

**State of Missouri
Office of Secretary of State**

Case No. AP-10-11

IN THE MATTER OF:

JAMES E. OTTO, CRD No. 1566081; and
MICHAEL LEES, CRD No. 867965;

Respondents.

Serve James E. Otto at:
13425 W. 128th Street
Overland Park, Kansas 66213

Serve Michael Lees at:
12404 Beverly Street
Leawood, Kansas 66209

**ORDER TO CEASE AND DESIST AND ORDER TO SHOW CAUSE WHY CIVIL
PENALTIES AND COSTS SHOULD NOT BE IMPOSED**

On July 12, 2010, the Enforcement Section of the Securities Division of the Office of Secretary of State (the "Enforcement Section"), through the Securities Division's Assistant Commissioner, Mary Hosmer, submitted a Petition for Order to Cease and Desist and Order to Show Cause Why Civil Penalties and Costs Should Not Be Imposed. After reviewing the petition, the Commissioner issues the following findings of fact, conclusions of law and order:

I. FINDINGS OF FACT

1. James E. Otto ("Otto") is an insurance agent and is licensed to sell life and health insurance through the Missouri Department of Insurance, Financial Institutions, and Professional Registration ("Missouri DOI"). Otto was registered as a securities agent in Missouri through the Central Registration Depository System ("CRD") from October 1986 to May 2002, with CRD number 1566081. Otto has not been registered in the State of Missouri to sell securities since May 2002. From May 2002 until August 2006, Otto was an insurance agent with Bankers Life and Casualty Company ("Bankers Life"). Otto has an address of 13425 W. 128th Street, Overland Park, Kansas 66213. Otto is not registered as a broker-dealer or investment adviser in the State of Missouri.
2. Michael Lees ("Lees") is an insurance agent and is licensed to sell life and health insurance through the Missouri DOI. Lees has a CRD number of 867965 but has never been registered as a securities agent in Missouri. Lees has never been affiliated with a registered broker-dealer. Lees has a last known address of 12404 Beverly Street, Leawood, Kansas 66209.
3. Bankers Life is a Missouri-licensed insurance company with National Association of Insurance Carriers number 61263. Bankers Life has a main address of 600 West Chicago Avenue, Chicago, Illinois 60654.
4. Sherry Wood Hayes ("Hayes") is an insurance agent and is licensed to sell life and health insurance through the Missouri DOI. From approximately 2005 until March 2006, Hayes worked with Otto. Hayes has never been registered in the State of Missouri to sell securities. Hayes has an address of 905 NE 80th Terrace, Kansas City, Missouri 64118.
5. Brokerage Firm X is a Missouri-registered broker-dealer and has a main address in Nebraska.
6. Brokerage Firm Y is a Missouri-registered broker-dealer and has a main address in Rhode Island.
7. As used herein, the term "Respondents" refers to Otto and Lees.
8. In 2004, Otto approached Bankers Life's branch manager Lees about an operation to move Bankers Life clients' securities investments held outside Bankers Life into new investments through Bankers Life.
9. Otto claimed he could assist insurance agents at Bankers Life by, among other things:
 - a. transferring Bankers Life customers' brokerage accounts held at outside broker-dealers to Brokerage Firm X or Brokerage Firm Y;
 - b. liquidating securities from the customer's brokerage account at Brokerage Firm X or Brokerage Firm Y; and
 - c. requesting the transfer of money after liquidation from Brokerage Firm X or Brokerage Firm Y to Bankers Life and other insurance companies.

Hereinafter, this operation is referred to as "Otto's In-House Brokerage."

10. From May 2004 through August 2006, Otto made both group and individual presentations to insurance agents at Bankers Life regarding Otto's In-House Brokerage.
11. During these presentations, Otto claimed, among other things, that liquidating a customer's outside brokerage account through the "in-house brokerage" was:
 - a. less costly;
 - b. less time consuming; and
 - c. involved less paperwork than going through a brokerage firm
12. Information packets for Otto's In-House Brokerage were maintained at the front of the office at Bankers Life's branch office located in Overland Park, Kansas. These packets, which Otto developed, contained the forms necessary to open an account with Brokerage Firm X or Brokerage Firm Y and to transfer securities the customer already held to a new account.
13. Insurance agents of Bankers Life obtained a packet and assisted their customers with the completion of the forms in the packet, and gave the completed forms to Otto. Otto then established an account for the customer at Brokerage Firm X or Brokerage Firm Y.
14. In an on-the-record statement Otto provided to the Enforcement Section (the "Otto OTR"), Otto stated that thirty to thirty-five Bankers Life insurance agents used Otto's In-House Brokerage.
15. In accounts that Otto set up with Brokerage Firm X or Brokerage Firm Y, Otto gave himself limited trading authority and often listed Otto's email on the forms for Brokerage Firm X in order to receive customer statements. These account documents were signed by the customer.
16. Upon opening an account, Otto also set up an on-line account that allowed Otto to directly access the customer's brokerage account electronically.
17. Otto used this direct on-line access to sell the securities in the brokerage account and move the money to cash.
18. Otto executed liquidation orders in the customer's account and had the money from the brokerage account sent to Bankers Life for the purchase of an annuity or other insurance product.
19. For this service, Otto received ten percent (10%) of the agent's commission on the insurance product the customer purchased or a flat fee of one hundred fifty dollars (\$150).
20. Beginning in at least 2005, Otto contacted elderly investors in the Kansas City area and assisted them in selling securities in their brokerage accounts. In addition, Otto:
 - a. recommended to some of these investors that the investor:
 - 1) consolidate their accounts at Brokerage Firm X;
 - 2) reposition their 401(k)s into annuities;
 - 3) liquidate mutual funds;
 - 4) retain certain securities because the security "diversifies you" and/or had "good performance;" and
 - 5) purchase complex equity indexed annuities with long surrender periods;
 - b. told some of these investors that he worked for Brokerage Firm X;
 - c. told some of these investors that he did investment work;
 - d. did not state to all of these investors that:
 - 1) Otto was an insurance agent with Bankers Life; and/or
 - 2) neither Otto nor Otto's In-House Brokerage were registered to offer or sell securities in Missouri or to provide investment advice.

21. In the Otto OTR, Otto stated, among other things, that:
 - a. while at Bankers Life, he could only sell Bankers Life products;
 - b. the Bankers Life annuity that Otto typically sold to customers had a guaranteed competitive interest rate for one year and then decreased to the minimum interest rate at the end of the first year; and
 - c. he had received multiple complaints from Bankers Life customers since 2005 regarding Bankers Life's rate decrease after the first year.
22. After Otto's resignation from Bankers Life, Otto and Hayes contacted Bankers Life's customers and talked to these customers about exchanging their Bankers Life annuities for a new annuity.
23. Approximately fifty percent (50%) of the annuities sold by Bankers Life agents using Otto's In-House Brokerage were surrendered. These Bankers Life customers paid surrender fees in excess of two hundred seventy thousand dollars.
24. In late 2009, the Enforcement Section requested information from Brokerage Firm X regarding Otto's activities in customer accounts at Brokerage Firm X. In February 2010, Brokerage Firm X provided, among other things, the following information:
 - a. Otto had direct access and limited trading authority on over one hundred and fifty-nine (159) accounts at Brokerage Firm X;
 - b. Otto transferred over seven million one hundred thousand dollars (\$7,100,000) from these accounts at Brokerage Firm X to insurance companies;
 - c. Otto's email address was listed on some of the customer accounts;
 - d. Otto received customer account statements and trade confirmations on some of these accounts;
 - e. in or around May 2005 and again in April 2006, Brokerage Firm X contacted Otto regarding his trading authority for Brokerage Firm X accounts. Otto stated that:
 - 1) Otto assisted others in opening accounts at Brokerage Firm X to transfer stock from other brokerage firms;
 - 2) The account holders were friends or acquaintances;
 - 3) The funds were sent to Bankers Life to purchase an annuity;
 - 4) Bankers Life primarily catered to seniors;
 - 5) Seniors don't have computers and don't know any other way to get the funds transferred;
 - 6) Otto educated the clients;
 - 7) Neither the insurance agents nor the clients were smart enough to do the transfers on their own;
 - 8) Brokerage Firm X could contact Lees at Bankers Life for verification;
 - 9) Otto was not an insurance agent; and
 - 10) Otto did not receive a fee or commission for this service;
 - f. Brokerage Firm X obtained information that Otto was actively licensed to sell insurance in health, life and variable contracts;
 - g. Brokerage Firm X obtained information that Otto was an insurance agent with Bankers Life;
 - h. on or around April 11, 2006, Brokerage Firm X sent a letter to Otto. In this letter a Brokerage Firm X representative stated, among other things, that Brokerage Firm X intended to terminate its "business relationship" with Otto;
 - i. on or around April 13, 2006, a limited trading authorization form was submitted to Brokerage Firm X. On the form, Hayes was labeled as the authorized agent and indicated that her job was "self-employed-financial-planner." Otto's name and information was also listed on the form, but was crossed out. Otto's employer was listed as "JOTTO, INC.," with the industry specified as "real estate business development;"
 - j. on June 1, 2006, Brokerage Firm X sent another letter to Otto stating, among other things, that:

"Since the termination of your account, it is evident that the activity persists, both by engaging other parties to become an authorized agent, and through the access of [Brokerage Firm X's] client accounts. [Brokerage Firm X's] decision to terminate our relationship with you pertains to your authorization and power of attorney on accounts and your access to [Brokerage Firm X] accounts. Please refrain from accessing any [Brokerage Firm X] accounts, or allowing others access to these accounts on your behalf. [Brokerage Firm X] will no longer act as an intermediary or conduct these types of transactions . . . ;"

- k. from in or around March 2006, until in or around June 2006, representatives of Brokerage Firm X contacted multiple clients who had worked with Otto. Brokerage Firm X found that:

 - 1)some customers did not know that Otto had access to their accounts;
 - 2)some customers were confused about the process, did not know who had contacted them, or what product they had purchased at Bankers Life;
 - 3)one customer purchased an equity indexed annuity at Bankers Life after spending four (4) hours with the Bankers Life agent. This individual was never given information that described how the investment worked. This transfer was rescinded; and
 - 4)one ninety (90) year-old customer who was hearing impaired stated that he did not request a transfer and wanted to cancel the transfer and the purchase of an annuity at Bankers Life;
- l. Brokerage Firm X conducted several reviews of accounts connected to Otto. These reviews indicated, among other things, that:

 - 1)a customer sent a letter to Brokerage Firm X stating, "Please stop the order that I gave you to buy a Bankers' . . . annuity in the amount of \$89,000.00. I have changed my mind. Do not make this transfer. I did not realize that I already have 3 annuities" and "I wish to stop this transfer immediately!! I have faxed this letter of authorization to Nic Miller of Bankers' 3 times, and he is ignoring me;"
 - 2)at least two customers sent letters of instruction to Brokerage Firm X that indicated, among other things, any questions could be directed to their "authorized agent" Otto; and
 - 3)Between March 19, 2007, and April 6, 2007, an individual contacted Brokerage Firm X on three occasions representing himself as a resident of Overland Park, Kansas ("KR1"). During the conversations, this individual inquired about a check that had been requested from KR1's account at Brokerage Firm X. The person indicated that he needed the check to pay a friend to whom KR1 owed money. The individual also stated that the check should be written payable to a friend named "Jim Otto." This individual stated that the check, in excess of one thousand three hundred dollars (\$1,300), was to pay a "tax deal." Brokerage Firm X verified that the number used to contact Brokerage Firm X on all three occasions was a telephone number that was connected to Otto. A representative of Brokerage Firm X recorded the conversations and contacted KR1. KR1 stated to the Brokerage Firm X representative that the person speaking on the phone was, in fact, Otto and not KR1;
- m. Otto accessed Brokerage Firm X's customer accounts via the internet using the customer's unique user ID and password, and most of the accounts reflected Otto's email for receiving statements on the account;

 - n. between June 6, 2006, and September 1, 2006, IP addresses¹ connected to Otto were used one hundred and fifty times (150) times to access eleven (11) Brokerage Firm X accounts; and
 - o. as of June 21, 2007, multiple IP addresses connected to Otto continued to access accounts held at Brokerage Firm X.
25. On September 21, 2009, the Enforcement Section requested information from Brokerage Firm Y. Brokerage Firm Y provided, among other things, the following information:

 - a. on or around September 2009, Otto had access to twenty-six (26) accounts at Brokerage Firm Y;
 - b. these twenty-six (26) accounts held more than three hundred eighty thousand dollars (\$380,000);
 - c. on twenty-four (24) of these accounts Otto had limited trading authority for the customer;
 - d. Otto was listed as the owner of one account; and
 - e. the most recent account was opened on or around March 1, 2009.

26. Brokerage Firm Y indicated to the Enforcement Section that, as of November 24, 2009, Brokerage Firm Y removed Otto's access to all Brokerage Firm Y accounts on which Otto had limited trading authority.
27. On June 23, 2010, the Enforcement Section conducted an on-the-record interview of Lees. Lees stated, among other things, that:
 - a. Otto was a registered securities agent when Otto worked at Bankers Life;
 - b. Otto offered to act as a registered securities agent for Bankers Life insurance agents;
 - c. Lees hired Otto for the purpose of assisting agents at Bankers Life with the liquidation of securities held by their customers for the purchase of annuities;
 - d. Lees was aware that Otto received a portion of the insurance commission for Otto's services;
 - e. Lees did not check to see if Otto was registered to offer or sell securities; and
 - f. Lees understood that Otto performed the same securities services for other Bankers Life branch offices.
28. The Enforcement Section conducted interviews of insurance agents that used Otto's In-House Brokerage. The interviews revealed, among other things, that:
 - a. Otto gave a presentation at a branch meeting for the Hutchinson, Kansas, branch office detailing the business; and
 - b. Bankers Life agents in the Hutchinson branch were told that Otto was a registered securities agent at the time he was conducting the brokerage service.
29. Otto did not disclose to some Bankers Life customers who liquidated securities through Otto's In-House Brokerage, among other things, the following information:
 - a. Otto was not registered as a broker-dealer or investment adviser in the State of Missouri;
 - b. Otto was earning a commission or a fee from insurance sales in the customer accounts; and/or
 - c. Otto had a conflict of interest in recommending the liquidation of a security to purchase an insurance product.
30. After termination of Otto's relationship with Brokerage Firm X, Otto did not disclose to customers of Otto's In-House Brokerage, among other things, the following information:
 - a. Otto was prohibited from accessing customer accounts at Brokerage Firm X;
 - b. Otto was prohibited from on-line access to these accounts;
 - c. Otto violated these prohibitions; and/or
 - d. Otto had misrepresented himself as a customer in an attempt to obtain customer funds from Brokerage Firm X.
31. Otto misrepresented to Brokerage Firm X, among other things, the following information:
 - a. Otto was not an insurance agent; and
 - b. Otto did not receive a fee or commission for Otto's In-House Brokerage service.
32. Otto misrepresented to Bankers Life insurance agents that Otto was a registered securities agent.

II. STATUTORY PROVISIONS

33. Section 409.6-601(a), RSMo. (Cum. Supp. 2009), provides that the Missouri Securities Act of 2003 "shall be administered by the commissioner of securities"
34. Section 409.1-102(4), RSMo. (Cum. Supp. 2009), defines "Broker-dealer" as "a person engaged in the business of effecting transactions in securities for the account of others or for the person's own account."
35. Section 409.1-102(15), RSMo. (Cum. Supp. 2009), defines "Investment adviser" as "a person that, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing or selling securities or that, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities. The term includes a financial planner or other person that, as an integral component of other financially related services, provides investment advice to others for compensation as part of a business or that holds itself out as providing investment advice to others for compensation."
36. Section 409.1-102(26), RSMo. (Cum. Supp. 2009), defines "Sale" to include: "every contract of sale, contract to sell, or

disposition of, a security or interest in a security for value." That same section defines "offer to sell" as "every attempt or offer to dispose of, or solicitation of an offer to purchase, a security or interest in a security for value."

37. Section 409.1-102(28), RSMo. (Cum. Supp. 2009), defines "security" as "a note; stock; treasury stock; security future; bond; debenture; evidence of indebtedness; certificate of interest or participation in a profit-sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting trust certificate; certificate of deposit for a security; fractional undivided interest in oil, gas, or other mineral rights; put, call, straddle, option, or privilege on a security, certificate of deposit, or group or index of securities, including an interest therein or based on the value thereof; put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency; or in general, an interest or instrument commonly known as a "security"; or a certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.
38. Section 409.4-401(a), RSMo. (Cum. Supp. 2009), states:

It is unlawful for a person to transact business in this state as a broker-dealer unless the person is registered under this act as a broker-dealer or is exempt from registration as a broker-dealer under subsection (b) or (d).

39. Section 409.4-403(a), RSMo. (Cum. Supp. 2009), states:

It is unlawful for a person to transact business in this state as an investment adviser unless the person is registered under this act as an investment adviser or is exempt from registration as an investment adviser under subsection (b).

40. Section 409.5-501, RSMo. (Cum. Supp. 2009), provides:

It is unlawful for a person, in connection with the offer, sale, or purchase of a security, directly or indirectly:

- (1) employ a device, scheme, or artifice to defraud;
- (2) To make an untrue statement of a material fact or to omit state a material fact necessary in order to make the statement made, in the light of the circumstances under which it is made, not misleading; or
- (3) To engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

41. Section 409.6-604, RSMo. (Cum. Supp. 2009), states:

(a)If the commissioner determines that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this act or a rule adopted or order issued under this act or that a person has materially aided, is materially aiding, or is about to materially aid an act, practice, or course of business constituting a violation of this act or a rule adopted or order issued under this act, the commissioner may:

(1)Issue an order directing the person to cease and desist from engaging in the act, practice, or course of business or to take other action necessary or appropriate to comply with this act

(b)An order under subsection (a) is effective on the date of issuance. Upon issuance of the order, the commissioner shall promptly serve each person subject to the order with a copy of the order and a notice that the order has been entered. The order must include a statement whether the commissioner will seek a civil penalty or costs of the investigation, a statement of the reasons for the order, and notice that, within fifteen days after receipt of a request in a record from the person, the matter will be scheduled for a hearing. If a person subject to the order does not request a hearing and none is ordered by the commissioner within thirty days after the date of service of the order, the order becomes final as to that person by operation of law. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend it until final determination.

(c)If a hearing is requested or ordered pursuant to subsection (b), a hearing before the commissioner must be provided The final order may make final, vacate, or modify the order issued under subsection (a).

(d)In a final order under subsection (c), the commissioner may:

(1)Impose a civil penalty up to one thousand dollars for a single violation or up to ten thousand dollars for more than one violation;

(2)Order a person subject to the order to pay restitution for any loss, including the amount of any actual damages that may have been caused by the conduct and interest at the rate of eight percent per year from the date of the violation causing the loss or disgorge any profits arising from the violation;

(3)In addition to any civil penalty otherwise provided by law, impose an additional civil penalty not to exceed five thousand dollars for each such violation if the commissioner finds that a person subject to the order has violated any provision of this act and that such violation was committed against an elderly or disabled person. For purposes of this section, the following terms mean:

(A)"Disabled person", a person with a physical or mental impairment that substantially limits one or more of the major life activities of such individual, a record of such impairment, or being regarded as having such an impairment;

(B)"Elderly person", a person sixty years of age or older."

(e)In a final order, the commissioner may charge the actual cost of an investigation or proceeding for a violation of this act or a rule adopted or order issued under this act. These funds may be paid into the investor education and protection fund.

III. CONCLUSIONS OF LAW

Multiple Violations of Transacting Business as an Unregistered Broker-Dealer

42. Paragraphs 1 through 41 are incorporated by reference as though fully set forth herein.
43. At all times relevant, records maintained by the Missouri Commissioner of Securities contained no registration or granted exemption for Respondent Otto to transact business as a broker-dealer in the State of Missouri.
44. Respondent Otto, through Otto's In-House Brokerage, transacted business as an unregistered broker-dealer when he:
 - a. held himself out as registered to transact securities business;
 - b. assisted customers in opening accounts;
 - c. gave advice to investors on what securities to sell;
 - d. gave advice to investors on which securities to hold; and
 - e. effected trades in customer accounts.
45. Respondent Otto violated Section 409.4-401(a), RSMo. (Cum. Supp. 2009), when he effected purchases or sales of securities from the State of Missouri without being registered or exempt from registration as a broker-dealer.
46. Respondent Otto's actions in transacting business as an unregistered broker-dealer constitute an illegal act, practice, or course of business and thus such actions are subject to the commissioner's authority under Section 409.6-604(a), RSMo. (Cum. Supp. 2009).

Multiple Violations of Transacting Business as an Unregistered Investment Adviser

47. Paragraphs 1 through 41 are incorporated by reference as though fully set forth herein.
48. At all times relevant, records maintained by the Missouri Commissioner of Securities contained no registration or granted exemption for Respondent Otto to transact business as an investment adviser in the State of Missouri.
49. Respondent Otto, through Otto's In-House Brokerage, transacted business as an unregistered investment adviser when he:
 - a. held himself out as registered to transact securities business;
 - b. assisted customers in opening accounts;
 - c. gave advice to investors on what securities to sell;
 - d. gave advice to investors on which securities to hold; and
 - e. effected trades in customer accounts.
50. Respondent Otto violated Section 409.4-403(a), RSMo. (Cum. Supp. 2009), when he provided advice to customers relating to their securities in the State of Missouri without being registered or exempt from registration as an investment adviser.
51. Respondent Otto's actions in transacting business as an unregistered investment adviser constitute an illegal act, practice, or course of business and thus such actions are subject to the commissioner's authority under Section 409.6-604(a), RSMo. (Cum. Supp. 2009).

Multiple Violations of Omitting to State Material Facts in Connection with the Offer or Sale of a Security

52. Paragraphs 1 through 41 are incorporated by reference as though fully set forth herein.
53. In connection with the offer, sale or purchase of a security, Respondent Otto omitted to state material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading, including the following:
 - a. That Respondent Otto was not registered as a broker-dealer or investment adviser in the State of Missouri;
 - b. That Respondent Otto was earning a commission from insurance sales in customer accounts;
 - c. That Respondent Otto had a conflict of interest in recommending the liquidation of securities in the customers' brokerage accounts to purchase insurance products;
 - d. That Respondent Otto was prohibited from accessing customer accounts at Brokerage Firm X;
 - e. That Respondent Otto was prohibited from on-line access to accounts at Brokerage Firm X;
 - f. That Respondent Otto violated these prohibitions; or
 - g. That Respondent Otto had misrepresented himself as a customer in an attempt to obtain funds from the customer's account at Brokerage Firm X.
54. Respondent Otto violated Section 409.5-501(2), RSMo. (Cum. Supp. 2009), when, in connection with the offer and sale of securities, he omitted to state material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading.
55. Respondent Otto's actions in omitting to state material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading, constitute illegal acts, practices, or courses of business and thus such actions are subject to the Commissioner's authority under Section 409.6-604(a), RSMo. (Cum. Supp. 2009).

Multiple Violations of Making an Untrue Statement of Material Fact in Connection with the Offer or Sale of a Security

56. Paragraphs 1 through 41 are incorporated by reference as though fully set forth herein.
57. In connection with the offer, sale or purchase of a security, Respondent Otto made the following untrue statements of material fact to Brokerage Firm X:
 - a. Respondent Otto stated that Respondent Otto was not an insurance agent; and
 - b. Respondent Otto stated that Respondent Otto did not receive a fee or commission for Otto's In-House Brokerage service.
58. Respondent Otto violated Section 409.5-501(2), RSMo. (Cum. Supp. 2009), when, in connection with the offer and sale of securities, he made untrue statements of material fact.
59. Respondent Otto's actions in making untrue statements of material fact constitute illegal acts, practices, or courses of business and thus such actions are subject to the Commissioner's authority under Section 409.6-604(a), RSMo. (Cum. Supp. 2009).

Multiple Instances of Materially Aiding Unregistered Broker-Dealer

60. Paragraphs 1 through 41 are incorporated by reference as though fully set forth herein.
61. Respondent Lees materially aided Respondent Otto's violations of Sections 409.4-401(a) and 409.4-403(a), RSMo. (Cum. Supp. 2009), by, among other things, the following:
 - a. allowing Respondent Otto to present information to agents of Bankers Life about Respondent Otto's securities services;
 - b. allowing Respondent Otto to prepare packets for Bankers Life's agents about Otto's In-House Brokerage business;
 - c. allowing Bankers Life's agents to use Respondent Otto's business to liquidate securities to purchase insurance products; or
 - d. allowing Respondent Otto to receive a commission for liquidating securities for the purchase of an insurance policy.
62. Respondent Lees materially aided Otto's violations of Section 409.4-401(a) and 409.4-403(a), RSMo. (Cum. Supp. 2009), when he aided Respondent Otto in transacting business in the State of Missouri as an unregistered broker-dealer and as an

unregistered investment adviser.

63. Respondent Lees' actions materially aided Respondent Otto's violations of the Missouri Securities Act of 2003, and thus such actions are subject to the commissioner's authority under Section 409.6-604(a), RSMo. (Cum. Supp. 2009).
64. This order is in the public interest and is consistent with the purposes of the Missouri Securities Act of 2003. See Section 409.6-604(b), RSMo. (Cum. Supp. 2009).

IV. ORDER

NOW THEREFORE, it is hereby ordered that Respondents, their agents, employees and servants, and all other persons participating in or about to participate in the above-described violations with knowledge of this order are prohibited from:

- A. violating or materially aiding in any violation of Section 409.4-401(a), RSMo. (Cum. Supp. 2009), by transacting business as an unregistered broker-dealer;
- B. violating or materially aiding in any violation of Section 409.4-403(a), RSMo. (Cum. Supp. 2009), by transacting business as an unregistered investment adviser; and
- C. violating or materially aiding in any violation of Section 409.5-501, RSMo. (Cum. Supp. 2009), by, in connection with the offer or sale of securities, making an untrue statement of a material fact or omitting to state a material fact necessary in order to make statements made, in light of the circumstances under which they are made, not misleading, or engaging in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

IT IS FURTHER ORDERED that, pursuant to Section 409.6-604(d), RSMo., (Cum. Supp. 2009), the Commissioner will determine whether to grant the Enforcement Section's petition for an imposition of a civil penalty of up to ten thousand dollars (\$10,000) against Respondent Otto for multiple violations of Section 409.4-401(a), RSMo. (Cum. Supp. 2009), in a final order, unless Respondent Otto requests a hearing and shows cause why the penalty should not be imposed.

IT IS FURTHER ORDERED that, pursuant to Section 409.6-604(d), RSMo., (Cum. Supp. 2009), the Commissioner will determine whether to grant the Enforcement Section's petition for an imposition of a civil penalty of up to ten thousand dollars (\$10,000) against Respondent Otto for multiple violations of Section 409.4-403(a), RSMo. (Cum. Supp. 2009), in a final order, unless Respondent Otto requests a hearing and shows cause why the penalty should not be imposed.

IT IS FURTHER ORDERED that, pursuant to Section 409.6-604(d), RSMo., (Cum. Supp. 2009), the Commissioner will determine whether to grant the Enforcement Section's petition for an imposition of a civil penalty of up to ten thousand dollars (\$10,000) against Respondent Lees for multiple violations of Section 409.4-401(a), RSMo. (Cum. Supp. 2009), in a final order, unless Respondent Lees requests a hearing and shows cause why the penalty should not be imposed.

IT IS FURTHER ORDERED that, pursuant to Section 409.6-604(d), RSMo. (Cum. Supp. 2009), the Commissioner will determine whether to grant the Enforcement Section's petition for an imposition of a civil penalty of up to ten thousand dollars (\$10,000) against Respondent Otto for multiple violations of Section 409.5-501, RSMo. (Cum. Supp. 2009), in a final order, unless Respondent Otto requests a hearing and shows cause why the penalty should not be imposed.

IT IS FURTHER ORDERED that, as the Enforcement Section has petitioned for an order of restitution, the Commissioner will determine whether to order Respondent Otto and/or Respondent Lees to pay restitution for any loss, possibly to include the amount of any actual damages that may have been caused by the conduct of Respondent Otto and/or Respondent Lees, and interest at the rate of eight percent per year from the date of the violation causing the loss, or disgorge any profits arising from the violation of Sections 409.4-401, 409.4-403 and 409.5-501, RSMo. (Cum. Supp. 2009), after review of evidence submitted by the Enforcement Section, in a final order, pursuant to Section 409.6-604(d), RSMo. (Cum. Supp. 2009), unless Respondent Otto and Respondent Lees request a hearing and show cause why this restitution or disgorgement should not be ordered.

IT IS FURTHER ORDERED that, as the Enforcement Section has petitioned for an award for the costs of the investigation against Respondents in this proceeding, the commissioner will issue a final order, pursuant to Section 409.6-604(e), RSMo. (Cum. Supp. 2009), awarding an amount to be determined after review of evidence submitted by the Enforcement Section, unless Respondents request a hearing and show cause why such award should not be made.

SO ORDERED:

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY, MISSOURI THIS 14TH DAY OF JULY, 2010.

ROBIN CARNAHAN
SECRETARY OF STATE

(Signed/Sealed)
MATTHEW D. KITZI

State of Missouri
Office of Secretary of State

Case No. AP-10-11

IN THE MATTER OF:

JAMES E. OTTO, CRD No. 1566081; and
MICHAEL LEES, CRD No. 867965;

Respondents.

Serve James E. Otto at:
13425 W. 128th Street
Overland Park, Kansas 66213

Serve Michael Lees at:
12404 Beverly Street
Leawood, Kansas 66209

NOTICE

TO: Respondents and any unnamed representatives aggrieved by this Order:

You may request a hearing in this matter within thirty (30) days of the receipt of this Order pursuant to Section 409.6-604(b), RSMo. (Cum Supp. 2009), and 15 CSR 30-55.020.

Within fifteen (15) days after receipt of a request in a record from a person or persons subject to this order, the Commissioner will schedule this matter for a hearing.

A request for a hearing must be mailed or delivered, in writing, to:

**Matthew D. Kitzi, Commissioner of Securities
Office of the Secretary of State, Missouri
600 West Main Street, Room 229
Jefferson City, Missouri, 65102.**

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of July, 2010, a copy of the foregoing Order and Notice in the above styled case was **mailed by Certified U.S. mail to:**

James E. Otto
13425 W. 128th Street
Overland Park, Kansas 66213

Michael Lees
12404 Beverly Street
Leawood, Kansas 66209

And hand delivered to:

Mary S. Hosmer
Assistant Commissioner
Securities Division

John Hale, Specialist

¹ IP Address (“internet protocol address”) is a numerical label that is assigned to a specific computer within a network. An IP address has two main functions; first, to identify a specific computer within a network, and second, to ascertain the location of the computer.