

STATE OF MAINE
OFFICE OF SECURITIES
121 STATE HOUSE STATION
AUGUSTA, ME 04333

IN RE

Hawthorne Investment Management, LLC

NOTICE OF INTENT
TO ISSUE AN ORDER TO
DENY A LICENSE
01-074

ALLEGATIONS

1. Hawthorne Investment Management, LLC (“HIM”) is a limited liability company organized pursuant to the laws of Delaware.
2. David Conary (“Conary”) is and has been at all material times the manager of HIM since its organization in 1999.
3. Mustang Capital LLC (“Mustang”) was a limited liability company licensed as an investment adviser in the State of Maine from February 26, 1998, through December 31, 1999. Conary was an investment adviser representative and executive vice president of Mustang.
4. Conary resigned his positions with Mustang in or about September or October 1999.
5. On or about June 16, 2000, HIM submitted an application to the Office of Securities¹ for the State of Maine (“Office of Securities”) to be licensed as an investment adviser in the State of Maine.
6. By letter dated September 7, 2000, the Office of Securities confirmed to Lawrence Kletter (“Kletter”), counsel for HIM, that HIM was licensed as an investment adviser in Maine effective September 7, 2000.
7. On or about November 20, 2000, the Office of Securities commenced an examination at HIM’s office in Bethel, Maine. Conary was not present during the examination due to physical incapacitation, but he participated by telephone.

¹ On September 21, 2001, the name of the Department of Professional and Financial Regulation, Bureau of Banking, Securities Division, was changed to the Department of Professional and Financial Regulation, Office of Securities.

8. During the examination of HIM's office on November 20, 2000, Conary informed the Office of Securities that HIM had been acting as an investment adviser in the State of Maine since the latter part of 1999.
9. More particularly, during the examination of HIM's office on November 20, 2000, Conary informed the Office of Securities that he contacted Maine customers of Mustang in the latter part of 1999 and told them that they could choose to leave Mustang and become his clients at HIM.
10. As a result of Conary's solicitations, some Maine investment advisory clients who had been with Mustang, left Mustang and became investment advisory clients of HIM in the latter part of 1999 and HIM engaged in investment advisory activities on behalf of these Maine clients in the latter part of 1999.
11. On or about July 20, 2001, the Office of Securities recommenced its examination of HIM at the Office of Securities in Gardiner, Maine. During this examination, Conary confirmed again that he had contacted Mustang clients, at least some of whom were Maine residents, in the latter part of 1999 with a view toward having them become HIM clients. Conary further confirmed that some of these Maine Mustang clients became clients of HIM in the latter part of 1999.
12. By letter dated March 20, 2002, Conary informed the Office of Securities that HIM would be withdrawing from licensure as an investment adviser in the State of Maine effective April 19, 2002, and submitted the completed withdrawal form.
13. Accordingly, the Office of Securities terminated HIM's investment adviser license with the State of Maine effective April 19, 2002. By letter dated April 19, 2002, the Office of Securities notified Conary that HIM's license as an investment adviser in the State of Maine was terminated. In this letter, the Office of Securities requested that Conary notify the Office of Securities that HIM no longer had any investment advisory clients. By letter dated April 25, 2002, Conary confirmed that HIM no longer had any investment advisory clients.
14. By letter dated May 7, 2002, Kletter, on behalf of HIM, submitted a new investment adviser license application on behalf of HIM to the Office of Securities.
15. A person may not act in Maine as an investment adviser unless licensed or exempt from licensing pursuant to 32 M.R.S.A. § 10303(1).
16. According to the records of the Office of Securities, HIM was not licensed to act as an investment adviser in the State of Maine prior to September 7, 2000, and the Office of Securities is not aware of any exemption from licensing for which HIM might have qualified.

17. HIM acted as an unlicensed investment adviser in the State of Maine in violation of 32 M.R.S.A. § 10303(1) when it acted as an investment adviser in the State of Maine from the latter part of 1999 until September 7, 2000.
18. HIM acted as an unlicensed investment adviser in the State of Maine in violation of 32 M.R.S.A. § 10303(1) when Conary solicited Maine clients of Mustang to become clients of HIM in the latter part of 1999.
19. HIM acted as an unlicensed investment adviser in the State of Maine in violation of 32 M.R.S.A. § 10303(1) when Maine investment advisory clients of Mustang became investment advisory clients of HIM in the latter part of 1999.
20. HIM engaged in unlawful, unethical or dishonest conduct or practice in the securities business when it acted as an unlicensed investment adviser in the State of Maine from the latter part of 1999 until September 7, 2000.
21. Pursuant to 32 M.R.S.A. § 10313(1)(G), the Administrator may, after notice and opportunity for hearing, by order, deny any license, if the Administrator finds that the order is in the public interest and that the applicant has engaged in any unlawful, unethical or dishonest conduct or practice in the securities business.

NOTICE

Pursuant to 32 M.R.S.A. §10708, notice is hereby given that the Securities Administrator intends to issue an Order to Deny HIM's application for investment adviser licensure pursuant to 32 M.R.S.A. §10313(1)(G).

Pursuant to 32 M.R.S.A. § 10708(2), HIM has thirty (30) calendar days from the entry of this Notice of Intent to file a written request for a hearing.

Date: June 7, 2002

Christine A. Bruenn
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Securities Administrator