

**STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION**

MATTHEW CICCONE,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 2013-2710
	)	
STATE BOARD OF ADMINISTRATION,	)	
	)	
Respondent.	)	
	)	
_____	)	

**FINAL ORDER**

On July 22, 2013, the Presiding Officer submitted her Recommended Order to the State Board of Administration in this proceeding. A copy of the Recommended Order indicates that copies were served upon the pro se Petitioner, Matthew Ciccone, and upon counsel for the Respondent. Respondent filed a Proposed Recommended Order. Petitioner did not file a Proposed Recommended Order. Neither party filed exceptions, which were due on August 6, 2013. A copy of the Recommended Order is attached hereto as Exhibit A. The matter is now pending before the Senior Defined Contribution Programs Officer for final agency action.

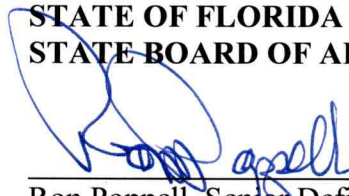
**ORDERED**

The Recommended Order (Exhibit A) hereby is adopted in its entirety. The Petitioner's request that the trading restrictions placed by the Respondent on Petitioner's Florida Retirement System (FRS) Investment Plan account on January 25, 2013 be lifted hereby is denied.

Any party to this proceeding has the right to seek judicial review of the Final Order pursuant to Section 120.68, Florida Statutes, by the filing of a Notice of Appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, with the Clerk of the State Board of Administration in the Office of the General Counsel, State Board of Administration, 1801 Hermitage Boulevard, Suite 100, Tallahassee, Florida, 32308, and by filing a copy of the Notice of Appeal accompanied by the applicable filing fees with the appropriate District Court of Appeal. The Notice of Appeal must be filed within thirty (30) days from the date the Final Order is filed with the Clerk of the State Board of Administration.

DONE AND ORDERED this 17<sup>th</sup> day of September, 2013, in Tallahassee, Florida.

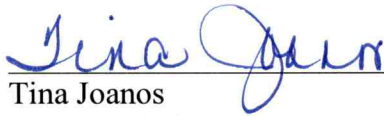
**STATE OF FLORIDA  
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Ron Poppell, Senior Defined Contribution  
Programs Officer  
State Board of Administration  
1801 Hermitage Boulevard, Suite 100  
Tallahassee, Florida 32308  
(850) 488-4406

FILED ON THIS DATE PURSUANT TO  
SECTION 120.52, FLORIDA STATUTES  
WITH THE DESIGNATED CLERK OF THE  
STATE BOARD OF ADMINISTRATION,  
RECEIPT OF WHICH IS HEREBY  
ACKNOWLEDGED.



Tina Joanos  
Agency Clerk

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing Final Order was sent by UPS to Matthew Ciccone, pro se, [REDACTED] and by U.S. mail to Brian Newman and Brandice Dickson, Esq., at Pennington, Moore, Wilkinson, Bell & Dunbar, P.A., P.O. Box 10095, Tallahassee, Florida 32302-2095, this 17th day of September, 2013.



Ruth A. Smith  
Assistant General Counsel  
State Board of Administration of Florida  
1801 Hermitage Boulevard  
Suite 100  
Tallahassee, FL 32308

STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION

MATTHEW CICCONE,

Petitioner,

v.

CASE NO.: 2013-2710

STATE BOARD OF ADMINISTRATION,

Respondent.

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**RECOMMENDED ORDER**

This case was heard in an informal proceeding pursuant to Section 120.57(2), Florida Statutes, before the undersigned presiding officer for the State of Florida, State Board of Administration (SBA) on May 7, 2013, in Tallahassee, Florida. The appearances were as follows:

**APPEARANCES**

For Petitioner: Matthew Ciccone, pro se



For Respondent: Brian A. Newman, Esquire  
Pennington, P.A.  
215 S. Monroe Street, Suite 200  
Tallahassee, Florida 32301

**STATEMENT OF THE ISSUE**

The issue is whether trading restrictions were properly placed on Petitioner's Florida Retirement System (FRS) Investment Plan account on January 25, 2013 due to excessive trading.

**EXHIBIT A**

## PRELIMINARY STATEMENT

Petitioner attended the hearing by telephone and testified on his own behalf. Respondent presented the testimony of Daniel Beard, Director of Policy, Risk Management, and Compliance, State Board of Administration. Petitioner offered no exhibits. Respondent's Exhibits 1 through 7 were admitted into evidence without objection. After the hearing Respondent's Exhibits 8 and 9 were admitted into evidence.

A transcript of the informal hearing was made, filed with the agency, and provided to the parties, who were invited to submit proposed recommended orders within 30 days. Respondent filed a proposed recommended order; Petitioner made no further filings.

## MATERIAL UNDISPUTED FACTS

1. Petitioner is a member of the FRS defined contribution Investment Plan.
2. In September and October of 2007, Petitioner engaged in the following trades in his Investment Plan account:

### Round Trip Trade #1

September 25, 2007 Buy FRS Select Conservative Balanced Fund 

October 9, 2007 Sell FRS Select Conservative Balanced Fund 

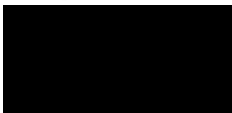
### Round Trip Trade #2

September 25, 2007 Buy FRS Select Moderate Balanced Fund 

October 9, 2007 Sell FRS Select Moderate Balanced Fund 

3. A warning letter was issued to Petitioner on December 4, 2007, advising him that the above-referenced trades constituted Market Timing Trades and that further Market Timing Trades will result in a trade restriction on his Investment Plan account.

4. In May of 2011, Petitioner engaged in the following trades in his Investment Plan account:

*May 9, 2011 Buy U.S. TIPS T10* 

*May 12, 2011 Sell U.S. TIPS T10* 

5. A direction letter was issued to Petitioner on May 13, 2011, advising Petitioner that he was restricted from making trades via MyFRS.com for at least one full calendar month, until July 1, 2011.

6. In January of 2013, Petitioner engaged in the following trades in his Investment Plan account:

*January 23, 2013 Buy FRS Select Moderate Balanced Fund* 

*January 24, 2013 Sell FRS Select Moderate Balanced Fund* 

7. A second direction letter was issued to Petitioner on January 25, 2013, advising Petitioner that he was restricted from making trades via MyFRS.com for at least three full calendar months, i.e. until May 1, 2013.

8. Petitioner filed a Petition for Hearing protesting the January 25, 2013 trade restriction, and this administrative process followed.

#### CONCLUSIONS OF LAW

9. Excessive trading in Investment Plan accounts is prohibited. "Excessive trading" means multiple occurrences of Market Timing Trades by a member. Rule 19-11.001(22), F.A.C.

10. A "Market Timing Trade" is:

a member-directed series of trades with the following two characteristics:

1. At least one Roundtrip Trade within a 30-day period, and
2. The trade amount for all Roundtrip Trades is an aggregate amount of \$[REDACTED] or more.

Rule 19-11.001(34), F.A.C.

11. A "Roundtrip Trade"

occurs when a member conducts a series of at least two non-exempt transactions that include one or more transfers into an authorized investment fund and one or more transfers out of the same authorized investment fund in either order (i.e., in/out or out/in), regardless of any multiple transfers from or to other different authorized investment funds during the roundtrip.

Rule 19-11.001(40), F.A.C.

12. The trades Petitioner engaged in 2007, 2011, and 2013 (identified above) meet the definition of "Market Timing Trade" and thus constitute "excessive trading."

13. Having engaged in excessive trading on at least two occasions prior to the issuance of the second direction letter, the latest restriction placed on Petitioner's account was warranted under Rule 19-11.004(2)(b)3., F.A.C., which provides:

[M]embers who engage in Market Timing Trades and who have previously received a direction letter, as described in subparagraph 2., above, will be sent another direction letter, delivered by courier. This direction letter shall require that the member shall not have access to automated trade instructions for at least three full calendar months following the date of the direction letter. The member shall be required to conduct trades via telephone by contacting the Investment Plan Administrator for at least three full calendar months.

14. The three calendar month restriction placed on Petitioner's Investment Plan account on January 25, 2013 is appropriate because of Petitioner's history of excessive trading. Petitioner's claim that the latest Market Timing Trades were unintended is immaterial to this proceeding because intent is not an element of the definition of a Market Timing Trade. Thus, the SBA is not required to establish that Petitioner *intended* to engage in Market Timing Trading a third time to justify the most recent trade restriction on his Investment Plan account.

15. Excessive trading in the Investment Plan is prohibited because market timing trades drive up the cost of administering the Plan and those costs are borne by all Plan participants. The Respondent is constrained by Chapter 121 to contain costs, including administrative costs, of the Investment Plan. §§121.4501(8)(c)1.d.; 121.4501(9)(c)5; and 121.4501(9)(c)9., Fla.Stat.

16. The rules governing excessive trading in an Investment Plan account do not contemplate that previous infractions "roll off" or otherwise disappear. Rule 19-11.004, F.A.C.; Therefore, previous infractions are always counted against the Investment Plan member in determining the consequence for future violations. *Id.*

17. Members are allowed, however, to cancel any transaction that may qualify as a Market Timing Trade as long as the member cancels it before 4:00 p.m. ET – at the close of the market - on the day the transaction was placed. Should the member timely cancel such a transaction, then no excessive trading infraction will have occurred and it will not count against the member's accumulation of infractions under Rule 19-11.004, Florida Administrative Code.

18. Here, the Petitioner admits that the last infraction was due to his error, but he did not notify the Respondent or attempt to cancel the transaction until after the 4:00 p.m. ET close



of the market deadline. [Id]. Therefore, the transaction went through and he accumulated another excessive trading infraction.

19. Rule 19-11.004 does not prohibit an Investment Plan member from making trades – even when he or she reaches the maximum number of excessive trades under the rule; rather, the greatest restriction the Respondent can impose under the rule on any Plan member is to confine the member to paper trades for the duration of his/her membership in the Plan.

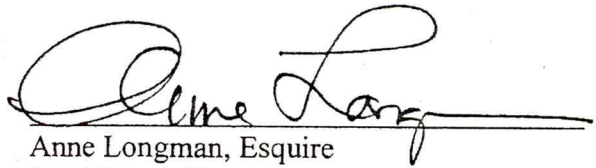
20. The Florida Statutes creating and governing the Florida Retirement System, and Petitioner's rights and responsibilities under them are clear, and the SBA cannot deviate from them. Balezentis v. Department of Management Services, Division of Retirement, 2005 WL 517476 (Fla.Div.Admin.Hrgs.). Further, the SBA's construction of the statutes it is charged to implement is entitled to great weight and will be followed unless proven to be clearly erroneous or amounting to an abuse of discretion. Level 3 Communications v. C.V. Jacobs, 841 So.2d 447, 450 (Fla. 2002); Okeechobee Health Care v. Collins, 726 So.2d 775 (Fla. 1st DCA 1998).

21. Respondent's rule against excessive trading is premised on the United States Securities and Exchange Commission's Rule 22c-2 (codified at 17 CFR § 270.22c), which allows for investigation into market timing trades, and Chapter 121, Florida Statutes, which directs Respondent to control administrative costs of the Investment Plan for all members, and Petitioner has not shown that Respondent's actions in restricting the Petitioner's method of trading were an abuse of discretion.

### **RECOMMENDATION**

Having considered the law and the undisputed facts of record, I recommend that Respondent, State Board of Administration, issue a final order denying the relief requested.

RESPECTFULLY SUBMITTED this 22<sup>d</sup> day of July, 2013.



Anne Longman, Esquire  
Presiding Officer  
For the State Board of Administration  
Lewis, Longman & Walker, P.A.  
315 South Calhoun Street, Suite 830  
Tallahassee, FL 32301-1872

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS: THIS IS NOT A FINAL ORDER

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions must be filed with the Agency Clerk of the State Board of Administration and served on opposing counsel at the addresses shown below. The SBA then will enter a Final Order which will set out the final agency decision in this case.

Filed via electronic delivery with:  
Agency Clerk  
Office of the General Counsel  
Florida State Board of Administration  
1801 Hermitage Blvd., Suite 100  
Tallahassee, FL 32308  
Tina.joanos@sbafla.com  
Daniel.B Beard@sbafla.com  
(850) 488-4406

This 22<sup>d</sup> day of July, 2013.

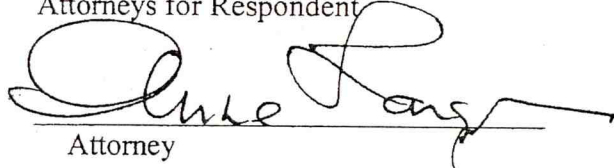
Copies furnished to:

Via Regular Mail  
Matthew Ciccone



Petitioner

Via electronic mail:  
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Brandice D. Dickson  
Pennington, P.A.  
Post Office Box 10095  
Tallahassee, FL 32302-2095  
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Attorneys for Respondent



Attorney