

# State of Missouri Office of Secretary of State

Case No. AP-10-42

IN THE MATTER OF:

MEYERS ASSOCIATES, L.P.  
CORPORATION, CRD #34171; *and*  
SUKHWAN MICHAEL YUN, CRD #5640757

Respondents.

Serve: Meyers Associates, L.P. at:  
45 Broadway  
Second Floor  
New York, New York 10006

Serve: Sukhwan Michael Yun at:  
280 Marin Boulevard, Apartment 4N  
Jersey City, New Jersey 07302

## **ORDER TO CEASE AND DESIST AND ORDER TO SHOW CAUSE WHY CIVIL PENALTIES AND COSTS SHOULD NOT BE IMPOSED**

On December 13, 2010, the Enforcement Section of the Securities Division of the Office of Secretary of State (the "Enforcement Section"), through the Securities Division's Assistant Commissioner, Mary Hosmer, submitted a Petition for Order to Cease and Desist and Order to Show Cause Why Civil Penalties and Costs Should Not Be Imposed. After reviewing the petition, the Commissioner issues the following findings of fact, conclusions of law and order:

### **I. FINDINGS OF FACT**

1. Meyers Associates, L.P. ("Meyers"), is a Missouri-registered broker-dealer with a last known address of 45 Broadway, Second Floor, New York, New York 10006. Meyers is registered with the Central Registration Depository System ("CRD") with CRD number 34171.
2. Sukhwan Michael Yun ("Yun") is a New Jersey resident with a last known address of 280 Marin Boulevard, Apartment 4N, Jersey City, New Jersey 07302. For the period July 28, 2010, to present, Yun has been with Meyers as an agent registered in New York, California, Illinois, Minnesota, and Virginia with CRD number 5640757. Although Yun was registered as an agent in Missouri with a previous employer, that registration terminated on October 22, 2009. Yun is not currently registered as an agent in Missouri.
3. A search of Meyers's CRD records revealed that on November 23, 2010, the Connecticut Banking Commissioner issued an order to cease and desist, notice of

intent to revoke registration as broker-dealer and notice of intent to fine (Docket No. RCF-10-7817-S) against Meyers. The action alleged that the firm violated section 36B-6(B) of the Connecticut Uniform Securities Act by employing unregistered agents, and that the firm sold unregistered securities in contravention of Section 36B-16 of that act. In addition, the action alleged that the firm engaged in fraudulent, dishonest and unethical conduct by failing to disclose to Connecticut customers that a "handling fee" charged by the firm included a profit to the firm, that certain customers paid a lower fee, and that the fee was not based on the costs of handling a particular transaction. The action also alleged that the firm failed to exercise adequate supervisory controls over its operations.

4. As used herein, the term "Respondents" refers to Meyers and Yun.
5. In December of 210, Yun, an agent of Meyers, called a Missouri resident on behalf of Meyers and attempted to sell securities.
6. On or around 3 p.m. on December 1, 2010, a registration/licensing specialist with the Missouri Securities Division ("MR1") received a cold call<sup>[1]</sup> from Yun while MR1 was at work. During that call, Yun:
  - a. identified himself and his firm, Meyers;
  - b. asked MR1 about MR1's investment experience with brokers;
  - c. asked MR1 if MR1 was interested in investing;
  - d. attempted to solicit MR1's purchase of Nuance Communications, Inc. ("NUAN") stock;
  - e. told MR1 that NUAN was a technology stock and compared NUAN to IPOD technology; and
  - f. told MR1 that Yun could effect the transaction at that time.
7. MR1 ended the call telling Yun that MR1 needed to consult with his wife, and asked if Yun could call back the next day so MR1's wife could sit in on the conversation.
8. On December 8, 2010, Yun called MR1 a second time. MR1 informed Yun that MR1 still needed to speak with MR1's wife before making a decision. Yun then solicited the purchase of NUAN stock asserting, among other things:
  - a. it was not a problem if MR1's wife wasn't around to discuss the investment;
  - b. Steve Mozniak ("Mozniak") of Apple misspoke during a recent press conference, saying Apple had acquired NUAN;
  - c. Mozniak's "slip of the tongue" likely indicated Apple was considering the purchase of NUAN;
  - d. NUAN's stock price climbed twelve percent (12%) the next day as a result of Mozniak's "slip of the tongue;"

- e. Yun could easily see the stock price of NUAN rising to twenty-eight or twenty-nine dollars (\$28 or \$29) per share if acquired by Apple;
  - f. MR1 could invest three thousand six hundred dollars (\$3600) in NUAN that day (\$3600 being the minimum investment Yun's firm (Meyers) allowed) through Yun;
  - g. if MR1 invested that day, Yun would "Fed Ex" MR1 the confirmation and it would be on MR1's desk the next day;
  - h. even though MR1's wife was not there, MR1 should purchase immediately to lock in the current price of the stock; and
  - i. Yun couldn't make any guarantees about risk, but could place a stop limit order to minimize any potential losses.
9. Throughout the December 8, 2010, call, MR1 repeatedly told Yun MR1 never invested without discussing it with MR1's wife first. However, Yun continued to pressure MR1 to make an immediate purchase, asking, "why don't we do this?" Eventually, Yun agreed to call MR1 back the next day when MR1's wife ("MR2") could speak with Yun as well.
10. On December 9, 2010, Yun spoke with members of the Enforcement Section twice. Yun initiated the contact, calling MR1's cell phone and speaking with MR1 and MR2 at approximately 12:30 p.m. Later in the day, at approximately 1:00 p.m., MR1 and MR2 called Yun to ask more questions about NUAN and Yun.
11. During the December 9, 2010, calls, Yun stated, among other things:
- a. Yun was an investment banker with Series 7 and Series 63 licenses;
  - b. Meyers had over one hundred (100) associates, and they worked as a team, but MR1 and MR2 would work mainly with Yun;
  - c. Yun could go ahead and place the trade that day, and MR1 and MR2 could either mail or wire the money;
  - d. MR1 and MR2 needed to purchase now because NUAN had a huge contract with Apple pending;
  - e. NUAN was a five billion dollar (\$5,000,000,000) company that had one billion dollars (\$1,000,000,000) in earnings;
  - f. NUAN was the "Bentley" of stocks, would be "money in the bank," and an investment in NUAN was "safe money;"
  - g. there was no doubt in Yun's mind that NUAN's stock price would reach thirty dollars (\$30) per share;
  - h. Apple was going to eventually pay a very big premium to purchase NUAN;
  - i. the market was going to rise for the rest of the year;

- j. the market closed in approximately two hours, so MR1 and MR2 could make the purchase immediately;
  - k. Yun would not charge a commission for the first trade, but requested that MR1 and MR2 think about doing business with him after he got them a return of thirty-five percent to forty percent (35% to 40%) on NUAN; and
  - l. if MR1 and MR2 were paying by check, they should make it out to Stearn, AGG, and Leach, Meyers's bank clearing service based in Alabama.
12. During their conversations with Yun, MR1 and MR2 heard noise in the background, including people talking, phones ringing, and people answering phones saying, "Meyers and Associates."
13. Yun did not, at any time during his correspondence with MR1 and MR2, ask any questions regarding financial needs, age, investment objectives, or other suitability related issues.
14. On December 10, 2010, members of the Enforcement Section spoke with Meyers's Chief Compliance Officer, Mitchell Halpern ("Halpern") on the telephone. During that conversation, Halpern asserted that Meyers had policies in place that prohibited agents of Meyers from calling to solicit the sale of securities in states those agents were not registered in.

## **II. STATUTORY PROVISIONS**

15. Section 409.6-601(a), RSMo. (Cum. Supp. 2009), provides that the Missouri Securities Act of 2003 "shall be administered by the commissioner of securities . . . ."
16. Section 409.1-102(1), RSMo. (Cum. Supp. 2009), defines "Agent" as "an individual, other than a broker-dealer, who represents a broker-dealer in effecting or attempting to effect purchases or sales of securities or represents an issuer in effecting or attempting to effect purchases or sales of the issuer's securities. But a partner, officer, or director of a broker-dealer or issuer, or an individual having a similar status or performing similar functions is an agent only if the individual otherwise comes within the term. The term does not include an individual excluded by rule adopted or order issued under this act."
17. Section 409.1-102(26), RSMo. (Cum. Supp. 2009), defines "Sale" to include: "every contract of sale, contract to sell, or disposition of, a security or interest in a security for value." That same section defines "offer to sell" as "every attempt or offer to dispose of, or solicitation of an offer to purchase, a security or interest in a security for value."
18. Section 409.1-102(28), RSMo. (Cum. Supp. 2009), defines "Security" as "a note; stock; treasury stock; security future; bond; debenture; evidence of indebtedness; certificate of interest of participation in a profit-sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting trust certificate; certificate of deposit for a security; fractional undivided interest in oil, gas, or other mineral rights; put, call, straddle, option, or privilege on a security, certificate of deposit, or group or index of securities, including an interest therein or based on the value thereof; put, call, straddle, option, or

privilege entered into on a national securities exchange relating to foreign currency; or in general, an interest or instrument commonly known as a "security"; or a certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing."

19. Section 409.4-402(a), RSMo. (Cum. Supp. 2009), states:

It is unlawful for an individual to transact business in this state as an agent unless the individual is registered under this act as an agent or is exempt from registration as an agent under subsection (b).

20. Section 409.4-402(d), RSMo. (Cum. Supp. 2009), states:

It is unlawful for a broker-dealer, or an issuer engaged in offering, selling, or purchasing securities in this state, to employ or associate with an agent who transacts business in this state on behalf of broker-dealers or issuers unless the agent is registered under subsection (a) or exempt from registration under subsection (b).

21. Section 409.5-501, RSMo. (Cum. Supp. 2009), states:

It is unlawful for a person, in connection with the offer, sale, or purchase of a security, directly or indirectly:

- (1) To employ a device, scheme, or artifice to defraud;
- (2) To make an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statement made, in the light of the circumstances under which it is made, not misleading; or
- (3) To engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

22. Section 409.6-604, RSMo. (Cum. Supp. 2009), states:

(a) If the commissioner determines that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this act or a rule adopted or order issued under this act or that a person has materially aided . . . an act, practice or course of business constituting a violation of this act . . . the commissioner may:

- (1) Issue an order directing the person to cease and desist from engaging in the act, practice, or course of business or to take other action necessary or

appropriate to comply with this act. .

(b) An order under subsection (a) is effective on the date of issuance. Upon issuance of the order, the commissioner shall promptly serve each person subject to the order with a copy of the order and a notice that the order has been entered. The order must include a statement whether the commissioner will seek a civil penalty or costs of the investigation, a statement of the reasons for the order, and notice that, within fifteen days after receipt of a request in a record from the person, the matter will be scheduled for a hearing. If a person subject to the order does not request a hearing and none is ordered by the commissioner within thirty days after the date of service of the order, the order becomes final as to that person by operation of law. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend it until final determination.

(c) If a hearing is requested or ordered pursuant to subsection (b), a hearing before the commissioner must be provided. A final order may not be issued unless the commissioner makes findings of fact and conclusions of law in a record in accordance with the provisions of chapter 536, RSMo, and procedural rules promulgated by the commissioner. The final order may make final, vacate, or modify the order issued under subsection (a).

(d) In a final order under subsection (c), the commissioner may:

(1) Impose a civil penalty up to one thousand dollars for a single violation or up to ten thousand dollars for more than one violation;  
....

(e) In a final order, the commissioner may charge the actual cost of an investigation or proceeding for a violation of this act or a rule adopted or order issued under this act. These funds may be paid into the investor education and protection fund.

### **III. CONCLUSIONS OF LAW**

#### **Multiple Violations of Transacting Business as an Unregistered Agent**

23. Paragraphs 1 through 22 are incorporated by reference as though fully set forth herein.
24. At all times relevant, records maintained by the Missouri Commissioner of Securities contained no registration or granted exemption for Yun to transact business as an agent in the State of Missouri.
25. Respondent Yun violated Section 409.4-402(a), RSMo. (Cum. Supp. 2009), when Yun transacted business in this State without being registered or exempt from registration as an agent.
26. Respondent Yun's actions in transacting business as an unregistered agent constitute illegal acts, practices, or courses of business and thus such actions are subject to the commissioner's authority under Section 409.6-604, RSMo. (Cum. Supp. 2009).

#### **Employing an Unregistered Agent**

27. Paragraphs 1 through 22 are incorporated by reference as though fully set forth herein.
28. Meyers employed Yun who transacted business on behalf of Meyers by calling a Missouri resident and offering to sell the Missouri resident a security.
29. Yun was not registered as an agent of Meyers in Missouri.
30. Meyers violated Section 409.4-402(d), RSMo. (Cum. Supp. 2009), when it employed an agent who transacted business in the State of Missouri without being registered or exempt from registration as an agent.
31. Respondent Meyers' action of employing an unregistered agent who transacted business in this state constitutes an illegal act, practice, or course of business, and thus such action is subject to the commissioner's authority under Section 409.6-604, RSMo. (Cum. Supp. 2009).

#### **Multiple Violations of Making an Untrue Statement or Omitting to State Material Facts in Connection with the Offer or Sale of a Security**

32. Paragraphs 1 through 22 are incorporated by reference as though fully set forth herein.
33. In connection with the offer, sale or purchase of a security Respondent Yun omitted to state material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading, including, but not limited to, the following:
  - a. In connection with the offer of these securities in Missouri, Yun omitted to disclose that:

- i. Yun was not registered to offer or sell securities in the State of Missouri;
  - ii. Meyers employed unregistered agents who transacted business in the State of Missouri; or
  - iii. by offering securities in the State of Missouri, Yun was in violation of Meyers's policies and procedures.
34. Respondent Yun violated Section 409.5-501, RSMo. (Cum. Supp. 2009), when, in connection with the offer, sale or purchase of a security, he omitted to state material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading.
35. Respondents Yun's actions in omitting to state material facts constitute illegal acts, practices, or courses of business and thus such actions are subject to the commissioner's authority under Section 409.6-604, RSMo. (Cum. Supp. 2009).
36. This order is in the public interest and is consistent with the purposes of the Missouri Securities Act of 2003. See Section 409.6-605(b), RSMo. (Cum. Supp. 2009).

#### **IV. ORDER**

**NOW, THEREFORE**, it is hereby ordered that Respondents, their agents, employees and servants, and all other persons participating in or about to participate in the above-described violations with knowledge of this order be prohibited from:

- A. violating or materially aiding in any violation of Section 409.4-402(a), RSMo. (Cum. Supp. 2009), by transacting business as unregistered agents;
- B. violating or materially aiding in any violation of Section 409.4-402(d), RSMo. (Cum. Supp. 2009), by employing unregistered agents; and
- C. violating or materially aiding in any violation of Section 409.5-501, RSMo. (Cum. Supp. 2009), by, in connection with the offer or sale of securities, omitting to state a material fact necessary in order to make statements made, in light of the circumstances under which they were made, not misleading.

**IT IS FURTHER ORDERED** that, pursuant to Section 409.6-604(d), RSMo. (Cum. Supp. 2009), the Commissioner will determine whether to grant the Enforcement Section's petition for an imposition of civil penalties of up to ten thousand dollars (\$10,000) against Respondent Yun for multiple violations of Section 409.4-402(a), RSMo. (Cum. Supp. 2009), in a final order, unless Respondent Yun requests a hearing and shows cause why the penalty should not be imposed.

**IT IS FURTHER ORDERED** that, pursuant to Section 409.6-604(d), RSMo. (Cum. Supp. 2009), the Commissioner will determine whether to grant the Enforcement Section's petition for an imposition of civil penalties of up to one thousand dollars (\$1,000) against Respondent Meyers for violation of Section 409.4-402(d), RSMo. (Cum. Supp. 2009), in a final order, unless Respondent Meyers requests a hearing and shows cause why the penalty should not be imposed.

**IT IS FURTHER ORDERED** that, pursuant to Section 409.6-604(d), RSMo. (Cum.

Supp. 2009), the Commissioner will determine whether to grant the Enforcement Section’s petition for an imposition of civil penalties of up to ten thousand dollars (\$10,000) against Respondent Yun for multiple violations of Section 409.5-501(2), RSMo. (Cum. Supp. 2009), in a final order, unless Respondent Yun requests a hearing and shows cause why the penalty should not be imposed.

**IT IS FURTHER ORDERED** that, as the Enforcement Section has petitioned for an award for the costs of the investigation against Respondents in this proceeding, the commissioner will issue a final order, pursuant to Section 409.6-604(e), RSMo. (Cum. Supp. 2009), awarding an amount to be determined after review of evidence submitted by the Enforcement Section, unless Respondents request a hearing and show cause why such award should not be made.

**SO ORDERED:**

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY, MISSOURI THIS 16<sup>th</sup> DAY OF DECEMBER, 2010.

ROBIN CARNAHAN  
SECRETARY OF STATE

(Signed/Sealed)  
MATTHEW D. KITZI  
COMMISSIONER OF SECURITIES



State of Missouri  
Office of Secretary of State

Case No. AP-10-42

IN THE MATTER OF:

MEYERS ASSOCIATES, L.P.  
CORPORATION, CRD #34171; and  
SUKHWAN MICHAEL YUN, CRD #5640757

Respondents.

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Second Floor  
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Serve: Sukhwan Michael Yun at:  
280 Marin Boulevard, Apartment 4N  
Jersey City, New Jersey 07302

### **NOTICE**

#### **TO: Respondents and any unnamed representatives aggrieved by this Order:**

You may request a hearing in this matter within thirty (30) days of the receipt of this Order pursuant to Section 409.6-604(b), RSMo. (Cum. Supp. 2009), and 15 CSR 30-55.020.

Within fifteen (15) days after receipt of a request in a record from a person or persons subject to this order, the Commissioner will schedule this matter for a hearing.

A request for a hearing must be mailed or delivered, in writing, to:

**Matthew D. Kitzi, Commissioner of Securities**  
**Office of the Secretary of State, Missouri**  
**600 West Main Street, Room 229**  
**Jefferson City, Missouri, 65102.**

### **CERTIFICATE OF SERVICE**

I hereby certify that on this 16<sup>th</sup> day of December, 2010, a copy of the foregoing Order and Notice in the above styled case was **mailed by Certified U.S. mail to:**

Meyers Associates, L.P.  
45 Broadway  
Second Floor  
New York, New York 10006

Michael Yun  
280 Marin Boulevard, Apartment 4N  
Jersey City, New Jersey 07302

#### **And hand delivered to:**

Mary Hosmer  
Assistant Commissioner  
Securities Division

[\[1\]](#) A method used by agents of broker-dealers to obtain new business by making unsolicited calls to potential customers who have no connection to the broker-dealer or agent.

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John Hale, Specialist