

STATE OF NEW JERSEY
BUREAU OF SECURITIES
153 Halsey Street
P.O. Box 47029
Newark, New Jersey 07101

IN THE MATTER OF: :

WestPark Capital, Inc. :

CRD# 39914 :

RESPONDENT :

CONSENT ORDER

Pursuant to the authority granted to Amy G. Kopleton, Acting Chief of the New Jersey Bureau of Securities (“Bureau Chief”), under the Uniform Securities Law (1997), N.J.S.A. 49:3-47 et seq. (“Securities Law”), more particularly, N.J.S.A. 49:3-58 and N.J.S.A. 49:3-70.1, and after investigation, careful review and due consideration of the facts, certain documents provided to the Bureau, and statutory provisions set forth below, the Bureau Chief has determined that a **MONETARY PENALTY** shall be issued against WestPark Capital, Inc. (“WestPark”)

WHEREAS, the New Jersey Bureau of Securities (“Bureau”) is the State agency with the responsibility to administer and enforce the Securities Law; and

WHEREAS, N.J.S.A. 49:3-67 authorizes the Bureau Chief from time to time to issue such Orders as are reasonably necessary to carry out the provisions of the Securities Law, upon finding that the action is necessary and appropriate in the public interest for the protection of investors or consistent with the purposes fairly intended by the provisions of the Securities Law; and

WHEREAS, The Bureau has conducted an investigation into certain activities of WestPark as set forth in this Consent Order; and

WHEREAS, WestPark has cooperated with the Bureau by conducting an internal review relating to the Bureau's investigation and reporting to the Bureau the results of that review, and by providing such other documents and information as requested by the Bureau; and

WHEREAS, prior to the Bureau's investigation, WestPark retained a compliance consultant ("Compliance Consultant") to conduct a review and make recommendations in order to improve WestPark's supervisory and compliance systems; and

WHEREAS, the Compliance Consultant has made recommendations to enhance the supervisory structure and compliance oversight of WestPark's retail sales activities including those listed on Appendix A attached hereto that have been adopted by WestPark and made part of its written supervisory procedures; and

WHEREAS, WestPark has retained the Compliance Consultant to provide ongoing compliance and supervisory support including periodic reviews of WestPark's supervisory system; and

WHEREAS, since the date of the findings contained herein, WestPark has increased its supervisory staff with the retention of certain registered principals and has effected certain other changes to its compliance program; and

WHEREAS, WestPark has retained a New Jersey consultant (the "NJ Consultant") to assist with its internal review of the activities relating to the findings contained herein and to

conduct periodic reviews and to report to WestPark on the company's registration, sales and supervisory activities as they relate to WestPark's New Jersey business; and

WHEREAS, WestPark has represented that the terms and scope of the retention of the Compliance Consultant and the NJ Consultant are set forth in Appendix A attached hereto; and

WHEREAS, WestPark and the Bureau wish to resolve these issues in accordance with the terms of this Consent Order and without the expense and delay that other proceedings could involve; and

WHEREAS, the Bureau, having examined the facts and circumstances relating to two specific New Jersey resident client relationships with Harry Datys as further identified in Appendix B (the "Appendix B Clients"), does not object to Harry Datys conducting business with these clients while he is being supervised by WestPark as long as such business is not transacted to or from New Jersey; and

WHEREAS, WestPark consents to notifying, by at least providing a copy of this Consent Order and the related Consent Order with Harry Datys, the Appendix B Clients regarding the matters that are the subject of this Consent Order prior to their recommencement of transactions with Datys; and

WHEREAS, WestPark consents to the form and entry of this Consent Order without admitting or denying the findings set forth herein, WestPark waives the following rights:

- a. To be afforded the opportunity for a hearing on the Bureau Chief's findings and conclusions of law in this Consent Order after reasonable notice within the meaning of N.J.S.A. 49:3-58(c)(2); and

b. To seek judicial review of, or otherwise challenge or contest, the validity of the Consent Order; and

WHEREAS, this Consent Order concludes the investigation by the Bureau Chief and any civil or administrative action that could be commenced, pursuant to the Securities Law, on behalf of the Bureau Chief, as it relates to seeking monetary penalty or other relief from WestPark for the conduct described herein.

FINDINGS OF FACT

The Bureau Chief makes the following findings of fact:

1. WestPark has been registered with the Bureau as a broker-dealer since September 8, 2000 and maintains a primary business location at 1900 Avenue of the Stars, Suite 310, Los Angeles, California, 90067. WestPark has no place of business in New Jersey.

2. Harry S. Datys (“Datys”) (CRD # 1877750), residing in Warwick, New York, has been employed as an agent of WestPark since June 10, 2005 and has worked out of several New York, NY branch offices. On May 15, 2008 the Bureau entered a Summary Revocation Order and Assessment of Civil Monetary Penalties based on findings that he failed to comply with a heightened supervisory agreement entered as a condition of his initial registration as an agent of WestPark. The May 15, 2008 order revoked Datys’ registration with the Bureau and assessed a \$6,000.00 penalty. Datys has not been registered with the Bureau since the entry of the May 15, 2008 order and the penalty was paid on June 11, 2013.

3. Also, on May 15, 2008, the Bureau Chief entered a Summary Order of Penalty Assessment against WestPark for failing to comply with the company’s obligations under the Datys’ heightened supervisory agreement and assessed a civil monetary penalty against

WestPark in the amount of \$15,000.00. On September 29, 2008 the matter was resolved by consent and WestPark paid the \$15,000.00 penalty.

Datys continued to act as an agent of WestPark in connection with the Purchase and Sale of Securities to certain New Jersey Residents After his Registration was Revoked

4. After Datys' agent registration with the Bureau was revoked, Datys caused or otherwise facilitated the change of address on the books and records of WestPark for a number of accounts related to four New Jersey clients (the "New Jersey Clients") from the clients' residential address to a New York address, typically a business address, despite the fact that the clients were still residing at the New Jersey addresses.

5. Although the Bureau revoked Datys' registration, between May 15, 2008 and August of 2012, Datys continued to act as an agent of WestPark in New Jersey in that he:

- a. Accepted numerous orders for securities trades in certain of the accounts of up to four of the New Jersey Clients; and
- b. Continued to communicate both verbally and by email with the New Jersey Clients relating to the purchase or sale of securities.

6. By offering and selling securities to certain New Jersey residents who changed their address to a New York business address after his registration was revoked, Datys acted as an unregistered agent in New Jersey in violation of N.J.S.A. 49:3-56.

WestPark Failed To Follow Its Own Written Supervisory Procedures Regarding Address Changes

7. According to WestPark's Written Supervisory Procedures ("WSP"), dated and in effect as of June 2008, Section 7.6 entitled "Address Changes and Mail Holds" stated that upon receipt

of a change of address request from a client, which is required to be in writing, WestPark is required to verify the change of address.

8. Further, according to WestPark's WSP "[i]t is unacceptable for a customer to change an address to a P.O. Box or other location not indicative of the customer's true street address and Registered Representatives entering customer address changes of this nature in the record without prior clearance will be subject to further inquiry and asked for a full explanation."

9. Despite the obligations under WestPark's WSP, Datys' New Jersey clients were permitted to change their address of records to New York P.O. Boxes as well as other New York business locations in violation of the standard set out in WestPark's WSP.

10. Despite the obligations under WestPark's WSP, none of the files for Datys' clients who changed their address of record from New Jersey residences to New York business addresses, contained any documentation to offer support for WestPark's verification of the change of address.

11. Additionally, Datys' New Jersey clients continued to receive duplicate account statements at their New Jersey addresses.

WestPark failed to reasonably supervise Datys to detect and prevent his unregistered activities in New Jersey

12. At all relevant times WestPark was obligated to supervise Datys' activities to detect and prevent violation of the securities laws.

13. WestPark failed to supervise Datys' activities in the period after May 2008 in that it did not adequately respond to red flags that should have alerted the firm to Datys' possible unregistered activity relating to the accounts of the New Jersey Clients including the following:

a. WestPark failed to reasonably monitor and respond to written and electronic communications between Datys and his New Jersey Clients relating to their change of addresses and the continuing business activity in the client's accounts; and

b. WestPark approved, without verification, changes of addresses of Datys' former New Jersey accounts from their New Jersey addresses to New York business or P.O. boxes following the entry of the Bureau's Order revoking Datys' registration.

14. With respect to the New Jersey Clients who had changed the addresses on their accounts from their New Jersey residence to a New York business address, WestPark failed to establish and enforce written supervisory procedures necessary to supervise Datys' activities to determine whether or not his offer and sale of securities was directed into New Jersey in violation of the registration provisions of the Securities Law.

15. WestPark failed to inquire whether Datys' continued activities involving New Jersey residents having a New York business address would constitute a violation of the Securities Law. WestPark did not obtain an opinion of counsel, attempt to contact the Bureau or make an inquiry in any way.

CONCLUSIONS OF LAW

The Bureau Chief makes the following conclusions of law:

16. WestPark's failure to verify address changes of clients and by allowing Datys to transact business and communicate with clients who were residents in a state in which Datys was not registered constitutes a failure to reasonably supervise pursuant to N.J.S.A. 49:3-58(2)(xi).

17. Pursuant to N.J.S.A. 49:3-56(a), Datys' transactions in at least nineteen (19) accounts of four (4) New Jersey residents while Datys was not registered with the Bureau constitutes violations of N.J.S.A. 49:3-56(h) for the employment of an unregistered agent and is the basis for the issuance of an Order assessing penalties against WestPark.

ORDER

THEREFORE it is on this 24th day of March 2014, **ORDERED AND AGREED AS FOLLOWS:**

1. Prior to the entry of this Consent Order, WestPark retained the Compliance Consultant to provide a review of WestPark's compliance and supervisory system and to provide compliance and supervisory support as detailed in Appendix A attached hereto. WestPark shall continue to retain this or another compliance consultant, not objectionable to the Bureau to provide the services described in Appendix A for no less than two years from the date of this Order, unless otherwise ordered by the Bureau; and further
2. In the event that the Compliance Consultant is no longer retained by WestPark, WestPark will notify the Bureau within ten business days of the termination and provide the name of the new compliance consultant; and further
3. WestPark shall retain the services of a New Jersey Consultant, not objectionable to the Bureau to review and report on the New Jersey sales and supervisory activities as further detailed in Appendix A for a period of not less than two years from the date of this Order, unless otherwise Ordered by the Bureau; and further

4. In the event that the New Jersey Consultant is no longer retained by WestPark, WestPark will notify the Bureau within five business days of the termination and provide the name of the proposed New Jersey consultant, not objectionable to the Bureau ; and further

5. WestPark shall maintain for ten (10) years copies of all recommendations, reports or other correspondence from both the Compliance Consultant and the NJ Consultant and shall provide such copies upon request from any securities regulator; and further

6. WestPark Capital, Inc. is hereby assessed a civil monetary penalty in the amount of \$50,000 of which \$20,000 is permanently suspended; and further

7. The remaining \$30,000 civil monetary penalty is due upon entry of this Consent Order and payable to “State of New Jersey, Bureau of Securities,” 153 Halsey Street, 6th Floor, Newark, New Jersey 07102, or to be mailed to “Bureau of Securities,” P.O. Box 47029, Newark, New Jersey 07101. The civil monetary penalties shall be deposited in the Securities Enforcement Fund, pursuant to N.J.S.A. 49:3-66.1.

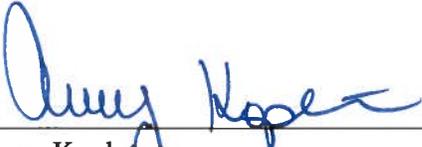
ADDITIONAL PROVISIONS

1. Nothing in this Consent Order shall in any matter be construed to limit or affect the rights of any persons who may have a claim against WestPark.

2. WestPark shall not represent or imply that any business practice or other act or practice hereinafter used or engaged in by WestPark or Datys, has been required or approved, in whole or in part, by the Attorney General of New Jersey, the Bureau, the State of New Jersey or any of the State’s agencies, agents or subdivisions.

3. If any portion of this Consent Order or the Appendix is held invalid or unenforceable by operation of law or court order, the remaining terms of this Consent Order shall remain in full force and effect.

4. Nothing contained herein shall be in any manner be construed to limit or affect any position that the Bureau Chief may take in settlement with any other party.
5. Nothing in this Consent Order is intended to limit or supersede any authority or remedy available to the Bureau Chief under the Securities Law.
6. No employee or official of, or person representing, the New Jersey Bureau of Securities has made any additional promise or representation to WestPark regarding this Consent Order.
7. This Consent Order shall not bind any person not a party hereto. Each of the undersigned has read this Consent Order, understands it, and agrees to be bound by its terms.
8. This Consent Order and the Appendixes hereto constitutes the entire agreement between WestPark, and the Bureau Chief.
9. WestPark agrees that solely for the purpose of settling this matter or any future proceedings to enforce this Consent Order, that this Consent Order shall have the same effect as if proven and ordered after a full hearing.

By: 
Amy Kopleton
Acting Chief, Bureau of Securities

WestPark Capital, Inc.

By: 
Name: Richard Rappaport
Title: CEO

Appendix A

Compliance Consultant will review, spot check and where appropriate recommend updates or changes to:

- On an on-going basis:
 - Advertising and sales literature;
 - Private placement memorandums and or disclosure documents;
 - FINRA filings related to private placement activities of firm;
 - Regulatory inquiries.
- On a monthly basis:
 - Supervision of E-mail correspondence;
- On a quarterly basis:
 - Handling of Customer Complaints;
 - Pending or threatened litigation; ○ Written Supervisory Procedures; ○ Supervisory Control Procedures;
 - Compliance with continuing education requirements;
- On an annual basis:
 - Disclosure of Outside Business Activities and conduct of conflicts reviews;
 - Review employee account statements and personal trading activity;
 - Private securities transactions;
 - Documentation supporting suitability determinations;
 - Employee records;
 - Due diligence records

Compliance Consultant will conduct:

- Annual Compliance Meeting for all registered personnel of WestPark;

- Annual inspection of the following offices:
 - Home Office
 - Florida Offices;
- Annual review and testing of AML Program;
- Annual review and testing of Supervisory Procedures and Processes (FINRA Rule 3012);
- Annual review of outside business activities and conflicts reviews;
- Annual review of documentation supporting suitability determinations;
- Annual review of due diligence activities.

Scope of engagement of the New Jersey Consultant

- On a quarterly basis
 - Confer with management and the Compliance Consultants regarding:
 - Changes in the supervisory structure,
 - Scope of New Jersey business,
 - Regulatory developments
 - Litigation and customer complaints
 - Review West Park's New Jersey activities during the quarter relative to compliance with New Jersey statutes and rules, including:
 - Review and test for compliance with New Jersey registration provisions and review the sales activities and supervision of New Jersey retail business;
 - Examine all New Jersey new accounts opened in the period;
 - Review all changes of address requests for New Jersey related accounts;
 - Review all commission sharing arrangements regarding agents registered in New Jersey, if any;
 - Examine all offices located in New Jersey, if any;
 - Review the activities of Harry Datys for indications of New Jersey business,
 - Review all New Jersey customer complaints and correspondence;
 - Review the reports of the Compliance Consultants and exception reports for red flags indicating further review may be needed;
 - Review and test the supervisory structure responsible for oversight of the New Jersey business and for oversight of Harry Datys