

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 74429 / March 4, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16419

In the Matter of

**H.D. Vest Investment
Securities, Inc.**

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS
PURSUANT TO SECTIONS 15(b) AND 21C
OF THE SECURITIES EXCHANGE ACT OF
1934, MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS AND A CEASE-
AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against H.D. Vest Investment Securities, Inc. d/b/a H.D. Vest Investment Services (“H.D. Vest” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) 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 it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

H.D. Vest failed to reasonably supervise Lewis J. Hunter ("Hunter") with a view to preventing and detecting Hunter's violations of Section 17(a) of the Securities Act of 1933 ("Securities Act") and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. As part of a fraudulent scheme, Hunter misappropriated approximately \$300,000 from H.D. Vest brokerage customers by soliciting customers to invest in both foreign and domestic bank investments and promising guaranteed returns. In reality, Hunter used the funds to pay for personal and business expenses and concealed his actions by making false and misleading representations to his customers, including fabricating bank documents that purported to memorialize investments.

Had H.D. Vest established reasonable supervisory policies and procedures prior to the start of Hunter's fraudulent scheme, H.D. Vest likely would have discovered Hunter's misappropriation of customer funds. Specifically, as part of his fraudulent scheme, Hunter conducted unauthorized and deceptive wire transfers from customer brokerage accounts to bank accounts and other brokerage accounts in the name of his outside business activities ("OBAs") without H.D. Vest's detection. If H.D. Vest had reasonable policies and procedures concerning the review of third-party disbursements to its registered representatives from customer brokerage accounts or to entities controlled by its registered representatives, H.D. Vest likely could have prevented and detected Hunter's misappropriation of customer funds.

Moreover, in addition to Hunter, certain other registered representatives deposited or transferred customer funds into OBA bank accounts and misused the funds for their personal benefit. Because these actions created customer liabilities for H.D. Vest, and H.D. Vest did not perform the required reserve formula calculations or maintain cash and/or qualified securities in a reserve bank account for amounts owed to customers when the firm determined that it owed money to customers due to its representatives' actions, H.D. Vest violated certain provisions of the Commission's customer protection requirements.

Additionally, H.D. Vest's e-mail policy allowed registered representatives to communicate with customers on investment-related matters using non-H.D. Vest e-mail accounts, so long as registered representatives copied or forwarded those customer communications to H.D. Vest. H.D. Vest has learned, however, that some registered representatives failed to forward investment-related customer e-mails to the firm. Because H.D. Vest did not obtain and preserve those customer communications, H.D. Vest failed to maintain all required business-related e-mails in violation of certain books and records provisions.

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Respondent

1. H.D. Vest is a Texas corporation headquartered in Irving, Texas. H.D. Vest has been registered as a broker-dealer with the Commission since 1983. H.D. Vest has a network of over 4,500 independent contractor registered representatives located in branch offices throughout the United States. The overwhelming majority of H.D. Vest's independent contractor registered representatives are tax professionals that operate tax businesses through OBAs. For many H.D. Vest registered representatives, OBAs are their primary source of income and they are associated with H.D. Vest in an effort to provide additional financial and investment services to their tax clients.

Other Relevant Person

2. Lewis J. Hunter was a H.D. Vest registered representative from November 15, 2006 through October 19, 2011. On May 30, 2013, pursuant to a settlement with Hunter, the Commission found that Hunter willfully violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. As a result, Hunter was: (i) ordered to cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder; (ii) barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, nationally recognized statistical rating organization, or participating in an offering of a penny stock; (iii) prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter; and (iv) ordered to pay disgorgement of \$295,875, along with prejudgment interest, and a civil penalty in the amount of \$150,000. In the Matter of Lewis J. Hunter, Exchange Act Rel. No. 69668 (May 30, 2013) (settled Order).

Misappropriation of Customer Funds by Lewis Hunter

3. In or around September 2010 and February 2011, Hunter recommended an investment in a Canadian bank to two long-time, elderly customers (collectively, "Victim 1"). Hunter told Victim 1 that the investment had to be funded and held outside of their H.D. Vest brokerage account because the investment was not offered on H.D. Vest's trading platform. Unbeknownst to Victim 1, Hunter caused H.D. Vest to wire a total of \$250,000 from their brokerage account into a bank account held in the name of one of his OBAs.

4. After being confronted by Victim 1, Hunter informed Victim 1 that the funds were used to purchase guaranteed investments in a Canadian bank and provided Victim 1 with bank documents as proof of the investment. Pursuant to the investment, Victim 1 was guaranteed monthly interest payments of 15% for two years. Hunter, however, fabricated the bank documents and used Victim 1's funds to pay for various personal and business expenses. In addition, Hunter

used the funds to make interest payments to Victim 1 pursuant to the investment and repay a loan that Victim 1 had made to Hunter.

5. Similarly, in August 2010, Hunter recommended that another long-time, elderly customer (“Victim 2”) make a guaranteed investment in “US Bank.” Based on Hunter’s representations, Victim 2 signed a wire transfer form that authorized the transfer of \$54,000 to “US Bank,” although the actual recipient was a brokerage account in the name of another Hunter OBA. The funds were subsequently transferred into a bank account of Hunter’s OBA, and Hunter then used the funds to pay for personal and business expenses, including personal loan repayments to Victim 1.

H.D. Vest’s Failure to Supervise Lewis Hunter

6. All broker-dealers have a duty to reasonably supervise their employees by means of effective and established procedures. See In the Matter of Shearson, Hammill & Co, Inc., Exchange Act Rel. 7743 (Nov. 12, 1965) (Commission Opinion). The independent contractor model employed by certain broker-dealers, including H.D. Vest, entails greater supervisory challenges than typically presented at traditional wire house brokerage firms. Therefore, to discharge their supervisory duties, firms employing that model must establish policies and procedures reasonably designed to address those challenges. See, e.g., In the Matter of Quest Capital Strategies, Inc. and David Chen Yu, Exchange Act Rel. No. 44935 (Oct. 15, 2001) (Commission Opinion); In the Matter of 1st Discount Brokerage, Inc. and Michael R. Fisher, Exchange Act Rel. No. 66212A (Jan. 23, 2012) (settled Order); In the Matter of Royal Alliance Assocs., Inc., Exchange Act Rel. No. 38174 (Jan. 15, 1997) (settled Order).

7. As part of his fraudulent scheme, Hunter conducted unauthorized and deceptive wire transfers from customer brokerage accounts to bank accounts and other brokerage accounts in the name of his OBAs. At the time of Hunter’s actions, H.D. Vest did not identify the unauthorized and deceptive wire transfers to Hunter’s OBAs and did not discover Hunter’s misappropriation of customer funds. H.D. Vest only learned of Hunter’s actions after complaints from the victims.

8. H.D. Vest’s policies and procedures were not reasonably designed to prevent or detect the type of fraudulent behavior conducted by Hunter. Specifically, despite the fact that H.D. Vest knew that the overwhelming majority of its registered representatives operate their securities business through their OBAs, H.D. Vest had no policies and procedures in place to review third-party disbursements from customer brokerage accounts to determine whether funds were being transmitted to registered representative OBAs or other entities controlled by its registered representatives.

9. At H.D. Vest, independent contractors like Hunter typically operate their securities and other businesses through an OBA and pay expenses for the businesses by an account under the OBA’s name. H.D. Vest did not establish procedures governing reviews of OBA accounts from which representatives paid their securities business expenses.

10. If H.D. Vest had such policies and procedures in place at the time of Hunter's conduct, it is likely that H.D. Vest would have detected Hunter's unauthorized and deceptive wire transfers to his OBAs and his subsequent misappropriation of customer funds would have been prevented.

11. Based on the conduct described above, H.D. Vest failed reasonably to supervise Hunter within the meaning of Section 15(b)(4)(E) of the Exchange Act with a view to preventing and detecting his violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

H.D. Vest's Failure to Comply with Customer Protection Requirements

12. From at least December 2007, certain H.D. Vest registered representatives, including Hunter, transferred customer funds from H.D. Vest brokerage accounts to OBA bank accounts or directed customers to write investment-related checks to their OBAs rather than H.D. Vest, and subsequently misappropriated the funds.

13. Section 15(c)(3) of the Exchange Act authorizes the Commission to prescribe rules and regulations with respect to the financial responsibility and related practices of broker-dealers including, but not limited to, the acceptance of custody and use of customers' deposits or credit balances. Such rules and regulations must provide for, among other things, the maintenance of reserves with respect to customers' deposits or credit balances. Rule 15c3-3 under the Exchange Act was adopted pursuant to Section 15(c)(3) and requires, among other things, that broker-dealers subject to the rule perform a calculation to determine the amount of funds that must be maintained in a special reserve account for the exclusive benefit of customers. Rule 15c3-3 is intended to protect customer funds and securities in the possession of broker-dealers.

14. Although H.D. Vest claimed an exemption from Rule 15c3-3, the firm was not permitted to rely on the exemption when its registered representatives deposited or transferred customer funds into OBA bank accounts and misused the funds for their personal benefit. See, e.g., In the Matter of Clinger & Co., Inc. and Norman E. Clinger, Exchange Act Rel. No. 31620 (Dec. 17, 1992) (Commission Opinion) (Commission affirming NASD finding that broker-dealer "could not rely on the customer protection rule exemption on those occasions when it handled its customers funds in a manner inconsistent with the exemption's terms"). These actions created customer liabilities for H.D. Vest, which subjected the firm to the substantive provisions of Rule 15c3-3, including the reserve formula calculation and reserve bank account deposit requirements under Section 15(c)(3) of the Exchange Act and Rule 15c3-3 thereunder. Further, when the firm determined that it owed money to customers due to its representatives' actions, it should have made a reserve formula calculation and any requisite reserve bank account deposit under Rule 15c3-3. See, e.g., In the Matter of Elvyn Q. Evans and Evans Trading Co., Inc., Exchange Act Rel. No. 25070 (Oct. 29, 1987) (settled Order); In the Matter of Henry A. Pawlik, Exchange Act Rel. No. 24568 (Jun. 10, 1987) (settled Order). Because H.D. Vest did not perform required reserve formula calculations or maintain cash and/or qualified securities in a reserve bank account for

amounts owed to customers, H.D. Vest failed to comply with Section 15(c)(3) under the Exchange Act and Rule 15c3-3 thereunder.

H.D. Vest's Failure to Preserve E-mails

15. Section 17(a) of the Exchange Act and Rule 17a-4(b)(4) thereunder require registered broker-dealers to preserve "originals of all communications received and copies of all communications sent (and any approvals thereof) by the member, broker, or dealer (including inter-office memoranda and communications) relating to its business as such, including all communications which are subject to rules of a self-regulatory organization of which the member, broker or dealer is a member regarding communications with the public." Electronic communications, including e-mail, relating to a broker-dealer's business as such must be preserved under Rule 17a-4(b)(4). H.D. Vest was aware of this requirement and allowed its registered representatives to communicate with customers using non-H.D. Vest e-mail accounts, so long as investment-related communications were copied or forwarded to H.D. Vest. H.D. Vest believed that its e-mail policy complied with regulatory requirements because the copied or forwarded communications could be captured and reviewed by the firm.

16. H.D. Vest learned, however, that H.D. Vest registered representatives communicated with customers through their personal and OBA e-mail accounts and did not copy or forward those communications to H.D. Vest. Because H.D. Vest did not obtain and preserve those customer communications, H.D. Vest failed to maintain all required business-related e-mails under Rule 17a-4(b)(4).

Violations

17. As a result of the conduct described above, H.D. Vest failed reasonably to supervise Hunter within the meaning of Section 15(b)(4)(E) of the Exchange Act with a view to detecting his violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. H.D. Vest also willfully violated Section 15(c)(3) of the Exchange Act and Rule 15c3-3 thereunder by failing to maintain reserves for amounts owed to customers and Section 17(a) of the Exchange Act and Rule 17a-4(b)(4) thereunder by failing to preserve e-mails.

Remedial Efforts

18. In determining to accept the Offer, the Commission considered remedial acts voluntarily undertaken by Respondent to improve its supervisory system for customer checks, wire transfers, and automated clearing house disbursements issued to registered representatives and/or OBAs.

Undertakings

Respondent H.D. Vest undertakes:

- a. to retain, within 60 days of the date of the Order, at its own expense, the services of an Independent Consultant not unacceptable to the Division of Enforcement of the Commission (“Division of Enforcement”), to review H.D. Vest’s written supervisory policies and procedures concerning (i) the maintenance and review of electronic communication with customers; and (ii) the handling of H.D. Vest customer funds by registered representatives.
- b. to require the Independent Consultant, at the conclusion of the review, which shall be no more than 150 days after the entry of the Order, to submit a Report of the Independent Consultant to H.D. Vest and the Division of Enforcement. The report shall address the supervisory issues described above and shall include a description of the review performed, the conclusions reached, the Independent Consultant’s recommendations for changes or improvements to the policies, procedures and practices of H.D. Vest and a procedure for implementing the recommended changes or improvements to such policies, procedures and practices.
- c. to adopt, implement, and maintain all policies, procedures, and practices recommended in the Report of the Independent Consultant; provided, however, that within 180 days from the date of the entry of the Order, H.D. Vest will in writing advise the Independent Consultant and the Division of Enforcement of any recommendations that it considers to be unnecessary or inappropriate. With respect to any such recommendation, H.D. Vest need not adopt that recommendation at that time but will propose in writing an alternative policy, procedure, or system designed to achieve the same objective or purpose. As to any of the Independent Consultant’s recommendations about which H.D. Vest and the Independent Consultant do not agree, such parties shall attempt in good faith to reach agreement within 210 days of the date of the entry of the Order. In the event that H.D. Vest and the Independent Consultant are unable to agree on an alternative proposal, H.D. Vest will abide by the determinations of the Independent Consultant and adopt those recommendations deemed appropriate by the Independent Consultant.
- d. to cooperate fully with the Independent Consultant in its review, including making such information and documents available as the Independent Consultant may reasonably request, and by permitting and requiring H.D. Vest’s employees and agents to supply such information and documents as the Independent Consultant may reasonably request.

- e. that, in order to ensure the independence of the Independent Consultant, H.D. Vest (i) shall not have the authority to terminate the Independent Consultant without prior written approval of the Division of Enforcement; and (ii) shall compensate the Independent Consultant, and persons engaged to assist the Independent Consultant, for services rendered pursuant to the Order at their reasonable and customary rates.
- f. to require the Independent Consultant to enter into an agreement that provides that, for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with H.D. Vest, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. The agreement will also provide that the Independent Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Division of Enforcement in Fort Worth, Texas, enter into any employment, consultant, attorney-client, auditing or other professional relationship with H.D. Vest, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.
- g. to certify, in writing, compliance with the undertaking(s) set forth above. The certification shall identify the undertaking(s), provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to David L. Peavler, Associate Regional Director, with a copy to the Office of Chief Counsel of the Division of Enforcement, no later than sixty (60) days from the date of the completion of the undertakings.
- h. For good cause shown and upon timely application by the Independent Consultant or H.D. Vest, the Commission's staff may extend any of the deadlines set forth above.

IV.

In view of the foregoing, the Commission deems it appropriate, in the public interest, to impose the sanctions agreed to in Respondent H.D. Vest's Offer.

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent H.D. Vest cease and desist from committing or causing any violations and any future violations of Sections 15(c)(3) and 17(a) of the Exchange Act and Rules 15c3-3 and 17a-4(b)(4) promulgated thereunder.

B. Respondent H.D. Vest is censured.

C. Respondent shall, within 30 days of the entry of this Order, pay a civil money penalty in the amount of \$225,000 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) 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
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission 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 H.D. Vest as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to David L. Peavler, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, Fort Worth Regional Office, 801 Cherry Street, Suite 1900, Fort Worth, TX 76102.

D. Respondent shall comply with the undertakings enumerated in Section III above.

By the Commission.

Brent J. Fields
Secretary