BUSINESS REGISTRATION DIVISION
OFFICE OF ADMINISTRATIVE HEARINGS
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
STATE OF HAWAII

In the Matter of:	)	SEU-2005-041
	)	
JOSEPH W. SULLIVAN, also doing business as THE SWISS GROUP INC.; also known as THE SWISS GROUP LTD.; CHAD S. MORISATO, also doing business as SWISS NATIONAL BANK; "DOE" RESPONDENTS 1 through 10,	)	COMMISSIONER'S FINAL ORDER
	)	
Respondents.	)	
	)	

COMMISSIONER'S FINAL ORDER

On or about November 17, 2008, the duly appointed Hearings Officer submitted his Findings of Fact, Conclusions of Law and Recommended Order in the above-captioned matter to the Commissioner of Securities, Department of Commerce and Consumer Affairs ("Commissioner"). Copies of the Hearings Officer's recommended decision were also transmitted to the parties. On January 15, 2009, written exceptions were filed by Respondent Joseph W. Sullivan. A statement in support of the recommended decision was filed by the Securities Enforcement Branch, Department of Commerce and Consumer Affairs ("Petitioner"), on January 30, 2009. Neither Petitioner nor Respondent Sullivan requested an opportunity to provide oral argument.

After review of the entire record of this proceeding, the Commissioner hereby modifies the Hearings Officer's Findings of Fact with the following exceptions:

1. The Commissioner makes no finding of fact regarding the Hearing Officer's Finding of Fact 22.a. "Respondents falsely represented that Respondent Sullivan had a background in banking;"

2. The Commissioner makes an additional finding of fact that Respondents falsely misrepresented that Respondent Sullivan was a certified public accountant and that this representation was an untrue statement of material fact, in connection with the offer, sale or purchase of securities in Respondent's programs.

The Commissioner determines that the Hearings Officer's Findings of Fact as modified by the Commissioner's exceptions, in the aggregate, continue to support the Hearings Officer's Conclusions of Law and Recommended Order.

The Commissioner hereby adopts the Hearings Officer's Findings of Fact as modified by the Commissioner's exceptions, Conclusions of Law and Recommended Order as the Commissioner's Final Order. Accordingly, the Commissioner finds and concludes that the preponderance of the evidence established that Respondents Joseph W. Sullivan, also doing business as The Swiss Group Inc., also known as The Swiss Group Ltd., and Chad S. Morisato, also doing business as Swiss National Bank ("Respondents") violated Hawaii Revised Statutes §§485-8, 485-14, and 485-25(a)(1), (2), (3), and (7), and orders that the Preliminary Order to Cease and Desist issued herein on December 8, 2006, and the sanctions assessed therein against these Respondents, be affirmed in its entirety.

DATED: Honolulu, Hawaii: APR - 7 2008.

TUNG CHAN
Commissioner of Securities
Department of Commerce and
Consumer Affairs

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Respondents.	)	
	)	

HEARINGS OFFICER'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDED ORDER

I. INTRODUCTION

On December 8, 2006, the Commissioner of Securities, Department of Commerce and Consumer Affairs ("Commissioner"), issued a Preliminary Order to Cease and Desist and Notice of Right to Hearing against Respondents Joseph W. Sullivan , also doing business as The Swiss Group Inc., also known as The Swiss Group Ltd. , Daryn K. Murai, and Chad S. Morisato, also doing business as Swiss National Bank.

By letter dated December 19, 2006, the named Respondents, by and through their attorneys, Dandar Suemori, LLLC, filed a written request for hearing pursuant to the provisions of Hawaii Revised Statutes ("HRS") §485-18.7. The matter was set for hearing, and the notice of hearing and pre-hearing conference was transmitted to the parties.

On March 12, 2007, James P. Dandar, Esq. and Jay T. Suemori, Esq. and the law firm of Dandar Suemori, LLLC, withdrew as counsel for Daryn K. Murai ("Murai"). Neal K. Aoki, Esq. and the law firm of Koshiba Agena & Kubota entered their appearance as Murai's attorneys.

The hearing in the above-captioned matter was convened by the undersigned Hearings Officer in accordance with HRS Chapters 91, 92 and 485 on January 8, 2008, continued through January 11, 2008, reconvened on January 15, 16 and 29, 2008 and was concluded on February 27, 2008. Carolyn M. Yu, Esq. appeared for Petitioner Securities Enforcement Branch, Department of Commerce and Consumer Affairs, State of Hawaii ("Petitioner"); James P. Dandar, Esq. and Jay T. Suemori, Esq. appeared on behalf of Respondents Joseph W. Sullivan, also doing business as The Swiss Group Inc., also known as The Swiss Group Ltd., and Chad S. Morisato, also doing business as Swiss National Bank ("Respondents"). Neal K. Aoki, Esq. appeared for Murai.

On February 1, 2008, Petitioner filed a Stipulation and Order to Dismiss Preliminary Order to Cease and Desist Dated December 8, 2006 as to Murai.

At the close of the hearing, the parties were directed to file written closing arguments and proposed findings of fact and conclusions of law. Petitioner filed its argument and proposed findings and conclusions on May 16, 2008. Respondents filed their closing arguments and proposed findings and conclusions on August 5, 2008. On September 9, 2008, Petitioner filed a reply brief and a response to Respondents' proposed findings and conclusions.

Having reviewed and considered the evidence and argument presented at the hearing, together with the entire record of this proceeding, the Hearings Officer hereby renders the following findings of fact, conclusions of law and recommended order.

II. FINDINGS OF FACT

As a preliminary matter, the proposed findings of fact and conclusions of law filed by the parties have been considered. To the extent that the proposed findings and

conclusions are in accordance with the findings and conclusions stated herein, they have been accepted, and to the extent that they are inconsistent, they have been rejected. Certain proposed findings and conclusions have been omitted as the Hearings Officer determined them to be irrelevant to a proper determination of the material issues presented.

1. Respondent The Swiss Group Inc., also known as The Swiss Group Ltd. ("The Swiss Group") is a Hawaii corporation with its last known business address at 350 Ward Avenue, Honolulu, Hawaii.

2. Respondent Joseph W. Sullivan ("Sullivan") was, at all times relevant herein, the chief executive officer, president, secretary, treasurer, director and registered agent for Respondent The Swiss Group.

3. Murai was, at all times relevant herein, a vice-president, representative and agent for Respondent The Swiss Group.

4. Respondent Chad S. Morisato ("Morisato") was, at all times relevant herein, a vice-president, representative and agent for Respondent The Swiss Group.

5. At all times relevant herein, Respondent Morisato was also doing business as Respondent Swiss National Bank ("SNB") with a website address of: "www.swissnationalbank.com".

6. From 1997 through April 30, 2007, Respondents offered and/or sold to Hawaii residents and nonresidents, investment programs ("Programs")[1] that had been established by Respondents in connection with Respondent The Swiss Group.

7. From 1997 through April 30, 2007, Respondents established and provided the organizational structure, policies, rules, procedures, promotional materials, website access, investment account statements, and other information and materials regarding their Programs. Respondents also arranged for meetings and presentations, distributed interest payments and returned principal payments, and issued account statements, in connection with the Programs.

[1] These Programs were established and/or offered by Respondents through or in connection with "DCM Investments", Respondent The Swiss Group, and "Client Trust Funds".

8. From 1997 through April 30, 2007, the Programs were administered under the direction and control of Respondent Sullivan.

9. From 1997 through April 30, 2007, Respondents organized, conducted and personally participated in presentations and meetings in Hawaii for the purpose of offering and selling Respondents' Programs to Hawaii residents and nonresidents.

10. From 1997 through April 30, 2007, Respondents retained control of all documents in connection with the Programs, including, but not limited to, client lists, individual investment information, interest accrual and distribution, and principal payouts.

11. From 1997 through April 30, 2007, Respondents obtained checks and wire transfers directly from investors and disbursed monies to investors who participated in their Programs.

12. From 1997 through April 30, 2007, Respondents' Programs were based on a scheme where new investors were needed to invest in Respondents' Programs in order for prior investors to be paid their interest or principal at the end of the investment period.

13. By December 2006, following the issuance of the Commissioner's Preliminary Order to Cease and Desist, Respondents' scheme collapsed resulting in a number of investors losing some or all of their investment.

14. From 1997 through April 30, 2007, Respondents offered and sold investment contracts and stock in Respondent SNB.

15. James Ronan, a Massachusetts resident, invested $5,000.00 and $15,000.00 in 1997 and 2005 respectively, in Respondents' Programs and received a "Certificate of Deposit" purportedly from the "Bank of the Bahamas".

a. Ronan's initial payments were intended to secure income or profit from its employment in Respondents' Programs.

b. Respondents guaranteed Ronan an 8% return on his initial investments in the Programs.

c. Respondents offered and sold to Ronan, a "Bank of Bahamas" Certificate of Deposit.

d. Respondents retained control over the managerial decisions and operations of Respondents' Programs in connection with Ronan's investments.

16. In or around May 2000, Respondents offered and sold to Murai stock in SNB.

17. Between 1999 and 2006, Murai invested approximately $235,000.00 in Respondents' Programs.

a. Murai's initial payment was intended to secure income or profits from its employment in Respondents' Programs.

b. Respondents offered Murai a return on his investment that was higher than his original investment amount.

c. Murai had no practical or actual control over the managerial decisions and operations of Respondents' Programs.

18. Between 1997 and April 30, 2007, Hawaii residents and nonresidents invested, and Respondents received approximately $8.1 million in investments for Respondents' Programs.

a. Hawaii resident and nonresident investments were intended to secure income or profits from their employment in Respondents' Programs.

b. In order to induce investors to invest in the Programs, Respondents offered interest rates and returns on their investments that were higher than those offered by commercial banks in Hawaii.

c. None of the Hawaii resident and nonresident investors had any practical or actual control over the managerial decisions and operations of Respondents' Programs.

19. From 1997 through April 30, 2007, Respondents' Programs were not registered with the Commissioner and were not exempt from registration.

20. From 1997 through April 30, 2007, Respondents were acting either as an issuer for their own securities or as a dealer or salesperson of the securities.

21. From 1997 through April 30, 2007, Respondents were not registered as salespersons or dealers of securities with the Commissioner nor were Respondents exempt from registration.

22. Respondents made untrue statements of material fact and omitted to state material facts in connection with the offer, sale or purchase of securities in Respondents' Programs:

a. Respondents falsely represented that Respondent Sullivan had a background in banking;

b. Respondents falsely represented that Respondent Sullivan was a former bank investigator under the Kennedy Administration;

c. Respondents falsely represented that Respondent Sullivan had a background in offshore finance;

d. Respondents falsely represented that Respondent Sullivan came to Hawaii to represent the National Football League ("NFL") in opening a franchise in Hawaii;

e. Respondents falsely represented to investors that their Programs were "safe", "secure", that interest payments were "guaranteed", and investors could withdraw their interest or demand the return of their principal at anytime prior to the investment termination date;

f. Respondents falsely represented that their Programs invested money "offshore" or outside of the United States for tax advantage purposes;

g. Respondents failed to disclose that investors' monies had not been placed "offshore" or outside of the United States or into foreign banks;

h. Respondents failed to disclose that investors' monies went directly to Respondent Sullivan as follows:

(1) $2,397,351.34 was transferred from Respondent The Swiss Group's bank account into Respondent Sullivan's personal checking account;

(2) $331,500.00 in checks were cashed by Respondent Sullivan; and

(3) $834,170.00 in cashier's checks was purchased from Respondent The Swiss Group's checking account by Respondent Sullivan.

i. Respondents failed to disclose that investors' monies were used to pay for Respondent Sullivan's personal living expenses, fund his securities trade accounts that

25. Respondents failed to disclose that Respondent Sullivan had filed for bankruptcy in the United States Bankruptcy Court in the District of Hawaii in 1999.

26. Between 1997 and April 30, 2007, Respondent Morisato applied for a "DCM Investments" general excise taxpayer identification number using the "Donald Allen" social security number provided by Respondent Sullivan.

27. From 1997 through April 30, 2007, Respondent Morisato obtained a Central Pacific Bank business checking account for "DCM Investments" using the "Donald Allen" social security number.

28. Respondents did not file a copy of their advertising materials for Respondent The Swiss Group's internet website address: www.theswissgroupltd.com, printed brochures for The Swiss Group and SNB; and Respondent The Swiss Group business cards for Respondents Sullivan and Morisato, with the Commissioner.

29. Investors Russell Shimooka, John Newman, Guy Moncrief, Daryn Murai, Carolyn Gillum, Tin Yao Goo, Ken Kuroiwa, Liann Shigemi, Kathie and Reyn Yamashiro, Brian Teramae, Clives LaBoy, and Thomas and Josef Wolfgruber have not received the repayment of their investments notwithstanding demands to Respondents.

III. CONCLUSIONS OF LAW.

If any of the following conclusions of law shall be deemed to be findings of fact, the Hearings Officer intends that every such conclusion of law shall be construed as a finding of fact.

Petitioner contends that investments in Respondents' Programs were "securities" as defined in the Hawaii Uniform Securities Act (Modified), HRS Chapter 485 ("Act"); that Respondents offered or sold those securities to Hawaii residents and nonresidents; and that in doing so, Respondents committed or engaged in the following violations of the Act:

1. Respondents failed to register said securities in violation of HRS §485-8;

Respondent Sullivan possessed and controlled, and pay for a luxury condominium at "The Hokua", located at 1288 Ala Moana Boulevard, Honolulu, Hawaii;

j. Respondents failed to disclose that they were not authorized to use the terms, "Swiss" and "Bank" by the Swiss Federal Banking Commission in Switzerland;

k. Respondents failed to disclose that Respondent SNB was not a bona fide commercial bank;

l. Respondents failed to disclose that Respondent Sullivan had been previously convicted for larceny and check forgery;

m. Respondents failed to disclose that Respondent Sullivan used an alias and obtained a California identification card under the name, "Donald Elbert Allen";

n. Respondents failed to disclose that Respondent Sullivan signed investors' investment certificates using his alias, "Donald Allen";

o. Respondent Sullivan falsely represented that he was a certified public accountant;

p. Respondents failed to disclose that investors' monies were deposited into Respondents' commodities and securities trading accounts for the purchase and sale of options in the commodities market, such as gold, silver, coffee, soy beans and securities rather than placed in bank certificates of deposits as represented;

q. Respondents failed to disclose to investors the risks associated with the purchase and sale of commodities and/or securities;

r. Respondents failed to disclose that Respondents' securities were not registered or exempt from registration with the Commissioner; and

s. Respondents failed to disclose that Respondents were not registered or exempt from registration, as either securities dealers or salespersons, with the Commissioner.

23. From 1997 through April 30, 2007, Respondent Sullivan obtained a social security identification number, "XXX-XX-3769", under the name "Donald Elbert Allen".

24. Respondents failed to disclose that Respondent Sullivan had used his alias, "Donald Elbert Allen", and social security number "XXX-XX-3769", in filing for bankruptcy in the United States Bankruptcy Court in the District of Hawaii in 1999.

2. Respondents were not registered as securities dealers and/or salesperson in violation of HRS §485-14;

3. Respondents employed devices, schemes, and/or artifices to defraud in violation of HRS §485-25(a)(1);

4. Respondents made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, in violation of HRS §485-25(a)(2);

5. Respondents engaged in acts, practices and/or a course of business which operates or would operate as a fraud or deceit upon a person in violation of HRS §485-25(a)(3); and

6. Respondents, in making the aforesaid representations, caused to be issued, circulated, or published advertising material which was not previously filed with the Office of the Commissioner nor exempted by rule or order from said filing requirement in violation of HRS §485-25(a)(7).

A. Investment in Respondents' Programs As Securities.

In *Hawaii Market Center*, the Hawaii Supreme Court rejected the "restrictive formula" set out in *SEC v. W.J. Howey Co., 328 U.S. 293 (1946)* to test for the existence of an "investment contract." The court held that an investment contract is created whenever the following factors were present:

1. An offeree furnishes initial value to an offeror;

2. A portion of this initial value is subjected to the risks of the enterprise;

3. The furnishing of the initial value is induced by the offeror's promises or representations which give rise to a reasonable understanding that a valuable benefit of some kind, over and above the initial value will accrue to the offeree as a result of the operation of the enterprise; and

4. The offeree does not receive the right to exercise practical and actual control over the managerial decisions of the enterprise.

Id. at 649.

The court adopted this broad test in recognition of the remedial purpose of the state securities laws in preventing fraud and protecting the public against unsubstantial schemes. The court designed this test to protect the public against both novel forms of investment as well as more conventional forms of investments, and stated that the formula was to be broadly construed for these purposes.

1. Investors furnished initial value to Respondents.

The first element of the *Hawaii Market Center* four-prong test, "an offeree furnishes initial value to an offeror," has been met since investors invested over $8 million in Respondents' Programs.

2. A portion of the initial value is subjected to the risks of the enterprise.

The evidence established that the interest payments promised to investors on their investments were not guaranteed; rather the payments were dependent upon new investors investing in Respondents' Programs in order for prior investors to be paid their interest or principal at the end of the investment period. The evidence also proved that by December 2006, this scheme collapsed resulting in investors losing some or all of their investment. Clearly, the monies paid by investors in order to derive income from its use in the enterprise were put at risk in the event the enterprise failed.

3. Investors were induced to invest in Respondents' Programs based on a reasonable belief that they would receive a valuable benefit beyond the initial value paid.

According to the evidence, investors were induced to invest in Respondents' Programs by promises and representations that participation in the Programs would result in a valuable benefit beyond their initial value. For example, Respondents offered investors

guaranteed interest rates between 6% and 20% for short-term investment periods ranging from one to five years. Such "guarantees" caused investors to reasonably believe that they would receive a valuable benefit beyond their initial investment, satisfying the third prong of the *Hawaii Market Center* test.

4. Investors had no practical or actual control over Respondents' Programs.

The evidence also established that investors received no practical or actual control over the managerial decisions of Respondents' Programs. In fact, according to the evidence, investors were unaware of where their money went once they invested it with Respondents. Instead, the only person who controlled the investments in Respondents' Programs was Respondent Sullivan. Respondent Sullivan collected the money and was the sole signatory on Respondent The Swiss Group's checking account which allowed Respondent Sullivan to transfer approximately $3.4 million into his personal accounts to purchase personal and real property. Thus, the fourth prong of the *Hawaii Market Center* test is satisfied.

Accordingly, Petitioner has shown by a preponderance of the evidence that investments in Respondents' Programs constituted "investment contracts" and therefore are deemed "securities" under the Act.[2] As such, these transactions are subject to regulation under the Act.

B. Securities Registration.

The preponderance of the evidence established that Respondents offered to sell and sold securities to Hawaii residents and nonresidents from 1997 through April 2007 through their Programs. The evidence further established that these securities were not registered with the Commissioner. Therefore, Respondents violated HRS §485-8.

C. Salesperson and Dealer Registration.

A securities salesperson or dealer must be registered with the Commissioner before transacting securities business in Hawaii under HRS §485-14. Respondents' active involvement in the Programs through their solicitation, promotion, and sale, constitutes the transaction of business involving securities in Hawaii. In making offers and sales of the

[2] Respondents' closing arguments did not directly challenge Petitioner's assertions that Respondents' Programs constituted securities transactions or that Respondents had acted as salespersons, dealers, investment advisers or investment adviser representatives in connection with these transactions, as defined in HRS Chapter 485.

Programs to Hawaii residents and nonresidents, Respondents acted as securities salespersons or dealers within the meaning of HRS §485-1(2) and (3). According to the evidence, however, Respondents were not duly registered securities salespersons or dealers. Thus, Respondents also violated HRS §485-14.

D. Securities Fraud.

Petitioner has also charged that Respondents engaged in fraudulent practices in violation of HRS §485-25(a)(1), (2), (3) and (7). HRS §485-25 provides in relevant part:

> §485-25. Fraudulent and other prohibited practices.
>
> (a) It is unlawful for any person, in connection with the offer, sale, or purchase (whether in a transaction described in section 485-6 or otherwise) of any security (whether or not of a class described in section 485-4), in the State, directly or indirectly:
>
> (1) To employ any device, scheme, or artifice to defraud;
>
> (2) To make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading;
>
> (3) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person;
>
> * * * *
>
> (7) To issue, circulate, or publish any advertising matter unless a copy thereof has been previously filed with the office of the commissioner, or unless the commissioner has by rule or order exempted the filing of any advertising material.

The foregoing provisions mirror portions of the fraud provisions of Section 17(a) of the Securities Exchange Act of 1933. Interpretation of Hawaii's codification of securities fraud should be interpreted, where similar, in the same manner as the federal courts and the Securities and Exchange Commission have interpreted the federal counterpart.

The requirement for "scienter" in subsection (a)(1) of HRS §485-25 may be satisfied by a showing of a reckless disregard for the truth. It is not necessary to find that a misrepresentation or omission of material fact was made wilfully or maliciously in order to conclude that a violation of HRS §485-25(a)(1) has occurred. Such a violation will be sustained if the misrepresentation or omission was made recklessly. Proof of such recklessness may be based upon inferences from circumstantial evidence. *See Securities & Exchange Commission v. Burns, 816 F.2d 471 (9th Cir. 1987).*

A violation of HRS §485-25(a)(2) and (a)(3) occurs when there is any untrue statement of a material fact or any omission to state a material fact. A fact is considered material for purposes of Hawaii securities laws "if there is a substantial likelihood that its disclosure would have been considered significant by [a] reasonable investor." *See, e.g., Basic Inc. v. Levinson, 485 U.S. 224, 231, 108 S.Ct. 978, 983, 99 L.Ed.2d 194 (1988). See also, T.S.C. Industries, Inc. v. Northway, Inc., 426 U.S. 438 (1976).* As with Sections 17(a)(2) and (a)(3) of the Securities Exchange Act of 1933, scienter is not required for a violation of HRS §§485-25(a)(2) and (3). *See, e.g. Aaron v. Securities & Exchange Commission, 100 S.Ct. 1945 (1980); Securities & Exchange Commission v. Murphy, 626 F.2d 633 (9th Cir. 1980); and Securities & Exchange Commission v. Blazon Corp., 609 F.2d 960, 965 (9th Cir. 1979).*

In this case, Respondents made numerous false statements and omissions of material facts, including, but not limited to the following:

1. Failing to disclose that investments in Respondents' Programs were "securities" and that those securities had not been registered with the Commissioner;

2. Respondents were not registered as securities salespersons or dealers with the Commissioner;

3. Respondents' Programs were "safe" and interest payments were "guaranteed";

4. Material false statements were made about Respondent Sullivan's credentials - that he was a former bank investigator in the Kennedy Administration and that he came to Hawaii to start an NFL franchise;

5. Respondents failed to disclose that Respondent Sullivan had been convicted for larceny and forgery;

6. Respondents failed to disclose that Respondent Sullivan had obtained and used an alias, "Donald Allen," in signing investors' "investment certificates";

7. Respondents failed to disclose that they placed investors' monies in the commodities options market when Respondents were not registered to do so;

8. Respondents failed to disclose that investors' monies were used to pay for Respondent Sullivan's personal expenses, including, but not limited to, the purchase of a luxury condominium; and

9. Respondents falsely represented to investors that their monies would leave the United States and be deposited "off-shore".

The foregoing clearly establishes that Respondents made numerous untrue statements of material facts and omitted to state material facts necessary to make statements made not misleading, and also engaged in acts and practices which operated as a fraud upon investors, in violation of HRS §§485-25(a)(2) and (3).

The Hearings Officer further concludes that Respondents employed a device or scheme to defraud investors in Hawaii in the form of their Programs. Respondents induced investors to invest in their Programs by promising a "legitimate" and "guaranteed" return on their investments at rates that were higher than commercial banks and falsely represented that their investments would be invested offshore or outside of the country for tax advantage purposes. The monies, however, were never invested offshore or abroad or deposited with any foreign banks. Instead, the monies were used to make "interest" payments to other investors, to pay for Respondent Sullivan's personal expenses, and to purchase options in the commodities market, all without the knowledge of the investors. Moreover, Respondents issued documents that closely resembled commercial bank certificates of deposits for the obvious purpose of creating the appearance of legitimacy and authenticity of their Programs. Respondents referred to the certificates as "investment certificates", and the certificates bore a gold-stamped seal and were signed by Respondent Sullivan as "Donald Allen". These actions prove not only that Respondents employed a scheme to defraud investors but also, did so with a malicious intent. Based on these

considerations, the Hearings Officer concludes that Respondents violated HRS §485-25(a)(1).

Petitioner has also alleged that Respondents violated HRS §485-25(a)(7). It is a fraudulent practice in Hawaii to issue, circulate, or publish any advertising material in connection with the offer, sale, or purchase of any security unless a copy of the advertising material is first filed with the Commissioner or exempted therefrom under HRS §485-25(a)(7). The evidence established that Respondents issued, circulated, and/or published Respondent The Swiss Group's internet website, printed brochures and tri-folds for Respondents The Swiss Group and SNB, and Respondent The Swiss Group's business cards for Respondents Sullivan and Morisato. These materials, however, were not previously filed with the Commissioner or exempted from said filing in violation of HRS §485-25(a)(7).

IV. RECOMMENDED ORDER.

For the reasons set forth above, the Hearings Officer recommends that the Commissioner find and conclude that the preponderance of the evidence established that Respondents violated HRS §§485-8, 485-14, 485-25(a)(1), (2), (3), and (7) of the Act and that the Preliminary Order to Cease and Desist issued by the Commissioner as to the remaining Respondents, and the sanctions assessed therein against these Respondents, be affirmed in its entirety.[3]

Dated: Honolulu, Hawaii, NOV 18 2008

CRAIG H. UYEHARA
Administrative Hearings Officer
Department of Commerce
and Consumer Affairs

[3] The $1 million fine imposed by the Commissioner is not unreasonable given Respondents' malicious intent as evidenced, in part, by Respondents' numerous blatant material omissions and false statements made for the purpose of inducing investors to invest in their Programs, and the transfer of over $3 million of investors' monies to Respondent Sullivan's personal account and the use of $530,282.00 of those funds to purchase a luxury condominium. The fine is also supported by the fact that Respondents essentially received approximately $8 million from the illegal sales of unregistered securities, netted gains of at least $3,398,118.00, and paid investors only $643,273.00 in interest and principal. Moreover, there was evidence that some investors may lose their entire investments totaling approximately $3.5 million.