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: Financial Services International Corp.; Candace Jean Lee; David Waldemar Asplund, Jr.; Respondents.	Order No.: S-09-343-12-FO01 ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW AND FINAL ORDER TO CEASE AND DESIST AND IMPOSE A FINE, AS TO DAVID WALDEMAR ASPLUND, JR.

On October 6, 2011, the Securities Administrator of the state of Washington issued Statement of Charges and Notice of Intent to Enter Order to Cease and Desist, Suspend Registrations, Impose Fines, and Recover Costs, S-09-343-10-SC01, hereinafter referred to as "Statement of Charges," against Financial Services International Corp.; Candace Jean Lee; David Waldemar Asplund, Jr.; and George Wallace Hook III.

The Statement of Charges, together with a Notice of Opportunity to Defend and Opportunity for Hearing, hereinafter referred to as "Notice of Opportunity for Hearing" and an Application for Adjudicative Hearing, hereinafter referred to as "Application for Hearing," was served on Respondent, David Waldemar Asplund, Jr., on December 1, 2011. The Notice of Opportunity for Hearing advised Respondent, David Waldemar Asplund, Jr., that a written application for an administrative hearing on the Statement of Charges must be received within twenty days from the date of receipt of the notice. The Statement of Charges advised David Waldemar Asplund, Jr. that if a hearing was not requested, the Securities Administrator intends to adopt the "Tentative Findings of Fact" and Conclusions of Law," as set forth in the Statement of Charges, as final, and enter a final order against the Respondent to cease and desist from violations of the Securities Act, to suspend registrations, to impose the fine, and recover costs.

Respondent, David Waldemar Asplund, Jr., failed to request an administrative hearing within twenty days of receipt of the Statement of Charges and Notice of Opportunity for Hearing, either on the Application for Hearing provided, or otherwise.

On February 1, 2012, the Securities Division entered a Final Order, S-07-478-12-FO01, against David Waldemar Asplund, Jr., resolving a Statement of Charges issued against David Waldemar Asplund, Jr. in a different matter. The sanctions from that Final Order included denial of any future securities registration application of David Waldemar Asplund, Jr. as an investment adviser, broker-dealer, investment adviser representative, or securities salesperson.

The Securities Administrator therefore will adopt the following findings of fact and conclusions of law and enter a Final Order against David Waldemar Asplund, Jr. to cease and desist from violations of the Securities Act and to impose the fine.

The Securities Administrator makes the following findings of fact and conclusion of law:

FINDINGS OF FACT

Respondents

1. Financial Services International Corp. ("FSIC"), a Washington corporation, is a broker-dealer and investment adviser with its principal place of business at 701 Fifth Avenue Suite 6870, Seattle, Washington. FSIC has been registered in Washington State as a broker-dealer from January 30, 1995 to present. FSIC is a federally registered investment adviser that has made notice filings in Washington State since June 14, 2005. Prior to federally registering, FSIC was registered as an investment adviser with Washington State beginning on August 18, 1992. FSIC has a Central Registration Depository ("CRD") and Investment Adviser Registration Depository ("IARD") number of 37813.

2. Candace Jean Lee ("Lee") is the Chief Executive Officer and Chief Compliance Officer of FSIC. Lee is registered as a securities salesperson and investment adviser representative of FSIC. Her office is located at 701 Fifth Avenue, Suite 6870, Seattle, Washington. Her CRD number is 1502112.

3. David Waldemar Asplund, Jr. ("Asplund") was registered as a securities salesperson and investment adviser representative of FSIC. Asplund resigned from FSIC in June of 2010. His office was located at 4507 Sunnyside Avenue North, Suite D, Seattle, Washington. His CRD number is 2803177.

Related Individuals

4. George "Tripp" Wallace Hook III ("Hook") is registered as a securities salesperson and investment adviser representative of FSIC. His office is located at 13852 SE 62nd Street, Bellevue, Washington. His CRD number is 3231480.

Introduction

5. FSIC used annual fees from Class C shares of mutual funds ("C shares") as a way to receive compensation for investment advisory services to some clients who did not meet the minimum asset requirements for its traditional advisory accounts. FSIC's failure to follow its own procedures concerning the sale of mutual funds resulted in clients receiving inadequate disclosures and, in some cases, unsuitable investments.

Background

6. A mutual fund is an investment company which pools money from many investors and invests those funds in a collection of securities (stocks, bonds, short-term money-market instruments, or other securities) based on the fund's stated investment objective. Investors in a mutual fund purchase a share of the fund which gives them a proportional ownership right to the income and capital gains generated by the fund. A mutual fund is professionally managed and can help an investor obtain diversification.

7. Mutual funds charge fees to the investors to cover expenses of managing the fund. A mutual fund's investment return is determined by subtracting those fees from the performance of the investments in the mutual fund.

8. Mutual funds can be offered in various share classes (typically Class A, Class B, or Class C) with each class utilizing a different fee and expense structure. These fees and expenses affect an investor's return; therefore it is important for an investor to understand how their investment strategy fits with the fee structure of each mutual fund class. An investor's investment time horizon can be important in determining which share class to purchase.

9. With Class A shares ("A shares") an investor pays a commission at the time the mutual fund is purchased, typically called a front-end sales charge or load. With a front-end sales charge, the amount invested in the fund is reduced at the point of purchase by the amount of the charge. For example, if an investor had $1,000 to

invest into a fund with a 5% front-end sales charge, $50 dollars would be taken out to cover the sales charge, leaving the investor with an investment of $950 in the fund. The front-end sales charge is usually paid to the selling broker. Typically, an A share carries an overall annual expense that is lower than its B and C share counterparts.

10. Class B shares ("B shares") have a back-end load, also called a deferred sales charge. With a back-end load the investor pays a fee if the mutual fund is sold prior to a specific time period, typically 5-8 years. With a back-end sales charge all of the investor's dollars are invested at the point of purchase. The back-end sales charge normally decreases the longer the shares are held, until it is eliminated altogether after the specific time period ends. Once the back-end sales charge time period lapses, B shares typically convert to A shares. Instead of a front-end sales charge, B shares charge higher annual fees than A shares. A portion of the annual fees is typically paid to the selling broker.

11. Class C shares ("C shares") have a level fee paid throughout the time the investor holds the mutual fund. Like B shares, C shares do not utilize a front-end sales charge and all of the investor's funds get invested at the point of purchase. C shares typically entail higher annual fees than A shares or B shares, with a portion of the fee paid to the selling broker. Unlike B shares, C shares generally do not convert to A shares, so the annual fees are not reduced over time.

12. Class A shares typically are more expensive than B or C shares in the short term because the investor must recoup the front-end sales charge. However, assuming that the mutual fund grows, eventually the investor in A shares recovers the front-end sales charge. Over time, the higher annual fees of C shares mean reduced long-term returns compared to A shares. Because of this negative impact on long-term returns, C shares usually are only suitable for investors with a short-term investment time horizon.

<u>Advisory / Brokerage Services</u>

13. FSIC offers both investment advisory services and broker-dealer services. Brokerage clients pay commissions to the representative for facilitating securities transactions. Commission-based compensation provides for a set dollar amount charge per trade in an account. Advisory clients pay a fee for investment recommendations.

Typically the advisory fee is a percentage of the value of the assets managed by the firm. Investment advisers are required to provide advisory clients with a brochure which discloses the fees charged by the adviser.

DFI Examination

14. On May 26, 2009 a Securities Division examiner conducted a routine broker-dealer examination of the home office/headquarters of FSIC pursuant to RCW 21.20.100(4). The examination sought to review only FSIC's broker-dealer business and not its federally registered investment adviser business.

15. During the examination, the examiner reviewed the commissioned brokerage accounts of the representatives based at FSIC's headquarters, which included current FSIC Chief Executive Officer and Chief Compliance Officer Candace Lee. The examiner discovered that a number of FSIC clients held C share mutual funds in brokerage accounts with an investment time horizon of 5 years or longer. While the fees from mutual funds can vary, the higher fees charged by C shares typically make them unsuitable for an investor with an investment time horizon of greater than 5 years. The Securities Division examiner questioned Lee about the suitability of those transactions both during the examination and in a deficiency letter sent to FSIC on July 7, 2009.

16. Lee did not sell C shares to clients because they were suitable for the clients' investment objectives. Rather, Lee sold her clients C shares as a method for her to be paid for advisory services in smaller accounts. FSIC's custodian, Raymond James, does not allow FSIC to open investment advisory accounts that hold less than $300,000 in assets. If FSIC wanted to open advisory accounts for clients with these smaller accounts, FSIC would have to handle the billing of those accounts directly. FSIC found the cost of quarterly billing to be expensive and inconvenient. As such, FSIC allowed its representatives to use the annual sales charge from C shares held in brokerage accounts as an alternative fee for providing investment advisory services. Lee does not sell C shares to clients who have enough assets to qualify for a traditional advisory account.

17. C shares do not require FSIC's custodian to debit client accounts to pay for the advisory fee. With C shares, the mutual fund company automatically provides payment to the FSIC representatives. FSIC found C shares were cheaper for smaller account advisory relationships because C shares eliminated the need to perform administrative tasks. By using C shares as an advisory fee, FSIC avoided the expenses associated with downloading

client transactions into data management software, reconciling the data with FSIC's custodian, calculating the advisory fees, liquidating assets to cover the fees, billing the account, and mailing the client a billing statement.

Deceptive Practices / Advisory Accounts

18. FSIC's use of C shares as an advisory fee may have provided FSIC with a cheaper method to bill clients with smaller accounts for advisory fees, but FSIC failed to provide clients with adequate information about those advisory services and the fees associated with them.

19. With clients who had traditional advisory accounts, FSIC investment adviser representatives entered into a written advisory agreement. The advisory agreement included a sample fee schedule which disclosed to advisory clients the annualized fees charged at different ranges of account values.

20. At the time of the examination in May 2009, FSIC's Investment Adviser Policies and Procedures Manual ("RIA Manual") required a written investment advisory agreement for each client relationship. The RIA Manual stated:

> Written advisory agreements form the legal and contractual basis for an advisory relationship with each client and as a matter of industry and business best practices provide protections for both the client and an investment adviser. An advisory agreement is the most appropriate place for an adviser to describe its advisory services, fees, liability, and disclosures for any conflicts of interest, among other things. It is also a best business practice to provide a copy of the advisory agreement to the client…

21. With clients who received investment advice in accounts which used C shares for the advisory fee, FSIC representatives did not enter into written advisory agreements. Traditional advisory accounts required FSIC to send a written advisory agreement to its custodian so that the custodian could debit client accounts to pay the advisory fee. With C shares, FSIC did not need to provide its custodian with an advisory agreement, because the C shares automatically provided payment to FSIC representatives. FSIC also did not provide C share clients with the written fee schedule provided to other advisory clients.

22. Rule 204-3 of the Investment Advisers Act of 1940 ("Rule 204-3") requires federally registered investment advisers to furnish advisory clients with a written disclosure statement ("Disclosure Document") which contains at least the information then so required by Part 2 of Form ADV. Form ADV is a uniform disclosure form used by investment advisers to register with the SEC and state securities authorities. Part 2 of Form ADV contains a

description of the advisory services offered, the adviser's fee schedule, disciplinary information, and other information about the adviser.

23. FSIC's RIA Manual required representatives to maintain a document or other form of acknowledgment evidencing delivery of the Disclosure Document to each advisory client. Lee violated FSIC's Disclosure Document policy and Rule 204-3 by failing to provide written Disclosure Documents to clients utilizing C shares as an advisory fee.

24. At the time of examination, FSIC's Registered Representative Manual ("Rep Manual") required representatives to provide a "complete, comprehensive description of the share-class characteristics" of mutual funds to all potential mutual fund investors. The Rep Manual addressed the avoidance of front-end sales loads by noting that "[a]lthough the purchase of certain fund classes may allow an investor to avoid paying a front-end sales load, the cost imposed by a class's higher expenses may outweigh this benefit…" At least two FSIC representatives failed to provide a comprehensive description of the share-class characteristics of mutual funds to clients.

25. By not providing C share advisory clients with written advisory agreements, Disclosure Documents, or complete descriptions of the multi-class structure of mutual funds, FSIC clients received incomplete and inadequate information on the products and services supplied by FSIC.

Candace Lee

26. The majority of Lee's clients hold mutual funds, primarily from Russell Investments.

27. With certain clients Lee utilizes C shares as an advisory fee. Lee did not enter into written advisory agreements with those clients for whom she used C shares as an advisory fee. At the time of examination, Lee did not provide C shares advisory clients with the fee schedule that she provides to non C shares advisory clients. Lee also did not deliver to clients utilizing C shares as an advisory fee any written disclosure materials containing at least the information then so required by Part 2 of Form ADV.

28. With clients using C shares as an advisory fee, Lee did not provide a complete, comprehensive description of the share-class characteristics of mutual funds. Lee did not compare the fee structure of C shares with

A or B shares. Lee does not believe in paying fees up front and therefore does not recommend A or B shares to her clients. Because Lee does not recommend A or B shares, she does not discuss them with her clients. Lee does not use the term C shares with clients. Lee described the term C shares as "jargon," which clients did not need to hear.

Suitability / Brokerage Accounts

29. FSIC's initial response to the examiner's deficiency letter indicated firm wide use of C shares as an advisory fee. Lee assumed that any FSIC registered investment adviser representative that sold C shares to a client, used those C shares as an advisory fee. However, FSIC later provided a list of 14 FSIC representatives that did not use C shares as an advisory fee, but did have clients with C share holdings in their brokerage account.

30. Pursuant to RCW 21.20.702, a salesperson must have reasonable grounds for believing that a recommendation is suitable for a customer based on the facts disclosed by the client with regard to the client's financial situation and needs.

31. FSIC's Registered Representative Manual ("Rep Manual") emphasized suitability as a representative's primary concern and required that recommendations be based on the client's investment objectives, financial resources, risk tolerance, and investment experience.

32. With multi-class mutual funds, the Rep Manual stated that a representative needed a full understanding of issues involving multi-class funds. The Rep Manual noted that different classes may entail different expense levels and different compensation to the representative. The Rep Manual also explained that the cost of a class's higher expenses may outweigh the benefit of avoiding a front-end sales load.

33. Some FSIC representatives made unsuitable recommendations to their brokerage clients when they sold a short-term product, C shares, to customers with long-term investment time horizons.

David Waldemar Asplund, Jr.

34. The majority of Asplund's clients at FSIC held C share mutual funds, primarily from Russell Investments. The investment strategy for most of the clients Asplund sold C shares was to purchase and hold.

35. Asplund used C shares as a way to "annuitize" his business, with a small percentage of the value of the shares paid to him on a quarterly basis.

36. Asplund discussed A shares and C shares with his client, but did not discuss B shares. Asplund preferred C shares because C shares did not impose a front-end sales charge.

37. FSIC provided materials for 67 accounts of Asplund that held C shares. Of the 67 Asplund accounts, only one client indicated a primary investment time horizon of less than 5 years. Fifty-three clients indicated a primary investment time horizon of 5 to 10 years. Thirteen clients indicated a primary investment time horizon of greater than 10 years. At least some of the clients were not familiar with the differences between the share classes of mutual funds.

George "Tripp" Hook

38. FSIC provided materials for 46 accounts holding C shares through Hook. Of the 46 accounts, only one client indicated a primary investment time horizon of less than 5 years. Nineteen clients indicated a primary investment time horizon of 5 to 10 years. Twenty-six clients indicated a primary investment time horizon of greater than 10 years.

Supervision

Salespersons

39. As Chief Compliance Officer for FSIC, Lee is responsible for the review of transactions by FSIC representatives for compliance with the firm's policies and procedures.

40. FSIC's Broker-Dealer Written Supervisory Policies and Procedures ("BD Supervisory Procedures") at the time of examination required supervising principals to ensure that mutual fund investors received a "complete, comprehensive description of share-class characteristics." The BD Supervisory Procedures required that a record of such disclosures, whether provided to clients in writing or orally, be maintained in client files. FSIC representatives did not follow this procedure and did not keep a record of such disclosures, if given.

41. At the time of examination, FSIC's BD Supervisory Procedures required investment recommendations to be suitable based on information disclosed to the representative. The BD Supervisory Procedures further instructed supervising principals to "be sensitive to the patterns of purchases and solicitations which may be indicative of potential suitability problems." FSIC failed to discharge this duty. As described above,

FSIC representative Asplund sold C shares in 66 accounts where the client indicated an investment time horizon of 5 years or greater. FSIC representative Hook sold C shares in 45 accounts where the client indicated an investment time horizon of 5 years or greater. Pursuant to the BD Supervisory Procedures, FSIC supervisors were to question seemingly unsuitable trades and call the representative to discuss the appropriateness and/or suitability. No supervisor at FSIC ever contacted Asplund or Hook to discuss the appropriateness of C shares for those clients with an investment time horizon of five years or greater. FSIC allowed each C share transaction to occur.

42. FSIC's BD Supervisory Procedures required the designated principals of FSIC to ensure that its registered representatives had sufficient training to consider the suitability of recommending higher-expense classes of mutual funds, "particularly when an investor is seeking a long-term investment." FSIC failed to provide such training. FSIC only provides firm wide training of mutual funds if regulatory changes occur. Individual representative training occurs only if problems arise in FSIC's compliance reviews. Between February 2008 and February 2010, FSIC did not have record of any training sessions involving mutual funds.

43. FSIC failed to provide adequate supervision to its salespersons in connection with the sale of C share mutual funds to brokerage clients. FSIC had supervisory procedures for suitability of investment recommendations generally and suitability procedures for mutual funds specifically, but failed to reasonably discharge the duties and obligations required by those procedures.

Investment Adviser Representatives

44. Pursuant to FSIC's Investment Adviser Policies and Procedures Manual ("RIA Manual"), Lee had responsibility for the implementation and monitoring of FSIC's advisory agreement policies and procedures.

45. As described above, at the time of examination, FSIC's RIA Manual required a written investment advisory agreement for each client relationship. Despite this requirement, FSIC failed to ensure its representatives obtained written advisory agreements from those clients who used C shares as an advisory fee. Lee did not enter into written advisory agreements with her C share advisory clients.

46. FSIC's RIA Manual and Rule 204-3 required representatives to furnish advisory clients with a written Disclosure Document containing the information required by Part 2 of Form ADV. FSIC failed to ensure its

representatives furnished a Disclosure Document to those clients who used C shares as an advisory fee. Lee did not provide a Disclosure Document to her C share advisory clients.

47. FSIC's failure to have written advisory agreements with clients using C shares as an advisory fee, combined with its failure to ensure delivery of Disclosure Documents, operated as a deceit upon those clients. C share clients did not receive any written materials describing FSIC's advisory services or fees. Without receiving these written disclosures, C share clients might not know whether they are receiving advisory services.

48. FSIC itself could not adequately determine which clients holding C shares had an advisory relationship with an FSIC representative versus a brokerage relationship. At the time of examination, FSIC lacked a system for documenting whether C shares in brokerage accounts were being used as an advisory fee or were simply brokerage holdings. FSIC's registered investment adviser representatives who sold C shares to clients were assumed to be using them as an advisory fee. FSIC provided conflicting information to the Securities Division as to which representatives used C shares as an advisory fee, ultimately naming four representatives. One of those four was Asplund, who did not use C shares as an advisory fee and only had brokerage clients. Hook, one of the representatives FSIC claimed did not use C shares as an advisory fee, told two clients who had advisory accounts at previous firms that he could provide them with similar services using C shares as the fee. Hook did not have written advisory agreements with those clients. Without being able to determine which C share clients had brokerage accounts versus advisory accounts, FSIC could not reasonably discharge its duty to ensure clients received proper disclosures or its duty to properly review C share transactions for suitability.

Misrepresentations and Omissions

49. In offering and selling C shares, Respondents FSIC, Lee, and Asplund made misrepresentations of material facts and/or omitted to state material facts necessary in order to make the statements made, in light of the circumstances in which they were made, not misleading.

50. Respondents FSIC and Lee failed to provide C share advisory clients with written disclosures containing the information then so required by Part 2 of Form ADV.

51. Respondents FSIC, Lee, and Asplund failed to provide to customers a complete, comprehensive description of the share class options and fees of mutual funds.

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

CONCLUSIONS OF LAW

1. The offer or sale by Respondents of C share mutual funds described above constitutes the offer and/or sale of a security as defined by RCW 21.20.005(10) and (12).

2. The offer and/or sale of said securities were made in violation of RCW 21.20.010 because, as set forth above, in connection with the offer and sale of C shares, Respondent Asplund made misrepresentations of material facts and/or omitted to state material facts necessary in order to make the statements made, in light of the circumstances in which they were made, not misleading, and Respondent Asplund engaged in acts, practices, and courses of business which operated as a deceit.

3. Respondent Asplund, violated RCW 21.20.702 because, as set forth above, he recommended the purchase of a security without reasonable grounds to believe that the recommendation was suitable. Such conduct is grounds for the imposition of fines pursuant to RCW 21.20.110(1).

4. Respondent Asplund, as described above, engaged in one or more dishonest or unethical practices in the securities business as defined by WAC 460-22B-090(7) by failing to have reasonable grounds for believing that recommendations for the purchase, sale or exchange of a security were suitable in light of the customer's investment objectives, financial situation, and needs.

FINAL ORDER

Based upon the foregoing and finding it in the public interest:

IT IS HEREBY ORDERED that the Respondent, David Waldemar Asplund, Jr., shall cease and desist from violating RCW 21.20.010, the anti-fraud section of the Securities Act of Washington.

IT IS FURTHER ORDERED that the Respondent, David Waldemar Asplund, Jr., shall cease and desist from violating RCW 21.20.702, the suitability of recommendation section of the Securities Act of Washington.

IT IS FURTHER ORDERED that the Respondent, David Waldemar Asplund, Jr., shall be liable for and shall pay a fine of $20,000.00.

AUTHORITY AND PROCEDURE

This FINAL ORDER is entered pursuant to the provisions of RCW 21.20.390 and 21.20.395, and is subject to the provisions of RCW 21.20.440 and RCW 34.05. The Respondent has the right to petition the superior court for judicial review of this agency action under the provisions of RCW 34.05. For the requirements for Judicial Review, see RCW 34.05.510 and sections following.

WILLFUL VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.

SIGNED and ENTERED this ____16th_________ day of ___August________________________ 2012.

William M. Beatty
Securities Administrator

Approved by:

Suzanne Sarason
Chief of Enforcement

Presented by:

Jack McClellan
Financial Legal Examiner