

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

SECURITIES ACT OF 1933  
Release No. 8720 / July 13, 2006

SECURITIES EXCHANGE ACT OF 1934  
Release No. 54139 / July 13, 2006

Administrative Proceeding  
File No. 3-12365

**In the Matter of**

**IFMG SECURITIES, INC.,**

**Respondent.**

**ORDER INSTITUTING  
ADMINISTRATIVE AND CEASE-  
AND-DESIST PROCEEDINGS,  
MAKING FINDINGS, AND  
IMPOSING REMEDIAL SANCTIONS  
AND A CEASE-AND-DESIST ORDER  
PURSUANT TO SECTION 8A OF  
THE SECURITIES ACT OF 1933  
AND SECTIONS 15(b) AND 21C OF  
THE SECURITIES EXCHANGE ACT  
OF 1934**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”) and Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against IFMG Securities, Inc. (“IFMG”).

**II.**

In anticipation of the institution of these proceedings, IFMG has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, IFMG consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933 and Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Order”), as set forth below.

### III.

On the basis of this Order and IFMG's Offer, the Commission finds that:

#### **Respondent**

1. IFMG Securities, Inc. and/or its predecessor, Liberty Securities Corp., has been registered with the Commission as a broker-dealer pursuant to Section 15 of the Exchange Act since 1983. It is also a member of the National Association of Securities Dealers ("NASD"). IFMG's principal offices are located in Purchase, New York. IFMG is a subsidiary of Sun Life Financial (U.S.) Holdings, Inc. which is in turn, a subsidiary of Sun Life Financial Inc., a publicly held corporation headquartered in Toronto, Canada. IFMG is affiliated with a third-party marketer of mutual funds and insurance products, which sets up programs with depository institutions such as banks and savings and loan associations to allow those institutions to offer securities to their customers. IFMG's approximately 700 registered representatives sell mutual funds, variable insurance products and general securities in the lobbies of depository institutions nation-wide. IFMG has over 700 registered branch offices nation-wide, and all but two of its branch offices are physically located in the lobbies of depository institutions.

#### **Overview**

2. From at least January 2000 through November 2003, IFMG gave preferred sales treatment to certain mutual fund complexes and certain variable insurance product issuers which participated in its revenue sharing program (the "Preferred Program"). Revenue sharing is a form of additional compensation, over and above regular commissions and distribution fees, which is typically paid by mutual fund advisers and insurers to broker-dealers for sales of the mutual funds or variable insurance products.

3. Under the Preferred Program, in exchange for revenue sharing payments, IFMG provided participating mutual fund families and insurers ("Preferred Families") preferential sales treatment, including increased access to its registered representatives and sales managers and placement on its preferred list. IFMG also paid enhanced compensation to its registered representatives for sales of certain of the Preferred Families' products. However, IFMG, in violation of Section 17(a)(2) of the Securities Act and Rule 10b-10 under the Exchange Act, failed to adequately disclose to its customers the existence of its Preferred Program and the potential conflict of interest created by these payments.

### **IFMG's Preferred Program**

4. From at least January 2000 through November 2003, five mutual fund families participated in IFMG's Preferred Program.

5. Each of these mutual fund families made revenue sharing payments to IFMG in varying amounts in exchange for preferential sales treatment. IFMG received two types of revenue sharing payments from these mutual fund families: fees based on total assets under management (asset-based fees) and fees based on new sales (sales-based fees). IFMG generally received between .1% and .18% of new sales and between .03% to .05% of the funds' assets under management. Most of these payments were made to IFMG in cash from the distributor or the adviser. However, one mutual fund family made its revenue sharing payments to IFMG via directed brokerage commissions.<sup>1</sup> Sales of mutual funds from the Preferred Families accounted for approximately 81% of IFMG's total sales in 2000, 88% of its total sales in 2001, 89% of its total sales in 2002, and 87% of its total sales in 2003.

6. From at least January 2000 through November 2003, between six and twelve insurers offering variable insurance products, at various times, participated in IFMG's Preferred Program. IFMG received revenue sharing payments from these insurers that generally ranged from .1% to 1% on sales of new contracts, with an average payment of .5%. Payments were generally made in cash by the insurer.

7. The revenue sharing payments that IFMG received were in addition to standard fees paid by the respective mutual funds and insurers such as sales charges, commissions and distribution fees paid out of fund assets pursuant to a Rule 12b-1 Plan.

8. Revenue sharing was a factor, among others, in IFMG's selection and retention of mutual fund families and insurers for participation in the Preferred Program. In fact, IFMG informed some insurers that the payment of .5% in revenue sharing on new contracts was required to be considered for IFMG's Preferred Program. At least one insurer was removed from IFMG's Preferred Program after it reduced its revenue sharing payments to less than .5%. IFMG did not offer any variable insurance products from insurers that did not participate in the Preferred Program; in most cases, insurers that were included in the Preferred Program made revenue sharing payments. In most cases, mutual fund providers that were included in the Preferred Program made revenue sharing payments, while mutual fund providers that were not included in the Preferred Program did not make revenue sharing payments.

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<sup>1</sup> Directed brokerage refers to the practice of fund advisers "directing" mutual fund brokerage transactions to broker-dealer firms as a reward for sales the broker-dealer makes of that adviser's funds. The brokerage commissions on the directed brokerage are used to reduce the adviser's revenue sharing obligations to the broker-dealer and are paid out of fund assets.

9. As part of the Preferred Program, IFMG provided financial incentives to its registered representatives to sell funds from the Preferred Families over other funds. IFMG reduced the commission it paid to its registered representatives for the sale of products whose advisers or insurers did not participate in its Preferred Program. Specifically, IFMG reduced the sales commission paid to its registered representatives for the sale of non-preferred products by approximately 33%. In March 2000, IFMG informed its sales staff that the reason that IFMG implemented this differential compensation policy was because some mutual fund families and insurers provided “either sub-par service and/or less than competitive financial support.” IFMG discontinued its differential compensation policy in December 2003.

10. Preferred Families participating in IFMG’s Preferred Program received other forms of preferential sales treatment which were not available to the non-Preferred Families. First, the Preferred Families were placed on a preferred list which was then distributed to IFMG’s sales personnel as a means of encouraging sales of their products. Second, the Preferred Families were given prominent billing in new business presentations to potential and existing clients (typically depository institutions) and at least some of the Preferred Families were listed on IFMG’s website. Third, IFMG gave the Preferred Families enhanced access to sales and other meetings attended by its sales managers, its registered representatives, and/or its depository institution clients. Finally, IFMG allowed representatives from the Preferred Families to call or meet with IFMG’s registered representatives.

#### **IFMG Did Not Adequately Disclose its Revenue Sharing Program to its Customers**

11. During the relevant period, IFMG made statements on its website indicating that it used certain criteria in selecting its Preferred Families. IFMG’s website stated that, “[e]ach mutual fund on our preferred list has been evaluated utilizing the stringent requisites developed by Independent Financial and IFMG Securities, Inc. (IFMGSI). Specifically, we review each fund provider concentrating on its longevity, size, quality, focus and breadth.” IFMG’s website also stated that its preferred products “are regularly reviewed, using stringent criteria regarding performance, service, breadth of product, and fees.” Although IFMG’s website was accessible to the public, the intended audience were potential depository institution clients, not brokerage clients.

12. During the relevant period, IFMG did not adequately disclose to its customers who purchased mutual fund shares or variable insurance products the existence of the Preferred Program and IFMG’s receipt of revenue sharing payments pursuant to the Preferred Program. During the relevant period, IFMG also did not adequately disclose that it considered revenue sharing payments in selecting participants for the Preferred Program. IFMG also did not adequately disclose the dimensions of the potential conflicts of interest created by these payments.

13. Instead, IFMG relied on disclosures made by the Preferred Families themselves in prospectuses and Statements of Additional Information (“SAIs”) to satisfy its disclosure obligations regarding the revenue sharing payments and its Preferred Program.<sup>2</sup> During the relevant period, these documents failed to disclose to IFMG’s customers adequate information about the source and the amount of the revenue sharing payments to IFMG and the dimension of the resulting potential conflicts of interest.

14. As a result of the conduct described above, IFMG willfully<sup>3</sup> violated:

a. Section 17(a)(2) of the Securities Act, which provides that it is “unlawful for any person in the offer or sale of any securities . . . by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly . . . to obtain money or property by means of any untrue statement of material fact or any omission to state a material fact necessary in order to make the statements made, in the light and circumstances under which they were made, not misleading;” and

b. Rule 10b-10 under the Exchange Act, which provides in pertinent part that it is “unlawful for any broker or dealer to effect for or with an account of a customer any transaction in, or to induce the purchase or sale by such customer of, any security . . . unless such broker or dealer, at or before completion of such transaction, gives or sends to such customer written notification disclosing . . . [t]he source and amount of any other remuneration received or to be received by the broker in connection with the transaction.”

Neither Section 17(a)(2) nor Rule 10b-10 requires a showing of scienter.<sup>4</sup>

### **Undertakings**

15. IFMG undertakes the following:

(a) IFMG shall place and maintain on its website, within 15 days from the date of entry of the Order, disclosures regarding its revenue sharing program to include, if applicable: (i)

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<sup>2</sup> While mutual fund distributors are required to provide customers with a prospectus, they are not required to provide an SAI unless a customer requests a copy.

<sup>3</sup> “Willfully” as used in this Order means intentionally committing the act which constitutes the violation. See Wonsover v. SEC, 205 F.3d 408, 414 (D.C. Cir. 2000); Tager v. SEC, 344 F.2d 5, 8 (2d Cir. 1965). There is no requirement that the actor also be aware that he is violating one of the Rules or Acts. Id.

<sup>4</sup> Scienter refers to a “mental state embracing intent to deceive, manipulate, or defraud.” Ernst & Ernst v. Hochfelder, 425 U.S. 185, 193 (1976).

the existence of the program; (ii) the fund complexes and insurers participating in the program; (iii) the maximum amount of payment that IFMG receives, expressed in basis points, in connection with the fund complexes' and insurers' participation in the program; and (iv) the source of such payments. IFMG shall make this information available via a hyperlink on the home page of its website.

(b) IFMG shall retain, within 45 days from the date of entry of the Order, the services of an Independent Consultant, who is not unacceptable to the Commission's staff. IFMG shall require the Independent Consultant to perform all of the services and tasks described below. IFMG shall exclusively bear all costs, including compensation and expenses, associated with the retention and performance of the Independent Consultant.

(c) IFMG shall retain and shall require the Independent Consultant to conduct a comprehensive review of (i) the completeness of the disclosures regarding IFMG's revenue sharing program; and (ii) the policies and procedures relating to IFMG's recommendations to its customers of mutual funds and variable insurance products in the revenue sharing program. IFMG shall retain the Independent Consultant to recommend policies and procedures that address deficiencies, if any, in these areas.

(d) IFMG shall further retain and require the Independent Consultant to prepare and, within 90 days from the date of entry of the Order, submit to IFMG and the Commission's staff an Initial Report. The Initial Report shall address, at a minimum: (i) the adequacy of the disclosures regarding IFMG's revenue sharing program; (ii) the adequacy of the policies and procedures regarding IFMG's recommendations and disclosures to its customers of mutual funds and variable insurance products in its revenue sharing program. The initial report must include a description of the review performed, the conclusions reached, and the Independent Consultant's recommendations for policies and procedures to address any deficiencies identified, an effective system for implementing the recommended policies and procedures and an effective system for establishing and maintaining written records that evidence compliance with the recommended policies and procedures.

(e) Within 100 days from the date of entry of the Order, IFMG shall in writing advise the Independent Consultant and the Commission's staff of the recommendations from the Initial Report that it is adopting and the recommendations that it considers unnecessary or inappropriate. With respect to any recommendations that IFMG considers unnecessary or inappropriate, IFMG shall explain why the objective or purpose of such recommendation is unnecessary or inappropriate or provide in writing an alternative policy, procedure or system designed to achieve the same objective.

(f) With respect to any recommendation about which IFMG and the Independent Consultant do not agree IFMG shall attempt in good faith to reach an agreement with the Independent Consultant within 120 days from the date of entry of the Order. In the event the

Independent Consultant and IFMG are unable to agree on an alternative proposal, IFMG shall abide by the recommendation of the Independent Consultant.

(g) IFMG shall further retain and shall require the Independent Consultant to complete the aforementioned review and submit a written Final Report to IFMG and to the Commission's staff within 140 days from the date of entry of the Order. The Final Report must recite the efforts the Independent Consultant undertook to review: (i) IFMG's disclosures regarding its revenue sharing program; and (ii) the policies and procedures regarding IFMG's recommendations of the mutual funds and variable insurance products in its revenue sharing program. The Final Report shall also set forth in detail the Independent Consultant's recommendations and a reasonable time frame(s), not to exceed 180 days from the date of entry of the Order, for IFMG to implement its recommendations. The Final Report must also describe how IFMG proposes to implement those recommendations within the time period(s) set forth in the Final Report.

(h) IFMG shall take all necessary and appropriate steps to adopt and implement all recommendations and proposals contained in the Independent Consultant's Final Report.

(i) To ensure the independence of the Independent Consultant, IFMG: (i) shall not have the authority to terminate the Independent Consultant, without the prior written approval of the Commission's staff; (ii) shall compensate the Independent Consultant, and persons engaged to assist the Independent Consultant, for services rendered pursuant to the Order at their reasonable and customary rates; and (iii) shall not be in and shall not have an attorney-client relationship with the Independent Consultant and shall not seek to invoke the attorney-client or any other doctrine or privilege to prevent the Independent Consultant from transmitting any information, reports or documents to the Commission or the Commission's staff.

(j) To further ensure the independence of the Independent Consultant, for the period of the engagement and for a period of two years from the completion of the engagement, IFMG, its present or former affiliates, directors, officers, employees, and agents acting in their capacity shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with the Independent Consultant. Further, IFMG, its present or former affiliates, directors, officers, employees, and agents acting in their capacity shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with any firm with which the Independent Consultant is affiliated in performance of his or her duties under the Order, or agents acting in their capacity, for the period of the engagement and for a period of two years after the engagement without prior written consent of the Commission's staff.

(k) IFMG shall cooperate fully with the Independent Consultant and shall provide the Independent Consultant with prompt access to IFMG's files, books, records and personnel as the Independent Consultant reasonably deems necessary or appropriate in fulfilling any function or completing any task described in these undertakings.

(l) For good cause shown, and upon receipt of a timely application from the Independent Consultant or IFMG, the Commission's staff may extend any of the procedural dates set forth above.

#### IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent IFMG's Offer.

Accordingly, pursuant to Section 8A of the Securities Act and Sections 15(b) and 21C of the Exchange Act, it is hereby ORDERED that:

A. IFMG shall cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act and Rule 10b-10 under the Exchange Act;

B. IFMG is censured;

C. IFMG shall, within 30 days from the date of the entry of the Order, pay disgorgement and prejudgment interest in the amount of \$2,827,408 to the United States Treasury. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies IFMG as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to David P. Bergers, District Administrator, Securities and Exchange Commission, 33 Arch Street, 23<sup>rd</sup> Floor, Boston, MA 02110;

D. IFMG shall, within 30 days from the date of the entry of the Order, pay a civil money penalty in the amount of \$1 million to the United States Treasury. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies IFMG as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to David P. Bergers, District Administrator, Securities and Exchange Commission, 33 Arch Street, 23<sup>rd</sup> Floor, Boston, MA 02110; and

E. IFMG shall comply with the undertakings enumerated in Section III.B.15. above.



By the Commission.

Nancy M. Morris  
Secretary