

OCT 17 2014

INDIANA  
SECRETARY OF STATE

STATE OF INDIANA  
OFFICE OF THE SECRETARY OF STATE  
SECURITIES DIVISION

IN THE MATTER OF: )  
 )  
 ONEAMERICA SECURITIES, INC., ) Cause No. 14-0229 CD  
 )  
 Respondent. )

CONSENT AGREEMENT

The Office of the Indiana Secretary of State, Securities Division ("Division") and OneAmerica Securities, Inc. ("OAS") do hereby agree and offer this Consent Agreement ("Agreement") for the Securities Commissioner's approval. OAS and the Division shall collectively be referred to herein as the "Parties". The Parties hereby agree and stipulate that:

RECITALS

A. OAS is a registered broker-dealer in Indiana under CRD Number 4173 and is regulated by the Division.

B. On June 4, 2012, Jerry Smith ("Smith") pled guilty to Mail and Wire Fraud Conspiracy, Obstruction, and Tax Evasion in the Southern District of Ohio. From November 2003 to September 2009, Smith and Jasen Snelling allegedly operated a Ponzi scheme selling unregistered investments in CityFund Advisory ("CityFund") and Dunhill Investments ("Dunhill") (the "Scheme").

C. On March 20, 2013, Smith was sentenced to Sixty Five (65) months and ordered to pay Five Million Four Hundred Thousand (\$5,400,000) in restitution to the victims of the Scheme.

D. At the time of this agreement, Smith is awaiting trial in Franklin County (Cause No. 24C02-1102-FB-000044) and Dearborn County (Cause No. 15D01-1106-FC-00054) for multiple counts of criminal securities fraud stemming from his conduct and participation in the Scheme.

E. From February 22, 2005 through May 15, 2008, Smith was a registered representative of OAS.

F. From February 22, 2005 through May 15, 2008, the Division has alleged that CityFund and Dunhill investor losses were approximately \$2.1 million. The Division's investor loss calculations are based upon the best available information and are attached and incorporated into this Agreement as Exhibit A.

G. The Division asserts that OAS violated Ind. Code § 23-2-1-11(6) of the Indiana Securities Act (the "Act") by failing to properly supervise Smith, Ind. Admin. Code 710 1-17-1.

H. OAS disputes the Division's assertions and further responds that it exercised reasonable supervision over Smith at all times during his affiliation with OAS based on circumstances at the time.

#### AGREEMENT

**NOW, THEREFORE**, in lieu of any administrative adjudication on the matter and as a compromise between the Division and OAS, with no admission as to liability, the Parties now agree to the following:

1. The above stated Recitals are incorporated into and made a part of this Agreement.
2. OAS will pay to the Division the total sum of Eight Hundred and Five Thousand Dollars and No Cents (\$805,000.00). All funds owed pursuant to this Agreement shall be

tendered to the Indiana Securities Division no later than thirty (30) days following approval by the Securities Commissioner.

3. This amount will be distributed by the Division as restitution on a pro rata basis using the best available information to the investor victims of the Scheme. The distribution shall be to those investor victims who made investments as part of the Scheme from February 22, 2005 to May 15, 2008 as identified by the Division in Exhibit A. This Agreement does not contemplate any payment from this compromise resolution being directed to Smith. Likewise, this Agreement does not contemplate any payment from this compromise resolution to Patricia Smith, Smith's mother and whose accounts were under Smith's direct control. This Agreement does not contemplate any payment from this compromise resolution to Smith's partner in the alleged Scheme, Jasen Snelling.

4. OAS waives its right to any and all additional proceedings pursuant to the Act, including an appeal.

5. The Division represents that the draft audit report of this matter prepared by Somerset CPAs, P.C. remains an investigative document and is not a public record adopted by the Division.

6. This Agreement represents a full and final resolution of the matter; a waiver from the Division of all penalties, fines and costs; an integrated contract; constitutes the entire agreement between the Parties, and; supersedes all earlier agreements of the Parties relating to the same subject matter. This Agreement is made without reliance on any representations or promises by any of the Parties, or their representatives, other than those expressly contained herein. This Agreement may not be modified except in writing, signed by all Parties hereto.

7. The Division will take no action against OAS and/or any of its affiliates, Dennis Dice, Peggy Bennett or any OAS current or former registered representatives (excluding Smith) or employees relating to or in any way connected with the conduct of Smith or the Scheme.

8. For any person or entity not a party to this Agreement, this Agreement does not limit or create any private rights or remedies against OAS, create, imply or impose any liability on OAS, serve as an admission by OAS, or limit any defenses of OAS to any claims. OAS denies any liability to any other state, state securities division, or governmental authority or to the purported victims of the Scheme as identified by the Division and enters into this Agreement to avoid the expense and uncertainty of litigation and the potential impairment of its goodwill.

9. The failure of OAS to adhere to the terms of this Agreement shall constitute grounds for administrative action by the Division against OAS.

10. This Agreement does not constitute abandonment of the claims raised by the Division against any other party not party to this Agreement. The entry of this Agreement merely reflects the parties' mutual desire to resolve this matter without formal administrative proceedings.

11. This Agreement shall have no effect on the Division's ability to take action with regard to any complaint or complaints against OAS concerning matters other than the Scheme.

12. Each of the covenants contained in this Agreement shall be binding upon and shall inure to the benefit of each of the Parties and their respective assigns and successors-in-interest.

13. The Parties have executed this Agreement having relied upon their own judgment and having had the opportunity to seek legal advice from their own counsel and have not been

influenced to any extent whatsoever in making this Agreement by any representations or statements made by any other Party hereto, except as set forth in this Agreement.

14. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Indiana.

15. The Parties acknowledge that each has had an equal opportunity to participate in the drafting of this Agreement. Therefore, in any construction or interpretation of this Agreement, the Parties agree and understand that this Agreement shall not be construed against either Party on the basis of authorship.

16. Each individual signing this Agreement warrants that they have proper authorization to execute this Agreement on behalf of their respective entity, and are of sound mind and legal age to sign this Agreement.

17. This Agreement may be executed in multiple counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument. The Parties further agree to accept facsimile or .pdf signatures as sufficient evidence of the valid execution of the Agreement and as originals, and the Parties agree to be bound thereby.

18. The Parties agree to cooperate fully, and to execute any and all necessary supplementary documents, and to take all additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement.

19. The Division agrees not to distribute any funds paid by OAS to the Division until such time as those investors have entered into a Release Agreement in favor of OAS. A copy of the Release Agreement to be executed by the investors is attached to this Agreement as Exhibit B. Participating investors have ninety (90) days following notification to enter into the Release Agreement. Funds designated for those investors of the Scheme not entering into the Release

Agreement may be distributed by the Securities Commissioner to participating investors at her discretion.

20. This Agreement is expressly subject to the approval of the Securities Commissioner and should the Commissioner fail or refuse, for any reason, to approve this Agreement, the same shall be of no force or effect, will not be part of the agency record in this matter, and it shall be not admissible into evidence nor referred to in any hearing in connection with the matters referred to herein.

THE STATE OF INDIANA  
OFFICE OF THE SECRETARY OF STATE  
SECURITIES DIVISION

Dated: October 17, 2014

By:

Name:

Matthew D. Allen  
Matthew D. Allen, litigation counsel

ONEAMERICA SECURITIES, INC.

Dated: \_\_\_\_\_, 2014

By: \_\_\_\_\_

Name: \_\_\_\_\_

APPROVED and ORDERED at Indianapolis, Indiana this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

CONNIE LAWSON  
SECRETARY OF STATE

CAROL A. MIHALIK  
SECURITIES COMMISSIONER

investors of the Scheme not entering into the Release and Confidentiality Agreement may be distributed by the Securities Commissioner to participating investors at her discretion.

20. This Agreement is expressly subject to the approval of the Securities Commissioner and should the Commissioner fail or refuse, for any reason, to approve this Agreement, the same shall be of no force or effect, will not be part of the agency record in this matter, and it shall be not admissible into evidence nor referred to in any hearing in connection with the matters referred to herein.

THE STATE OF INDIANA  
OFFICE OF THE SECRETARY OF STATE  
SECURITIES DIVISION

Dated: \_\_\_\_\_, 2014

By: \_\_\_\_\_  
Name: \_\_\_\_\_

ONEAMERICA SECURITIES, INC.

Dated: OCTOBER 15, 2014

By: Richard M. Ellery  
Name: RICHARD M. ELLERY, PRESIDENT

APPROVED and ORDERED at Indianapolis, Indiana this 17<sup>th</sup> day of October, 2014.



CONNIE LAWSON  
SECRETARY OF STATE

Carol A. Mihalik

CAROL A. MIHALIK  
SECURITIES COMMISSIONER