

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

**STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
SECURITIES DIVISION**

IN THE MATTER OF DETERMINING
whether there has been a violation of the
Securities Act of Washington by:

Ryan P. Stearns and Stearns Asset
Management, LLC,

Respondents.

S-03-189-03-SC01

STATEMENT OF CHARGES AND NOTICE
OF INTENT TO ENTER AN ORDER TO
CEASE AND DESIST, DENY
REGISTRATIONS, AND IMPOSE FINES

Case No. S-03-189

THE STATE OF WASHINGTON TO:

Ryan P. Stearns, CRD #3031848
Stearns Asset Management, LLC, IARD #124913

STATEMENT OF CHARGES

Please take notice that the Securities Administrator of the State of Washington has reason to believe that the Respondents, Ryan P. Stearns and Stearns Asset Management, LLC, have violated the Securities Act of Washington. The Securities Administrator believes that those violations justify the entry of an order pursuant to RCW 21.20.390 to cease and desist from such violations, and under 21.20.110 to deny registration as a broker-dealer, securities salesperson, investment adviser, or investment adviser representative. The Securities Administrator finds as follows:

TENTATIVE FINDINGS OF FACT

I. Respondents

1. Ryan P. Stearns (“Stearns”) was a registered securities salesperson in the State of Washington from February 1998 to August 2003. From February 1998 to November 1999, Stearns was employed as a registered securities salesperson with U.S. Bancorp Piper Jaffray Inc. (“Piper Jaffray”), a registered broker-

1 dealer. Stearns was discharged for failing to follow firm policies and procedures with respect to, among other
2 things, initial public offerings (“IPOs”) in client accounts. From December 1999 to September 2000, Stearns
3 was employed as a registered securities salesperson with First Montauk Securities Corp. (“First Montauk”).
4 Central Registration Depository (“CRD”) records indicate that on August 17, 2000, First Montauk initiated
5 an internal review to investigate potential changes by Stearns to client records in contravention of firm
6 policy, National Association of Securities Dealers (“NASD”) rules, and state law. First Montauk also
7 reported that Stearns had an unpaid debt to the firm of \$4,500. From September 2000 through May 14,
8 2003, Stearns was employed as a registered securities salesperson and investment adviser representative
9 with UBS PaineWebber Inc. (“PaineWebber”). Stearns was discharged for failing to disclose that he was
10 the subject of a New York Stock Exchange (“NYSE”) investigation. From July 15, 2003 through August
11 7, 2003, Stearns was employed as a securities salesperson with Sterling Financial Investment Group, Inc.
12 of Boca Raton, FL. Stearns was discharged due to the entry of a final NYSE decision, as described below.
13 CRD records indicate that while employed at First Montauk, a customer of Stearns alleged Stearns made
14 an unauthorized trade in an IPO in December 2000.

15 2. Stearns Asset Management, LLC (“SAM”) is a Washington limited liability company whose
16 managing member is Ryan P. Stearns. On January 14, 2003 and February 3, 2003, Stearns, on behalf of
17 SAM, filed an application with the Securities Division for registration as an investment adviser, file number
18 30002482. SAM’s application has been pending since February 5, 2003.

19 **II. Nature of the Conduct**

20 *NYSE Final Decision*

21 3. On July 24, 2000, the NYSE’s Division of Enforcement delivered notice pursuant to NYSE Rule
22 477 to Stearns that it was investigating Stearns’s possible redirection of commissions from a team production

1 number to a personal production number, transfer of funds from customer accounts to Stearns's personal
2 account, and Stearns's participation in various IPOs in these accounts. The NYSE requested a written
3 explanation of these matters.

4 4. On May 15, 2001, Stearns was deposed by the NYSE Division of Enforcement.

5 5. In a letter to Stearns dated November 27, 2002, the NYSE Division of Enforcement informed
6 Stearns that it had concluded its investigation and was authorized to initiate disciplinary action. The NYSE
7 invited Stearns to settle with a Stipulation of Facts and Consent to Penalty, or else a Charge Memorandum
8 would be issued.

9 6. On January 24, 2003, the NYSE's Division of Enforcement filed charges against Stearns
10 alleging that Stearns, while employed by member firm Piper Jaffray:

- 11 i. Engaged in conduct inconsistent with just and equitable principles of trade, by causing
12 shares of IPOs to be allocated to customer accounts and sharing in profits from the sale of
13 such shares;
- 14 ii. Violated Exchange Rule 352(C), by sharing in profits of IPO transactions in the
15 accounts of customers;
- 16 iii. Engaged in conduct inconsistent with just and equitable principles of trade, by signing
17 the names of customers to letters of authorization transferring funds into his account; and
- 18 iv. Caused a violation of Regulation T, Section 220.13 of the Board of Governors of the
19 Federal Reserve System, by advancing funds to purchase an IPO in a customer account.

20 6. On July 28, 2003, the NYSE Hearing Panel issued Decision 03-131 against Stearns. The
21 panel found Stearns guilty as charged. The panel censured Stearns and barred him for a period of eight years
22 from membership, allied membership, approved person status, and from employment or association in any

1 capacity with any member organization. The panel found that at all relevant times, Piper Jaffray's policy
2 prohibited employees from participating in IPOs in which Piper Jaffray was a member of the underwriting
3 syndicate, without prior approval of the firm. The panel found that from September 1999 through November
4 1999, Stearns caused shares of certain IPOs in which Piper Jaffray was a member of the underwriting
5 syndicate to be allocated to four customer accounts. The total profits from the purchase and sale of these IPOs
6 was \$36,781. During this period, a total of \$28,700 of such profits was transferred from the customers'
7 accounts into Stearns's account. Stearns effected two of these transfers by signing customers' names to letters
8 of authorizations transferring funds from the customers' accounts to Stearns's personal account.

9 7. On September 5, 2003, Decision 03-131 became final and effective immediately.

10 *Stearns Asset Management, LLC*

11 8. On January February 3, 2003, Stearns, on behalf of SAM, electronically filed Form ADV, the
12 Uniform Application for Investment Adviser Registration, with the Securities Division. Item 11 E asks, "Has
13 any self-regulatory organization or commodities exchange ever: . . . (2) found you or any advisory affiliate to
14 have been involved in a violation of its rules (other than a violation designated as a "minor rule violation"
15 under a plan approved by the SEC), . . . (4) disciplined you or any advisory affiliate by expelling or
16 suspending you or the advisory affiliate from membership, barring or suspending you or the advisory
17 affiliate from association with other members, or otherwise restricting your or the advisory affiliate's
18 activities?" Part 11 G asks, "Are you or any advisory affiliate now the subject of any regulatory
19 proceeding that could result in a "yes" answer to any part of 11C, 11D, or 11E?" Stearns, on behalf of
20 SAM, answered each item in the negative. Part IB, Item 2 F asks, "Are you, any advisory affiliate, or any
21 management person currently subject to, or have you, any advisory affiliate, or any management person been
22 found liable in, a civil, self-regulatory organization, or administrative proceeding involving any of the

1 following: (1) an investment or investment-related activity, (2) fraud, false statement, or omission, (3) theft,
2 embezzlement, or other wrongful taking of property, (4) bribery, forgery, counterfeiting, or extortion, (5)
3 dishonest, unfair, or unethical practices?” Stearns, on behalf of SAM, answered each item in the negative. To
4 date, Stearns has not filed an update to the Form ADV to disclose the NYSE Division of Enforcements
5 charges or final decision.

6
7 Based upon the above Tentative Findings of Fact, the following Conclusions of Law are made:

8 **CONCLUSIONS OF LAW**

9 1. Ryan P. Stearns and Stearns Asset Management, LLC, as described above, have violated
10 RCW 21.20.350 by filing a Form ADV containing one or more false or misleading statements.

11 **NOTICE OF INTENT TO DENY REGISTRATIONS**

12 Pursuant to RCW 21.20.110(1), and based upon the Tentative Findings of Fact and Conclusions of
13 Law, the Securities Administrator intends to order that Respondent Stearns Asset Management, LLC’s
14 investment adviser registration, file number 30002482, be denied.

15 Pursuant to RCW 21.20.110(1)(e)(iii), and based upon the above Tentative Findings of Fact and
16 Conclusions of Law, the Securities Administrator intends to order that Respondent Ryan P. Stearns shall
17 be denied registration as a securities salesperson, broker-dealer, investment adviser representative, or
18 investment adviser for a period of eight (8) years from the date of the entry of a final order in this matter.

19 **NOTICE OF INTENT TO IMPOSE FINES**

20 Pursuant to RCW 21.20.110(1) and (4), and based upon the above Tentative Findings of Fact and
21 Conclusions of Law, the Securities Administrator intends to order that Respondents Ryan P. Stearns and
22 Stearns Asset Management, LLC shall be liable for and pay a fine of \$5,000.


1 **NOTICE OF INTENT TO ORDER RESPONDENTS TO CEASE AND DESIST**

2 Pursuant to RCW 21.20.390, and based upon the above Tentative Findings of Fact and Conclusions
3 of Law, the Securities Administrator intends to order that Respondents permanently cease and desist from
4 violations of the Securities Act.

5 **AUTHORITY AND PROCEDURE**


6 This Order is entered pursuant to the provisions of RCW 21.20.110 and RCW 21.20.390, and is
7 subject to the provisions of RCW 21.20.120 and Chapter 34.05 RCW. The Respondents may each make
8 a written request for a hearing as set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND
9 OPPORTUNITY FOR HEARING accompanying this Order. If a Respondent does not request a hearing,
10 the Securities Administrator intends to adopt the foregoing Tentative Findings of Fact and Conclusions
11 of Law as final, and enter a permanent cease and desist order against that Respondent and enter an order
12 denying registration and imposing fines, as described above.

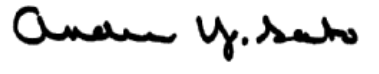
13 DATED this 24th day of October, 2003.

14
15
16 
17 DEBORAH R. BORTNER
18 Securities Administrator

19 Approved by:

Presented by:

20 
21 Michael E. Stevenson
22 Chief of Enforcement

23 
24 Andrea Y. Sato
25 Enforcement Attorney