

**OFFICE OF THE MISSISSIPPI SECRETARY OF STATE  
SECURITIES DIVISION**

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<b>IN THE MATTER OF</b>	)	
	)	
<b>AMERICAN WEALTH MANAGEMENT, INC.</b>	)	<b>Administrative Consent Order</b>
	)	<b>Number: LS-16-2118</b>
	)	
<b>Respondent</b>	)	

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**CONSENT ORDER**

**WHEREAS**, the Securities Division of the Mississippi Secretary of State’s Office (“Division”), having the authority to administer and provide for the enforcement of all provisions of the Mississippi Securities Act (“Act”) codified at Mississippi Code Section 75-71-101, *et. seq.*; and

**WHEREAS**, the Division has conducted a routine broker-dealer examination of American Wealth Management, Inc.’s (“AMW” or “Respondent”) Biloxi, Mississippi branch office, Branch Office # 580429;

**WHEREAS**, Respondent has cooperated with the Division’s examination with responses to the Division’s findings;

**WHEREAS**, Respondent has advised the Division of its agreement to resolve the matters left unresolved by Respondent’s responses to the Division’s findings, without the expense and delay that formal proceedings would involve;

**WHEREAS**, Respondent elects to permanently waive any right to a hearing and appeal under the Act in Sections 75-71-604 and 75-71-609; and

**WHEREAS**, Respondent, solely for the purpose of concluding this open matter with the Division, without admitting or denying the Findings of Fact and Conclusions of Law contained

herein, agrees to take certain actions described herein and consents to the terms and conditions of this Administrative Consent Order (“Order”). Neither this Order, nor any acts performed or documents executed in furtherance of this Order, is intended for use by any person or entity not a party to this proceeding as an admission of, or evidence of, any fault or omission of Respondent in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal. This Order is not intended to confer any rights upon any person or entities who are not a party to this proceeding;

**NOW, THEREFORE,** the Division, as Administrator of the Act, hereby enters this Order:

**I. FINDINGS OF FACT**

1. The Secretary of State (“Administrator”) has the authority pursuant to the Act to administer and enforce the Act and regulate the offer and sale of securities in Mississippi including the firms and persons who offer or sell securities or who provide investment advice regarding securities.
2. AWM is a broker-dealer with a main office address at 1050 Crown Pointe Parkway, Suite 1230, Atlanta, GA 30338. The Central Registrations Depository (“CRD”) for AWM is 25536.
3. AWM has a branch office (Branch #580429) located in Biloxi, Mississippi. The branch is located at 2635 Pass Road, Biloxi, MS 39531.
4. According to CRD records, Wallace E. Sheely (“Sheely”), CRD# 851609, is the Branch Manager at the Biloxi office. Sheely began working for AWM on November 29, 2010. He began managing the Biloxi office on January 1, 2015.

### **SHARED SPACE**

5. AWM's branch office #580429 occupies/shares space with another investment-related firm. The Uniform Branch Office Registration Form (Form BD) filed in connection with registration specifically asks about branch office arrangement. The branch manager and the firm initially responded to the Form BD question "occupies or shares space with or jointly markets with any other investment-related entity" by answering "no." Since the examination, the response has been correctly updated.

6. Additionally, the branch office shares services, such as mail delivery, and office equipment, such as the fax machine which is located in the other firm's office. As evidenced by the multiple faxes received with the name of the other firm in the header, Respondent was aware of the shared fax usage and did not address the issue until the Division began its examination.

### **U-4 DISCLOSURES**

7. Question 14K of the Uniform Application for Securities Industry Registration or Transfer Form ("Form U-4") requires disclosures of tax liens, unsatisfied judgments, bankruptcies, and compromises with creditors.

8. During the onsite examination, Sheely referenced two (2) Hurricane Katrina related foreclosures that are not disclosed on his Form U-4 in CRD.

9. Additionally, Sheely had correspondence addressed to the company email discussing his "offer in compromise" stating that payments are to be made by check with "offer in compromise" written in the notes section of the check.

10. Sheely's Form U-4 reflects a "no" answer to question 14K.

## WRITTEN SUPERVISORY PROCEDURES

11. Respondent has adopted certain Written Supervisory Procedures (“WSPs”) that must be followed to ensure oversight of the representatives’ activities in handling customer accounts.
12. According to the WSPs, on Page 9, the President and CCO requires heightened supervision and the AML (Anti Money Laundering) Officer is responsible to supervise the President as a producing manager under heightened supervision. Further, the AML Officer is responsible for calculating production of the producing manager on a rolling twelve (12) month basis and recording this calculation on the Quarterly Compliance Report. The Compliance Reports provided to the Division do not include this calculation.
13. The WSPs also state, on Page 96, that the Office of Supervisory Jurisdiction (“the OSJ”) will conduct a quarterly random review that includes twenty-one (21) specific compliance issues. The review is to be evidenced by the completion and filing of the Quarterly Compliance Report. However, per AWM’s response, twelve (12) of these compliance issues are reviewed on an on-going basis through the surveillance system and six (6) of them are reviewed on an annual basis through individual attestation. The Quarterly Compliance Report does not accurately reflect and evidence what the WSPs require of the Quarterly Compliance Report.
14. According to Page 20 of the WSPs, Respondent’s clearing agreement is to be reviewed annually by the CCO to verify the responsibilities of each party; the CCO is to reference FINRA Conduct Rule 3230 as part of the review; and the First Quarterly Compliance Report is to serve as documentation that the clearing agreement is in compliance and has been reviewed by the CCO. The First Quarterly Compliance Report provided to the Division made no reference to FINRA Conduct Rule 3230, nor did it reference the fact that Respondent’s clearing agreement was in compliance.

15. According to the WSPs, AWM “does not hire reps with a history of customer complaints, disciplinary actions, or arbitration or employ a rep who develops such a record during his employment.”

16. Sheely’s U-4 currently reflects four (4) FINRA arbitration awards, one instance of resignation in lieu of termination, one termination for failure to adhere to a letter of understanding regarding office space (October 29, 2010), and one judgment/lien (October 14, 2010).

## II. APPLICABLE LAW

17. Miss. Code Section 75-71-102(1) states, “‘Administrator’ means the Secretary of State.”

18. Section 75-71-601(a) of the Act states, “The administrator shall administer this chapter.”

19. Section 75-71-406(d) Amendment states, “If the information or record contained in an application ... is or becomes inaccurate or incomplete in a material respect, the registrant shall promptly file a correcting amendment.”

20. **Rule 5.07 Change of Material Information; Amendments** states:  
The Division must be notified within thirty (30) days whenever the information contained in any application or amendment for registration as a broker-dealer and/or agent changes in a material way or is, or becomes, inaccurate or incomplete in any respect. All amendments for FINRA-member broker-dealers shall be filed through the CRD.

21. Miss. Code Ann. § 75-71-412 sets forth:

§ 75-71-412. Denial, revocation suspension, withdrawal, restriction, condition, or limitation of registration.

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(d) **Grounds of Discipline.** A person may be disciplined under subsections (a) through (c) if the person:

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(9) Has failed to reasonably supervise an agent, investment adviser representative, or other individual, if the agent, investment adviser representative, or other individual was subject to the person's supervision and committed a violation of this chapter or the predecessor act within the previous fifteen (15) years.

22. Miss. Code Ann. § 75-71-505 provides:

§ 75-71-505. Misleading filings.

It is unlawful for a person to make or cause to be made, in a record that is used in an action or proceeding or filed under this chapter, a statement that, at the time and in the light of the circumstances under which it is made, is false or misleading in a material respect, or, in connection with the statement, to omit to state a material fact necessary to make the statement made, in the light of the circumstances under which it was made, not false or misleading.

23. Rule 5.19 of the Mississippi Securities Act states:

All broker-dealers shall establish and keep current a set of written supervisory procedures and a system for implementing such procedures which may be reasonably expected to prevent and detect any violations of the Act and Rules promulgated thereunder. The procedures shall include the designation by name or title of those persons delegated supervisory responsibility in at least the areas of sales, financial operations, and compliance. A complete set of such procedures and systems shall be kept in all offices located in this State or be immediately accessible.

24. Rule 5.21(A) of the Rules enacted by the Administrator under the Act sets forth:

**Standards of Conduct.**

Each broker-dealer and agent shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business. Acts and practices, including, but not limited to, the following, are considered contrary to such standards and may constitute grounds for denial, suspension, or revocation of registration, imposition of fines, or such other actions authorized by statute.

A. Broker-dealers.

- (23) Violating any laws or rules of the SEC or a national securities exchange or national securities association of which it is a member, or violating any federal or state securities law or any rule or regulation promulgated thereunder.

25. 17 CFR 248.30 sets forth:

§248.30 Procedures to safeguard customer records and information

(a) Every broker, dealer, and investment company, and every investment adviser registered with the Commission must adopt written policies and procedures that address administrative, technical, and physical safeguards for the protection of customer records and information. These written policies and procedures must be reasonably designed to:

- (1) Insure the security and confidentiality of customer records and information;
- (2) Protect against any anticipated threats or hazards to the security or integrity of customer records and information; and
- (3) Protect against unauthorized access to or use of customer records or information that could result in substantial harm or inconvenience to any customer.

26. FINRA Rule 3110 sets forth:

(a) Supervisory System

Each member shall establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules. Final responsibility for proper supervision shall rest with the member.

(b) Written Procedures

(1) General Requirements. Each member shall establish, maintain, and enforce written procedures to supervise the types of business in which it engages and the activities of its associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules.

27. Miss. Code Ann. § 75-71-604 of the Act sets forth:

Administrative enforcement.

(a) Issuance of an order or notice. If the administrator 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 chapter or a rule adopted or order issued under this chapter 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 chapter or a rule adopted or order issued under this chapter, the administrator 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 chapter;
- (2) Issue an order denying, suspending, revoking, or conditioning the exemptions for a broker-dealer under Section 75-71-401(b)(1)(D) or (F) or an investment adviser under Section 75-71-403(b)(1)(C);or
  - (3) Issue an order:
    - (A) Under Section 75-71-204;
    - (B) Imposing a civil penalty in the case of an issuer of registered securities, broker-dealer, investment advisor, agent, investment adviser representative, or other person who violated this chapter;
    - (C) Barring or suspending the person from association with a broker-dealer or investment advisor registered in this state; or
    - (D) Requiring the person to pay restitution for any loss or disgorge any profits arising from the violation, including interest.

\* \* \*

- (d) Civil penalty. In a final order under subsection (c), the administrator may impose a civil penalty in an amount set forth in Section 75-71-613 for each violation and each violation shall be considered a separate offense in a single proceeding or a series of related proceedings.

### **III. ACTION NECESSARY TO PROTECT THE PUBLIC**

28. Action by the Division is necessary and appropriate in the public interest and for the protection of investors, and is consistent with the purposes fairly intended by the policy and provisions of the Act. Based upon the foregoing Findings of Fact, and consistent with the consent of the Respondent, the Division makes the following:

### **IV. CONCLUSIONS OF LAW**

29. The Administrator has jurisdiction over the subject matter of securities-related business in Mississippi and over AWM and Wallace Sheely.

30. AWM filed a statement that Sheely did not share an office space with an unrelated investing entity when he did. This false representation is in violation of § 75-71-505.

31. Respondent is required to maintain policies and procedures that address the protection of customer information and records. By sharing a fax machine and mail services, AWM has not maintained a procedure to protect customer privacy and client records in violation of FINRA Rule 3110, and consequently in violation of Rule 5.21(A)(23).

32. AWM failed to update Sheely's U-4 disclosures in violation of § 75-71-406(d) and Rule 5.07.

33. Respondent failed to adequately supervise Sheely based on paragraphs 30-32 above. That failure is the basis for discipline under § 75-71-412(d)(9).

34. Respondent failed to calculate production of the producing manager as defined and required by the WSPs. In failing to abide by the WSPs, the Respondent has violated FINRA Rule 3110 requiring the enforcement of written procedures, thereby violating Rule 5.21(a)(23).

35. The Quarterly Compliance Report fails to evidence review of the twenty-one (21) compliance issues as required by the WSPs. In failing to abide by the WSPs, the Respondent has violated FINRA Rule 3110 requiring the enforcement of written procedures, thereby violating Rule 5.21(a)(23).

36. Respondent failed to reference Rule 3230 or the fact that the clearing agreement was in compliance, as required by the WSPs. In failing to abide by the WSPs, the Respondent has violated FINRA Rule 3110 requiring the enforcement of written procedures, thereby violating Rule 5.21(a)(23).

37. In direct conflict with the WSPs, Respondent hired a representative with a history of disciplinary actions and arbitrations. In failing to abide by the WSPs, the Respondent has violated FINRA Rule 3110 requiring the enforcement of written procedures to supervise the

activities of its associated persons reasonably designed to achieve compliance with applicable laws and rules. This failure constitutes a violation of Rule 5.21(a)(23).

38. In failing to follow their WSPs, the Respondent also violated Rule 5.19 by not establishing a system for implementing their own supervisory procedures.

### **ORDER**

IT IS HEREBY ORDERED:

1. This Order concludes the open matter with the Division with respect to the routine examination and above referenced allegations. However, nothing herein limits the ability of the Division, individually or jointly with other agencies, in pursuing any investigation with respect to any other securities-related matter involving the Respondent.

2. This Order is entered into solely for the purpose of resolving the previously referenced allegations and is not intended to be used for any other purpose.

3. Respondent shall immediately add, publish, draft, update, and/or implement as required, and provide evidence of the same to the Division, the following changes to address the above-referenced deficiencies and/or instances of failure to supervise:

- (a) Written Supervisory Procedures that appropriately address the description of the President and CCO as producing manager and the requirements of heightened supervision;
- (b) Written Supervisory Procedures that adequately represent the compliance issues review and how they are performed; and
- (c) Written Supervisory Procedures that accurately outline criteria for pre-hire screening.

4. Additionally, the Respondent will verify the accuracy of all disclosures of Mississippi branches and update accordingly.

5. For purposes of this Order, “immediately” means that Respondent has commenced compliance without delay upon consenting to this Order, and shall provide evidence of its compliance within thirty (30) days of the entering of this Order.

6. In addition, Respondent shall pay to the Mississippi Secretary of State’s Securities Division an administrative penalty in the amount of Five Thousand dollars (\$5,000.00).

7. Respondent shall not take any action, or make or permit to be made any public statement, denying, directly or indirectly, any finding in this Order or creating the impression that this Order is without factual basis. Nothing in this paragraph affects Respondent’s (a) testimonial obligations; or (b) right to take legal or factual positions in defense of litigation or other legal proceedings to which the Administrator is not a party; and

8. Respondent shall fully, fairly, and truthfully disclose all information and producing all records and other evidence in its possession, custody, or control relevant to all inquiries made by the Division concerning the subject matter of this Order, except to the extent such inquiries call for the disclosure of information protected by the attorney-client and/or work product privileges.

9. If Respondent defaults in any of its obligations set forth in this Order, the Division may vacate this Order, at its sole discretion, upon fifteen (15) days’ notice to Respondent and without opportunity for administrative hearing and refer this matter for enforcement as provided in Section 75-71-604 (g) of the Act.

10. This Order is not intended to indicate that Respondent shall be subject to any disqualifications contained in the federal securities law, the rules and regulations thereunder, the

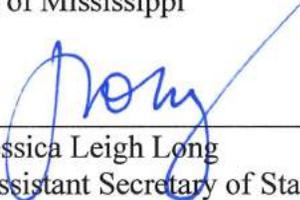
rules and regulations of self-regulatory organizations or various states' securities laws. In addition, this Order is not intended to form the basis for any such disqualifications.

11. This Order contains, constitutes, and embodies the entire agreement between the undersigned, there being no agreement of any kind, verbal or otherwise, which varies, alters, or adds to this Order; and this Order supersedes any prior communication, understanding, or agreement, whether written or oral, concerning the subject matter of this Order.

12. In the event that one or more provisions contained in this Order shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Order.

Date: July 5, 2017

C. DELBERT HOSEMANN, JR.  
Secretary of State  
State of Mississippi

By:   
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Jessica Leigh Long  
Assistant Secretary of State  
Securities Division

**CONSENT TO ENTRY OF FINAL ORDER**

American Wealth Management, Inc. hereby acknowledges that it has been served with a copy of this Administrative Consent Order ("Order"), has read this Order, is aware of its right to a hearing and appeal in this matter, and has waived the same.

American Wealth Management, Inc. admits the jurisdiction of the Division, neither admits nor denies the Findings of Fact and Conclusions of Law contained in this Order, and consents to entry of this Order by the Division solely for purposes of settlement.

American Wealth Management, Inc. states that no promise of any kind or nature whatsoever was made to it to induce it to enter into this Order and that American Wealth Management, Inc. has entered into this Order voluntarily.

The undersigned officer of American Wealth Management, Inc. warrants and represents that he is fully authorized to act for and bind American Wealth Management, Inc. by this Administrative Consent Order.

Dated this the 28<sup>th</sup> day of June 2017.

American Wealth Management, Inc.

By: [Signature]  
Sign Name

Jerome A. Borzello  
Print Name

President  
Title

STATE OF Georgia

COUNTY OF Newton

SUBSCRIBED AND SWORN TO before me this 28 day of June, 2017.

[Signature]  
Notary Public

My commission expires: March 8<sup>th</sup>, 2021

