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BEFORE THE DIRECTOR OF THE DEPARTMENT OF FINANCE

OF THE STATE OF IDAHO

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| In the Matter of:<br><br>STATE OF IDAHO,<br><br>Department of Finance,<br>Securities Bureau,<br><br>Complainant,<br><br>vs.<br>Densmore Financial Group, Inc. (IARD No. 136644) and<br>Allan H. Densmore (CRD No. 2469110),<br><br>Respondents. | Docket No.: 2010-7-04<br><br>**AGREEMENT AND ORDER** |

The Director of the Department of Finance ("Director") has instituted an investigation into the conduct of DENSMORE FINANCIAL GROUP, INC., and ALLAN H. DENSMORE (collectively, "Respondents"). Pursuant to the investigation, it appears to the Director that violations of the Idaho Uniform Securities Act (2004), Idaho Code Sections 30-14-101, *et seq.* (the "IUSA") have occurred. The Director and Respondents Densmore Financial Group, Inc., and Allan H. Densmore have agreed to resolve this matter without a public hearing or other adjudication. Therefore, the Director deems it appropriate and in the public interest that this Agreement and Order be entered. Respondents consent to the entry of this Agreement and Order.

## I.

## FINDINGS OF FACT

1. Densmore Financial Group, Inc. ("DFG") is an Idaho corporation with its principal place of business located at 612 3rd Street South, Nampa, ID 83651.

2. Allan H. Densmore ("Densmore") is the CEO of DFG and is and was at all relevant times a principal and control person of DFG. Densmore resides at 6868 Old Bruneau Highway, RR1 Box 812, Marsing, ID 83639.

3. Densmore was affiliated with US Allianz Securities, Inc. as a broker-dealer and investment adviser representative from March 29, 2005 to July 7, 2005.

4. DFG was established in August 2000 and was registered as an investment adviser with the Department from September 6, 2005 to November 23, 2010.

5. On June 9, 2005, the Department sent a letter to Densmore requesting documentation demonstrating that an advertising flier had been sent to US Allianz Securities, Mr. Densmore's then currently affiliated broker-dealer/investment adviser firm, for review and approval.

6. On or about June 21, 2005, Densmore responded to the Department's June 9, 2005 letter, stating, " . . . It was not my staff's nor my intention to send out any material that has not been approved by my new broker/dealer. It was an oversight on my staff's part that this material was not submitted to US Allianz Securities for approval (as it was an oversight on my part to ensure the submission) and was not omitted intentionally. All other material relating to our conducting business has been approved by US Allianz Securities. It appears somehow this one piece fell through the cracks."

7. On December 3-5, 2007, the Department conducted an examination of DFG and found advertising information used by DFG which had not been submitted or reviewed by the

Department as required. In the Department's January 8, 2008, examination report, this violation was noted.

8. On February 5, 2008, Densmore responded to the Department's January 8, 2008, examination letter, stating, "All advertising will be submitted to the Department of Finance for approval as required by Rule 47 of the IUSA. We do not make any misrepresentations in any of our advertising materials."

9. Prior to January 2010, neither Densmore nor DFG submitted any advertising or sales literature for the Department's review as required by Rule 47.

10. In January 2010, the Department discovered that several sales literature items were being used by Densmore and DFG. These items include:

- The website: http://www.densmorefinancialgroup.com
- The free report entitled, "What Should I Do With My Money Now?" available for download on the http://www.densmorefinancialgroup.com website.
- A mailer invitation relating to the free seminars to be held on January 19, January 21, and January 27, 2010, at the Brick 29 Bistro in Nampa, ID.
- PowerPoint presentation used at DFG's workshops.
- Radio show commercials.

11. The Department subsequently approved Densmore's and DFG's use of the foregoing website, , power point presentation and some radio show commercials. DFG removed from its website the free report entitled, "What Should I Do With My Money Now?"

12. On or about January 5, 2010, Danielle Morriss, a staff member of DFG, contacted the Department requesting guidance regarding testimonials, specific product discussion and the use of designations in connection with a proposed radio show Densmore was considering hosting.

13. On Thursday, January 7, 2010, via e-mail, the Department informed DFG that to comply with Rule 47, "the format and known content of the radio show will need to be reviewed and approved prior to use. In addition, all radio shows will need to be recorded and submitted to our Department for review."

14. On January 8, 2010, via e-mail, the Department further responded to DFG's request made on or about January 5, 2010. The Department's response stated:

> The use of testimonials in investment adviser advertising is prohibited in accordance with Section 206(4) of, and Rule 206(4)(a)(1) under the Investment Advisers Act of 1940 ("Act"). Rule 206(4)(a)(1) states, "It shall constitute a fraudulent, deceptive, or manipulative act, practice, or course of business within the meaning of Section 206(4) of the Act for any investment adviser registered or required to be registered under Section 203 of the Act, directly or indirectly, to publish, circulate, or distribute any advertisement which refers, directly or indirectly, to any testimonial of any kind concerning the investment adviser or concerning any advice, analysis, report or other service rendered by such investment adviser.

The Department also provided a reference to a 2005 Securities and Exchange Commission (SEC) no-action letter regarding "testimonials." The SEC no-action letter stated, "The term 'testimonial' is not defined in the rule, but we have consistently interpreted that term to include a statement of a client's experience with, or endorsement of, an investment adviser."

15. On January 18, 2010, the Department was informed that Densmore had started the radio show on January 9, 2010. No filing containing the format or the known content of the

radio show was filed with the Department in accordance with Rule 47 prior to the start of Densmore's radio show.

16. On or about January 21, 2010, the Department received a letter from Densmore and a disc containing a recording of the January 16, 2010 radio show. Densmore's letter stated that he did not have a copy of the January 9, 2010 radio show. On April 7, 2010, Densmore provided a disc containing a recording of the January 9, 2010 radio show.

17. On January 8, 2010, Densmore sent a newsletter to his clients, which included his clients Betty and Bernard Bufford. The newsletter states, "Next for those of you who don't know, we will be starting a weekly radio show. Every Saturday from 12:00 Noon to 1:00 PM on 670 KBOI. KBOI is the number 1 talk radio station in the valley by a margin of three. Each week I will be discussing different topics as well as taking calls. If you have the time please listen and call. Also please tell your friends, family relatives about the show. I would really appreciate your help in building awareness of the show. The purpose of the show is to educate, enlighten, and entertain."

18. During the January 9, 2010 radio show, the following dialogue is heard:

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DENSMORE: Our first caller it looks like is Betty. Hi, Betty. This is
Allan.

CALLER: Hi Allan. This is Betty Bufford. And we have been with you for
several years. And I do have a question. You know, we have never lost
any money; we've made money with you. And we have friends that just
don't seem to believe us when we say, you know, you don't have to lose
money on your investments. What can we say to these people to let them
know that there are ways that they can handle their retirement and
savings so that they don't lose --

DENSMORE: Well, Betty, first let me say thanks for calling in. You and
Bernie -- what'd you get my email last night telling everyone about the
show?

CALLER: Yes.

DENSMORE: Hey, thanks for calling. Thanks for calling. Um, you know,
Betty, I tell you, it is kinda tough. Everybody thinks that, you know,
when the market goes up they make money. When the market goes down they
lose money. Everybody just thinks that's kind of the way it is. And you
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know it is hard for my clients -- you know how we work. We don't lose money when the market goes down. So it is kind of hard to explain to somebody -- like right now I tell people, well, we didn't -- not only did we not lose money, we actually made money last year. So it is really hard for you guys when you're trying to tell somebody that, they always think the old saying, "if it sounds too good to be true, you know it probably is."

CALLER: Right.

DENSMORE: So, you know, Betty, man, you know, I appreciate you guys, and, you know, I'm glad you guys are saying something. I think probably the best thing to do -- you know, I'm talking here on the radio is -- probably the best thing to do is just to tell somebody. You know, if they're not happy with what they're doing, if it's not working, come to one of our workshops. That's how you guys originally came. You came to one of our workshops and you listened to what we had to say and you like it a lot. And you guys have been great clients. And that way you don't have to worry about trying to explain to people that you don't have to lose money. You don't have to dig out of a hole. You know, we just came through the worst market we've had in our lives and you guys didn't lose any money. You guys have been doing terrific. So, you know, I app-reciate you guys calling. You know, that wasn't the, kinda of the purpose of the show, but I do appreciate you guys calling. Say hi to Bernie --

CALLER: Okay.

DENSMORE: -- and thanks for calling, Betty.

CALLER: Thank you, Allan.

DENSMORE: Bye, bye.

19. The dialogue set forth in paragraph 17 is a violation of Rule 104.39 of the IUSA. Pursuant to Rule 104.39, it is a fraudulent, dishonest, and unethical practice to publish, circulate or distribute any advertisement that does not comply with Rule 206(4)-1 under the Act. DFG's use of this testimonial violates Rule 104.39 of the IUSA.

20. During the January 16, 2010 radio show, the following dialogue is heard:

DENSMORE: Let me give you a story real quick. I have a couple of clients -- nice couple. When they came into my office originally they had a substantial amount of money. All they were looking for is to pull from their pension, their social security and $2,000 a month out of their retirement account. That was it. This couple was turning so many times their investments, they were paying over $40,000 a year just in taxes.

We made a lot of changes. They're safe now. They are conservative. They don't ever have to worry about their money again. They're happy.

21. Densmore's statement in paragraph 19 is a violation of Rule 104.39 of the IUSA. Pursuant to Rule 104.39 it is a fraudulent, dishonest, and unethical practice to publish, circulate or distribute any advertisement that does not comply with Rule 206(4)-1 under the Act. DFG's use of this testimonial violates Rule 104.39 of the IUSA.

22. During the May 8, 2010 radio show, the following dialogue is heard:

DENSMORE: Good afternoon. My name is Allan Densmore. You are listening to the Idaho Retirement Guru. We have about seven minutes so if you have questions, call 336-3700, 336-3700 or if you are on Verizon call #670. If you have questions, give me a call. We have about seven minutes. First person on the line is Richard in Nampa. Hi Richard.

CALLER: Hello Allan. After getting into the stock --

DENSMORE: Ah --

CALLER: -- market with the trailing stop losses to protect from investments dropping too much, when would you suggest getting back in and why.

DENSMORE: Okay. So first I've got to tell everybody that's listening I know by the voice who I'm listening to. This guy Richard -- if you meet him you'll always remember him. He's like a brainiac. When I first met this guy and he came to my office I thought, oh my goodness. I'm going to have a problem with this guy. One of the smartest guys and, you know, he's a great guy to work with. So, I'm putting that out there.

Richard, I know it's you. I can tell by your voice.

CALLER: Yes, it is.

DENSMORE: Hey. So, hey, here's what we did. If you look on, you know, Scottrade, what we did is we had some of our positions hit the trailing stop --

CALLER: Let's put it this way. I think all but about three of them did.

DENSMORE: I'm telling you, the market dumped hard. And so what I did is I went on and I looked and I found out what did we have, what did we keep. There's some, there's some disclaimers or some warnings that came out from Scottrade and some other indices talking about what happened for a short period of time and I called Scottrade. But anyway, what happened is if you look you can see we've gone back in to some because we still -- we went back in, we've still got our trailing stop, but what we did is we focused a little bit more like you and I had talked

about, instead of spreading it around we actually went in and we just started being a little bit more clear. You probably saw we got some MO --

CALLER: Um-hmm.

DENSMORE: -- you know that's been doing pretty good for us. I think we did EOS, I think we did DNP. So I went back in and I bought some more stuff, put the trailing stop. You know my thinking is if the market does come up, ah, we did good because the market will come back up and life is good and we'll use it as a buying opportunity. If the market still continues to dump, then we're going to have to look and say, okay, here's what we put in, here's what we've made, here's what we're down, and reevaluate it and find out what's going on, because, dawg, you know, I mean, nobody knows for certain if the market will go up and down. Most of us think it is only a matter of time before it is going to dump, but we still at least want to participate in the gains. So, you know, we took some of the stuff -- some of the stuff has to clear, if you're familiar with that when --

CALLER: I am.

DENSMORE: Yeah, so some of the stuff has to clear. Once it clears we'll go into some more positions again so we can take advantage of it. You know, the goal is when it's going up, let's take advantage of it. You know, it hit the trailing stops when it went down. And if the market kept going down, you know, that's the benefit of the trailing stops. We got out of it and then we would buy in at a lot lower price.

So we got out what I could. We went back in I think the following day with what we could and now it's just a matter of wait and see what the market does.

CALLER: Okay. Thank you very much.

DENSMORE: Hey, man, thanks for calling, Richard. Say hi to your wife. Have a good week-end.

CALLER: Bye.

DENSMORE: Bye, bye.

So if you have questions, I have answers. You were actually listening to Richard, one of my clients. Great guy to work with. Very, very smart, I'm telling you. We have the best conversations. I actually loan Richard books and then we set up times to get together and review our books and see what we come up with.

23. The dialogue set forth in paragraph 21 is a violation of Rule 104.39 of the IUSA. Pursuant to Rule 104.39, it is a fraudulent, dishonest, and unethical practice to publish, circulate

or distribute any advertisement that does not comply with Rule 206(4)-1 under the Act. DFG's use of this testimonial violates Rule 104.39 of the IUSA.

24. Densmore's free report entitled "What Should I Do With My Money Now?" states in part, " . . . So, let's look at a real life example of an index and our alternative strategy. This is the market from 1966 to 1982. As you can see, we call this the peaks and the valleys. What would you do if you could keep the peaks and get rid of the valleys? The red line represents the market and the green line represents our alternative." Densmore later advised the Department that the green line represented a "hypothetical return with a cap on the upside while protecting principle from and earned interest from loss." Densmore's representation that he was presenting a real life example was deceptive or misleading in violation of Rule 104.17 since the information presented was actually hypothetical.

25. On February 5, 2010, the Department requested a complete copy of the advertising records maintained by DFG in accordance with Section 204-2 of the Act. Rule 93 of the IUSA requires every investment adviser to make and keep true, accurate and current books and records in compliance with Section 204-2 of the Act. By letter received by the Department on February 16, 2010, DFG responded, stating, "Enclosed, please find our advertising records from 2007 forward." Rule 204-2 of the Act and Rule 93 of the IUSA requires books and records to be maintained and preserved for a period of not less than five years. DFG's February 16, 2010 response did not contain:

- The free report entitled "What Should I Do With My Money Now?"
- PowerPoint Presentation used at DFG workshops located during the Department's December 3-5, 2007 examination.

26. DFG has failed to make and keep true, accurate and current books and records in compliance with the IUSA.

27. On November 23, 2010, Respondents Densmore and DFG withdrew their IAR and RIA registrations.

## II.

## CONCLUSIONS OF LAW

1. The Director has jurisdiction over this matter pursuant to the IUSA.

2. Respondent Densmore and/or DFG failed to file certain items of sales literature with his affiliated BD/IA firm or with the Department pursuant to Rule 47 of the IUSA.

3. Respondents Densmore and DFG violated Rule 93 pursuant to the IUSA by failing to make and keep true, accurate and current books and records in compliance with 17 CFR 275.204-2 under the Investment Advisers Act of 1940, as currently amended.

4. Respondents Densmore and DFG violated the provisions of Rule 104.39 of the IUSA by the airing of testimonials in his radio programs of January 9, 2010, January 16, 2010 and May 8, 2010, in violation of Rule 206(4)-1 under the Investment Advisers Act of 1940, and violated the provisions of Rule 104.17 of the IUSA by representing a hypothetical as a real life example in his free report entitled, "What Should I Do with My Money Now?"

## III.

## REMEDIES

THEREFORE, on the basis of the Findings of Fact, and Respondent's agreement to the entry of this Agreement and Order, the Director finds that the following remedies are appropriate and in the public interest:

1. Respondents acknowledge that a factual basis exists from which a reasonable trier of fact could conclude that Respondents have failed to comply with provisions of the IUSA and the rules thereunder as generally alleged in this Agreement and Order. Consequently, Respondents concede and acknowledge the likelihood that Complainant could establish and prove violations of the IUSA and the rules thereunder.

2. Respondents agree to pay a civil penalty in the amount of $10,000 no later than 30 days after signature by the Director. Payment shall be made payable to the order of the "Idaho Department of Finance."

3. Respondents acknowledge and agree that all investment advisory activity, including but not limited to advertising, conducted in connection with Densmore Financial Group, Inc., when a state registered investment adviser, was regulated by Complainant.

4. Respondents agree that any investment advisory activity performed henceforth will be done in their capacity as either:

A. an investment adviser representative of a federally regulated advisory firm;

B. an investment adviser representative of a state-regulated investment adviser firm that i) has been registered in Idaho for at least five years and has no significant disciplinary history and ii) agrees to perform all supervisory functions with respect to Respondent(s)'s activities, including review and approval of all advertising prior to its submission to the Department; or

C. an Idaho registered investment adviser firm, provided Respondents retain and use the services of a third-party compliance professional, at their own expense, and such compliance professional reviews and approves all advertising prior to its submission to the Department.

5. Respondents agree to comply with the requirements of Rule 47 under the IUSA.

6. Respondents agree to comply with Rule 104 under the IUSA.

7. Respondents agree to comply with Rule 93 under the IUSA.

8. Respondents may file applications (Form ADV) for investment adviser registration with the Complainant and the entry of this Agreement and Order and the facts and conclusions contained herein shall not be the basis for denial of the applications.

9. Respondents agree not to conduct securities or investment advisor-related radio or television programs until they become an investment adviser representative of a federally covered investment adviser, or of a state-regulated investment adviser firm that agrees to perform all supervisory functions with respect to Respondent(s)'s activities, including review and approval of all advertising prior to its submission to the Department. If after six months Respondents have been unable to become so affiliated, the Department agrees to reevaluate the necessity of this requirement.

10. Respondents shall not hereafter offer investment advisory services unless registered with the Department as required by the IUSA or unless such services are exempt from registration as provided in the IUSA.

11. Respondents agree that failure to comply with this Agreement and Order may result in the Director bringing further legal proceedings.

12. Respondents attest and avow that all information provided to the Department directly or through their legal representatives is true, accurate and complete.

13. Respondents waive notice and opportunity for a hearing under Idaho Code Section 30-14-604(b) and (c), and under the contested case provisions of the Idaho Administrative Procedures Act, Idaho Code Sections 67-5240, *et. seq.* 10. The terms contained in this Agreement and Order constitute the entire agreement between Complainant and Respondents.

ALLAN H. DENSMORE

DENSMORE FINANCIAL GROUP, INC.

By: ALLAN H. DENSMORE
Title: President and CEO

State of Idaho

County of Canyon

SUBSCRIBED AND SWORN to before me this 13th day of April, 2011

NOTARY PUBLIC

My Commissions Exp: 9-2012

ANGELA CALHOUN NOTARY PUBLIC STATE OF IDAHO

MARILYN T. CHASTAIN
Bureau Chief, Securities Bureau
Department of Finance
State of Idaho

IT IS SO ORDERED

DATED this 15th day of April, 2011.

STATE OF IDAHO
DEPARTMENT OF FINANCE

GAVIN M. GEE, Director

DEPARTMENT OF FINANCE DIRECTOR SEAL STATE OF IDAHO