

UNITED STATES OF AMERICA  
Before the  
COMMODITY FUTURES TRADING COMMISSION

\_\_\_\_\_  
In the Matter of )  
)  
)  
)  
)  
)  
)  
)  
)  
)  
\_\_\_\_\_)

WILSHIRE INVESTMENT MANAGEMENT  
CORPORATION

Registrant.

CFTC DOCKET NO. SD 06-06

RECEIVED  
C.F.T.C.  
SEP 28 A 11:28  
OFFICE OF PROCEEDINGS  
PROCEEDINGS CLERK

**NOTICE OF INTENT TO SUSPEND, REVOKE, OR RESTRICT  
WILSHIRE INVESTMENT MANAGEMENT CORPORATION'S REGISTRATION  
AS AN INTRODUCING BROKER**

I.

The Commodity Futures Trading Commission ("Commission") has received information from its staff which tends to show, and the Commission's Division of Enforcement ("Division") alleges and is prepared to prove that:

1. Wilshire Investment Management Corporation ("WIMC") maintains its principal place of business at 825 US 1, Suite 230, Jupiter, Florida 33477.
2. Since September 25, 2000, WIMC has been registered with the Commission as an introducing broker ("IB"), pursuant to Section 4f of the Commodity Exchange Act, as amended (the "Act"), 7 U.S.C. § 6f.
3. Andrew Alan Wilshire ("Wilshire") is president, a principal, and a controlling person of WIMC.
4. Since September 18, 2000, Wilshire has been registered with the Commission as an associated person ("AP") of WIMC, pursuant to Section 4k of the Act, 7 U.S.C. § 6k.
5. Eric Scott Malcolmson ("Malcolmson") is a broker and registered AP for WIMC.

6. James Joseph Russo (“Russo”) is a broker and registered AP for WIMC.

7. On September 14, 2004, the Commission filed an injunctive action in the U.S. District Court for the Southern District of Florida against WIMC, Wilshire, Malcolmson, and Russo, case number 04-CV-80862.

8. On December 5, 2005, the court entered a Trial Order and Final Judgment against WIMC, Wilshire, Malcolmson, and Russo. The Order finds that Malcolmson and Russo engaged in fraudulent solicitation of customers in violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b) and Commission Regulation 33.10(a) and (c), 17 C.F.R. § 33.10(a) and (c), that WIMC is liable for the violations of the Act and Commission Regulations by its employees, and that Wilshire is liable for the violations of Section 4c(b) of the Act and Commission Regulation 33.10(a) and (c) as a controlling person of WIMC and for failing to diligently supervise WIMC employees in violation of Commission Regulation 166.3, 17 C.F.R. § 166.3.

9. Based on these findings, the Order permanently enjoins WIMC, Wilshire, Malcolmson, and Russo from violating Section 4c(b) of the Act and Commission Regulation 33.10(a) and (c), and also permanently enjoins Wilshire from violating Commission Regulation 166.3. The Order also finds that because the violations were “blatant, brazen and repeated, a more extensive injunction is required.” Based on that finding, the Order permanently enjoins each of the defendants from engaging in any commodity related activity, including soliciting new customers.

10. The facts set forth in paragraphs 1 through 9 above constitute a basis for statutory disqualification from registration under Section 8a(2)(C) and (E) of the Act, 7 U.S.C. § 12a(2)(C) and (E), pursuant to which the registration of WIMC may be suspended, revoked or restricted.

11. Because refusal, suspension, or revocation of the registration of Wilshire would be warranted under Section 8a(2)(C) and (E) of the Act and Wilshire is a principal of WIMC, WIMC's registration is subject to suspension, revocation or restriction under Section 8a(2)(H) of the Act, 7 U.S.C. § 12a(2)(H).

## II.

Pursuant to Section 3.60(a), 17 C.F.R. § 3.60(a), WIMC is hereby notified that a public proceeding shall be conducted in accordance with the provisions of Commission Regulation 3.60, 17 C.F.R. § 3.60, on the following questions:

1. Whether WIMC is subject to statutory disqualification under Sections 8a(2)(C), (E) and (H), as set forth in Section I, above; and
2. If the answer to question 1 is affirmative, whether the registration of WIMC as an IB should be suspended, restricted or revoked. Such proceeding shall be held before an Administrative Law Judge, in accordance with Commission Regulation 3.60, and all post-hearing procedures shall be conducted pursuant to Commission Regulation 3.60(i)-(j), 17 C.F.R. § 3.60(i)-(j).

In accordance with the provisions of Commission Regulation 3.60(a)(3), 17 C.F.R. § 3.60(a)(3), WIMC is entitled to file a response challenging the evidentiary bases of the statutory disqualification or show cause why, notwithstanding the accuracy of the allegations, its registration should not be suspended, revoked, or restricted. Such response must be filed with the Hearing Clerk, Office of Hearings and Appeals, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21<sup>st</sup> Street, N.W., Washington, D.C. 20581, and served upon Allison Lurton, Trial Attorney, Division of Enforcement at the same address, within thirty (30) days after the date of service of this Notice upon WIMC in accordance with the provisions of

Commission Regulation 3.60(b). If WIMC fails to file a timely response to this Notice, the allegations set forth herein shall be deemed to be true and the presiding officer may issue an Order of Default in accordance with the provisions of Commission Regulation 3.60(g), 17 C.F.R. § 3.60(g).

III.

The Hearing Clerk shall serve this Notice of Intent to Suspend, Revoke, or Restrict Registration by registered or certified mail pursuant to Commission Regulation 3.50, 17 C.F.R. § 3.50.

By the Commission.



---

Eileen A. Donovan  
Acting Secretary to the Commission  
Commodity Futures Trading Commission

Dated: September 28, 2006