

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 71714 / March 13, 2014**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 3793 / March 13, 2014**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-15789**

**In the Matter of**

**MARC STEVEN  
FIRESTONE**

**and**

**RICHARD MARK  
HOROWITZ**

**Respondents.**

**ORDER INSTITUTING CEASE-AND-  
DESIST PROCEEDINGS PURSUANT TO  
SECTION 21C OF THE SECURITIES  
EXCHANGE ACT OF 1934 AND SECTION  
203(f) OF THE INVESTMENT ADVISERS  
ACT OF 1940, MAKING FINDINGS, AND  
IMPOSING A CEASE-AND-DESIST  
ORDER**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”) and Section 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”), against Marc Steven Firestone (“Firestone”) and Richard Mark Horowitz (“Horowitz”) (collectively, “Respondents”).

**II.**

In anticipation of the institution of these proceedings, each Respondent has submitted an Offer of Settlement (the “Offers”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Cease-

and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

### III.

On the basis of this Order and Respondents’ Offers, the Commission finds<sup>1</sup> that:

#### A. SUMMARY

1. Between mid-November and mid-December 2007, Firestone signed as the registered representative in the sale of twelve deferred variable annuities. Firestone so acted with the knowledge of Horowitz, to whom he reported. With respect to each sale, new account forms of the affiliated broker-dealer, NFP Securities, Inc. (“NFP”) included a question regarding the customer’s investment “time horizon,” which was NFP’s term in this context for how soon the customer intended to access the investment. As submitted to NFP, this question was answered on the forms with long-term time periods. Instead, it should have been answered with substantially shorter periods. The incorrect time horizons provided on these forms led to NFP supervisory principals’ approval of the sales, which, in turn, allowed the variable annuities to be issued. By negligently allowing new account forms containing the aforementioned incorrect information to be submitted to NFP, Respondents caused NFP to violate Section 17(a) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 17a-3 thereunder, and each realized commissions deriving therefrom.

#### B. RESPONDENTS AND ASSOCIATED BROKER-DEALER

2. **Marc Steven Firestone**, age 57, is an insurance agent residing in Los Angeles, California. From January 2004 through May 2008, Firestone was a registered representative with NFP, but has not been associated with a registered entity since then. An employee of Management Brokers, Inc. (“MBI”)—a wholly-owned subsidiary and independent affiliate of NFP that sells insurance products—he formerly held Series 6 and 63 securities licenses.

3. **Richard Mark Horowitz**, age 72, is an insurance broker residing in Los Angeles, California and President of MBI where, at all relevant times, Firestone reported to him. He was a registered representative with NFP between January 2004 and May 2008, but has not been associated with a registered entity since then. He formerly held Series 6 and 63 securities licenses.

4. **NFP Securities, Inc. (“NFP”)** is a broker-dealer and an investment adviser, registered as both with the Commission, and headquartered in New York, New York.

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<sup>1</sup> The findings herein are made pursuant to Respondents’ Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

## C. FACTS

5. Between mid-November and mid-December 2007, Respondent Firestone signed as the registered representative on the sale of twelve deferred variable annuities, each of which was sold through NFP. The customers purchasing these twelve variable annuities included natural persons.

6. In so signing, Respondent Firestone acted with the knowledge of Respondent Horowitz, the President of MBI, to whom Firestone reported, and who shared in commissions generated by Firestone. As Respondents knew contemporaneously, in all twelve of these sales, customers intended for their variable annuity purchases to be short-term investments.

7. Each of the aforementioned variable annuity sales was subject to supervisory principal review by NFP, and could be submitted to the issuer for consummation only after NFP principal approval of each proposed sale. That review, in turn, required Respondents to furnish a completed new account form, for each annuity sale, containing information that included the customer's investment "time horizon," which was NFP's term in this context for how soon the customer intended to access his or her investment. As Respondents should have known, NFP's reviewing principals scrutinized each customer's investment "time horizon" to ensure that it exceeded the multi-year "surrender charge" period for the deferred variable annuity being purchased.<sup>2</sup>

8. Without reviewing the new account forms (which neither Respondent had prepared), Firestone signed and submitted them to NFP. As submitted, all twelve answered the time horizon question with long-term periods, each exceeding the relevant surrender-charge period. These answers were incorrect because the customers purchasing the annuities intended to hold their investments for much shorter periods.

9. All twelve annuities sales subsequently withstood NFP's principal review. This, in turn, led to issuance of the annuities. Had accurate time horizons been provided on the new account forms, however, none of these annuities would have withstood NFP's principal review.

10. Of the total commissions paid by the annuity issuers on the twelve annuities referenced above, Respondent Horowitz received \$292,767.89, and Respondent Firestone received \$127,853.20.

## D. VIOLATIONS

11. Section 17(a) of the Exchange Act [15 U.S.C. § 78q(a)] and the rules thereunder require a registered broker or dealer to make and keep current specific books and records relating to its business. Exchange Act Rule 17a-3(a)(17) [17 C.F.R. §§ 240.17a-3(a)(17)] requires, in pertinent part, that every registered broker or dealer make and keep an account record for each

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<sup>2</sup> The "surrender charge" period embraces the years following purchase during which charges as high as 7 to 10% of any amounts withdrawn are generally assessed.

account with a natural person as a customer or owner, that includes, among other things, the account's investment objectives. Implicit in these provisions is the requirement that information contained in a required record or report be accurate, *In re Merrill Lynch, Pierce, Fenner & Smith, Inc.*, Exchange Act Rel. No. 33367, 55 SEC Docket 1970 (Jan. 11, 1994), regardless of whether the information entered itself is mandated. *See Sinclair v. SEC*, 444 F.2d 399, 401 (2<sup>nd</sup> Cir. 1971); *In re James F. Novak*, Exchange Act Release No. 19660 (Apr. 8, 1983).

12. Firestone and Horowitz should have known that the time horizon entries in the new account forms submitted to NFP for the twelve sales described above were incorrect. The NFP new account forms that Firestone signed, and which were submitted to NFP, constituted required books and records under Exchange Act Rule 17a-3(a)(17), and were relied on by NFP's supervisory principals in approving these annuity sales.

## **E. FINDINGS**

13. As a result of the conduct describe above, the Commission finds that Respondents caused NFP to violate Section 17(a) of the Exchange Act and Rule 17a-3 thereunder.

## **IV.**

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondents' Offers.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondents Firestone and Horowitz, and each of them, cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Exchange Act and Rule 17a-3 thereunder.

B. Respondent Firestone shall, within ten (10) days of the entry of this Order, pay (i) disgorgement of \$127,853.20 plus prejudgment interest of \$17,140.89; and (ii) a civil money penalty in the amount of \$40,800, to the United States Treasury. If timely payment of disgorgement is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. If payment of a civil penalty is not timely made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Payment shall be made in conformity with the payment procedures detailed in paragraph V.D. below.

C. Respondent Horowitz shall, within ten (10) days of the entry of this Order, pay: (i) disgorgement of \$292,767.89 plus prejudgment interest of \$36,512.20; and (ii) a civil money penalty in the amount of \$40,800, to the United States Treasury. If timely payment of disgorgement is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. If payment of a civil penalty is not timely made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Payment shall be made in conformity with the payment procedures detailed in paragraph V.D. below.

D. All payments required by this Order must be made in one of the following ways:

(1) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or

(2) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the United States Treasury and hand-delivered or mailed to:

Enterprise Services Center  
Accounts Receivable Branch  
HQ Bldg., Room 181, AMZ-341  
6500 South MacArthur Boulevard  
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying the paying Respondent both by name and as a Respondent in these proceedings, and the file number of these proceedings; regardless of the form of payment, a copy of the cover letter and form of payment must be sent to Stephen L. Cohen, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

By the Commission.

Jill M. Peterson  
Assistant Secretary