

Avenue, Suite L 04, Barrington, RI 02806 without notifying the Department.

3. Clearpath is currently licensed as an investment adviser in this State and has maintained that licensure since December 2007.
4. Churchville is the President and Chief Compliance Officer of Clearpath.
5. Churchville is currently licensed as an investment adviser representative in this State with Clearpath.
6. During the period August 31, 2009 through February 24, 2011 Churchville was licensed as a sales representative in this State with Spire Securities, LLC (“Spire”) a broker dealer headquartered in Reston, Virginia that was licensed in this State on August 31, 2009 and remains licensed in this state.
7. The Department has now received two written complaints concerning actions of Respondents and has conducted an investigation uncovering other potential violations of Rhode Island’s Uniform Securities Act.
 - A. Respondents Made Unsuitable Sales to the First Complainant, Alongside Generally Unethical or Dishonest Business Practices.**
8. On September 24, 2013, the Department received a written complaint from A.S. (“Complainant #1”) alleging that on April 23, 2010, and on June 25, 2010, Clearpath executed two trades in an investment account owned by the Complainant that involved the “short sale” of U. S. Treasury Securities Stripped Interest Payment coupons.
9. The first transaction was on April 23, 2010, and involved the “short sale” of 650,000 coupons with a total value of \$186,564.00. The second transaction was on June 25, 2010, and involved the “short sale” of 450,000 coupons with a total value of \$151,019.00. The total amount of securities sold “short” was \$337,583.00.
10. In November 2012, Complainant #1 closed out the “short sale” with the purchase of

U. S. Treasury Securities Stripped Interest Payment coupons with a market value of \$471,162.00. This transaction resulted in an investment loss totaling \$134,179.00.

11. Complainant #1 alleged that the “short sale” recommended by Clearpath was a speculative strategy that was unsuitable for the moderate investment profile upon which the account was based.
12. Complainant #1 further alleged that the “short sale” transaction was executed without her knowledge or consent.
13. Respondent Churchville did not have discretionary authority on Complainant #1’s account. Without discretionary authority, Respondent should have obtained Complainant #1’s informed consent prior to executing any trades on Complainant #1’s behalf.
14. To effectuate the short-sale transaction, Respondents caused Complainant to establish a brokerage account with Spire in 2010.
15. In 2008, Complainant #1 completed account opening documents with Respondents for Fidelity, in which Complainant #1 identified a moderate investor profile, and detailed an investment goal of capital appreciation coupled with a goal of capital preservation. Those Fidelity account opening documents further identified Complainant’s attitude towards risk as a 5 on a 0-10 scale. Complainant #1 believes that profile was correct, and consistent with her profile during the relevant time period.
16. In 2010, Complainant #1 alleges that Respondents caused her to sign a form identifying her investment profile as aggressive with the main goals of capital appreciation and speculation.
17. Complainant #1 alleges that the 2010 investment profile did not describe her actual investment objectives.

18. The investment sold short in Complainant #1's account was a security.

B. Respondents Made Unsuitable Sales to the Second Complainant, Alongside Generally Unethical or Dishonest Business Practices.

19. On April 20, 2015, the Department received a written complaint from W.B.

("Complainant #2") alleging that in April 2011, Respondents executed a trade in an investment account owned by the Complainant that involved the "short sale" of U. S. Treasury Securities.

20. Complainant #2 closed out the "short sale" with the purchase of U. S. Treasury Securities in December 2014. The complaint alleges that the transaction resulted in an investment loss of \$112,000.

21. Complainant #2 alleged that the "short sale" recommended by Clearpath was unsuitable for the conservative investment profile upon which the account was based.

22. Complainant #2 further alleged that the "short sale" transaction was executed without his knowledge or consent.

23. Complainant #2 alleges that the "short sale" was transacted on margin, which was also not disclosed to him.

24. Complainant #2 alleges that in order to effectuate the short-sale transaction, Respondents caused Complainant to establish a brokerage account with Spire.

25. The investment sold short in Complainant #2's account was a security.

C. Churchville was at Times a Dually Licensed Investment Adviser Representative and Sales Representative

26. From August 31, 2009 through February 24, 2011, Respondent Churchville was licensed both as an investment adviser representative with Clearpath and as a sales representative with Spire.

27. The Department never received a statement from either of Respondent Churchville's

- employers consenting that Respondent Churchville should act in such a dual capacity.
28. The Department never received prior written consent from both the licensed or registered entities that Churchville should act in such a capacity.
29. The Department never received any special notice from Respondent Churchville or any other entity that Churchville would be appointed as a sales representative with Spire while he was an active investment adviser representative with Clearpath.
30. Respondent Churchville was aware of his dual licensee status, and could not have become dually licensed without his active participation in that process.
31. Respondent Clearpath was aware of Churchville's dual registration status by virtue of the fact that its president and principal officer Churchville was aware of that fact.

D. Respondents Never Provided Required Additional Disclosures Investment Advisers Acting on the Opposite Side of a Transaction from their Client

32. During the course of the Department's investigation into the above Complainants' allegations, the Department became aware that both Complainant #1 and Complainant #2 were investment advisory clients of Respondents and purchased private funds through Respondents
33. Rhode Island's Uniform Securities Act (and similar federal law) requires investment advisers and investment adviser representatives to provide additional disclosures to clients who also purchase securities when the adviser also serves on the other side of the transaction.
34. Complainant #1 and Complainant #2 both purchased limited partnership interests in private equity funds offered by Respondents that were exempt from SEC registration.
35. The private fund limited partnership interests purchased by both Complainants were securities.

36. It is more difficult for a common investor to obtain information about funds exempt from SEC registration.
37. In 9 emails produced by Respondents between 2010 and 2012 all seeking approval from Complainant #1 to purchase additional interests in funds where Respondents or their affiliates were general partners, none disclosed the dual roles played by Respondents.
38. As investment adviser to Complainant #1, Respondents charged a 1.5% fee annually for assets under its managed care. That fee was taken out throughout the year, usually quarterly, based on the average assets under management through Clearpath.
39. As general partner to the private funds, Respondents charged a 2% placement fee for each purchase into the private funds. Respondents also charged a 1.5 or 2% annual management fee for managing those private funds. And some of the private funds also charged success fees based on investment earnings.
40. In 9 emails produced by Respondents between 2010 and 2012 all seeking approval from Complainant #1 to purchase additional interests in funds where Respondents or their affiliates were general partners, Respondents never disclosed the fees that Respondents would receive through its role as General Partner of the private funds.
41. Complainant #1 alleges that she was unaware of the dual roles played by Respondents, and was unaware that Respondents were profiting from both sides of the sale of the private funds she was purchasing.

II. Relevant Laws and Their Application

A. Unsuitable Transactions and Generally Unethical Practices

42. R.I. Gen. Laws § 7-11-212 allows the Department to revoke, bar or suspend an investment adviser and investment adviser representative license for violation of any

rules promulgated by the Department under RIUSA and for “unethical or dishonest practices in the securities business.”

43. RI Gen. Laws § 7-11-212 also allows the Department to bar an applicant or licensed person from association with a licensed broker dealer for violation of any rules promulgated by the Department under RIUSA and for “unethical or dishonest practices in the securities business.”
44. Securities Division Regulations, Rule 212(a)-1(C)(1) deems the following an “unethical or dishonest practice” by an investment adviser and investment adviser representative:
“Recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client’s investment objectives, financial situation and needs, and any other information known by the investment adviser.”
45. Securities Division Regulations, Rule 212(a)-1(C)(1) also deems the following an “unethical or dishonest practice” by an investment adviser and investment adviser representative: “Placing an order to purchase or sell a security for the account of a client without authority to do so.”
46. Securities Division Regulations, Rule 212(a)-1(C)(1) also deems the following an “unethical or dishonest practice” by a Broker-Dealer or sales representative: “Executing a transaction on behalf of a customer without authority to do so.”
47. RI Gen. Laws § 7-11-501 further details conduct not allowable in Rhode Island, including “(2) Make an untrue statement of a material fact or omit to state a material fact

necessary in order to make the statement made, in the light of the circumstances under which they are made, not misleading.”

48. Respondents caused unsuitable transactions to occur in the accounts of both Complainant #1 and Complainant #2.
49. Respondents behaved in unethical or dishonest practice generally, and specifically when they did not obtain prior authority to transact the treasury shorts on both Complainants behalves by either not discussing the trade at all, by not disclosing the margin element, by not explaining the speculative nature of the trade, by not explaining how such a trade could lead to virtually unlimited losses, by not explaining how a short sale operated, and/or by not explaining what a U. S. Treasury Securities Stripped Interest Payment coupon was.
50. As such, Respondents were in violation of R.I. Gen. Laws §§ 7-11-212, 501 and/or Securities Division Regulations, Rule 212(a)-1(C)(1).

B. Additional Disclosures Required when Dually Licensed as an Investment Adviser and a Sales Representative

51. Securities Division Regulations, Rule 208(d)(2) states: “The Director may concurrently license an individual as a sales representative and investment adviser representative provided that an individual acting in such a capacity shall obtain prior written consent from both employers to act in such a capacity, and the written consent is filed with the Director.”
52. Securities Division Regulations, Rule 208(g)(2) states: “The Director may concurrently license an individual as a sales representative and investment adviser agent provided that an individual acting in such capacity shall obtain prior written consent from both licensed or registered entities to act in such capacity, and the written consent is filed with the

Director.

53. The Director received no written approval from either of Respondent Churchville's employers, Clearpath or Spire, regarding his dual appointments as a sales representative and investment adviser representative.
54. Respondents were aware that Clearpath had not submitted a request for such approval nor received such approval from the Department.
55. As such, Respondents were in violation of Securities Division Regulations, Rule 208(d)(2) and/or Securities Division Regulations, Rule 208(g)(2).

C. Additional Disclosure Requirement for Investment Advisers Acting on the Both Sides of a Transaction

56. R.I. Gen. Laws § 7-11-503(3) prohibits an investment adviser from acting "as a principal for his or her own account, knowingly sell any security to or purchase any security from a client, or acting as broker for a person other than the client, knowingly effect any sale or purchase of any security for the account of the client, without disclosing to the client, in writing, before the completion of the transaction the capacity in which he or she is acting and obtaining the consent of the client to the transaction."
57. § 7-11-503(3) is virtually identical to the prohibitions that the SEC imposes on federally registered investment advisers through 15 U.S. Code § 80b-6(3), more commonly known as Section 206(3) of the Investment Advisers Act of 1940.
58. One reason for this rule is that Investment Advisers are required to act as fiduciaries for their clients. As fiduciaries, investment advisers are restricted in the other roles they can play with respect to their clients and their client's accounts.
59. The SEC has issued guidance with respect to interpreting 15 U.S. Code § 80b-6(3), through its releases, settlements, and has even issued a lengthy interpretation of that

section itself. *See* Interpretation of Sec. 206(3) of the Investment Advisers Act of 1940, Advisers Act Release No. 1732 (July 17, 1998).

60. That SEC interpretation makes clear that under Section 206(3), an investment adviser is not acting as a broker if it receives no compensation for effecting the transaction for its investment advisory client. *Id.* at Section II.
61. That SEC interpretation also makes clear that investment advisers must obtain informed consent of their client before each such transaction settles. *Id.* at Section III.
62. The Department believes that in order to give such informed consent, the client must have been made aware of the capacity in which the investment adviser or investment adviser representative was acting in each transaction.
63. The Department also believes that in order to give informed consent, the client must have been made aware of any fees its investment adviser would earn as a result of each transaction, specifically the placement fee, the fund management fee and any success fees.
64. Because Respondents were both an investment adviser to the Complainants and earning money from the sale of the private fund to the Complainants, Respondents were prohibited from transacting the sale without first disclosing those fees for each transaction, and obtaining the client's informed consent before each transaction settled.
65. In at least nine instances, the Department has found that Respondents (1) failed to disclose its dual roles in the transaction, and (2) failed to disclose the fees it would earn in the transaction, and as such, failed to obtain its clients' informed consent before each transaction settled.
66. As such, Respondents have violated R.I. Gen. Laws § 7-11-503(3) at least 9 times.

THEREFORE, the Director hereby orders the Respondents to appear before a Hearing Officer to show cause why the Director should not revoke, bar or suspend Respondents' licenses pursuant to the authority set forth in R.I. Gen. Laws § 7-11-212. In accordance with Central Management Regulation 2 Rules of Procedures for Administrative Hearings ("CMR 2"), Section 6, a prehearing conference was held on April 2, 2015 at 2:00 p.m. at the Department's offices located at 1511 Pontiac Avenue, Bldg. 68-69, Cranston, Rhode Island 02920. As agreed to by all parties at that hearing, a Hearing was scheduled for June 29, 2015 at 1:30 p.m. at the Department's offices, located at 1511 Pontiac Avenue, Bldg. 68-69, Cranston, Rhode Island 02920.

Pursuant to R.I. Gen. Laws § 42-6-8, the Director previously appointed Catherine Warren, Esq., as Hearing Officer for the purpose of conducting the hearing and rendering a decision in this matter.

The proceedings shall be conducted in conformity with the APA and CMR 2. CMR 2, Section 5 provides that it shall be the Respondents' sole responsibility, or as delegated to Respondents' representative(s), to present Respondents defense(s) to the Hearing Officer. Pursuant to CMR 2, Section 7, the Respondents may be represented by legal counsel admitted in the State of Rhode Island.

If you have any questions regarding the subject matter of the hearing, please contact the prosecuting attorney, Matthew Gendron, at (401) 462-9540 or matthew.gendron@dbr.ri.gov.

Dated this 10th day of June, 2015.



Macky McCleary, Director

All are welcome at the Rhode Island Department of Business Regulation ("DBR"). If any reasonable accommodation is needed to ensure equal access, service or participation, please contact DBR at 401-462-9551, RI Relay at 7-1-1, or email directorofficeinquiry@dbr.ri.gov at least three (3) business days prior to the hearing.

CERTIFICATION

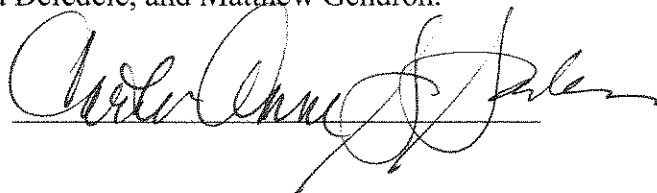
I hereby certify that on this 10th day of June 2015 a copy of this Request for Leave to Amend and Amended Order was sent by first class mail postage prepaid, certified mail, and e-mail to:

Patrick Churchville
310 Maple Avenue, Suite L04
Barrington, RI 02806

Patrick Churchville
170 Westminster Street, 9th Floor
Providence, Rhode Island

Michael Lepizzera, Esq.
Lepizzera & Laprocina
117 Metro Center Blvd. - Ste. 2001
Warwick, RI 02886

and by electronic mail to Hearing Officer Catherine Warren, Esq. and to the following parties at the Department of Business Regulation: Maria D'Alessandro, Esq., Deputy Director, Securities, Commercial Licensing, Racing & Athletics, Donald Defedele, and Matthew Gendron.

A handwritten signature in black ink, appearing to read "Catherine Warren", written over a horizontal line.