas treasurer's office. The staff of the Arkansas treasurer's office made statements in emails to Stephens that they had no experience with the type of trading philosophy or strategy that he was advocating.

5. Stephens and St. Bernard purchased or sold agency bonds in 85 trades on behalf of the Arkansas treasurer's office between July 2009 and December 2012. Several of these bond trades involved bonds being sold prior to maturity or the call date. These bond trades were unsuitable, because the Arkansas treasurer's office actually received no real profit or benefit from these trades. In many instances, the bond trades offered by Stephens caused significant losses for the Arkansas treasurer's office while greatly benefiting Stephens and St. Bernard. St. Bernard charged the Arkansas treasurer's office \$3,233,190 in commissions for the securities trades it recommended. This amount resulted from the markups and markdowns St. Bernard charged the

Arkansas treasurer's office that were much higher than the median markups and markdowns charged on similar trades in the same bonds during the same time period.

6. Stephens only sold government agency bonds, which complied with Ark. Code Ann. § 19-3-518, to the Arkansas treasurer's office. However, the trading philosophy or strategy employed by Stephens resulted in unsuitable securities purchases and/or sales because of the timing of the securities trades advocated by Stephens.

7. An example of this unsuitable bond trading occurred on January 21, 2010. Stephens recommended the sale of a \$25 million non-callable bond paying 4.25% in order to purchase a \$25 million callable bond. The first call date for the replacement bond was August 19, 2010. The interest rates in 2010 were in a prolonged period of decline. In a declining interest rate market, it is highly likely that a callable bond will be called at the first opportunity. In fact, this bond was called on August 19, 2010. Stephens claimed these trades would capture a profit for the treasurer's office in excess of \$1.5 million. However, this trade created a loss for the treasurer's office of over \$200,000. Anyone with any real knowledge or understanding of bond trading should have easily seen that these were unprofitable and unsuitable trades.

8. Additional unsuitable bond trading completed by Stephens and St. Bernard for the Arkansas treasurer's office include a \$10 million bond traded in June 2011, multiple bonds with an approximately value of \$60 million traded in August 2011, a \$50 million bond traded in October 2011, and an approximately \$16 million bond traded in November 2011.

9. Keenan is the designated principal under St. Bernard's written compliance policy charged with establishing and enforcing said policy. Also, during an interview with the Staff, Keenan admitted that he was the actual supervisor of Stephens for the entire time of Stephens' employment with St. Bernard.

10. Numerous emails and trade confirmations clearly demonstrate Keenan knew about the bond trading activity of Stephens with the Arkansas treasurer's office at the time the trades were being conducted. St. Bernard's written compliance policy in section 7.2 (August 2008 version) prohibits all employees from engaging in unsuitable securities trading. Also, sections 5.1, 5.2 and 5.6 (August 2008 version) of St. Bernard's written compliance policy, required Keenan to conduct daily and monthly account reviews in order to determine the suitability of the securities being sold. Similar sections appear in later versions of St. Bernard's written compliance policy.

11. While some of the communications between Stephens and the Arkansas treasurer's office do not appear to have been sent on St. Bernard's email account, Keenan and St. Bernard knew or should have known about these emails. Pursuant to section 5.10 of St. Bernard's written compliance policy (August 2008 version), supervisory approval was required for Stephens to use a home computer or non-company sponsored electronic equipment. Also, the securities transactions handled by Stephens for the Arkansas treasurer's office were in the range of \$10 to \$50 million. Since Keenan was getting copies of the trade confirmations for these securities transactions, Keenan either received or should have requested copies of the emails or documentation from Stephens or the Arkansas treasurer's office concerning these trades. In mid to late 2013, Keenan did, get copies of many of these emails from C. L. King & Associates, Inc. (C. L. King) and the Arkansas treasurer's office.

12. The failure of Keenan and St. Bernard to enforce St. Bernard's own written compliance policy concerning suitability is further indicated by numerous post transaction verbal and written explanations of support for the benefit, advantage or suitability of Stephens' bond trades for the Arkansas treasurer's office. Actually, other than these post transaction

explanations, there is no documentary evidence of any meaningful compliance or supervisory suitability reviews of the bond trading for the Arkansas treasurer's office from the time when the bond trading occurred. The fact that Keenan and St. Bernard knew about Stephens' unsuitable bond trading with the Arkansas treasurer's office, and then took no reasonable steps to enforce the existing written compliance policy, was a clear violation of Ark. Code Ann. § 23-42-308(a)(2)(J).

B. Failure to Supervise the Omission or Misstatement
of Material Information During Securities Sales

13. Keenan and St. Bernard failed to supervise Stephens by not adequately enforcing St. Bernard's written compliance policy that specifically addressed the sale of securities while misstating or omitting material information. C. L. King was the clearing agent for St. Bernard for the bond trades involving the Arkansas treasurer's office. Mike Olsen (Olsen) is a registered agent of C. L. King. Several emails from Olsen to Stephens contain material information concerning proposed bond trades for the Arkansas treasurer's office. Ultimately, Stephens proposed said bond trades to the Arkansas treasurer's office. However, in violation of Ark. Code Ann. § 23-42-507(2) and Ark. Code Ann. § 23-42-308(a)(2)(G), when the proposed bond trades were presented by Stephens to the Arkansas treasurer's office, material information contained in Olsen's emails was removed. The missing material information included the down side or negative aspects of the proposed bond trades. Stephens intentionally removed and omitted this material information to the Arkansas treasurer's office at the time these bond trades were being considered.

14. Section 11.2 of St. Bernard's written compliance policy (August 2008 version) requires that "all communications with a customer must be fair and balanced and must not be misleading, omit material facts or contain inaccurate statements." Section 11.5 (August 2008

version) of St. Bernard's written compliance policy requires the preapproval of all institutional sales material. Stephens would not have provided the written communication to the Arkansas treasurer's office without getting the prior approval of Keenan. Keenan and St. Bernard had or should have had access to these emails and written communications and should have caught the omission of this material information by Stephens.

15. Keenan and St. Bernard also failed to stop and discipline Stephens for misstating the financial benefit of the bond trades he was proposing to the Arkansas treasurer's office. Several emails sent by Stephens to the Arkansas treasurer's office at the time the bond trades were occurring in 2010 and 2011 misstate or mischaracterize the bond transactions as generating large profits. Some of these emails were sent by Stephens on his St. Bernard email account. Keenan and St. Bernard had or should have had access to all of these emails containing misstatements. Nevertheless, Keenan and St. Bernard repeatedly allowed Stephens to misstate the benefit or value of these bond trades to his client, the Arkansas treasurer's office.

16. Keenan's and St. Bernard's failure to properly supervise Stephens was further indicated by numerous verbal and written post transaction explanations of the bond trades conducted on behalf of the Arkansas treasurer's office. These post transaction explanations were made by Stephens and Keenan as agents of St. Bernard, and repeatedly misstated the profit or benefit of these trades to the Arkansas treasurer's office. Said misstatements were made by Stephens, Keenan and St. Bernard directly to the staff of the Arkansas treasurer's office, as well as other agencies or branches of the Arkansas state government. Although these misstatements were made in post transaction meetings and written communications, they indicated the willingness of Keenan and St. Bernard to intentionally misstate the profit or benefit of these bond trades to the Arkansas treasurer's office.

IV. Applicable Law

17. Ark. Code Ann. § 23-42-308(a)(2)(G) states that the Commissioner may by order suspend or revoke any registration if he finds that the registrant has engaged in dishonest or unethical practices in the securities business.

18. Ark. Code Ann. § 23-42-308(a)(2)(J) states that the Commissioner may by order suspend or revoke any registration if he finds that the registrant, or an officer or director of a broker-dealer, has failed reasonably to supervise the agents of the broker-dealer.

19. Ark. Code Ann. § 23-42-308(g) states that upon notice and opportunity for hearing, the commissioner may fine any broker-dealer or agent up to a maximum of ten thousand dollars (\$10,000) for each separate violation of this chapter.

20. Rule 308.01(d) states that recommending to a customer the purchase, sale or exchange of any security when a broker-dealer or agent does not have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs, or encouraging a customer to invest beyond his immediate financial resources shall be grounds for suspension or revocation of a broker-dealer or agent registration.

21. Rule 308.01(y) states that the non-disclosure or misstatement of material facts shall be considered grounds for suspension or revocation and the Commissioner may suspend or revoke a registration when necessary and appropriate in the public interest.

22. Ark. Code Ann. § 23-42-507(2) states it is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly, to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.

23. Ark. Code Ann. § 23-42-507(3) states it is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly, to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

V. Violations of Law

24. St. Bernard violated Ark. Code Ann. § 23-42-308(a)(2)(J), when it failed to supervise its agent Stephens by failing to detect and prevent the unsuitable securities sales of Stephens as detailed in paragraphs number 3 through 10.

25. Keenan violated Ark. Code Ann. § 23-42-308(a)(2)(J), when he failed to supervise Stephens by failing to detect and prevent the unsuitable securities sales of Stephens as detailed in paragraphs number 3 through 10.

26. St. Bernard violated Ark. Code Ann. § 23-42-308(a)(2)(J), when it failed to supervise its agent Stephens by failing to detect and prevent the omission or misstatement of material information by Stephens as detailed in paragraphs number 11 through 14.

27. Keenan violated Ark. Code Ann. § 23-42-308(a)(2)(J), when he failed to supervise Stephens by failing to detect and prevent the omission or misstatement of material information by Stephens as detailed in paragraphs number 11 through 14.

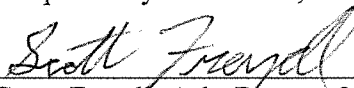
28. The registrations of St. Bernard and Keenan should be suspended or revoked by the Commissioner pursuant to Ark. Code Ann. § 23-42-308(a)(2)(J).

29. Pursuant to Ark. Code Ann. § 23-42-308(g), the Commissioner should impose appropriate fines against St. Bernard and Keenan.

VI. Notice of Hearing

This Complaint hereby serves notice of the institution of formal administrative proceedings against the Respondents. With the filing of this Complaint the Staff requests that the Arkansas Securities Commissioner set a date for a hearing before the Arkansas Securities Commissioner, pursuant to Rule 607.01, to consider whether the registrations of the Respondents should be suspended or revoked, fines should be imposed, and other appropriate action should be taken.

Respectfully Submitted,



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2/11/14

Date