

TRAVIS J. ILES
SECURITIES COMMISSIONER



CLINTON EDGAR
DEPUTY SECURITIES COMMISSIONER

Mail: P.O. BOX 13167
AUSTIN, TEXAS 78711-3167

Phone: (512) 305-8300
Facsimile: (512) 305-8310

Texas State Securities Board

208 E. 10th Street, 5th Floor
Austin, Texas 78701-2407
www.ssb.texas.gov

E. WALLY KINNEY
CHAIR

MIGUEL ROMANO, JR.
MEMBER

KENNY KONCABA
MEMBER

ROBERT BELT
MEMBER

MELISSA TYROCH
MEMBER

IN THE MATTER OF THE INVESTMENT
ADVISER REPRESENTATIVE
REGISTRATION OF RANDALL FIELDS

§
§
§

Order No. IC21-REV-02

TO: Randall Fields (CRD No. 1665946)
8118 Datapoint Drive, Suite 104
San Antonio, Texas 78229

DISCIPLINARY ORDER

Be it remembered that Randall Fields ("Respondent"), appeared before the Securities Commissioner of the State of Texas ("Securities Commissioner"), solely for the purpose of resolving an investigation by the Texas State Securities Board, and consented to the entry of this order ("Order") and the Findings of Fact and the Conclusions of Law contained herein for the sole purpose of resolving this matter.

FINDINGS OF FACT

1. Respondent has waived (a) Respondent's right to notice and hearing in this matter; (b) Respondent's right to appear and present evidence in this matter; (c) Respondent's right to appeal this Order; and (d) all other procedural rights granted to the Respondent by The Securities Act, Tex. Rev. Civ. Stat. Ann. arts. 581-1 to 581-45 (West, Westlaw through 2019 R. Sess.) ("Texas Securities Act"), and the Administrative Procedure Act, Tex. Gov't Code Ann. §§ 2001.001 to 2001.902 (West, Westlaw through 2019 R. Sess.).
2. On August 2, 2018, Respondent registered as an investment adviser representative of Facilitar Capital Group, LLC¹ ("Facilitar") with the Securities Commissioner. Respondent is also the sole owner of Facilitar. This registration is currently effective.

¹ Previously called Southern Cross Financial Group, LLC. Southern Cross changed its name to Facilitar on March 3, 2021.

3. From April 1, 2010 through March 2, 2020, Respondent was also registered as an investment adviser representative of Sensus Wealth Management Group, LLC (“Sensus”) with the Securities Commissioner.
4. While at Sensus, Respondent was also the Chairman and Chief Investment Officer of OPCIÓN Investment Strategy (“OIS”), a division of Sensus which implements Sensus’ option investment advisory service (the “Options Strategy”) for client accounts, and solely traded options in client accounts.

The Options Strategy

5. The Options Strategy was an aggressive strategy available only to “qualified clients”² that involved simultaneously buying and selling call or put options at different strike prices to realize immediate profit based on the price spreads.
6. An account would retain all the profit from a transaction when the options reached expiration without the underlying security or index reaching the applicable strike price. If the underlying security or index did not reach the strike price, the options would expire worthless.
7. The simultaneous transactions were intended to hedge against the price of the underlying security or index moving the opposite direction from that which Respondent expected, and to limit the amount an account could lose on a transaction. Generally, the Options Strategy could limit potential loss to about \$500 per options contract if the options were exercised.
8. For example, if Respondent sold 140 put contracts and received proceeds of \$100,000, and simultaneously purchased 140 put contracts (with a different strike price) for \$94,000, then the account would receive the net \$6,000 as cash. If the purchased put options expired, the account would realize the \$6,000 as profit. But if the positions did not expire worthless and were exercised, the account would realize a \$70,000 loss.
9. Accordingly, the Options Strategy was a very high-risk strategy.

Clients TB and HV

10. Respondent recommended this strategy to a number of clients, including Clients TB and HV (collectively, the “Clients”).

² In general, a qualified client is a natural person who, or a company that: (i) immediately after entering into an investment advisory contract, has at least \$1,000,000 under the management of the investment adviser; or (ii) the investment adviser reasonably believes, immediately prior to entering into the contract, has a net worth (together, in the case of a natural person, with assets held jointly with a spouse) of more than \$2,100,000, exclusive of the client’s primary residence.

11. The Clients opened accounts with Respondent in 2014.³ Prior to this, neither Client TB nor Client HV had any experience in trading options.
12. In fact, prior to opening their accounts with Respondent at Sensus, the Clients had conservative investment strategies and invested in more traditional securities such as stocks and bonds.
13. Despite their lack of knowledge and sophistication in options, Respondent recommended the Options Strategy to the Clients.
14. But the Clients agreed to place a portion of their assets in the Options Strategy in large part because Respondent assured them - "I only make money when you make money."
15. At times, however, the opposite was true.

Performance Fee and High-Water Mark

16. Respondent assessed a performance fee on the Clients' accounts for the Options Strategy.
17. The performance fee was equal to 25% of the monthly account trading profits (in excess of a hurdle rate⁴) for the assets traded as part of the Options Strategy.
18. Notably, Respondent did not apply a high-water mark. This is a common feature used in performance fees that prevents an adviser from effectively double billing the same performance, such as in a volatile market or for a risky strategy when the account alternates between times of profit and loss. With a high-water mark, the performance fee would be payable only when the account exceeds its previous high.
19. The absence of the high-water mark significantly impacted the performance fees assessed by Respondent on the Clients' accounts.

³ Collectively, the Clients had a total of four accounts with Respondent. Notably, one account of Client TB's had a significantly higher balance than the other three accounts and therefore incurred the highest fees and losses. This account (the "Account") is featured in this Order. However, the conduct described herein occurred throughout all the accounts of the Clients at varying degrees.

⁴ A hurdle rate is the minimum amount of profit or returns an adviser must earn before he/she can charge an incentive fee. The Clients' hurdle rate was only .42% per month.

20. For example, from July 2015 through December 2015, the monthly trading profits and performance fees in the Account were:

	Trading Profit (Loss)	Performance Fee
July 2015	\$72,728.35	\$18,096.36
August 2015	\$17,869.71	\$4,391.84
September 2015	(\$48,218.36)	N/A
October 2015	(\$98,478.46)	N/A
November 2015	\$27,033.52	\$6,697.59
December 2015	\$17,058.74	\$4,189.03

21. In this five-month period, the Options Strategy incurred losses of about \$12,000. While Respondent received \$33,374 in performance fees.

22. And similar conduct occurred in the Clients' three other accounts with Respondent.

23. Following expressed concerns from the Clients regarding the high fees being charged on their accounts, Respondent proposed the use of a high-water mark in October 2016.

24. Specifically, in an email dated October 27, 2016, Respondent told the Clients that he would charge a fee equal to 25% of the difference between the account net asset value ("NAV")⁵ at the end of the month and either the greater NAV at the end of the previous month or the high-water mark. And should a fee be charged (due to a profit in the account), a new high-water mark would be set, and the new high-water mark would have to be exceeded before any other fee would be charged.

25. However, Respondent miscalculated the initial high-water mark in the Account and consistently misapplied it across all the accounts of the Clients. At times, Respondent even ignored the high-water mark altogether.

26. Additionally, despite his representations to the Clients contained in the October 2016 email, Respondent continued to assess fees based on 25% of the accounts' trading profits (after the hurdle rate of .42%) rather than the difference between the account NAV at the end of the month and the high-water mark.

27. As such, Respondent rendered the application and use of a high-water mark void and continued to make money while the Clients lost money.

⁵ The accounts' NAV was calculated by taking the closing market prices of each security held in the Clients' accounts at the end of the last trading day of each month. Respondent also told the Clients that he would no longer be applying a hurdle rate to their fee schedule.

Broker-Assisted Trading

28. Respondent selected a discount brokerage firm (“Discount Broker”) as the broker-dealer through which Respondent would execute all trades in connection with managing investment advisory accounts, including accounts in the Options Strategy, such as those of the Clients.
29. The Discount Broker offered investment advisers the ability to use their own unique log-in to place trades for all accounts in an omnibus account—a practice known as block trading.
30. For investment advisers using this feature, the Discount Broker charged a fixed fee of \$0.65 per options contract, plus other third-party fees⁶.
31. The Discount Broker also offered broker-assisted trading through its trade desk. For this mechanism, the Discount Broker charged a fixed fee of \$0.95 per options contract (plus the third-party fees).
32. Respondent opted for the broker-assisted trading.
33. By doing so, Respondent received the advantages of time and convenience while his clients received no advantage at all. To the contrary, clients incurred an additional charge of \$0.30 per options contract—a cost that could have been mitigated if Respondent were to have entered the trades himself.
34. Respondent began using broker-assisted trading in 2015. And the increase in commissions paid per contract is consistent with this time period.
35. For example, in the Account, the average commission paid per contract was as follows:
- 2014: \$1.29/contract
2015: \$1.46/contract
2016: \$1.46/contract
2017: \$1.48/contract
2018: \$1.45/contract
36. Had Respondent used the online trading in the omnibus account, these commissions could have been reduced by more than 30%. For example, in lieu of paying \$204,785 for the transactions in the Account, Client TB would only have paid \$140,116.05.

⁶ i.e. Exchange Fees, Regulatory Fees, Clearing Fees and Transaction Fees.

37. Sensus' Form ADV Part 2, the disclosure brochure every investment adviser is required to deliver to each client or prospective client, only stated the following with respect to fees and expenses:

Individual client accounts also pay any fees assessed by the custodian and/or broker/dealer. These additional fees might include trade commissions or transaction fees, custodial fees, margin interest, wire fees, exchange fees, etc. These are paid directly by each account.

38. The brochure also disclosed that Respondent would have discretion to select the broker-dealer.

39. But Respondent never disclosed to the Clients that he would utilize the Discount Broker's assistance in entering transactions, which would result in higher commissions to the Discount Broker than other available options, like the omnibus account.

CONCLUSIONS OF LAW

1. Respondent's statement to the Clients that he would "only make money if you make money" when Respondent's performance fee arrangement with the Clients did not include a high-water mark was misleading and constitutes a breach of the fiduciary duty to employ reasonable care to avoid misleading clients.
2. Respondent's promise and subsequent failure to establish a high-water mark for the Clients' accounts also constitutes a breach of the fiduciary duty of care Respondent owed to the Clients.
3. Respondent's failure to disclose to the Clients the additional commissions the Clients would be paying due to Respondent's use of broker-assisted trading was a failure to disclose a material fact and constitutes a breach of the fiduciary duty to make full and fair disclosure of all material facts.
4. Respondent's use of broker-assisted trading for his own benefit, without any added value to the Clients, and without their consent, constitutes a breach of the fiduciary duty to seek best execution of client transactions.
5. Respondent's breaches of the aforementioned fiduciary duties to the Clients constitute fraudulent business practices.
6. Pursuant to Section 14.A(3) of the Securities Act, the aforementioned fraudulent business practices constitute bases for the issuance of an order revoking Respondent's registration with the Securities Commissioner.

7. Pursuant to Section 23 of the Securities Act, the aforementioned fraudulent business practices are bases for ordering Respondent to cease and desist from the fraudulent conduct.

ORDER

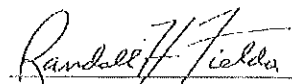
1. It is therefore ORDERED that the registration of Randall Fields, as an investment adviser representative with the Securities Commissioner is hereby REVOKED.
2. It is further ORDERED that Randall Fields CEASE AND DESIST from engaging in fraudulent conduct.

SIGNED AND ENTERED BY THE SECURITIES COMMISSIONER this 19th
day of May, 2021.




TRAVIS J. ILES
Securities Commissioner

Respondent:




Randall Fields
Individually

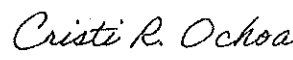
Approved as to Form:



Clinton Edgar,
Deputy Securities Commissioner



Kevin Edmundson
Edmundson Shelton Weiss PLLC
Attorney for Respondent



Cristi Ramón Ochoa,
Attorney
Inspections and Compliance Division