

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF MEMBER
REGULATION,

Complainant,

v.

INTERMOUNTAIN FINANCIAL
SERVICES, INC.
(CRD No. 15386),

Respondent.

Expedited Proceeding
No. EQS100001

STAR No. 20100247856

Hearing Officer – LBB

**EXPEDITED HEARING PANEL
DECISION**

April 18, 2011

Respondent Intermountain Financial Services, Inc. is continuing to violate NASD Rule 1021(e)(3) because it has not had a FINOP since October 2009. Respondent is suspended from FINRA membership until it designates a FINOP, and until it files a Form U5 for the person who is improperly identified in the Central Registration Depository as its current FINOP. If, within three months after the issuance of this Decision, Respondent has not designated a FINOP who will perform all the duties of a FINOP the suspension will automatically convert to a cancellation of FINRA membership.

Appearances

Anne-Marie Mason, Counsel, and Jetta Sandin, Attorney, Washington, D.C., for the Department of Member Regulation.

Kent D. Sweat, President, Intermountain Financial Services, Inc., for Respondent.

DECISION

On October 6, 2010, FINRA served a Notice of Failure to Meet Eligibility Standards (“Notice”) on Respondent Intermountain Financial Services, Inc. (“Respondent” or “Intermountain”). The Notice informed Respondent that it did not meet the eligibility requirements for continuing FINRA membership because the firm had not had a Financial and Operations Principal (“FINOP”) since October 2009. The Notice informed Respondent that

failure to demonstrate eligibility within 14 days would be grounds for cancellation of the firm's membership. On October 19, 2010, Respondent filed a request for a hearing, asserting that the firm's membership should not be suspended or cancelled because the Firm had a FINOP.

Pursuant to FINRA Procedural Rules 9555 and 9559, a telephone hearing was held on March 2, 2011, before a Hearing Panel composed of a former member of the District 7 Committee, a current member of the District 3 Committee, and a Hearing Officer.¹

I. Respondent

Intermountain has been a FINRA member since Randell Ashliman ("Ashliman") founded the firm in 1984. In 1997, Ashliman sold the firm to Kent Sweat ("Sweat"), its current owner and president, who had been a broker in the firm before the sale. Intermountain is a "\$5,000 broker," i.e., a firm that does not receive or hold customer funds or securities and does not carry customer accounts.² Tr. 30, 39. As of October 1, 2010, Intermountain had 34 registered representatives in 27 branch offices, all but two of which are in Utah. CX-11; Tr. 90.

II. The FINOP Requirement Under FINRA's Rules

NASD Membership and Registration Rule 1021(e)(3) requires that "an applicant for membership, if the nature of its business so requires, shall have at least one person qualified for registration pursuant to Rule 1022(b), (c) and (f)." Rule 1022(c) requires an introducing broker/dealer, such as Intermountain, to "designate as Limited Principal – Introducing Broker/Dealer Financial and Operations those persons associated with it, at least one of whom shall be its chief financial officer, who perform the duties described in subparagraph (2)...."

¹ On December 9, 2010, another Hearing Panel heard this matter. For reasons that are not relevant to this decision, that Hearing Panel was disqualified, a new Hearing Panel was convened, and a re-hearing was conducted on March 2, 2011.

² References to the exhibits provided by the Department of Member Regulation are designated as "CX-___." Respondent did not offer any exhibits. References to the hearing transcript are designated as "Tr. ___."

Rule 1022(c)(2) provides that a FINOP is a person associated with a member whose duties include:

- (A) final approval and responsibilities for the accuracy of financial reports submitted to any duly established securities industry regulatory body;
- (B) final preparation of such reports;
- (C) supervision of individuals who assist in the preparation of such reports;
- (D) supervision of and responsibility for individuals who are involved in the actual maintenance of the member's books and records from which such reports are derived;
- (E) supervision and/or performance of the member's responsibilities under all financial responsibility rules promulgated pursuant to the provisions of the Act;
- (F) overall supervision of and responsibility for the individuals who are involved in the administration and maintenance of the member's back office operations; or
- (G) any other matter involving the financial and operational management of the member.

FINRA has explained that the “purpose of requiring members to employ a [FINOP] is to protect investors and the public interest by helping to ensure that the [firm’s] financial and operations personnel . . . have the training and competence needed to ensure the member’s compliance with applicable net capital, recordkeeping, and other financial and operational rules.”³ Similarly, FINRA has stated that a FINOP’s role is to “[ensure] investor protection by being responsible for the firm’s compliance with applicable net capital, recordkeeping and other financial and operational rules.”⁴

III. Respondent Violated NASD Membership and Registration Rule 1021 by Failing to Have a FINOP Since October 2009

A. Facts

When Ashliman sold Intermountain to Sweat, he agreed to continue to work for the firm so the firm could use his municipal securities principal, options principal, and FINOP licenses

³ NTM 01-52.

⁴ NTM 06-23.

until Sweat could take the principal examinations and obtain the licenses himself. While Ashliman remained associated with Intermountain, the firm paid him \$125 a month for the options principal and FINOP licenses, and an additional \$40 per hour for bookkeeping services. Tr. 30-31, 39-40, 65.

The original understanding between Sweat and Ashliman provided that Ashliman would continue to serve as FINOP for approximately two months. By 2004, if not earlier, Ashliman began asking Sweat to take the FINOP examination so Ashliman could be relieved of his FINOP duties, and then to file a Form U5 for Ashliman, but Sweat never took the examination. Tr. 54-55, 63-64; CX-14. In October 2009, Ashliman informed Sweat that he was not going to continue to maintain Respondent's books, and stopped performing financial duties for Respondent. He then personally delivered his copies of Intermountain's books and records to Sweat. He asked Sweat to file a Form U5 notifying FINRA of the termination of his association with the firm. Since that time, Ashliman has asked Sweat to file the Form U5 several times, but Sweat has not filed one, and the Central Registration Depository ("CRD") continues to show that Ashliman is the firm's FINOP. Tr. 41-44, 55-56, 135; CX-12, CX-13, CX-14; CX-20.

In June 2010, FINRA notified Respondent that it was going to conduct an examination of the firm. Intermountain had been fined an amount that exceeded the firm's excess net capital because of issues that arose with respect to its 2008 examination, and the examiners were concerned about whether Intermountain continued to be in net capital compliance. Sweat asked the examiners to postpone the examination until 2011 so he could correct deficiencies from the 2008 examination. The examiners agreed to begin the examination on September 27, 2010. Tr. 101, 108-110, 146. On September 27, Sweat told the examiners that he would not permit the examination due to Sweat's medical condition, and the examiners asked Sweat if Ashliman could

help. Sweat told the examiners that Ashliman lived in Idaho and was too busy to help. Tr. 114-115; CX-10.

The supervisory examiner contacted Ashliman about the financial information in October 2010. Ashliman told the examiner that he had resigned from the firm in October 2009, and had asked Sweat to file a Form U5. In response to the examiner's request, Ashliman sent a letter to the examiner by e-mail explaining that he had called Sweat on October 21, 2009, told Sweat that he wanted a Form U5 filed that day, and wanted money that Intermountain owed to him. The letter also explained that he had delivered all of his Intermountain files to Sweat. The letter indicated that Ashliman and Sweat had discussed Ashliman's request to Sweat to file the Form U5 in November 2009. The examiner asked for a signed copy of the letter, and Ashliman signed a copy and submitted it to FINRA, sending a copy to Sweat. CX-13; CX-14; Tr. 48-51, 58-59, 159-160, 162-165.

Ashliman has not worked on Intermountain's financial matters since October 2009. He has not been involved in filing FOCUS reports or the firm's annual audit. Other than Ashliman, there has not been anyone registered with FINRA as Intermountain's FINOP since October 2009. CRD continues to identify Ashliman as Intermountain's FINOP, and the only person registered with the firm who has a FINOP license. Tr. 58-60, 88, 137, 173; CX-12. Intermountain has continued to file FOCUS reports since Ashliman's resignation from the firm. CX-18, CX-19; Tr. 97.

Pursuant to FINRA Procedural Rule 9555(a)(1), "If a member ... does not meet the eligibility or qualification standards set forth in the FINRA By-Laws or rules, FINRA staff may provide written notice to such member or person stating that the failure to become eligible or qualified will result in a suspension or cancellation of membership...." On October 6, 2010,

FINRA's Senior Vice President and Regional Director for District 3A sent a letter to Sweat, president of Intermountain, informing him that Intermountain did not meet FINRA's eligibility requirements because it did not have a FINOP, and that its membership would be cancelled if it did not demonstrate eligibility for membership within 14 days. CX-28. More specifically, the Notice stated:

Intermountain is not in compliance with NASD Rule 1021(e)(3) as it does not have at least one person qualified for registration pursuant to NASD Rule 1022(c); NASD Rule 1022(c) requires members to employ a Limited Principal – Introducing Broker/Dealer Financial and Operations and designate at least one such registered person as its chief financial officer. Intermountain has failed to employ such an individual since October 2009, and thus does not meet the eligibility requirements for continuing membership.

The Notice informed Respondent of its right to request a hearing under FINRA Procedural Rule 9555. As noted above, Respondent filed a timely request for a hearing.

B. Respondent's Sham Continuation of Ashliman's Registration Does Not Comply with the FINOP Requirement

Respondent contends that it has met FINRA's requirement to have a FINOP because it continued to list Ashliman in the CRD as the firm's FINOP. Rule 1022(c)(3) defines a FINOP as the term "a person associated with a member whose duties include" the duties previously enumerated in this decision. Ashliman had none of those duties as of October 2009, so, by definition, he was not a FINOP.

Furthermore, FINRA expressly prohibits such sham registration of principals. Rule 1021(a) provides, "A member shall not maintain a principal registration with NASD for any person ... who is no longer active in the member's ... securities business...." FINRA's By-Laws require member firms to notify FINRA promptly when a registered person leaves a firm.⁵ By

⁵ By-Laws of the Corporation, Article V, Section 3.

refusing to file a Form U5 for Ashliman, Respondent did not satisfy the FINOP requirement; it merely violated FINRA's By-Laws and Rules.

The Hearing Panel finds that Intermountain did not have a FINOP from October 2009, until March 2, 2011, the date of the hearing.

IV. Remedies

Pursuant to FINRA Procedural Rule 9559(n)(1) "the Hearing Panel may approve, modify or withdraw any and all sanctions, requirements, restrictions or limitations imposed by the notice and, pursuant to Rule 8310(a), may also impose any other fitting sanction." The Notice of October 6, 2010, informed Respondent that FINRA seeks cancellation of Respondent's FINRA membership. The Hearing Panel finds that it is appropriate to modify the remedy set forth in the Notice, and that Respondent should be suspended from FINRA membership until it has a FINOP, as required by FINRA's Rules. If, within three months after issuance of this Decision, Respondent has not designated a FINOP who will perform the duties of a FINOP,, the suspension will automatically convert to a cancellation of membership. Designation of a FINOP who will not perform the duties of a FINOP, as set forth in NASD Rule 1022, shall not be sufficient to terminate the suspension.

The Hearing Panel finds that the suspension should also continue until Respondent has filed a Form U5 notifying FINRA of the termination of Ashliman's association with the firm. Ashliman has clearly requested the filing of a Form U5 multiple times, and has not performed any duties for the firm since October 2009. By failing to file the Form U5, Respondent continues to permit deceptive information concerning Ashliman's association with the firm and his role as the Firm's FINOP to remain in the CRD, and continues to violate FINRA's By-Laws and Rules.

The suspension is effective upon issuance of this decision, and remains in effect until Respondent designates a Limited Principal – Introducing Broker/Dealer Financial and Operations and has filed a Form U5 for Ashliman. As noted above, if Respondent has not designated a FINOP within three months after the date of this Decision, the suspension will automatically convert to a cancellation of membership. Pursuant to FINRA Procedural Rule 9555(g), Respondent may file a written request for termination of the limitation, prohibition or suspension on the ground of full compliance with this decision. Such request shall be filed with the head of FINRA District 3A, the FINRA office that issued the notice. The appropriate head of the office may grant relief for good cause shown.

V. Conclusion

Respondent Intermountain Financial Services, Inc. has failed to comply with NASD Rule 1021(e)(3) since October 2009 because it has not had at least one person qualified for registration as a Limited Principal – Introducing Broker/Dealer Financial and Operations, pursuant to NASD Rule 1022(c), and designated at least one such registered person as its chief financial officer. Respondent is suspended from FINRA membership until it designates a FINOP, and until it files a Form U5 for Randell Ashliman. If Respondent has not designated a FINOP within three months after the issuance of this Decision, the suspension will automatically convert to a cancellation of FINRA membership. Designation of a FINOP who will not perform the duties of a FINOP, as set forth in NASD Rule 1022, shall not be sufficient to terminate the suspension.

Pursuant to Procedural Rule 9559(n)(2), Respondent is ordered to pay costs in the amount of \$2,459.85, which includes an administrative fee of \$750 and the cost of the hearing transcript.

The costs shall be due as of a date established by FINRA.⁶

Hearing Panel.

Andrew H. Perkins⁷
Deputy Chief Hearing Officer

Copies to: Intermountain Financial Services, Inc. (*via overnight courier and first-class mail*)
Kent D. Sweat (*via electronic and first-class mail*)
Ann-Marie Mason, Esq. (*via electronic and first-class mail*)
Daniel Sibears, Esq. (*via electronic mail*)

⁶ The Hearing Panel has considered and rejects without discussion all other arguments of the parties.

⁷ Pursuant to Rule 9235(b) the Deputy Chief Hearing Officer signs this Decision in Hearing Officer Bernard's absence.