

STATE OF HAWAII

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

In the Matter of:	)	Case Nos.	SEU-1999-102 and
	)		SEU-2001-111
	)		
	)		
JEFFREY ALAN LING,	)		
	)		
	)		
	)		
Respondent.	)		
	)		
	)		

PRELIMINARY ORDER TO CEASE AND DESIST
AND NOTICE OF RIGHT TO HEARING

I. STATEMENT OF APPLICABLE STATUTORY LAW

Pursuant to the authority granted by the Uniform Securities Act found at Chapter 485, and its successor, Chapter 485A, of the Hawaii Revised Statutes ("HRS"), the rules and orders adopted thereunder, and other applicable authority, the Commissioner of Securities of the State of Hawaii ("Commissioner") has conducted a preliminary investigation into the activities of Respondent Jeffrey Alan Ling ("Respondent") to determine if he has engaged in, or is about to engage in, any act or practice constituting a violation of Chapters 485 and 485A, HRS, or any rule or order adopted thereunder. The Uniform Securities Act, Chapter 485, HRS, was in effect from 1957 to June 30, 2008, and its successor, Chapter 485A, HRS, took effect on July 1, 2008.

From the information revealed pursuant to said investigation, the Commissioner has reasonable cause to believe that the Respondent has violated Chapter 485, HRS, or is about to violate Chapter 485A, HRS, in that she finds:

II. STATEMENT OF JURISDICTION

The Commissioner has jurisdiction over this case because the limited partnership interests (“LP interests”) offered and/or sold by Respondent constitute securities under HRS § 485-1(13). The Commissioner also has jurisdiction over this case because the activities of the Respondent constitute those of an investment adviser and/or investment adviser representatives pursuant to HRS § 485-14.

III. PRELIMINARY FINDINGS OF FACT

A. Respondent’s Background

1. Respondent is and, at all relevant times herein, was a resident of the State of Hawaii.
2. Respondent worked in the securities industry, as a registered salesperson (CRD No. 1284221), at various times between 1988 and 1997.
3. Respondent has never been registered with the Office of the Commissioner as an investment adviser or investment adviser representative.

B. Respondent Sold Unregistered Securities in the Form of LP Interests

4. Respondent offered for sale and/or sold unregistered securities in the form of LP interests in an investment fund called Shaolin Trading Management Fund (“the Fund”) as described hereafter.

Formation of the Fund and Registration with the SEC

5. On or about August 9, 1989, Respondent and Charles Wong (“Wong”), Respondent’s friend and business partner, filed a Form D Notice of Sale of Securities with the U.S. Securities and Exchange Commission (“SEC”) to make an offering of securities

(partnership interests) in a private investment partnership named Shaolin Trading Growth Fund, Ltd. (“the Fund”), pursuant to Rule 506 of Regulation D, at 17 C.F.R. § 230.506 (“the Notice”). Although the Fund included “Ltd.” in its name, it was identified in the Notice as a “limited partnership, already formed.”

6. In the Notice, Respondent and Wong were each identified as a “General and/or Managing Partner.”

7. Although the Fund may have been a federally covered security on SEC Form D, the Fund was never properly registered with the Commissioner in accordance with the notice filing requirements pursuant to HRS § 485-4.5 and Hawaii Administrative Rules (“HAR”) § 16-38-65.

8. Nothing happened with the Fund until 1999.

Formation of a Company to Act as the Fund’s General Partner

9. On or about January 8, 1999, Wong formed and registered a Limited Liability Company called Shaolin Trading, LLC (“the LLC”), with the State of Hawaii.

10. The LLC became a parent company to the Fund, serving as its sole general partner. The Fund’s March 20, 2000 Private Placement Memorandum (“PPM”) states that the LLC will have “discretion with respect to the operations, management and investment decisions of the [Fund].”

11. Although Respondent was not named as a member of the LLC on paper, he was brought in by Wong to help run the LLC as an equal business partner. In the Fund’s PPM, Respondent is identified as the “Chief Investment Strategist, managing member, and

½ owner” of the LLC. Also, Respondent and Wong equally split the LLC’s profits after setting aside 25% for taxes.

The Fund is Registered in Nevada and Hawaii

12. On or about June 28, 1999, the State of Nevada issued a Certificate of Limited Partnership to an entity called the Shaolin Trading Growth Fund, Limited Partnership.

13. On August 2, 1999, Wong filed an Application for Foreign Limited Partnership Registration with the State of Hawaii for the Fund. In a correction filed on February 8, 2000, Wong stated that the Fund should be correctly named “Shaolin Trading Growth Fund, Limited Partnership” rather than “Shaolin Trading Growth Fund, Ltd.,” and that the LLC should be, alone, named as the general partner thereof. For the purposes of this Preliminary Order to Cease and Desist (“Order”), “Shaolin Trading Growth Fund, Limited Partnership” and “Shaolin Trading Growth Fund, Ltd.,” shall be interchangeably, “the Fund.”

The Offer and Sale of LP Interests

14. Respondent and Wong offered and/or sold investment contracts, which they described as “limited partnerships,” in the Fund as described hereinbelow.

15. Wong, with Respondent’s knowledge, collaboration, and participation, created, operated, and/or managed a website under the LLC’s name, on which they maintained a web page called “The Private Money Management” which advertised and solicited investors to purchase the LP interests, stating “Shaolin Trading Growth Fund is accepting limited partners for details please contact us.”

16. The LLC's website also served to promote and to attract investors to the LLC's and Respondent's separate, individual money management services discussed in Section D hereinbelow.

17. From 1999 to 2000, Respondent and Wong brought in nine investors, who, collectively, paid a total of \$361,000 to acquire the Fund's LP interests for investment purposes.

18. Respondent and Wong told the investors that their monies would be invested in the Fund's investment portfolio, which subjected the investors' monies to the risks of the Fund's enterprise.

19. Respondent and Wong, through the LLC, charged investors a management fee equal to 0.1458% per month of the investment balance for managing the Fund's investment portfolio and had full control of the interest portfolio.

20. The investors did not receive any rights to exercise practical and actual control over the managerial decisions regarding the Fund.

21. The LP interests were securities.

22. Through the Fund's PPM, Respondent falsely informed investors and/or prospective investors through offering papers that the Fund's LP interests were exempt from registration as securities, when, in fact, they were required to be registered with the State of Hawaii.

23. The LP interests were not registered as securities with the State of Hawaii.

24. By the time Respondent and Wong closed and liquidated the Fund in 2001, the investors, collectively, lost a total of \$189,801.69 of their initial investment of \$361,000.

C. Respondent Acted as an Unregistered Investment Adviser and/or Investment Adviser Representative in his role with the LLC and the Fund

25. Respondent and Wong placed the investors' initial investment of \$361,000 into an account with the dealer, Brown & Company Securities Corporation (hereafter "Brown & Co.").

26. As the general partner for the Fund, the LLC provided investment advice to the Fund (and, therefore, to the nine investors who purchased LP interests) by directing trades.

27. As the LLC's "Chief Investment Strategist, managing member and ½ owner," Respondent represented the LLC in, and/or directly engaged in, the business of advising the Fund and its nine investors as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, by directing trades.

28. On December 22, 2006, Wong, the LLC, and the Fund executed a Consent Agreement with the Commissioner to settle their concerns in this matter, regarding multiple violations of the Uniform Securities Act, Chapter 485, HRS.

D. Respondent Acted as an Investment Adviser and/or Investment Adviser Representative for Other Investors Who Did Not Purchase LP Interests

29. Respondent managed a substantial amount of money for four investors based on his promise that they would get a profitable return on their individual investment accounts with Brown & Co. through his stock "trading."

Investor CG

30. In April of 1999, Respondent and Wong held a seminar on personal investing in Honolulu, Hawaii, at which time they encouraged attendees to visit the LLC's

website. An attendee, hereinafter identified as "Investor CG," expressed interest in having the LLC provide "personal money management" services to her.

31. In May of 1999, Respondent and Wong met with Investor CG at her home. She did not invest in the Fund, but she did agree to compensate Respondent and Wong for their investment advice, which they would provide to her by directing trades with her money in an account under her name.

32. Respondent assisted Investor CG in opening an account with Brown & Co. with an opening balance of \$468,175. Investor CG, Respondent, and Wong agreed that Respondent would decide what stock trades would be made and would direct the trades. Investor CG listed Respondent as a "designated trader" by submitting a "Limited Trading Authorization & Indemnification" form to Brown & Co. Respondent's signature appears on the form in two places, both dated May 5, 1999, along with Investor CG's signature, which appears once, with her signature dated May 4, 1999.

33. Respondent and Wong presented Investor CG with a Money Management Agreement that they had previously drafted, which she signed on July 14, 1999. The agreement stated that Investor CG would pay the LLC compensation of 17.5% on profits earned each month.

34. In July of 1999, Investor CG liquidated an account she had with Charles Schwab, and added the entire \$36,740 from that account to her account with Brown & Co. That month the LLC wrongfully charged 17.5% in compensation on that transfer, as though it were a gain or profit on her account. Respondent received a portion of this compensation pursuant to his agreement with Wong.

35. In the months that followed, Respondent directed numerous stock trades in Investor CG's account. Respondent and Wong sent emails to Investor CG, informing her of the value of her investment. These emails exaggerated gains or falsely stated that her account was making gains when it was not. For example, the December 1999 statement emailed to Investor CG stated that her account was worth \$726,153, when it was actually worth \$464,592. Respondent and Wong billed Investor CG for compensation based upon these false and inflated statements.

36. By the time Investor CG removed Respondent from her Brown & Co. account as her "designated trader," her account had lost \$273,901 of its initial value. In addition, Respondent and Wong took \$57,971 in compensation based on monthly profits calculated off of Investor CG's account, but the compensation was actually based upon exaggerated profits or falsely stated gains in light of the fact that the account actually lost money. Respondent pocketed \$21,375 of the compensation.

Investor GS

37. On or before February 5, 1999, Investor GS hired Respondent directly to manage his investment monies, as described herein below, and did not engage him through the LLC or in association with Wong.

38. Respondent assisted Investor GS in opening an account at Brown & Co. with the understanding that Respondent alone would decide what stock trades would be made and would direct the trades. Investor GS listed Respondent as a "designated trader" by submitting a "Limited Trading Authorization & Indemnification" form to Brown & Co.

Respondent's signature appears on the form in two places, both dated February 5, 1999, along with Investor GS's signature, also dated February 5, 1999.

39. Subsequently, Investor GS verbally agreed to compensate Respondent to "trade" in his Brown & Co. account in an amount equal to 10% of the monthly profit on the account.

40. Respondent thereafter directed trades on Investor GS's Brown & Co. account with full discretion and no input from Investor GS.

Investor RI

41. On or before February 8, 1999, Investor RI hired Respondent and the LLC to manage his investment monies, as described herein below, and did not have contact with Wong.

42. Respondent assisted Investor RI in opening an account at Brown & Co. with the understanding that Respondent would decide what trades would be made and would direct the trades. Investor RI listed Respondent as a "designated trader" by submitting a "Limited Trading Authorization & Indemnification" form to Brown & Co. Respondent's signature appears on the form in two places, both dated February 8, 1999, along with Investor RI's signature, dated February 9, 1999.

43. Subsequently, Investor RI verbally agreed to compensate Respondent to direct trades in his Brown & Co. account in an amount equal to 10% of the monthly profit on the account.

44. Respondent thereafter directed trades on Investor RI's Brown & Co. account with full discretion and no input from Investor RI.

45. During the year 2000, Respondent charged and took compensation from Investor RI. Investor RI paid the compensation by check to the LLC in the amount of about \$4,000.

Re: Investor SK

46. On or before March 19, 1998, Investor SK hired Respondent directly to manage his investment monies, as described herein below, and did not engage him through the LLC or in association with Wong.

47. Respondent assisted Investor SK in opening an account at Brown & Co., with the understanding that Respondent would decide what trades would be made and would direct the trades. Investor SK listed Respondent as a "designated trader" by submitting a "Limited Trading Authorization & Indemnification" form to Brown & Co. Respondent's signature appears on the form in two places, both dated March 19, 1998, along with Investor SK's signature, also dated March 19, 1998.

48. Subsequently, Investor SK verbally agreed to pay Respondent compensation to direct trades in his Brown & Co. account equal to 10%-15% of the monthly profit on the account.

49. Respondent thereafter directed trades on Investor SK's Brown & Co. account with full discretion and little or no input from Investor SK.

50. Between 1998 and 2002, Respondent charged and took compensation from Investor SK for these services.

E. Misrepresentations and Omissions

51. To attract investors to the Fund and to his investment management services for individuals' accounts, Respondent misrepresented and/or omitted material facts about himself, including, but not limited to, the following:

- a. The Fund's PPM falsely stated that Respondent "currently holds three securities licenses: Series 7, General Securities Representative (96%), Series 3 National Commodities Futures (94%), and the Series 63, the Uniform Securities Agent State Law Examination (100%)." According to records, Respondent held no such licenses and was not registered as a securities professional in the state of Hawaii during the time he managed investors' monies.
- b. Respondent falsely held himself out to investors and prospective investors as being financially successful. In fact, Respondent had filed for Chapter 7 bankruptcy in the State of Hawaii on March 6, 1997, and his debts were discharged on August 18, 1997. During much of the time of the events in question, Respondent was working at Pizza Hut.

IV. VIOLATIONS OF SECURITIES LAWS

52. The facts and allegations in paragraphs 1 through 51 are realleged and incorporated herein as if set forth verbatim.

53. Respondent committed at least forty-six (46) violations of Chapter 485, HRS.

A. Unregistered Securities

54. The LP interests in the Fund were securities in the form of investment contracts within the meaning of HRS § 485-1(13) and other applicable authority, to wit:

- a. Nine investors furnished value in the form of \$361,000 total to Respondent, Wong, and/or the LLC, which was placed in a Brown & Co. account.
- b. That investment of \$361,000 was subject to the risk of the LLC, in that the investment would gain or lose based solely upon Respondent's decisions on what to trade within the Brown & Co. account.
- c. The nine investors were induced to invest by Respondent's representations that he had the knowledge and ability to make good judgments directing trades with their \$361,000, such that their investments would grow.
- d. The nine investors did not have any control and were not involved in the management of the LLC, the Fund, or any of the related Brown & Co. accounts.

55. The LP interest were investment contracts that were required to be registered pursuant to HRS §§ 485-8 and/or 485-4.5(b), but were not, in fact, registered.

B. Unregistered Investment Adviser and/or Investment Adviser Representative

56. As The LLC's "Chief Investment Strategist, managing member and ½ owner," Respondent represented the LLC in, and/or directly engaged in, the business of advising

the Fund and its nine investors, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, by directing trades in the Fund's Brown & Co. account. He also directly engaged in the business of advising Investors CG, GS, RI, and SK as to the value of securities or as to the advisability of investing in, purchasing, or selling securities by directing trades in each of their Brown & Co. accounts.

57. Respondent's acts and practices identified in paragraph 56 are the activities of an investment adviser and/or investment adviser representative. Respondent was required to, but failed to, register as an investment adviser and/or investment adviser representative, resulting in fourteen (14) violations of HRS § 485-14.

C. Securities Fraud

58. Respondent's actions as alleged in paragraphs 1 through 51, in connection with offering for sale and/or selling of the above-described unregistered securities constitute or appear to constitute securities fraud, in violation of HRS § 485-25, in one or more of the following particulars:

- a. He received compensation based upon a system of calculating false or inflated profits on Investor CG's Brown & Co. account;
- b. Pursuant to his agreement with Investor CG, he was to receive compensation based upon the calculation of a percentage of profit or gain on Investor CG's Brown & Co. account. Instead, he received compensation based upon the transfer of Investor CG's Schwab account into her Brown & Co. account, even though this money was not a profit or gain;

- c. He failed to inform investors and/or prospective investors in the “Fund” and Investors CG, GS, RI, and SK that he was not registered with the State of Hawaii as an investment adviser and/or investment adviser representative, as required for the services he provided to them;
- d. He falsely informed investors and/or prospective investors through offering papers that the Fund’s LP interests were exempt from registration as securities, when, in fact, they were required to be registered with the State of Hawaii;
- e. He made false statements to investors and/or prospective investors in the “Fund” and/or to Investors CG, GS, RI, and SK, describing himself as being a financially successful investor and investment adviser, and failed to inform them that, in fact, he had recently filed for bankruptcy and was working at Pizza Hut;
- f. He failed to inform Investor CG that the compensation he received from her was based upon a system of false calculations of gains on her Brown & Co. account;
- g. He failed to inform Investor CG that he wrongfully received compensation based upon the transfer of Investor CG’s Schwab account into her Brown & Co. account, even though this money was not a profit or gain;

- h. The "Fund's" offering papers stated that Respondent "currently holds three securities licenses: Series 7, General Securities Representative (96%), Series 3 National Commodities Futures (94%), and the Series 63, the Uniform Securities Agent State Law Examination (100%)." However, according to the CRD, Respondent held no such licenses and was not registered as a securities professional in the state of Hawaii during the time he managed investors' monies;
- i. Respondent took compensation from Investor CG in exchange for his advice regarding the value of securities, which compensation was calculated using false and/or inflated account balances; and
- j. He provided investment advice to Investors CG, GS, RI, and SK for compensation by directing trades in their Brown & Co. accounts even though he was not registered as an investment adviser and/or investment.

V. PRELIMINARY ORDER

NOW THEREFORE, pursuant to HRS § 485-18.7, because of the aforementioned findings and/or because it appears that Respondent engaged in and/or may engage in further acts or practices in violation of Chapter 485A, HRS, and/or because it is found that this action is necessary and in the public interest for the protection of investors, IT IS HEREBY ORDERED that:

1. Respondent shall CEASE AND DESIST from making any offer to sell, solicitation to purchase, sale of and/or transfer of the above-described securities, or any other security, within, to, or from the State of Hawaii;

2. All contracts regarding the purchase or sale of the aforesaid securities by Respondent to Investor CG or any similarly situated investors are hereby RESCINDED effective immediately. Respondent shall REFUND to said investors all monies or other compensation paid, plus interest on the amounts of monies or other compensation calculated at the same rate of ten percent (10%) per annum from the date of the investment to the date of the refund payment until fully paid, minus amounts already paid to said investors. This payment shall be made within thirty (30) days of the date of the Commissioner's Final Order (the "Final Order"). Proof of said payments to investors shall be provided to the Securities Enforcement Branch within thirty (30) days of the date of the Final Order. If an investor elects not to rescind the transaction, then the investor must so indicate in writing that the investor has elected not to exercise such right;

3. Respondent shall be liable to pay the State of Hawaii, Department of Commerce and Consumer Affairs, Business Registration Division, an ADMINISTRATIVE PENALTY in the sum of TWO HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$250,000.00) plus interest on the unpaid balance thereof at the rate of ten percent (10%) per annum from the date of the Final Order until finally paid. Payment of this administrative penalty shall be made by cashier's check or certified check made payable to the "Department of Commerce and Consumer Affairs Compliance Resolution Fund" and received by the Commissioner within thirty (30) days of the date of the Final Order;

4. Respondent is PERMANENTLY BARRED as an agent, broker-dealer, investment adviser and/or investment adviser representative from the date of the Final Order and from applying for registration in the State of Hawaii as an agent, broker-dealer, investment adviser and/or investment adviser representative from the date of the Final Order;

5. Respondent shall be subject to a civil penalty of not more than FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00) per violation for each and every violation of this "Order" or any order of the Commissioner, pursuant to § 485A-604, HRS, and any future violation of Chapter 485A, HRS; and,

6. The imposition of this Order shall not preclude or prevent in any way the imposition of further sanctions or other actions against Respondent or any other party for violations of Chapters 485 and 485A, HRS.

YOU ARE HEREBY NOTIFIED that pursuant to HRS §§ 485-18.7 and 485A-604, as applicable, you may request a hearing on this matter within thirty (30) days of the date of this Order. Your request must be in writing and addressed to: Office of Administrative Hearings, Department of Commerce and Consumer Affairs, State of Hawaii, P.O. Box 541, Honolulu, Hawaii, 96809.

Your written request for a hearing must be simultaneously served upon the Securities Enforcement Branch, Department of Commerce and Consumer Affairs, State of Hawaii, P.O. Box 40, Honolulu, Hawaii 96810. If a hearing is requested, it shall be scheduled within fifteen (15) business days after your written request has been received by the Office of Administrative Hearings unless extended by the Commissioner for good cause.

If your written request for hearing is not timely received by the Office of Administrative Hearings and a hearing is not otherwise ordered by the Commissioner, this Order shall remain in effect unless and until modified or vacated by the Commissioner or until a Final Order becomes effective.

You are hereby further notified that pursuant to § 16-201-23 of the Hawaii Administrative Rules for Administrative Practice and Procedure, you may within ten (10) days after receiving a Final Order move the Commissioner to reconsider the Final Order. Your motion shall be filed with the Commissioner and shall state specifically what points of law or facts the Commissioner has overlooked or misunderstood together with brief arguments on the points raised.

Additionally, pursuant to HRS §§ 485-23 and 485A-609, as applicable, you may file an appeal with the Circuit Court of the First Circuit of the State of Hawaii in the manner provided in Chapter 91, HRS.

You have the right to retain legal counsel, at your own expense, for all stages of these proceedings.

APR - 4 2012

DATED: Honolulu, Hawaii, _____



TUNG CHAN
Commissioner of Securities
DEPARTMENT OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII