



**U.S. COMMODITY FUTURES TRADING COMMISSION**

Three Lafayette Centre  
1155 21st Street, NW, Washington, DC 20581

In the Matter of

WILSHIRE INVESTMENT MANAGEMENT  
CORPORATION,

Registrant.

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CFTC Docket No. SD-06-06

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**INITIAL DECISION**

Registrant Wilshire Investment Management Corporation ("Wilshire") has not responded to the Commission's notice of intent to revoke its registration<sup>1</sup> even though the Proceedings Clerk properly served the pleading.<sup>2</sup> Thus, the

<sup>1</sup> Notice of Intent to Suspend, Revoke or Restrict Wilshire Investment Management Corporation's Registration as an Introducing Broker, dated September 28, 2006 ("Notice"). As the title of the Notice indicates, Wilshire is registered as an introducing broker. Notice at 1. The Notice sets forth allegations that Wilshire is subject to statutory disqualification pursuant to Section 8a(2)(C), (E) and (H) of the Commodity Exchange Act ("Act"), 7 U.S.C. §12a(2)(C), (E), (H). *Id.* at 2-3.

<sup>2</sup> This proceeding is conducted pursuant to Rule 3.60, 17 C.F.R. §3.60. Rule 3.50, 17 C.F.R. §3.50, governs service in Rule 3.60 proceedings. Rule 3.50(a) permits service by a number of methods but lists only one method as per se sufficient by stating, "service upon an applicant or registrant will be sufficient if mailed by registered mail or certified mail return receipt requested properly addressed to the applicant or registrant at the address shown on his application or any amendment thereto, and will be complete upon mailing." 17 C.F.R. §3.50(a). On November 2, 2006, the Proceedings Clerk sent the Notice by certified mail to 112 Santiago Drive, Jupiter, Florida 33458. Declaration of Tempest S. Thomas Pursuant to 28 U.S.C. §1746, dated January 29, 2007, at 2 (attached as Exhibit 5 to Division of Enforcement's Memorandum of Law in Support of its Motion for Entry of Order of Default, Findings of Fact, Conclusions of Law and Revocation of the Registration of Wilshire Investment Management Corporation, filed January 30, 2007 ("Division's Memorandum")).

(continued..)

registrant is in default.<sup>3</sup> Given these circumstances, the Division of Enforcement's motion for a default judgment<sup>4</sup> only requires us to determine whether the Division has adequately demonstrated Wilshire's statutory disqualification pursuant to Section 8a(2)(C), (E) or (H).<sup>5</sup> If Wilshire is disqualified under any one of these three provisions, then the firm will be found to be conclusively unfit for registration.<sup>6</sup>

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This address was listed as that of the firm on its registration application, as most recently amended, then on file with the National Futures Association. Declaration of Sandra A. Guard Pursuant to 28 U.S.C. §1746, dated January 26, 2007, at 2 (attached as Exhibit 1 to the Division's Memorandum). Consequently, service was proper and completed on November 2nd, and Wilshire's response was due by December 5, 2006. 17 C.F.R. §§3.50(a), 3.60(a)(3); In re Buckwalter, [1992-1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶25,609 at 39,893 n.2 (CFTC Dec. 10, 1992).

<sup>3</sup> When it did not respond to the Notice in a timely fashion, Wilshire automatically fell into default. 17 C.F.R. §3.60(a)(4).

<sup>4</sup> Division of Enforcement's Motion for Entry of Order of Default, Findings of Fact, Conclusions of Law and Revocation of the Registration of Wilshire Investment Management Corporation, filed January 30, 2007. Wilshire has not responded to the Division's motion.

<sup>5</sup> Rule 10.93, 17 C.F.R. §10.93, governs the disposition of Rule 3.60 default judgment motions. 17 C.F.R. §3.60(g). In determining whether a default judgment is appropriate, we take as true a notice of intent's well-pled allegations of fact, as augmented by any evidence the Division may submit in support of the motion, and draw our own legal conclusions. In re Collins, [2003-2004 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶29,607 at 55,621 (CFTC Nov. 4, 2003).

<sup>6</sup> Generally, the Division must establish the grounds for statutory disqualification by a preponderance of the evidence. 17 C.F.R. §3.60(e); Cf. In re Gath, [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶26,751 at 44,111 (CFTC Aug. 2, 1996). Once the Division satisfies this requirement, a registrant is deemed presumptively unfit for registration and the burden of  
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Our analysis of the record begins with the Notice and, because the Division's other submissions do not render its relevant claims ill-pled, the pleading forms an adequate basis for our decision. The following allegations are well-pled and we take them to be true. On September 14, 2004, the Commission filed an injunctive action against Wilshire in the United States District Court for the Southern District of Florida.<sup>7</sup> On December 5, 2005, the District Court entered a trial order permanently enjoining the firm from engaging in any commodity-related activity.<sup>8</sup> This precludes Wilshire from

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proof shifts. 17 C.F.R. §3.60(e)(1)-(2); In re Hirshberg, [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶26,573 at 43,522 (CFTC Dec. 27, 1995). To overcome the presumption of unfitness arising out of 7 U.S.C. §12a(2), the registrant must show by clear and convincing evidence that it does not pose a substantial threat to the public if permitted to remain registered. 17 C.F.R. §3.60(e)(1); Hirshberg, [1994-1996 Transfer Binder] ¶26,573 at 43,522. To make this showing, a registrant must present "[e]vidence mitigating the seriousness of the wrongdoing underlying the . . . disqualification" and/or evidence that the "registrant has undergone rehabilitation since the time of the wrongdoing underlying the statutory disqualification." 17 C.F.R. §3.60(f)(1)-(2). See In re Horn, [1986-1987 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶23,731 at 33,889 (CFTC July 21, 1987). (In certain cases not here applicable, the registrant must also present evidence of adequate supervision. 17 C.F.R. §3.60(f)(3).) A registrant preserves the right to show that its continued licensure would pose no substantial risk to the public despite the existence of one or more statutory disqualifications by stating, in a response to the notice of intent, an intent to make such a showing. 17 C.F.R. §3.60(b)(2)(i). Here, Wilshire's default precludes it from introducing evidence of rehabilitation or mitigation. Thus, if we find the registrant to be statutorily disqualified, the resulting presumption of unfitness will be conclusive.

<sup>7</sup> Notice at 2.

<sup>8</sup> Id.

acting as an introducing broker<sup>9</sup> and thereby establishes grounds for disqualification under Section 8a(2)(C).<sup>10</sup>

Because Wilshire is statutorily disqualified pursuant to Section 8a(2)(C), it is unfit for registration.<sup>11</sup> Accordingly, we **GRANT** the Division's motion for a default judgment and **REVOKE** Wilshire's registration as an introducing

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<sup>9</sup> With an exception not relevant here, the Act defines an introducing broker as any person

engaged in soliciting or in accepting orders for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility who does not accept any money, securities, or property (or extend credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom.

7 U.S.C. §1a(23).

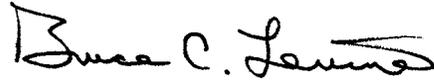
<sup>10</sup> Section 8a(2)(C), among other things, permits this agency to revoke the registration of any person who is permanently enjoined by a court order from acting as an introducing broker.

<sup>11</sup> See supra note 6. Because there is no evidence to rebut the presumption of unfitness, we need not to consider the other alleged grounds for revoking Wilshire's registration. Cf. In re Interstate Sec. Corp., [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶25,295 at 38,954-55 (CFTC June 1, 1992).

broker.

**IT IS SO ORDERED.**<sup>12</sup>

On this 13th day of February, 2007



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Bruce C. Levine  
Administrative Law Judge

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<sup>12</sup> Any party may appeal this initial decision to the Commission by filing a notice of appeal with the Proceedings Clerk within 15 days of the date upon which this order is served. 17 C.F.R. §§3.60(i)(1), 10.102(a). If no party files a notice of appeal and the Commission chooses not to place the case on its docket for review sua sponte, this initial decision shall automatically become the final decision of the Commission 30 days after service. 17 C.F.R. §3.60(i).