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

IN THE MATTER OF DETERMINING) Order No.: S-16-1889-16-CO01
whether there has been a violation of the)
Securities Act of Washington by:) CONSENT ORDER
)
)
SHARON HERBST (CRD No. 847172),)
)
Respondent.)

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INTRODUCTION

10 Pursuant to the Securities Act of Washington, Chapter 21.20 RCW, the Securities Administrator of
11 the Department of Financial Institutions, Securities Division (“Securities Division”) and the Respondent,
12 Sharon Herbst, do hereby enter into this CONSENT ORDER in settlement of the matters alleged herein.
13 The Securities Division believes that entry of a Consent Order is in the public interest and is appropriate for
14 the protection of investors. Respondent neither admits nor denies the following Findings of Fact and
15 Conclusions of Law.

16

FINDINGS OF FACT

17

RESPONDENT

18 1. Sharon Herbst was licensed as a securities salesperson with the Washington state Securities
19 Division from 1994 to 2015. Between May 2002 to October 2015, Respondent was licensed as a securities
20 salesperson at Edward Jones and conducted business from an Edward Jones branch office in Spokane,
21 Washington. In 2015, Edward Jones terminated her after it discovered she had entered trades contrary to
22 Edward Jones’ policy prohibiting discretionary orders, provided inaccurate information to the firm, and
23 entered inaccurate information into the firm’s notes system. She is currently licensed as a securities
24 salesperson with the state of Idaho at Calton and Associates, Inc. She is not licensed in Washington and
25 does not currently have an application pending with the Securities Division; however, she has stated an
intent to submit an application for licensing upon resolution of this matter. Her Central Registration
Depository (“CRD”) number is 847172.

1
2 **NATURE OF THE CONDUCT**

3 2. Ms. Herbst, while employed as a securities salesperson at Edward Jones, placed trades in
4 customer accounts without prior authorization from the customers.

5 3. Ms. Herbst's broker-dealer, Edward Jones, did not and does not permit its securities
6 salespersons to handle customer accounts on a discretionary basis, that is entering a securities transaction
7 without discussing the terms of the trade with the customer before entering the trade. This prohibition is
8 contained, in part, in Edward Jones' Client Authorization and Trade Order Entry Policy, which stated that
9 salespersons must:

10 Speak directly with the client to discuss the details of the investment (time, price, security,
11 amount, cost, risk, etc.); and confirm the trade order with the client the same day it is entered.
12 Additionally, Edward Jones does not permit [salespersons] to exercise discretion in accounts
held by the broker-dealer including, but not limited to, "time and price" discretion...

13 4. Ms. Herbst was aware of Edward Jones' policy since at least 2009 when she received a letter
14 from a customer granting discretionary authority over the customer's account. Edward Jones' personnel
15 told Ms. Herbst that Edward Jones prohibited the use of discretionary authority in customer accounts. Ms.
16 Herbst acknowledged Edward Jones' policy and advised the customer that she could not accept the
17 customer's grant of discretionary authority over the account.

18 5. Ms. Herbst attested to Edward Jones each year that she reviewed its policy requiring
19 salespersons to speak directly to clients before placing trades.

20 *Edward Jones' 2009 Revocation of Ms. Herbst's Discretionary Authority in a Customer Account*

21 6. A 2009 Securities Division examination of Ms. Herbst's office discovered that Ms. Herbst
22 received written authorization from at least one client allowing Ms. Herbst to exercise discretion in that
23 client's account.

24 7. The Securities Division examiner notified Edward Jones of the document and an Edward
25 Jones Senior Regulatory Attorney discussed the firm's Client Authorization and Trade Order Entry policy
with Ms. Herbst. Ms. Herbst told the Senior Regulatory Attorney that she was "quite aware" of the policy

1 and advised the customer that she was unable to accept the grant of discretion authority over the customer's
2 account.

3 8. Thereafter, Ms. Herbst did not have written authorization to exercise discretion in any
4 customer accounts.

5 *Edward Jones' 2015 Audit of Ms. Herbst's Branch Office Identified Ms. Herbst's Use of Discretion*

6 9. Edward Jones conducts annual audits of each branch office during which a supervisor
7 reviews the Client Authorization and Trade Order Entry Policy with the salesperson located at that branch
8 office.

9 10. Each year, including on May 2, 2014, Ms. Herbst attested to reviewing Edward Jones'
10 Client Authorization and Trade Order Entry Policy.

11 11. In 2015, Edward Jones conducted a routine annual audit of Ms. Herbst's branch office. As a
12 part of the audit, an Edward Jones Supervision Director monitored Ms. Herbst's trading activity. The
13 Supervision Director discovered Ms. Herbst's stock business increased 121% over the prior year and
14 observed what appeared to be discretionary trades by Ms. Herbst.

15 12. Examples of discretionary trading occurred on March 24, 2015 and April 16, 2015. The
16 Supervision Director observed that Ms. Herbst had multiple customers sell out of Coca Cola and purchase
17 Visa and that many of these trades were placed 1-2 minutes apart. The trades were entered within such a
18 short period that Ms. Herbst would not have had time to contact the customers immediately before each
19 trade. Each day of trading is discussed in more detail in the next two sections below.

20 13. On August 7, 2015, the Supervision Director told Ms. Herbst that all discretionary trading
21 must stop immediately. Ms. Herbst was further told to comply with the Edward Jones Client Authorization
22 and Trade Order Entry Policy, which prohibited the use of discretion and required a verbal discussion of the
23 trade details with the customer immediately prior to the order being entered. The Supervision Director told
24 Ms. Herbst that all conversations with customers should be noted in Edward Jones' note taking system.

25 14. Nonetheless, Ms. Herbst placed additional discretionary trades on August 10, 2015;
September 21, 2015; and September 24, 2015. In regard to the September 24, 2015 trades, Ms. Herbst

1 entered notes into Edward Jones' note system indicating that she verbally confirmed with the customers all
2 instructions immediately prior to entering the trade orders; however, her call logs do not support this.

3 *Discretionary Trades Placed on March 24, 2015*

4 15. On Tuesday, March 24, 2015, Ms. Herbst entered trades in 12 client accounts totaling
5 \$157,086 within 18 minutes. The trades were all "buys" of Visa and occurred between 1:43 pm and 2:01
6 pm.

7 16. When the firm asked Ms. Herbst about these trades, Ms. Herbst stated that the day was
8 incredibly hectic and that she was speaking to one customer on the telephone, while two customers were
9 talking to her assistants, waiting to give Ms. Herbst trade instructions. However, Ms. Herbst did not account
10 for the other trades.

11 17. The call logs do not support Ms. Herbst's statement that customers were on the phone with
12 her assistants waiting to speak to her about placing trades.

13 *Discretionary Trades Placed on April 16, 2015*

14 18. On Thursday, April 16, 2015, Ms. Herbst entered trades in 15 client accounts totaling
15 \$252,498.98 in 13 minutes, between 11:49 am and 12:02 pm.

16 19. When asked, Ms. Herbst told Edward Jones that every client was prepped prior to purchase.

17 20. However, according to Ms. Herbst's telephone log there were no calls on that day before
18 12:02 pm to the customers involved in the transactions.

19 *Discretionary Trade Placed on August 10, 2015*

20 21. After being told on August 7, 2015, by Edward Jones that all discretionary trading must
21 stop, Ms. Herbst continued to enter discretionary trades. On August 10, 2015, Ms. Herbst entered a
22 discretionary trade for Customer 1 totaling \$18,209.57.

23 22. When asked, Ms. Herbst told Edward Jones that she was at her desk when she placed the
24 trade and she called the customer from the office immediately prior to the trade. Ms. Herbst said that she
25 used the office phone, not her cell phone.

1 23. When informed there was no record of a call to Customer 1 from her office phone
2 immediately prior to the trade, Ms. Herbst told Edward Jones that she must have called him from her cell
3 phone, but that her cell phone records were not available.

4 24. However, later Ms. Herbst provided her cell phone records. Ms. Herbst circled a telephone
5 number, as evidence that she called Customer 1 prior to the trade. The telephone number she circled was to
6 the Edward Jones compliance office in Tempe, Arizona.

7 *Discretionary Trades Placed on September 21, 2015*

8 25. On September 21, 2015, Ms. Herbst entered three discretionary trades totaling \$19,005.63 for
9 Customer 2. When the Edward Jones compliance person contacted Customer 2 to verify the three trades,
10 Customer 2 stated he was “not aware of these trades” and that Ms. Herbst “just does whatever she needs to
11 do.”

12 26. The Edward Jones compliance person informed Ms. Herbst of the conversation with the
13 Customer 2. Ms. Herbst stated that the “trades were automated” through a letter of standing instruction.
14 However, there was no letter of standing instruction on file for Customer 2.

15 27. A letter of standing instruction is used in a situation where a customer makes periodic
16 deposits that are automatically invested in a product (or products) the customer specifies. A letter of
17 standing instruction only applies to new deposits whereas Customer 2’s investment was made with the
18 proceeds from another investment that had been in the account for a while before Ms. Herbst made the
19 investment. Additionally, where a trade is made pursuant to a letter of standing instruction, the money is
20 automatically invested. According to Edward Jones, Customer 2’s trades were not automated; they were
21 manually entered by Ms. Herbst.

22 *Discretionary Trades Placed on September 24, 2015*

23 28. On September 24, 2015, Ms. Herbst entered discretionary trades for Customers 3 and 4, a
24 married couple. To conceal that the trades were entered without confirming with the customers
25 immediately before the trades, Ms. Herbst placed a note in Edward Jones’ system stating she confirmed the
trades with the customers on the day of the trades.

1 Ms. Herbst provided false and misleading information during to Edward Jones during its investigation,
2 presumably, to cover her use of discretion.

3 35. On October 14, 2015, Ms. Herbst was terminated from Edward Jones.

4 *False Statements Made to the Washington Securities Division*

5 36. In February 2016, Ms. Herbst represented in writing to the Securities Division that the
6 matters relating to her dismissal concerned orders for clients that were received after the market closed. She
7 did not disclose the information set forth in paragraphs 33 and 34.

8 37. In a March 3, 2016 letter to the Securities Division, Ms. Herbst stated she was advised by
9 Edward Jones in August 2016 of her violation of the Client Authorization and Trade Order Entry Policy by
10 entering discretionary trades and that to her knowledge, she never violated the policy. She did not disclose
11 the information set forth in paragraphs 33 and 34.

12 38. During an on-the-record interview, Ms. Herbst stated that she was terminated from Edward
13 Jones for entering three discretionary trades on a Monday morning as soon as she got to the office for which
14 she had discussed with the customer Friday after the market closed. She did not disclose the information set
15 forth in paragraphs 33 and 34.

16 **CONCLUSIONS OF LAW**

17 1. Ms. Herbst's practice of entering transactions on behalf of her customers without
18 authorization to do so was in violation of RCW 21.20.110(1)(g) and WAC 460-22B-090(8). Such conduct
19 is grounds for the imposition of a fine and for the conditioning, restricting, and revocation of a broker-
20 dealer, securities salesperson, investment adviser, or investment adviser representative registration under
21 RCW 21.20.110(1) and for charging investigative costs under RCW 21.20.110(7).

22 2. Ms. Herbst's practice of exercising discretionary power in a customer's account without
23 written discretionary authority from the customer was in violation of RCW 21.20.110(1)(g) and WAC 460-
24 22B-090(9). Such conduct is grounds for the imposition of a fine and for the conditioning, restricting, and
25 revocation of a broker-dealer, securities salesperson, investment adviser, or investment adviser representative
registration under RCW 21.20.110(1) and for charging investigative costs under RCW 21.20.110(7).

1 examination will be grounds to deny any licensing applications Respondent might make with the Department
2 of Financial Institutions more than one year after the entry of this order.

3 IT IS FURTHER AGREED AND ORDERED that for each trade Respondent enters, she will obtain
4 and document client trade authorization immediately before the trade is entered. Documentation of the client
5 trade authorization shall mean that for each trade Ms. Herbst will document who authorized the trade, how she
6 spoke to the person (in-person, by telephone, etc.), the time and date she spoke to the person, the security,
7 the purchase price, and the purchase quantity, and, if the authorization was obtained by telephone, the
8 telephone number.

9 IT IS FURTHER AGREED that Respondent may apply for a securities salesperson or investment
10 adviser representative registration. Before approval of the application her sponsoring firm must provide the
11 Securities Division with an acceptable plan of supervision that addresses monitoring Respondent's use of
12 discretion in client accounts. Such plan must be in place for at least six months and the Securities Division
13 must be notified before the plan is modified or terminated.

14 IT IS FURTHER AGREED that the Securities Division has jurisdiction to enter this Consent Order.

15 IT IS FURTHER AGREED that Respondent enters into this Consent Order freely and voluntarily
16 and with full understanding of its terms and significance.

17 IT IS FURTHER AGREED that in consideration of the foregoing, Respondent waives her right to a
18 hearing and to judicial review of this matter pursuant to RCW 21.20.440 and Chapter 34.05 RCW.

19 **AUTHORITY AND PROCEDURE**

20 This Order is entered pursuant to the provisions of chapter 21.20 RCW and is subject to the
21 provisions of RCW 21.20.120 and Chapter 34.05 RCW. The Respondent has been notified of her right to
22 an administrative hearing and has waived her right to a hearing.

23
24 **WILLFUL VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.**

25

1 Signed this 10 day of March, 2017.

2 Signed by:

3 /s/

4 _____
5 Conrad Lysiak, WSBA # 14433
6 Attorney for Sharon Herbst

7
8 Signed by:

9 /s/

10 _____
11 SHARON HERBST, CRD # 847172

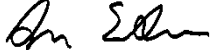
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13 SIGNED and ENTERED this 14th day of March, 2017.

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17 _____
18 William M. Beatty
19 Securities Administrator

20 Presented by:

21 Approved by:

22 

23 

24 _____
25 Suzanne Sarason
Chief of Enforcement

Kristen Standifer
Financial Legal Examiner