STATE OF MICHIGAN
MICHIGAN DEPARTMENT OF ENERGY, LABOR AND ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE REGULATION

Before the Commissioner of the Office of Financial and Insurance Regulation

In the matter of: **Enforcement Case No. 10-7562**

Office of Financial and Insurance Regulation
Petitioner,

v

Scott D. Pionk

Select Financial Group

Respondents.
_____/

ORDER TO CEASE AND DESIST

Issued and entered
this 7th day of April 2010
by Ken Ross
Commissioner

The Commissioner of the Office of Financial and Insurance Regulation ("OFIR"), pursuant to his statutory authority and responsibility to administer and enforce the Michigan Uniform Securities Act ("MUSA"), 1964 PA 265, MCL 451.501 *et seq.*, hereby orders **SCOTT D. PIONK AND SELECT FINANCIAL GROUP** to immediately **CEASE AND DESIST** from engaging in the offer and sale of securities without first obtaining a registration of said securities, and to cease and desist from engaging in securities transactions as unregistered agents and/or broker-dealers. Respondents are also notified of an opportunity to request a hearing on this matter.

I.

BACKGROUND AND FINDINGS OF FACT

1. Respondent Scott D. Pionk ("Pionk") is a resident of Clinton Township, Michigan. From October 2003 through March 2009 he was employed with Michigan Securities, Inc. ("MSI"). He was registered with OFIR as being a

securities agent associated with MSI, a broker-dealer firm that is also registered with OFIR. His principal place of business was located in Clinton Township. Pionk's securities were not registered with OFIR, nor were its offerings.

2. Respondent Select Financial Group ("SFG") is an unincorporated business with its principal place of business located in Clinton Township. Pionk serves as SFG's president and manager. SFG has never been registered with OFIR as a broker-dealer or as being associated with a broker-dealer firm that is registered with OFIR. SFG's securities were not registered with OFIR, nor were its offerings.

3. Pionk was employed as a registered representative with MSI from October 2003 through March 2009 and during his employment with MSI he sold various securities products to investors including mutual funds. Pionk induced or otherwise caused investors to purchase securities in offerings that were not recorded on the records of MSI, his employing broker-dealer. Moreover, such securities were not registered with OFIR, provided inadequate disclosures to investors and perpetrated a fraud upon investors who suffered substantial monetary losses.

4. More specifically, between January 2003 and June 2009, Pionk individually and through his business SFG, offered and sold bonds for a program entitled "Government Properties Trust". The purpose of the investment was to use the money to acquire, own and manage real estate subject to long-term leases with United States government agencies.

5. Pionk created SFG for the sole purpose of accepting funds to invest in the bond program. SFG has no other known business purpose. The bond certificates that Pionk gave to investors were titled "Select Financial Group Government Properties Trust", and another document was titled "Government Properties Group LLC Fixed Income Series Unit Investment Trust". The bond certificate acknowledged that SFI was receiving funds from the investor. The certificate states "Select Financial Group, a Michigan Company (the "Company"), promises to pay to the registered owner ... the principal amount specified above in lawful money of the United States of America on the date of maturity specified above, with interest from the date of original issue until such principal is paid at the rate per annum specified above on the basis of a 360 day year consisting of 12 months of 30 days each. Interest will be paid on the bond annually, on the anniversary date, reinvested to the registered owner's account, as shown on the registration books of the company as of the close of business on the 27th day of the money preceding any interest payment date."

6. Pionk promoted the bonds as legitimate investments to individuals who were his clients through his MSI business relationships and other contacts. OFIR has identified that at least 14 investors, of which five were also MSI clients. Each one of them issued one or more personal checks to invest with SFG. The investor

received no financial statements, risk disclosures, or certain other related material disclosures that would have been material to a reasonable investor prior to investing.

7. Additionally, the investors were not told that their investment money would be used to pay Pionk's personal expenses, or that the money would be used in Ponzi fashion to pay the interest or principal payments due to other investors. They were not told their money would be commingled in Pionk's personal and business accounts unrelated to the bond investment.

8. Pionk's bank records indicate that from January 2003 through June 2009, Pionk deposited approximately $2,088,960 of investor proceeds into two separate bank accounts owned and controlled by Pionk. During the same time frame, Pionk paid out approximately $538,400 to investors.

9. From one bank account, Pionk and SFG returned to investors a small portion of their principal investment. However, an examination of their records show that substantially all of the remaining funds were withdrawn in the form of ATM cash withdrawals from metro Detroit casinos and other funds were transferred to Pionk's personal credit union account.

10. A total of $2.08 million was received by Pionk and SFG for investment in the above-mentioned bond program. OFIR has not identified a legitimate use of the investor proceeds.

11. The only way Pionk and SGF could hope to keep their investors at peace with respect to their investment was to siphon the proceeds of new investors to repay earlier investors. Although the investors have demanded repayment of their principal, Pionk and SFG are unable to repay the money.

12. Because Pionk lied to investors and misappropriated their money Michigan citizens have been financially harmed.

II.

CONCLUSIONS OF LAW

A. Violations of Section 301, MCL 451.701, of the Securities Act.

1. A security is defined in Section 401(z) of the Act, MCL 451.801(z), to mean any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting-trust certificate; or certificate of deposit for a security; certificate of interest or participation in an oil, gas, or mining title or lease ...or, any contractual or quasi contractual arrangement pursuant to which (1) a person

furnishes capital, other than services, to an issuer; (2) a portion of that capital is subjected to the risks of the issuer's enterprise; (3) the furnishing of that capital is induced by the representations of an issuer, promoter, or their affiliates which give rise to a reasonable understanding that a valuable tangible benefit will accrue to the person furnishing the capital as a result of the operation of the enterprise; (4) the person furnishing the capital does not intend to be actively involved in the management of the enterprise in a meaningful way; and (5) a promoter or its affiliates anticipate, at the time the capital is furnished, that financial gain may be realized as a result thereof.

2. By definition a bond is a security under Section 401(z) of the MUSA, MCL 451.801(z), the offer or sale of which must be registered or exempt pursuant to Section 301 of the MUSA, MCL 451.301.

3. Additionally, pursuant to *SEC v. W.J. Howey Co.,* 328 U.S. 293 (1946), an investment contract exists if there is present "an investment of money in a common enterprise with profits to come solely from the efforts of others." *Id.* at 301. An investment contract is a security under Section 401(z) of the MUSA, MCL 451.801(z), the offer or sale of which must be registered or exempt pursuant to Section 301 of the MUSA, MCL 451.301.

4. The investments offered by Scott Pionk and SFG meet the definition of an investment contract as set forth in Section 401(z) and in *Howey*. Pionk's MSI clients and others invested money in the bond program promoted, recommended and offered by Pionk either individually or through SFG with the expectation of profit generation. Notwithstanding, the representations of interest returns, the investors bore 100% of the risk of loss each time they invested money with Pionk and SFG. The investors were entirely passive with respect to realizing a profit on their investments. The investors had no connection to the issuers of the securities.

5. Moreover, Pionk was instrumental in inducing MSI clients and others to invest their monies in the bonds he offered and sold. Pionk, individually and through his business SFG, exploited his prior business relationship with his clients to promote the securities by misrepresenting that the securities were legitimate. Pionk, individually and through his business SFG, represented that he intended to pay interest annually and return the principal upon maturity, which the investors interpreted to mean financial benefits would inure to them.

6. There is a common enterprise because investors are dependent on Pionk and SFG to facilitate receipt and transfer of funds, complete subscription agreements, invest the proceeds into to their alleged bond program, and disburse the principal and interest payments. All the investors would be negatively affected if Pionk and SFG were ineffective in following their alleged investment plan. A common enterprise also exists because Pionk and SFG were earning undisclosed percentages of the investment dollars received in the form of direct compensation. Finally, the investors are totally dependent upon the efforts of Pionk and SFG for

the realization of any return on their investment. As mentioned earlier, the investors had to rely solely on Pionk and SFG to transact each investment and repayment.

7. OFIR staff conducted a search to locate records of any registration or exemption filings pursuant to the MUSA related to Scott D. Pionk and Select Financial Group. No such records were found for them, or their securities.

8. As a result of the conduct described above, Scott Pionk and Select Financial Group violated Section 301 of the MUSA, which states it is unlawful for any person to offer or sell any security in this state unless the security is registered or exempt under the Act.

B. Violations of Section 101, MCL 451.501 of the Securities Act.

9. Section 101 of the MUSA provides "it is unlawful for any person, in connection with the offer, sale or purchase of any security, directly or indirectly to:
   - employ any device, scheme, or artifice to defraud,
   - make any untrue statement of a material fact or to 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,
   - engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person."

10. Pionk and SFG committed acts and caused events to happen to bring about the sale of securities in a way that defrauded Michigan residents by taking investment money in exchange for unlawful securities.

11. More specifically, Pionk and SFG took investment money and did not invest the money according to the terms of the investment contract, nor did they repay money as promised. The Respondents used the money for personal gain and benefit, and to repay earlier investors in Ponzi style.

12. Respondents also made untrue statements of material facts or failed to state material facts necessary in order to keep the statements made, in the light of the circumstances under which they were made, from being misleading and which would have been material to a reasonable investor prior to investing.

13. More specifically, the Respondents, in exchange for money, gave investment contracts on investments without disclosing the financial condition of the entities, risks associated with the investment, and fees and commissions assessed.

14. Based on the foregoing, the Respondents violated Section 101 of the MUSA where they took money in an investment scheme from Michigan residents in

exchange for unregistered, nonexempt securities without providing the financial condition of the entities, risks associated with the investment, and fees and commissions assessed.

15. Further the Respondents violations of Section 101 of the MUSA, where they did not invest the money as they represented they would, paid later investors from earlier investors, and did not keep the investor informed on matters concerning the investment are all demonstrative of engaging in acts, practices, or a course of business which operated as a fraud upon Michigan investors.

C. Violations of Section 204, MCL 451.604 of the Securities Act.

16. Section 204(a)(1)(G) of the MUSA, states that the administrator may by order, if it finds the order in the public interest, deny, suspend, or revoke any registration, or censure a registrant, if the registrant has engaged in dishonest or unethical business practices.

17. Scott Pionk violated Section 204(a)(1)(G) when he engaged in dishonest and unethical business practices when Pionk through SFG solicited and sold unlawful investments to individuals who were his clients through his MSI business relationships; when he failed to provide disclosures that would have been material to a reasonable investor prior to investing; when he failed to tell investors that their money would be used to pay for personal expenses, or that the money would be used in Ponzi style to pay the interest or principal payments due to earlier investors; and, when he failed to use investment proceeds for the purposes the investors believed he would.

18. Section 204(a)(1)(X) of the MUSA, states that the administrator may by order, if it finds the order in the public interest, deny, suspend, or revoke any registration, or censure a registrant, if the registrant has, while a registered agen,t made unauthorized use of the funds of customers.

19. Pionk violated Section 204(a)(1)(X) when he deposited client funds into accounts that he either owned or controlled.

20. Section 204(a)(1)(Y) provides that while registered as an agent is prohibited from effecting securities transactions when those transactions were not recorded on the records of the employer broker dealer.

21. Pionk violated Section 204(a)(1)(Y) when he did not inform MSI that he was effecting transactions in securities that were offered by him through his business SFG, and when none of the transactions were recorded on the records of MSI.

WHEREAS, Section 408 of the MUSA, MCL 451.808, states that whenever it appears to the Administrator (Commissioner of the Office of Financial and Insurance

Regulation) that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this Act or any rule or order hereunder, he may in his discretion issue a cease and desist order or bring an action in a circuit court to enjoin the Act or practices and to enforce compliance with this Act or any rule or order hereunder; and

WHEREAS, the Administrator finds this Order necessary and appropriate in the public interest, for the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the MUSA; and

WHEREAS, the Administrator retains the right to pursue further administrative action against Respondents should the Administrator determine that such action is necessary and appropriate in the public interest, for the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the MUSA, and may include but not be limited to bringing an action in circuit court to enjoin the acts and practices of the Respondents and upon proper showing seek an order to require an accounting or disgorgement of ill-gotten gains; and

WHEREAS, based on the foregoing, OFIR Staff recommends that the Administrator find that Respondents have engaged in acts and practices that violate Sections 101, 204, and 301 of the MUSA.

III.

ORDER

IT IS THEREFORE ORDERED, pursuant to Section 408 of the Act, MCL 451.808, and Section 409 of the Act, MCL 451.809, that:

1. Respondents shall immediately **CEASE AND DESIST** from violating Sections 101, 204, and 301 of the MUSA.

2. Based upon Respondent Pionk's violation of the MUSA and because the Administrator finds that it would be in the public interest, that any registrations currently held under Section 201 of the MUSA, MCL 451.601 for which Respondent still retains, are hereby **REVOKED** pursuant to Section 204(a), MCL 451.604(a).

3. Based upon Respondents' violations of the MUSA and because the Administrator finds that it would be in the public interest, any exemptions under Section 402(a)(1), (6), (7), (8), (9), (10), and 402(b) of the MUSA, MCL 451.802(a)(1), (6), (7), (8), (9), (10), and 451.802(b) for which Respondents might qualify, are hereby **SUMMARILY DENIED AND REVOKED** for all purposes provided under Section 408(c) of the MUSA, MCL 451.808(c), including but not limited to Respondents' right to engage in transactions otherwise exempt under Section 402(b) of the Act, MCL

451.802(b), in the future absent compliance with the registration provisions of the Act.

4. The Administrator finds that it would be in the public interest, that any exemptions for which Respondents might qualify for pursuant to the Michigan Uniform Securities Act 2002, 2008 PA 551, MCL 451.2101, *et seq.*, effective October 1, 2009, are hereby **SUMMARILY DENIED AND REVOKED**.

Failure to comply with this **ORDER** may subject the Respondents to a criminal penalty of not more than $25,000 for each violation, or imprisonment of not more than 10 years, or both.

IV.

NOTICE OF OPPORTUNITY FOR HEARING

Section 408(b) of the MUSA, MCL 451.808, provides:

> A person who has been ordered to cease and desist may file with the administrator within **15 days** after service on him or her of the order a written request for a hearing. The administrator within 15 days after the filing shall issue a notice of hearing and set a date for the hearing. If a hearing is not requested by the person or is not ordered by the administrator within 15 days, the order will stand as entered. The administrator shall hold the hearing in accordance with the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.328 of the Michigan Compiled Laws, and shall have all the powers granted thereunder. The administrator shall issue a decision sustaining, modifying, or dismissing the original order.

Should Respondents wish to request a hearing relating to the Commissioner's Order to Cease and Desist, a hearing must be requested in writing within 15 days of the issuance of this Order. The request for a hearing must be addressed to:

Dawn Kobus, Hearings Coordinator
Office of Financial and Insurance Regulation
Ottawa State Office Building, Third Floor
611 West Ottawa Street
Lansing, Michigan 48933

Please be advised that any statements made are voluntary and may be used in any proceeding that may be held. If a hearing is requested, Respondents have the right at their expense to legal representation at the hearing. A licensed attorney must represent Respondents that are corporations or limited liability companies.

The Commissioner retains the right to pursue further administrative action against the Respondents should the Commissioner determine that such action is necessary and appropriate in the public interest, for the protection of consumers, and consistent with the purposes fairly intended by the policy and provisions of the Act.

Any other communication regarding this Order should be addressed to the Office of Financial and Insurance Regulation, Attention: Elizabeth V. Bolden, P.O. Box 30220, Lansing, Michigan 48909, Telephone: 877-999-6442.

OFFICE OF FINANCIAL AND INSURANCE REGULATION

Ken Ross
Commissioner