

**STATE OF ILLINOIS
SECRETARY OF STATE
SECURITIES DEPARTMENT**

IN THE MATTER OF: JOSEPH M. ZENTNER JR.

FILE NO. 0700294

NOTICE OF HEARING

TO THE RESPONDENT: Joseph M. Zentner Jr.
(CRD#: 2797807)
139 S. Laurel Avenue
Charlotte, North Carolina 28207

C/o Citigroup Global Markets, Inc.
Registration Department 333 West 34th Street
7th Floor
New York, New York 10001

You are hereby notified that pursuant to Section 11.F of the Illinois Securities Law of 1953 [815 ILCS 5] (the "Act") and 14 Ill. Adm. Code 130, Subpart K, a public hearing will be held at 69 West Washington Street, Suite 1220, Chicago, Illinois 60602, on the 28th day of October, 2007 at the hour of 10:00 a.m. or as soon as possible thereafter, before George Berbas, Esq., or such other duly designated Hearing Officer of the Secretary of State.

Said hearing will be held to determine whether an Order shall be entered revoking Joseph M. Zentner Jr.'s (the "Respondent") registration as a salesperson in the State of Illinois and/or granting such other relief as may be authorized under the Act including but not limited to the imposition of a monetary fine in the maximum amount pursuant to Section 11.E (4) of the Act, payable within ten (10) business days of the entry of the Order.

The grounds for such proposed action are as follows:

1. That at all relevant times, the Respondent was registered with the Secretary of State as a salesperson in the State of Illinois pursuant to Section 8 of the Act.
2. That on June 6, 2007 NASD entered a Letter Of Acceptance; Waiver And Consent (AWC) submitted by the Respondent regarding File No. 2005000760101 Which sanctioned the Respondent as follows:

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- a. suspension from associating in all capacities with a member firm for 30 days;
 - b. fined \$30,000; and
 - c. Within 60 days of re-association with a member firm following the 30-day suspension noted above, the Respondent shall have completed 40 hours of Continuing Education relating to compliance with NASD Rules and federal securities laws, including courses that cover communications with the public and the use of sales materials.
3. That the AWC listed the following background information:
- a. CGMI and its predecessors have been members of NASD since 1936. CGMI maintains its principal place of business in New York City. CGMI engages in a full-service securities business, including retail and institutional sales, investment banking services, trading, and research. At the time of the events underlying this AWC, the firm was known as Salomon Smith Barney. CGMI has approximately 25,400 registered employees, including approximately 12,800 financial advisors in the United States.
 - b. Jeffrey Sweitzer, age 50, became registered as an associated person with one of CGMI's predecessors in 1984 and joined its Charlotte branch office in February 1992. Sweitzer was registered as a General Securities Representative (Series 7) and a General Securities Sales Supervisor (Series 9/10, previously Series 8). Sweitzer was terminated from CGMI on February 2, 2007 and is not currently registered with any member firm.
 - c. Matthew Muller, age 40, became registered as an associated person with one of CGMI's predecessors in 1996 and joined its Charlotte branch office at that time. Muller was registered as a General Securities Representative (Series 7). Muller was terminated from CGMI on February 2, 2007 and is not currently registered with any member firm.
 - d. The Respondent, age 35, became registered as an associated person with one of CGMI's predecessors in 1998 and joined its Charlotte branch office at that time. He is currently registered as a General Securities Representative (Series 7).

- e. Randall Matz, age 49, became registered as an associated person with one of CGMI's predecessors in 1984 and has served as the Branch Manager of its Charlotte branch office since 1988. He is currently registered as a General Securities Representative (Series 7), a General Securities Sales Supervisor (Series 9/10, previously Series 8), and an Options Principal (Series 4).
 - f. Elizabeth Harris, age 54, became registered as an associated person with one of CGMI's predecessors in 1981 and has served as the Operations Manager of its Charlotte branch office since 1986. She is currently registered as a General Securities Representative (Series 7) and a General Securities Sales Supervisor (Series 9/10, previously Series 8).
4. That the AWC found:

STATEMENT OF FACTS

a) Summary

From 1994 to 2002, Sweitzer held over 40 seminars alone or with Muller and the Respondent and hundreds of face-to-face meetings, some with Muller, with employees of BellSouth Corporation. As a result of those seminars and meetings, some of these employees believed that they could afford to retire early by cashing out their BellSouth pensions and investing their pension proceeds and other retirement assets with the brokers at CGMI. Using charts and graphs, Sweitzer and Muller conveyed to the BellSouth employees, without an adequate disclosure of risks, that the employees could expect to earn approximately 12 percent annually on their investments and withdraw approximately 9 percent annually, leaving them substantially richer after 30 years than when they retired. Sweitzer developed the sales campaign; led all the seminars and most of the face-to-face meetings as well as drafted, revised or directed the revision of the materials used in the seminars and face-to-face meetings. Beginning in 1996, typically at Sweitzer's request, Muller participated in 24 seminars and many of the face-to-face meetings. Sweitzer also requested that the Respondent participate in 15 seminars between 2000 and 2002.

The BellSouth employees were generally unsophisticated investors. Many had modest savings for retirement. They trusted the brokers. Over 400 employees and their spouses opened more than 1,100 accounts at CGMI. Many of them entrusted the brokers with most or all of their retirement savings. Fees and commissions from those accounts comprised a majority of the compensation earned by Sweitzer and Muller during the relevant period.

After the burst of the late 90's market bubble, most of the BellSouth customer accounts did not earn 12 percent annually and could not sustain the rate of withdrawals established when their accounts were opened with CGMI. Consequently, over 200 BellSouth employees saw the principal in their accounts decline, in the aggregate, by approximately \$12.2 million.

CGMI and the managers in its Charlotte branch Matz, branch manager, and Harris, operations manager failed to supervise the activities of the brokers by not following-up on red flags and did not adequately carry out their respective supervisory responsibilities with an eye to preventing the brokers' violations.

b) Background

In 1994, Sweitzer began meeting with employees of BellSouth (then Southern Bell) who were in their 50s and nearing retirement age, using a series of seminars as his primary vehicle to prospect for clients. Between 1994 and 2002, Sweitzer held at least 40 seminars attended by hundreds of BellSouth employees. Sweitzer was solely responsible for BellSouth seminars held between 1994 and 1996 and participated in every seminar held thereafter; Muller joined him in 1996 and participated in 24 seminars. Starting in 1999, the Respondent, at Sweitzer's direction, helped prepare materials ultimately adapted for use in seminars and face-to-face meetings. Subsequently, beginning in the fall of 2000, at Sweitzer's request, the Respondent participated in 15 seminars. Sweitzer, and later Muller, also held face-to-face meetings with BellSouth employees who had attended seminars and with employees referred to them by other BellSouth employees.

During these seminars and face-to-face meetings, Sweitzer and Muller suggested that certain BellSouth employees could retire early from their jobs, opt to take a lump sum payout (rather than the fixed monthly pension option), and then invest the lump sum and the balance of their 401(k) plans with CGMI. Sweitzer and Muller discussed how the BellSouth employees could meet their income needs through systematic monthly withdrawals pursuant to Section 72(t) of the Internal Revenue Code.'

As a result of these seminars and face-to-face meetings, over 400 BellSouth employees opened more than 1,100 accounts. Sweitzer and Muller generally recommended a mix of mutual funds to replace the BellSouth employees' pensions and 401(k) investments; some BellSouth employees were advised to allocate some of their funds to privately managed accounts that invested in individual stocks and bonds selected by either Sweitzer or another registered representative in the Charlotte branch office. Commissions and fees from these customers' accounts comprised a substantial majority of the income earned by Sweitzer and Muller.

Most of these BellSouth employees were unsophisticated investors with minimal experience in the financial markets. These clients trusted and relied on Sweitzer and Muller, who presented themselves as knowledgeable and experienced. The customers, by and large, retired in their mid-50s, well before the BellSouth retirement age of 62. They were of modest means, typically with retirement savings of less than \$350,000, and generally invested their entire retirement nest egg (the proceeds from their BellSouth pension plan and 401(k) plans) with the brokers.

c) **Sweitzer and Muller Used Inaccurate Materials that Omitted Material Facts in Their Seminars and Meetings with BellSouth Employees**

During their seminars and face-to-face meetings, Sweitzer and later Muller used a sales presentation, complete with misleading handouts, PowerPoint presentations, charts and graphs, to persuade BellSouth employees to invest with them.

Section 72(t) outlined the conditions under which an individual under the age of 59½ could withdraw a fixed stream of regular payments from their retirement savings without having to pay the usual 10 percent penalty for early withdrawals. Under this waiver, employees who retired early were required to take "a series of substantially equal payments" for at least five years or until the employee reached the age of 59½, whichever was longer. If the employee subsequently sought to change the withdrawal amount, all of the withdrawn payments would then be subject to the substantial tax penalty.

One of the documents used in the seminar presentation was a chart that led some of the employees to believe they could annually earn 12 percent returns and withdraw 9 percent for 30 years. This document projected that a generic Bell South employee ("Mr. or Mrs. BellSouth") with an initial investment of \$300,000 at age 53, typical of many BellSouth customers who attended the brokers' seminars, would experience a consistent growth rate of 12 percent compounded annually and withdraw 9 percent. The document suggested that this typical BellSouth employee could, over 30 years, earn more than \$1.8 million, withdraw between \$27,000 and \$69,400 annually (between \$1,800 and \$4,628 monthly) and see his or her principal grow steadily, so that by age 83 the employee would still have \$771,280 in principal remaining.

In their face-to-face meetings with BellSouth employees, Sweitzer and Muller modified the generic projections to reflect the actual amount the BellSouth employees could invest from their pensions and 401(k) plans, as well as the amount the employees indicated they wanted to withdraw monthly to cover their living expenses. The brokers recommended a basket of mutual funds and other investments to the BellSouth employees and some of the customers understood that they could expect to earn 12 percent and withdraw 9 percent annually.

In face-to-face meetings involving Sweitzer, Muller, a BellSouth employee, and her husband, Sweitzer said:

"Now I'm not going to tell you that we're going to try to get 22 or 23 or 24 or 25%. Okay, I'm not going to tell you that. I'm going to tell you that is what we've done in the past. I'm going to tell you by way of expectations that you should be able to expect 12%. That is not guaranteed, but I feel like good times, bad times, ugly times, beautiful times, we should be able to average 12. Now, I have no interest whatsoever in paying out everything that we earn because there's going to be years when we don't get 12. You follow me?"

"We expect to earn 12%. We pay out 9%."

"I mean, and basically 10 years down the road you are looking at doubling your money."

"Over here on the growth side of it where we've been averaging in the low to mid 20's, I would tell you to expect 12%. Are you with me?"

"We may do 15, may do 18 or 20. But good times, bad times, I think that we would do 12%."

"Now, the return here is net of fees, and what you should expect out of this part of the portfolio, what you should expect there is 12, 13, 14%. What you should expect here net of fees is 15 to 18. Now, in reality, over the past 10 years, you look and this portfolio has averaged 20%."

In 2000-2001, some employees followed Sweitzer and Muller's recommendations and decided to forego the nearly risk-free fixed monthly pension they could receive from BellSouth in favor of a lump sum payout. Many who ended up pursuing this retirement strategy did not understand the extent to which they were exposed to market risk. The customers' confusion stemmed largely from a "Pension Analysis" slide presented by the brokers at seminars that misleadingly depicted the lump sum option as no more risky than the fixed monthly pension option.

Sweitzer and Muller's sales presentation did not adequately disclose certain risks in their proposed investment strategy. For example, it was not adequately explained that 12 percent annual net returns exceeded the historical return of the Standard & Poor's 500 over 70 years, and that for many periods during that span, the S&P 500 returned far less than 12 percent. Nor did the presentation adequately explain that the recommended investments exposed the BellSouth clients to greater market risk than the clients would

otherwise have faced had they opted to retain their monthly fixed annuity pension payments. There was not adequate disclosure that the recommended investments could fluctuate with changes in market conditions and could decline in value so much as to reduce the clients' principal. Moreover, the documents used in the presentations failed to adequately disclose that the customers would pay fees of approximately 2-3 percent, requiring them to earn 14 or 15 percent to achieve the expected 12 percent return. Finally, the brokers' recommendation that their clients could withdraw up to 9 percent was inconsistent with industry consensus that retirees could not withdraw that much without depleting their principal.

Sweitzer and Muller distributed other misleading and unapproved materials to their BellSouth clients, including handouts that overstated their credentials and experience. One handout stated: "It can be comforting to know that the same manager handling the pension plan of a Fortune 500 company is also personally managing your portfolio." In fact, neither Sweitzer nor any other member of his team ever managed the pension plan of a Fortune 500 company. Another handout suggested that Muller was a "Senior Portfolio Manager" when he was not. Other handouts referred to the Sweitzer team as "The Portfolio Management Group," after CGMI's Compliance Department in New York advised that the team should not refer to themselves in that manner because it was misleading. At least one sales brochure implied that the brokers were part of the more elite, experienced "Private Portfolio Group of Smith Barney Asset Management" when they were not.

Other handouts provided to BellSouth clients during face-to-face meetings described the recommended mutual funds. Using a program provided by Morningstar, the broker's generated sales materials that listed the recommended mutual funds, identified the funds' Morningstar rankings, and aggregated the funds' past performance. CGMI procedures prohibited the distribution of these documents, which had not been filed with NASD's Advertising Regulation Department ("NASD Advertising"), as required by applicable NASD rules. Moreover, when Sweitzer distributed the documents, he failed to include Morningstar's required, three-page attachment that contained detailed information about the funds and relevant risks, such as the risk of relying on the funds' past performance.

d) The Brokers Failed to Secure Approval of Seminars, Seminar Sales Materials, and Other Sales Literature and Did Not File Required Sales Material with NASD

NASD rules required all three brokers to have a principal at CGMI approve, in writing, their seminar materials and to file all sales materials mentioning specific mutual funds within 10 days of first using such materials. Between 1999 and 2001 the Respondent, at Sweitzer's direction, substantially revised the materials Sweitzer and Muller used in seminars and face-to-face meetings with their BellSouth clients. Sweitzer and Muller never obtained written principal approval for these various documents, even though they frequently updated the material. In May 2001, the Respondent submitted one version of a seminar handout to Harris. Without reviewing the handout, as required by CGMI policy, Harris forwarded the handout to CGMI Compliance in New York for review, also as required by CGMI policy. While Compliance reviewed and edited the handout, it did not approve it, noting that the handout needed to be "revised and resubmitted" before final approval could be granted by branch management. Notwithstanding their failure to have the materials resubmitted and approved, the brokers used various versions of these same sales materials at all of their subsequent seminars.

Moreover, in their face-to-face meetings, Sweitzer and Muller used sales materials that recommended specific mutual funds but failed to take steps to ensure such sales materials were provided to Matz and Harris for filing with NASD Advertising within 10 days of first use. Furthermore, Sweitzer and Muller failed to provide the sales material to Matz and Harris to maintain a file of the sales literature used in the brokers' BellSouth seminars, as required by NASD rules. For their part, Matz and Harris did not take steps to ensure that the brokers were providing them with the materials for filing with NASD Advertising and maintaining a file of sales literature as required by NASD rules.

CGMI required the brokers to obtain advance written permission to hold seminars at BellSouth. They had to prepare and submit Seminar Approval Forms, and complete a Speaking Activity Log that provided Charlotte branch management with pertinent information such as the date, location, and title of the seminar, as

well as the number and identity of the seminar attendees. With the exception of their final seminar held in 2002, none of the three brokers obtained the firm's approval before they held any of their seminars. They also failed to complete the required Speaking Activity Logs for all but one of their seminars.

e) When Their BellSouth Clients Began Experiencing Market Losses, Sweitzer and Muller Attempted to Retain Their Accounts

By December 2000, accounts of many of the brokers' clients were not generating the 12 percent returns the customers believed they could expect. Sweitzer and Muller responded by inviting their clients to participate in a series of conference calls, participate in a question and answer (Q&A) session, and/or call in afterwards to hear an electronically recorded replay of the conference call at a more convenient time.

During these calls, Sweitzer and Muller attempted to address their clients' concerns. In one call, in December 2000, Sweitzer said he believed that the S&P 500 would increase by the end of 2001 and that the Dow Jones Industrial Average could rise above 11,000 and that it might get "closer to 12,000." Sweitzer's long-term view was equally positive; he told the clients that he believed the DJIA would double in six years, rising to 20,000 or 21,000 by 2006. Sweitzer had no reasonable basis for making these statements. Based on these and other statements, a number of clients decided to stay the course and not transfer their accounts.

f) Over Half of the BellSouth Employees Lost Approximately \$12.2 Million

Over half of the BellSouth customers saw the value of their investments decline. Many of those clients did not earn 12 percent, as they believed they could expect. The accounts that declined could not sustain the level of withdrawals the clients had elected, thus depleting their principal. As a result, several clients had to alter the amounts they were withdrawing, thereby incurring a penalty under Section 72(t). In all, the affected BellSouth employees lost approximately \$12.2 million.

g) CGMI, Matz, and Harris Failed to Adequately Supervise the Activities of the Brokers

CGMI, Matz, and Harris knew or should have known that the brokers were holding seminars without approval. CGMI, Matz, and Harris also should have known that the brokers used misleading and unapproved sales materials and failed to adequately disclose investment risk and other material information to their prospective customers. CGMI and its Charlotte branch management failed to respond adequately to these red flags and accordingly failed to supervise the activities of the brokers.

Through its branch office audit process, CGMI knew or should have known that the brokers were holding seminars. For most of the years between 1995 and 2003, Sweitzer indicated on a branch audit questionnaire that he had held seminars. Sweitzer was required, but failed, to provide CGMI audit staff with an example of the materials used in these seminars and to demonstrate that he had obtained principal approval before using these sales materials. CGMI audit staff were required to, but did not, obtain an example of the materials used in these seminars and did not confirm that principal approval had been obtained before the seminars were held and these sales materials were used. Moreover, as discussed above, in May 2001 CGMI compliance personnel did not correct some of the misstatements and omissions contained in the seminar handout submitted by the Respondent. Although Compliance sent the materials back with an instruction to "revise and resubmit to Compliance," there is no evidence that Compliance or branch management followed-up to ensure that the materials were revised and resubmitted prior to use.

CGMI's branch manager Matz and operations manager Harris similarly failed to adequately supervise the activities of Sweitzer and his team. Matz had principal responsibility for supervising the brokers' activities and delegated certain tasks to Harris. Matz and Harris did not perform their duties adequately and did not adequately follow up on red flags.

Matz, the branch manager, knew that some seminars were being held for BellSouth employees and, for the majority of the review period, had responsibility for approving such seminars. He should have known the brokers were not obtaining permission to hold their BellSouth seminars and were not completing the Speaking Activity Log after holding their seminars. On at least two occasions, Matz saw BellSouth seminar materials used by Sweitzer and Muller; on one occasion, Sweitzer provided Matz with an overview of their presentation and materials used during certain of the brokers' face-to-face meetings with BellSouth employees.

Matz did not take steps to ensure that the brokers obtained principal approval of their seminar materials, and as a result, he failed to correct the misstatements and omissions in the brokers' sales materials. After delegating responsibility for reviewing and approving seminar materials to Harris, Matz failed to follow-up on, or to even inquire about, whether Sweitzer, Muller, and the Respondent had provided their seminar materials to Harris. Matz provided the firm with signed quarterly certifications over a seven-year period confirming that he had followed up on his delegations of authority, even though he had not done so with respect to these seminar materials.

During the relevant time period, Matz delegated to Harris responsibility for reviewing and approving sales literature, including seminar flyers, brochures, handouts, PowerPoint presentations and speaking notes. Although Harris knew that the brokers were holding seminars, she took no steps to ensure that the brokers submitted seminar materials for her approval. Therefore, she did not review any of the brokers' seminar materials to determine whether they complied with CGMI guidelines, NASD rules, or the federal securities laws. On the one occasion when the Respondent presented her with a seminar handout in May 2001, rather than review and approve it herself as required, Harris instead forwarded it to Compliance in New York for review. When Compliance returned the document to her with instructions to "revise and resubmit to Compliance," Harris did not adequately follow-up to confirm that the recommended changes were made or that the handout was resubmitted and approved prior to use.

Although the brokers generally did not bring their seminar materials to Harris for review or approval, on some occasions, she reviewed some of the materials the brokers disseminated at their face-to-face meetings. On a few occasions, when Sweitzer or Muller wanted to fax a piece of sales material to a customer before or after such a meeting, the broker would bring it to Harris for review. For example, Harris approved the faxing of customized versions of the 12 percent projection sheets to certain customers. She approved these documents even though the documents

- a) constituted Misleading projections that violated NASD rules; and
- b) failed to include the necessary disclaimers and risk disclosures discussed above, also in violation of NASD rules.

- h. **That by virtue of the foregoing, The Respondent Violated NASD's Advertising Rules, NASD Rule 2210:**

Sales Material Not Fair and Balanced; Contained Misleading Claims, Exaggerated Statements and Improper Projections: Violations of NASD Conduct Rule 2210(d)(1)

As described above, The Respondent prepared and/or used materials at seminars and at face-to-face meetings that were not fair and balanced, contained misleading claims, exaggerations and unwarranted projections. These materials constituted communications with the public as defined by NASD Conduct Rule 2210. Accordingly, he violated NASD Conduct Rules 2210(d)(1) and 2110.

Sales Materials Not Approved by a Principal: Violations of NASD Conduct Rules 2210(b)(1) and 2110

As described above, The Respondent prepared and/or used copies of materials at seminars and face-to-face meetings that had not been approved by a principal. These materials constituted "sales literature" as defined by NASD Conduct Rule 2210. As "sales literature", NASD Conduct Rule 2210(b)(1) required these documents to be approved by signature or initial and date by a registered principal of the member firm. Accordingly, the Respondent violated NASD Conduct Rules 2210(b)(1) and 2110 when he used these documents without approval.

Sales Materials Not Retained: Violations of NASD Conduct Rules 2210(b)(2)(A) and 2110

As described above, the Respondent failed to retain records showing which sales materials were disseminated to customers, which registered principal approved the items, and the date of the approval. These failures constituted violations of NASD Conduct Rules 2210(b)(2)(A) and 2110.

5. That Section 8.E (1)(j) of the Act provides, inter alia, that the registration Of a salesperson may be revoked if the Secretary of State finds that such Salesperson has been suspended by any self-regulatory organization Registered under the Federal 1934 Act or the Federal 1974 Act arising from Any fraudulent or deceptive act or a practice in violation of any rule, regulation or standard duly promulgated by the self-regulatory Organization.
6. That NASD is a self-regulatory organization as specified in Section 8.E (1)(j) of the Act.

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7. That by virtue of the foregoing, the Respondent's registration as a Salesperson in the State of Illinois is subject to revocation pursuant to Section 8.E (1)(j) of the Act.

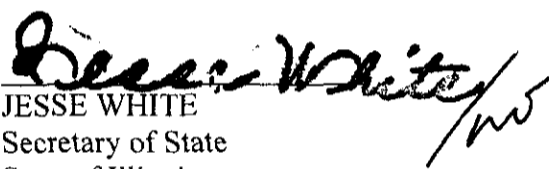
You are further notified that you are required pursuant to Section 130.1104 of the Rules and Regulations (14 ILL. Adm. Code 130)(the "Rules"), to file an answer to the allegations outlined above within thirty (30) days of the receipt of this Notice. A failure to file an answer within the prescribed time shall be construed as an admission of the allegations contained in the Notice of Hearing.

Furthermore, you may be represented by legal counsel; may present evidence; may cross-examine witnesses and otherwise participate. A failure to so appear shall constitute default, unless any Respondent has upon due notice moved for and obtained a continuance.

A copy of the Rules, promulgated under the Act and pertaining to hearings held by the Office of the Secretary of State, Securities Department, is included with this Notice.

Delivery of Notice to the designated representative of any Respondent constitutes service upon such Respondent.

Dated: This 29th day of October 2007.


JESSE WHITE
Secretary of State
State of Illinois

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