



conditions which required such an order have changed and that it is in the public interest to so vacate or modify.” This provision is consistent with the authority accorded to the statutory administrator in other states which have adopted the Uniform Securities Act.<sup>1</sup>

The first element of the standard to modify or vacate an order, a finding that “conditions which required such an order have changed”, is clearly a facts and circumstances based analysis, rather than one necessarily based upon legal precedent. The Secretary must examine not only the administrative record that yielded the Presiding Officer’s decision, but also the intervening circumstances that have arisen in the interim following the entry of the order. If the conditions necessitating the entry of the order (or a portion thereof) have changed, the first element may be found to be satisfied.

On November 2, 2010, Respondent Cohmad Securities Corporation consented to entry of a judgment by the United States District Court for the Southern District of New York in an action brought by the United States’ Securities and Exchange Commission<sup>2</sup> (the “SEC”). Specifically, Cohmad was enjoined from violating § 17(a)(2) of the Securities Act of 1933<sup>3</sup>, § 206(4) of the Investment Advisers Act of 1940<sup>4</sup>, or Rule 206(4)-3<sup>5</sup> thereunder, § 15(b)(1) of the Securities Exchange Act of 1934<sup>6</sup>, or Rule 15b3-1<sup>7</sup> thereunder, and § 17(a) of the Securities Act of 1933<sup>8</sup>, or Rule 17a-3<sup>9</sup> thereunder.

In the same ruling, the United States District Court for the Southern District of New York to ordered that, upon motion by the SEC, it would determine whether disgorgement

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<sup>1</sup> See *Westmark Asset Mgmt. Corp. v. Joseph*, 37 P.3d 516 (Colo. Ct. App. 2001)

<sup>2</sup> See *S.E.C. v. Cohmad Securities Corp.*, No. 09 Civ. 5680 (S.D.N.Y. Nov. 2, 2010).

<sup>3</sup> 15 U.S.C. § 77q(a).

<sup>4</sup> 15 U.S.C. § 80b-6(4).

<sup>5</sup> 17 C.F.R. § 275.206(4)-3.

<sup>6</sup> 15 U.S.C. § 78o(b)(1).

<sup>7</sup> 17 C.F.R. § 240.15b3-1.

<sup>8</sup> 15 U.S.C. § 78q(a).

<sup>9</sup> 17 C.F.R. § 240.17a-3.

and civil penalties would be appropriate to imposed on Cohmad. If such disgorgement and civil penalties were found to be appropriate, the United States District Court for the Southern District of New York would also determine the amounts of such sanctions.

In the present matter, counsel for Cohmad has represented to the Division that Cohmad's financial accounts have been restrained by the United States Attorney for the Southern District of New York. As of the date of this Order, it is uncertain what effect this restraint would have with regard to the satisfaction of any monetary penalties imposed by the Division's present action.

Finally, between October 15, 2009 and January 25, 2010, Cohmad terminated its registrations with the SEC, FINRA and every remaining state in which it maintained a broker-dealer registration. Accordingly, as of the date of this Order, Cohmad is not lawfully conducting securities brokerage business in any domestic jurisdiction. Counsel for Cohmad has also represented to the Division that Cohmad has no plans to return to the securities industry.

As articulated in Section VI below, the Office of the Secretary of the Commonwealth has determined the vacation of the Final Order and entry of this present Order to be in the public interest.

### **III. RELEVANT PROCEDURAL HISTORY**

The Enforcement Section of the Massachusetts Securities Division (hereinafter referred to as "Division") commenced this adjudicatory proceeding against Respondent Cohmad Securities Corporation (hereinafter alternatively referred to as "Cohmad" or "Respondent") on February 11, 2009. The Administrative Complaint alleges that

Respondent violated M.G.L. c. 110A, the Massachusetts Uniform Securities Act (hereinafter referred to as the "Act"). Specifically, the complaint alleges that Respondent willfully violated certain provisions of the Act, including: Section 204 (a)(2)(B) and Section 203, by failing to make, keep, and make available for examination by representatives of the Secretary of the Commonwealth's Office, certain records as prescribed by the Secretary by rule or order; Section 204 (a)(2)(G) by engaging in unethical or dishonest conduct or practices in the securities, commodities or insurance business; Section 204 (a)(2)(J) by failing reasonably to supervise agents, investment adviser representatives or other employees to assure compliance with the Act; and Section 404, by making, or causing to be made, in any document filed with the Secretary, or in any proceeding under the Act, any statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect. The Division's Complaint was accompanied by an Ex Parte Motion Seeking Summary Suspension of Cohmad's registration as a broker-dealer in the Commonwealth. Such motion, determined to be necessary for the protection of investors, was granted on February 11, 2009 by Diane Young-Spitzer, Associate Director and General Counsel of the Division.

The Division also requested such Order as may be in the public interest and necessary and appropriate for the protection of the public including, but not limited to, an Order: (a) requiring Cohmad to permanently cease and desist from committing any further violation of the Act and Regulations; (b) requiring Cohmad to provide an accounting of all Massachusetts investors Cohmad or its registered representatives (or other agents) referred to Madoff Investments and all fees earned in connection therewith; (c) revoking Cohmad's

registration with the Division; and (d) requiring Cohmad to pay an administrative fine in an amount and upon such terms and conditions as the Presiding Officer may determine.

On March 4, 2009, Respondent filed a Motion for a More Definite Statement. A day later, on March 5, 2009, the Division moved for Entry of Default Judgment pursuant to 950 CMR 10.06(e) against Respondent for failure to file an Answer timely. Respondent's Motion for a More Definite Statement was denied on March 6, 2009. Respondent filed its Answer to the Administrative Complaint on March 11, 2009, a week after it was due and three business days after its Motion for a More Definite Statement was denied.

Subsequently, on March 13, 2009, the Division moved to Strike Respondent's Answer. Respondent filed a Supplement to Its Opposition to the Enforcement Section's Motion for Entry of Default Judgment on March 20, 2009 and requested to be heard on the Motion. A hearing was held in the Office of the Secretary on March 24, 2009. Subsequent to the hearing, Respondent filed an Opposition to the Enforcement Section's Motion to Strike Its Answer. The Division moved for Leave to File a Reply to Cohmad's Opposition to Strike Its Answer, which leave was granted on April 3, 2009. The Division filed its Reply on April 6, 2009.

On May 7, 2009 the Presiding Officer issued an Order of Default in which she held that "Respondent's failure to Answer timely and verify the factual allegations in its Answer were a continuation of a course of conduct in which it willfully engaged in violation of 950 CMR 10.05 (b) and 10.06 (e) and (f) and its responsibilities as a registered broker-dealer in the Commonwealth." The definition of "willfulness" upon which the Presiding Officer relied in the Order is the definition applicable for determination of a violation under the Uniform Securities Act, M.G.L. c. 110A, (hereinafter referred to as the "Act") which

means an act which is intentional with regard to the conduct. *In the Matter of Meyers Pollock Robbins, Inc.*, et al. 1997 Mass. Sec. Lex 1 (Mass. Sec 1997) citing *Kittleson v. Ford*, 93 Wash. 2d 223 (1980).

The Massachusetts Superior Court, in its August 7, 2009, Order vacated the Default, finding there was insufficient evidence of Cohmad's willfulness because Cohmad's Answer was signed by the party and Cohmad acted not unreasonably in its efforts to comply with the Division's regulations prescribing the manner in which its Answers are signed. However, the Court noted, in footnote 12, that the Presiding Officer had also exercised her discretion to deem admitted the uncontroverted allegations contained in the Administrative Complaint and found that ruling not before the Court.

On September 30, 2009, the Presiding Officer vacated that portion of the Consolidated Order dated May 7, 2009 which held that the uncontroverted allegations in the Administrative Complaint were deemed admitted, contingent upon Cohmad submitting an executed and verified Answer. Cohmad filed Respondent's (second) Answer to the Administrative Complaint on October 13, 2009. A hearing on the Administrative Complaint was held December 8-10, 2009 at the Office of the Secretary of the Commonwealth.

On August 16, 2010, the Presiding Officer<sup>10</sup> issued a Final Order which found Cohmad to have engaged in two (2) violations of M.G.L. c. 110A, §§ 203, 204(a)(2)(B), three (3) violations of M.G.L. c. 110A, § 204(a)(2)(G), two (2) violations of M.G.L. c. 110A, § 204(a)(2)(J), and one (1) violation of M.G.L. c. 110A, § 404. The Final Order required Cohmad to cease and desist from violations of the Act and Regulations, to provide

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<sup>10</sup> On March 4, 2009, the Secretary of the Commonwealth appointed Laurie Flynn as Presiding Officer and Acting Director for purposes of the present matter.

an accounting of all Massachusetts investors Cohmad or its registered representatives referred to Bernard L. Madoff Investment Securities (“BLMIS”) and all fees earned in connection therewith, revoked Cohmad’s registration in the Commonwealth, and imposed an administrative fine in the amount of two hundred thousand dollars (\$200,000.00) on Cohmad.

On September 15, 2010, Cohmad filed a Compliant (the “Appellate Complaint”) in Superior Court for Suffolk County pursuant to M.G.L. c. 30A § 14(7)<sup>11</sup> seeking appellate review of the Final Order.

On October 3, 2011 Cohmad submitted a Consent to Entry of Administrative Order for the purpose of disposing the allegations set forth in the Administrative Complaint and the August 16, 2010 Final Order. Cohmad, without admitting or denying the Statement of Facts as set out herein in Section IV or the Conclusions of Law set forth in Section V, consents to the entry of this Order by the Division, thereby settling the Division’s Claims with prejudice.

#### IV. FINDINGS OF FACT

- 1) The Massachusetts Securities Division (hereinafter referred to as the “Division”) is a Division within the Office of the Secretary of the Commonwealth with jurisdiction over matters relating to securities as provided for by the Massachusetts Uniform Securities Act, M.G. L. c.110A (hereinafter referred to as “the Act”). The Act authorizes the Division to regulate, in pertinent part, broker-dealers and agents registered and/or transacting business in the Commonwealth.

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<sup>11</sup> See *Cohmad Securities Corporation v. William F. Galvin, et. al.* Civil Action No. SUCV2010-03633-BLS1 (filed September 15, 2010).

- 2) Cohmad Securities Corporation (hereinafter referred to as "Cohmad") was a broker-dealer registered with Division between on or about February 2, 1990 through May 7, 2009, with the Securities Exchange Commission (hereinafter referred to as "the SEC") between on or about April 22, 1985 and December 26, 2009. Cohmad's Central Registration Depository (hereinafter referred to as "CRD") number is 16307. Cohmad maintained a branch office in the Commonwealth at 29 Commonwealth Ave., Boston, Massachusetts from February 1995 until August 2005.
- 3) As a registered broker-dealer in Massachusetts, Cohmad is subject to the Act. It is also subject to the rules of the self-regulatory organization FINRA and the Securities and Exchange Commission.
- 4) Marcia Beth Cohn (hereinafter referred to as Marcia Cohn) serves as the president, chief operating officer and chief compliance officer of Cohmad. She is also a shareholder and former registered agent of Cohmad with a CRD number of 1049032.
- 5) Maurice Jay Cohn (hereinafter referred to as "Maurice Cohn") serves as the chairperson and chief executive officer of Cohmad. Like Marcia Cohn, Maurice Cohn is a shareholder and former registered agent of Cohmad with a CRD number of 1313085.
- 6) Robert Martin Jaffe (hereinafter referred to as "Jaffe") is a shareholder and served as vice-president of Cohmad until April 7, 2009. He was registered in Massachusetts as an agent of Cohmad and supervised its branch office in Boston,



Massachusetts from February 1995 until August 2005. Jaffee's employment with Cohmad terminated as of May 22, 2009.

- 7) Bernard L. Madoff (hereinafter referred to as "Bernard Madoff") is a director and shareholder of Cohmad. Bernard Madoff was arrested for operating a \$65 billion dollar Ponzi scheme through Bernard L. Madoff Investment Securities LLC (hereinafter referred to as "BLMIS").
- 8) Peter Madoff (hereinafter referred to as "Peter Madoff") is a director and shareholder of Cohmad. Peter Madoff is also listed as the Director of Trading and Chief Compliance Officer of BLMIS.
- 9) Morton David Kurzok (hereinafter referred to as "Kurzok") was registered in Massachusetts as an agent of Cohmad with a CRD number of 1054934. Kurzok's employment with Cohmad terminated as of June 26, 2009.
- 10) Rosalie Buccellato (hereinafter referred to as "Buccellato") served as a principal of Cohmad. She is a shareholder and former registered agent of Cohmad with a CRD number of 848124.
- 11) Milton S. Cohn (hereinafter referred to as "Milton Cohn") is a shareholder of Cohmad.
- 12) Alvin James Delaire, Jr. (hereinafter referred to as "Delaire") was formerly registered as an agent of Cohmad with a CRD number of 1480468. His employment with Cohmad terminated as of February 2, 2009.
- 13) Cyril David Jalon (hereinafter referred to as "Jalon") was formerly registered as an agent of Cohmad with a CRD number of 256951. His employment with Cohmad terminated August 6, 2009.

- 14) Linda Schoenheimer McCurdy (hereinafter referred to as "McCurdy") was formerly registered as an agent of Cohmad with a CRD number of 2991967. She is referred to as "RA" on Cohmad documents showing payments to registered representatives. McCurdy terminated her employment with Cohmad effective June 9, 2009.
- 15) Jonathan Barney Greenberg (hereinafter referred to as "Greenberg") was formerly registered in Massachusetts as an agent of Cohmad with a CRD number of 850655.
- 16) Richard George Spring (hereinafter referred to as "Spring") was formerly registered as an agent of Cohmad with a CRD number of 432604.
- 17) Sonja/Sonya Kohn (hereinafter referred to as "Kohn") received payments from Madoff through Cohmad for assets under management. Kohn is not registered as an agent of Cohmad.
- 18) Scott Sosnick (hereinafter referred to as "Sosnick") of Sosnick Bell & Co LLP, an accounting firm located in Fort Lee, New Jersey, provided accounting services to Cohmad.
- 19) Kaufman, Galluci & Grumer LLP (hereinafter referred to as "KGG") is an accounting firm in New York City that audited several of Cohmad's annual financial statements with the final audit being for the year ended June 30, 2007.
- 20) The Division commenced an investigation into Cohmad's activities in the Commonwealth shortly after Bernard Madoff was arrested for operating a \$65 billion dollar Ponzi scheme through Bernard L. Madoff Investment Securities (hereinafter referred to as "BLMIS").
- 21) On December 15 and 22, 2008, the Division subpoenaed documents and provided interrogatories to Cohmad for a response. Cohmad responded to both subpoenas on

January 2, 2009 after receiving an extension of time to respond to the earlier subpoena. The cover letter from Vinson & Elkins (counsel for Cohmad) noted "additional responsive documents will be produced shortly".

22) The December 15, 2008 subpoena required Cohmad to respond to two interrogatories. The first interrogatory was to provide the names and contact numbers of all investors with personal or business addresses in the Commonwealth of Massachusetts who invested money with Cohmad. It further requested Cohmad to include in its response, funds with business addresses outside of Massachusetts to the extent that those funds were known by Cohmad to have had investors with personal or business addresses in Massachusetts. The second interrogatory required Cohmad to describe in detail the relationship between BLMIS and Cohmad, including all business transacted between the two entities or their personnel and all compensation, commissions or other remuneration earned directly or indirectly in connection with the business and to produce all documents which describe the relationship. The relevant period for the response was January 1, 2000 through the present.

23) The December 22, 2008 subpoena contained only one interrogatory. It required Cohmad to describe in detail all commissions, fees or other compensation received, directly or indirectly by Cohmad or any Cohmad personnel in connection with investments made by Massachusetts investors in or with BLMIS or any other entity owned, controlled or managed, in whole or in part, by Bernard Madoff. The relevant period for the response was January 1, 2000 through the present. Cohmad was also instructed to provide copies of all documents which related to the

foregoing and to produce documents for each Massachusetts investor that invested money with or through Cohmad from January 1, 2005 to the present including, without limitation, all account opening documents, monthly or other periodic statements and all communications (including, without limitation, printouts of what the client reviewed, if the client accessed his account online, transcripts of taped conversations with clients and all disclosures provided to the client).

24) Cohmad provided a response to both the December 15, 2008 and December 22, 2008 subpoenas on January 2, 2009 and included 1138 documents labeled COH00001-COH01138. Marcia Cohn, in her capacity as President of Cohmad, verified that the response to the December 15 request was complete and accurate. The response to the December 22, 2009 subpoena was not signed.

25) Cohmad, noting its objection to the subpoenas as being overly broad, unduly burdensome, vague and ambiguous, supplemented its responses to the subpoenas on January 6, 2009 and January 9, 2009. Cohmad also reserved the right to revise, correct, add or clarify its responses. The responses included an additional 1035 documents numbered COH01139-COH02174 and a disc containing additional documents labeled COH01970. The production included "samples" of some of the types of documents it believed were responsive to the request, including: daily wire transaction reports for Cohmad and its customers for September 1, 2008 through October 31, 2008; a copy of Cohmad's Profit and Loss statement for the 11 month period ending November 30, 2008; and Cohmad's General Ledger from August 2008 – November 2008.

- 26) On January 16, 2009, the Division sent an additional subpoena that included nine interrogatories and required the production of numerous documents.
- 27) Cohmad responded to five of the nine interrogatories on January 30, 2009 but refused to complete the verification requested by the Division. Cohmad challenged both the Division's authority to require the verification in the form requested and its assertion that a corporate officer or employees consent to the Secretary's jurisdiction over him or her personally by executing a form in his or her corporate capacity. Cohmad provided the Division with a CD containing an additional 17,784 documents numbered COH02175-COH19959.
- 28) With regard to the relationship between Cohmad and BLMIS, Cohmad produced documents which included the following information:
- Billing statements for business expenses that Cohmad paid to BLMIS dated from January 2000 through November 2008;
  - Invoices from Cohmad to BLMIS dated January 2000 through December 2008;
  - Revenue reflected in audited financial statements Cohmad received from BLMIS from 2000 through 2008; and
  - Payments to certain Cohmad registered representatives on account of referrals to BLMIS from 1999 through 2008.
- 29) The Division asked for information regarding compensation, commissions and remuneration earned directly or indirectly in connection with its business in interrogatories dated December 15 and 22, 2008 and January 16, 2009.
- 30) Cohmad subleased office space from BLMIS at 885 Third Avenue, New York, New York and paid BLMIS for electricity, telephone and technical services.

- 31) Cohmad and Cohmad personnel received compensation from BLMIS for the referral of investors who opened accounts with BLMIS. Cohmad earned upwards of 90% of its revenue from referrals to BLMIS. These payments were described in a variety of ways on Cohmad's books, including brokerage service fees. Fees for account supervision. And professional services rendered. Cohmad tracked its registered representatives' assets under management in order to bill BLMIS for investor referrals.
- 32) The audited financial statement for the fiscal year ended June 30, 2007 reveals that Cohmad provided brokerage services to BLMIS for which it received fees totaling \$5,320,367, approximately 89% of the company's net revenue. Furthermore, it indicates that Cohmad shared office space and equipment with BLMIS for which it paid approximately \$54,000.
- 33) The audited financial statement for the fiscal year ended June 30, 2006 reveals that Cohmad provided brokerage services to BLMIS for which it received fees of \$6,812,342, approximately 91% of the company's net revenue. Furthermore, it indicates that Cohmad shared office space and equipment with BLMIS for which it paid approximately \$106,000.
- 34) The audited financial statement for the fiscal year ending June 30, 2005 reveals that Cohmad provided brokerage services to BLMIS for which it received fees of \$7,071,000, approximately 90% of the company's net revenue. Furthermore, it indicates that Cohmad shared office space and equipment with BLMIS for which it paid approximately \$90,000.

- 35) The audited financial statement for the fiscal year ended June 30, 2004 reveals that Cohmad provided brokerage services to BLMIS for which it received fees totaling \$7,935,000, approximately 90% of the company's net revenue. Furthermore, it indicates that Cohmad shared office space and equipment with BLMIS for which it paid approximately \$79,000.
- 36) The audited financial statement for the fiscal year ended June 30, 2003 reveals that Cohmad provided brokerage services to BLMIS for which it received fees totaling \$10,229,228, approximately 90% of the company's net revenue. Furthermore, it indicates that Cohmad shared office space and equipment with BLMIS for which it paid approximately \$86,000.
- 37) The documents produced reveal the following individuals identified herein received payment from Cohmad for assets under management: Marcia Cohn, Kurzok, Delaire, Jalon, Greenberg, Spring, McCurdy and Kohn.
- 38) Marcia Cohn, Maurice Cohn, Milton Cohn, Bernard Madoff, Peter Madoff, Buccellato and Jaffee received dividend payments from Cohmad in 2005, 2006 and 2007.
- 39) The answers to interrogatories do not include any reference concerning the compensation Jaffee received for referring investors to BLMIS.
- 40) The answers to interrogatories and the documents produced did not include any reference to how the compensation for registered representatives was calculated.
- 41) The answers to interrogatories do not include any explanation of why Sonja/Sonya Kohn received payment for assets under management. Kohn is not listed as a registered representative of Cohmad in the CRD.

42) The answers to interrogatories and the documents produced do not provide any information regarding compensation paid to Maurice Cohn despite the fact that the documents indicate he made a number of referrals to BLMIS.

43) On December 17, 2008, the Division subpoenaed Robert Jaffe to appear before the Division.

44) Jaffe failed to comply with the subpoena until ordered to do so by the Massachusetts Superior Court on January 26, 2009.

45) On February 4, 2009, Jaffe appeared at the offices of the Division but declined to answer any questions concerning his, Cohmad's or Madoff's business, invoking his rights under the Fifth Amendment of the U.S. Constitution and Article XII of the Massachusetts Declaration of Rights. Specifically, Jaffe asserted his Fifth Amendment and Article XII rights to the following questions:

- Have you ever referred clients to Madoff Investments?
- Were you paid a commission for the referral?
- What was the formula that determined your compensation?
- Was there an initial referral fee?
- What amount would that fee typically be?
- Did you receive an ongoing percentage based on the amount invested?
- Was this arrangement pursuant to a written agreement?
- Were you compensated in any other way by Madoff Investments or Mr. Madoff personally?
- Did you ever look at Madoff Investment's account statements for clients you referred?



- 46) The Division subpoenaed Marcia Cohn to testify before the Division on January 20, 2009.
- 47) Ms. Cohn contested the Division's jurisdiction over her and refused to appear.
- 48) The Division also subpoenaed Maurice Cohn to testify before the Division on January 30, 2009. He also contested the Division's jurisdiction and refused to appear.
- 49) Finally, on January 27, 2009, the Division subpoenaed Cohmad itself to provide the person most knowledgeable about its relationship with Madoff to testify before the Division on February 10, 2009. On February 6, 2009, Foley, Hoag, counsel for Cohmad, objected to the subpoena and notified the Division that it would not produce a witness on that date.
- 50) On February 11, 2009, the Division filed the Administrative Complaint against Cohmad alleging that Respondent willfully violated the Act. Specifically, the Complaint alleges that Respondent violated Section 204(a)(2)(B) and Section 203 of the Act by failing to make, keep and make available for examination by representatives of the Secretary of the Commonwealth's Office, certain records as prescribed by the Secretary by rule or order; Section 204(a)(2)(G) by engaging in unethical or dishonest conduct or practices in the securities business; Section 204(a)(2)(J) by failing reasonably to supervise agents, investment adviser representatives or other employees to assure compliance with the Act; and Section 404 by making or causing to be made in any document filed with the Secretary, or in any proceeding under the Act, any statement which is, at the time and in the light

of the circumstances under which it is made, false or misleading in any material respect.

- 51) On November 9, 2009, the Division submitted an Application for Issuance of Thirteen Witness Subpoenas for testimony at the hearing commencing on December 8, 2009. The witnesses included Bucellato, Marcia Cohn, Maurice Cohn, Delaire, Greenberg, Jalon, Belle Jones, Kurzok, McCurdy, Spring, Sosnick, KGG, and others. The subpoenas were issued the same day and mailed by the Division on November 10, 2009. That same day, Cohmad motioned for reconsideration of the issuance alleging that the subpoenas should not have been issued to out of state residents. The motion for reconsideration was denied on November 17, 2009 because Cohmad lacked standing to challenge the subpoenas. Subsequently, several witnesses, including Sosnick and KGG, motioned to vacate the subpoenas.
- 52) On December 4, 2009, the Division moved to withdraw the two witness subpoenas to Sosnick and KGG subject to agreements that had been reached with each to appear voluntarily. The Motion was allowed the same day.
- 53) Subsequently, on December 6, 2009, or thereabouts, Kaufman and Sosnick separately contacted the Division to indicate that Cohmad had contacted them and indicated it believed that their voluntary appearance would violate certain ethical rules regarding client confidentiality.
- 54) At the hearing on December 8, 2009, a former Cohmad employee and registered representative located in Cohmad's Boston office testified that during the period she was employed by Cohmad, Jaffe referred investors to BLMIS and directed them to

provide him with a copy of the statement of account from BLMIS on a monthly basis by mail or fax to Cohmad's address in the Commonwealth so that he could follow the progress of the account. The correspondence to investors was on Cohmad stationery and sent from Cohmad's Boston office.

- 55) The same former Cohmad employee and registered representative also testified that upon receipt of the monthly account statement in the Boston office, she inputted the long and short balances into a spreadsheet maintained to monitor the progress of the accounts and then, at Jaffe's direction, shredded the statements. The spreadsheet was not in the documents provided.

## V. CONCLUSIONS OF LAW

- 1) The Massachusetts Securities Division is a Division of the Office of the Secretary of the Commonwealth charged with the administration of the Act. (G.L. c. 110A § 406). The Act authorizes the Division to regulate, in pertinent part, broker-dealers and agents registered and or transacting business in the Commonwealth. (G.L. c.110A § 201).
- 2) As a registered broker-dealer in Massachusetts, Cohmad is subject to the Act.
- 3) In this administrative proceeding initiated pursuant to the Act, the Division must establish that Cohmad violated the provisions of G.L. c.110A by a preponderance of the evidence standard applicable to administrative proceedings. *Craven v. State Ethics Comm.* 390 Mass. 191, 200 (Mass 1983). The preponderance of the evidence standard requires the Division prove that it is more likely than not that Cohmad committed the alleged violations. *Lynch v. Merrell – Natl Laboratories,*

830 F 2d 1190, 1197 (1st Cir. 1987); Connolly v. Commonwealth, 377 Mass 527, 534 (Mass 1979).

**Count I. Violation of G.L. c.110A § 203(a) and (e)**

**G.L. c. 110A, Section 203 provides in pertained part:**

**(a) Every registered broker-dealer... shall make and keep accounts, correspondence, memoranda, papers, books and other records as the secretary prescribes by rule or order, except as limited by Section 15 of the Securities Exchange Act of 1934...**

**(e) All the records referred to in subsection (a) are subject at any time or from time to time to such reasonable periodic, special, or other examinations by representatives of the secretary, within or without the Commonwealth, as the secretary deems necessary or appropriate in the public interest or for the protection of investors...**

- 1) Cohmad's failure to maintain, provide or make available, documents with respect to registered representative compensation violated G.L. c.110A § 203 (a) and (e).

**Count II. Violation of G.L. c.110A § 204(a)(2)**

**G.L. c. 110A, Section 204 provides in pertinent part:**

**(a) The secretary may by order impose an administrative fine or censure or deny, suspend, or revoke any registration or take any other appropriate action if he finds (1) that the order is in the public interest and (2) that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser...has [engaged in certain enumerated conduct].**

- 1) Cohmad's destruction of books and records relating to its business before the expiration of the minimum three-year retention period violated G.L. c.110A § 204(a)(2).

- 2) Cohmad's failure to maintain or make available for examination documents with respect to its registered representatives compensation violated G.L. c.110A § 204(a)(2).
- 3) Cohmad's failure to assist in the Enforcement Section's lawful investigation by failing to provide any person to testify before the Division violated G.L. c.110A § 204(a)(2).

## VI. PUBLIC INTEREST

**G.L. c. 110A, Section 204. Denial, Revocation, Suspension, Cancellation and Withdrawal of Registration provides in pertinent part:**

**(a) The secretary may by order impose an administrative fine or censure or deny, suspend or revoke any registration or take other appropriate action if he finds 1) that the order is in the public interest.**

- 1) In order to impose an administrative fine or revoke the registration of a broker-dealer, the Division must establish that the Order is in the public interest.
- 2) The ability to sanction is broad when in the public interest. *Blinder, Robinson & Co. v SEC*, 837 F2 1099, 1110 (D.C. Cir 1988). Sanctions are not only a punishment, but serve to protect the public from future harm. *In the Matter of Leo Glassman* 1975 SEC Lexis 111, 7 (Dec. 16, 1975).
- 3) Massachusetts has addressed the key factors to be considered when determining sanctions in the public interest. *In the Matter of Paul J. Jackson*, No. E-99-19 (Mass. SEC Div. Oct. 25, 1999). These factors include: a) the egregiousness of Respondent's actions; b) the likelihood that Respondent's occupation will present opportunities for future violations; c) the sincerity of Respondent's assurances against future violations, and; d) the deterrent effect of disciplining the Respondent.

- 4) There is no set formula that needs to be applied when considering sanctions. The Presiding Officer needed only consider the facts before her.
- 5) Sanctions are not only a punishment but serve to protect the public from future harm. *In the Matter of Leo Glassman*, 1975 SEC Lexis 111, 7 (Dec. 16, 1975).
- 6) In the instant matter, Cohmad's failure to cooperate in the investigation by failing to produce any employee in response to the Division's subpoena, by failing to maintain or produce statutorily required records, by failing to properly supervise its agents and making misleading statements during the course of this proceeding, led the Presiding Officer to conclude that revocation of its broker-dealer license will protect the public from harm and have a deterrent effect on others who may otherwise be inclined to proceed in the same manner. The Respondent's conduct was sufficiently egregious to warrant the imposition of the following Order.


#### **VII. SECRETARY'S DECISION AND ORDER**

Based on the foregoing, it is hereby found that Cohmad violated Sections 203 and 204(a)(2) of the Act Pursuant to section 407A, such conduct constitutes grounds for the imposition of a permanent Order to cease and desist upon Respondent.

Finding that the conditions which required the Final Order have changed and that it is in the public interest to vacate the Final Order, the Secretary has determined to vacate the Presiding Officer's Final Order through this Consent Order. THEREFORE, it is hereby ORDERED that the sanctions and remedies detailed in the Presiding Officer's Final Order are vacated, and the following sanctions and remedies entered as follows:

- A. Cohmad shall permanently cease and desist from committing any further violations of the Act and regulations;
- B. Cohmad's registration with the Division is revoked; and
- C. Cohmad shall pay an administrative fine to the Commonwealth of Massachusetts in the amount of two hundred thousand dollars (\$200,000.00 USD) within 10 days of the entry of this Consent Order.

**WILLIAM FRANCIS GALVIN  
SECRETARY OF THE COMMONWEALTH**

  
Bryan J. Lantagne, Director  
Securities Division  
One Ashburton Place, Room 1711  
Boston, MA 02108

Dated this 4<sup>th</sup> day of October, 2011

**PURSUANT TO SECTION 409 OF THE ACT ANY PERSON WHO WILLFULLY VIOLATES THIS ORDER SHALL UPON CONVICTION BE FINED NOT MORE THAN ONE HUNDRED THOUSAND DOLLARS OR IMPRISONED NOT MORE THAN TEN YEARS OR BOTH.**

**CONSENT TO ENTRY OF ADMINISTRATIVE ORDER BY COHMAD  
SECURITIES CORPORATION**

Cohmad Securities Corporation hereby acknowledges that it has been served with a copy of this Administrative Consent Order (the "Consent Order") and has read the foregoing Consent Order. Cohmad Securities Corporation hereby elects to permanently waive any right to a hearing and appeal under Mass. Gen. Laws ch. 110A, § 407A and § 411, and Mass. Gen. Laws ch. 30A, § 14(7) with respect to the entry of this Consent Order.

Cohmad Securities Corporation hereby admits the jurisdiction of the Massachusetts Securities Division, neither admits nor denies the Findings of Fact and Conclusions of Law contained in the foregoing Consent Order, and consents to entry of this Consent Order by the Massachusetts Securities Division as the final settlement of; i) the issues contained in the foregoing Consent Order, and ii) the pending appeal in Massachusetts Superior Court under Mass. Gen. Laws ch. 30A.<sup>12</sup>

Cohmad Securities Corporation states that no promise of any kind or nature whatsoever that is not reflected in this Consent Order was made to it to induce it to enter into this Consent Order and that it has entered into this Consent Order voluntarily.

MARTIN F. MURPHY represents that he/she

is the duly authorized ATTORNEY IN FACT of Cohmad Securities Corporation and that, as such, has been authorized by Cohmad Securities Corporation to enter into this Consent Order for and on behalf of Cohmad Securities Corporation.

Dated this 3<sup>rd</sup> day of OCTOBER, 2011.

**COHMAD SECURITIES CORPORATION**

By: MARTIN F. MURPHY

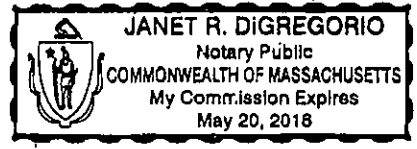
Its: duly authorized ATTORNEY in FACT

State of: Massachusetts )  
County of: Suffolk ) ss

SUBSCRIBED AND SWORN TO before me this 3<sup>rd</sup> day of October, 2011,

by \_\_\_\_\_

Janet R. DiGregorio  
Notary Public  
My commission expires: May 20, 2016



<sup>12</sup> Cohmad Securities Corporation v. William F. Galvin, et. al. Civil Action No. SUCV2010-03633-BLS1 (filed September 15, 2010).