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**STATE OF WASHINGTON  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
SECURITIES DIVISION**

IN THE MATTER OF DETERMINING  
whether there has been a violation of the  
Securities Act of Washington by:

JOYCE CHERRY,

Respondent.

S-03-020-03-SC01

STATEMENT OF CHARGES AND NOTICE  
OF INTENT TO ENTER AN ORDER TO  
CEASE AND DESIST, SUSPEND  
SECURITIES SALESPERSON  
REGISTRATION, AND IMPOSE FINES

Case No. S-03-020

THE STATE OF WASHINGTON TO:

JOYCE CHERRY, CRD #2207911  
5993 NW SUSIE LANE  
BREMERTON, WA 98312

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**STATEMENT OF CHARGES**

Please take notice that the Securities Administrator of the State of Washington has reason to believe that the Respondent, Joyce Cherry, has violated the Securities Act of Washington and has engaged in dishonest and unethical practices in the securities business while employed as a registered securities salesperson. The Securities Administrator believes those violations justify the suspension of Joyce Cherry's securities salesperson registration pursuant to RCW 21.20.110(1), and the entry of an order against the Respondent to cease and desist from such violations pursuant to RCW 21.20.390. The Securities Administrator finds as follows:

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STATEMENT OF CHARGES AND NOTICE OF INTENT TO  
ENTER AN ORDER TO CEASE AND DESIST, SUSPEND  
SECURITIES SALESPERSON REGISTRATION, AND IMPOSE  
FINES

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DEPARTMENT OF FINANCIAL INSTITUTIONS  
Securities Division  
PO Box 9033  
Olympia, WA 98507-9033  
360-902-8760

1 **TENTATIVE FINDINGS OF FACT**

2 **I. Respondent**

3 1. Joyce Cherry (“Cherry”) is a registered securities salesperson in the State of Washington. From March  
4 1993 to January 2002, Cherry was a registered securities salesperson with WM Financial Services, Inc.  
5 (“WM Financial”). WM Financial is the broker-dealer affiliated with Washington Mutual Bank  
6 (“Washington Mutual”). Cherry was terminated by WM Financial on January 10, 2002 for failure to  
7 follow procedures, following an internal review by WM Financial that found inappropriate trading  
8 activity in several accounts. In response to a subpoena from the Division, WM Financial provided  
9 copies of four separate internal compliance department inquiries into Cherry’s mutual fund switches,  
10 variable annuity sales practices and mutual fund sales practices. Three of these inquiries involved  
11 transactions executed between August 14, 2000 and October 12, 2000. WM Financial also provided  
12 four customer complaints against Cherry, involving mutual fund sales practices, switches of mutual  
13 funds and annuity purchases, two of which are detailed below. Cherry is currently a registered  
14 securities salesperson with Allstate Financial Services, LLC.

15 **II. Nature of the Conduct**

16 *“Customer A”*

17 2. Customer A is a 52 year-old medically retired former police officer and mental health therapist.  
18 Customer A worked for five years as a police officer, but in 1984, at age 33, she was forced to retire  
19 due to a heart condition. She returned to graduate school and became a mental health therapist with  
20 the Veteran’s Administration. She was then forced to retire from the Veteran’s Administration at age  
21 47 due to her worsening medical condition, including severely deteriorating eyesight resulting from  
22 glaucoma. In 2000, Customer A received approximately \$300 per month in income from her

1 investments and \$700 from her Veteran's Administration pension. Her husband earns approximately  
2 \$70,000 per year.

3 3. Customer A does not have experience in investing in the securities markets. She does not have  
4 experience in investing in fixed or variable annuities. Prior to 2000, her investment experience was  
5 limited to savings accounts and mutual funds.

6 4. Customer A has two investments through WM Financial, a mutual fund and a unit investment trust  
7 offered by John Nuveen & Co ("Nuveen"). Nuveen provides tax-free investments for conservative  
8 investors. The unit investment trust is Nuveen's Premier Insured Municipal Income Fund and the  
9 mutual fund is the Intermediate Duration Municipal Bond Fund (hereinafter the "Nuveen Funds").  
10 Both are considered conservative, low risk investments.

11 5. In August 2000, Customer A sold a home she owned prior to her marriage. She received \$125,350.32  
12 in profit from the sale of the home. The proceeds of the sale were wired to her bank account at  
13 Washington Mutual.

14 6. On September 1, 2000, Customer A went to the Crown Hill branch of Washington Mutual in Seattle,  
15 Washington (the "Crown Hill Washington Mutual"). The registered representative Customer A had  
16 worked with in the past was no longer with WM Financial. Customer A was directed to speak with  
17 Cherry.

18 7. Customer A told Cherry that she owned the Nuveen Funds and that she was satisfied with their  
19 performance. She brought a copy of a recent statement to show Cherry. She told Cherry that she  
20 wanted to invest the proceeds from the sale of her home in the Nuveen Funds.

- 1 8. Cherry told Customer A that WM Financial no longer carried Nuveen, but that she could recommend  
2 alternative investments. Unbeknownst to Customer A, WM Financial did in fact offer Nuveen at that  
3 time.
- 4 9. Customer A put her trust and confidence in Cherry to recommend a suitable investment. Customer A  
5 confided to Cherry that she had no understanding of securities or the securities markets. She also  
6 confided in Cherry about her medical conditions and the fact that she would never be able to re-enter  
7 the workforce. Customer A informed Cherry that her husband was planning on retiring in the next two  
8 years. In summary, she told Cherry that she needed a “safe” investment because she and her husband  
9 could not afford to lose the money. Although Customer A did not need an investment that would earn  
10 income in the short-term, she did need an investment vehicle that would preserve her capital and offer  
11 liquidity in the event that her husband was no longer able to work due to his failing health.
- 12 10. Cherry recommended a variable annuity<sup>1</sup> offered by American General (“AGL”). Cherry represented  
13 that the AGL annuity was a safe investment. Cherry represented that even if the investment did not  
14 increase in value that at the end of the “seven-year term,” Customer A was guaranteed to receive her  
15 entire principal back from AGL. Customer A expressed concerns about seven years of illiquidity, but  
16 Cherry represented that if she needed the money, she could withdraw 15% of investment per year  
17 without penalty. However, Cherry did not disclose that this withdrawal would be from an underlying  
18 investment whose market value would fluctuate as a result of variations in performance of the stock  
19 market. Cherry also represented that AGL was doing very well and that because it was a balanced  
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21 <sup>1</sup> An annuity is a contract between an individual and an insurance company. The individual buys an income stream in the form of annuity  
22 payments for a specified period of time. Payments can begin immediately or be deferred until a specified future time. During the accumulation  
phase of a deferred annuity, investment growth is tax-deferred. Fixed annuities offer a guaranteed rate of return, while variable annuities offer  
investment choices that fluctuate in value over time.

1 portfolio, it was a safe investment. Cherry described the investment as operating similar to a bond, i.e.  
2 that in seven years Customer A would receive her principal and any accrued interest.

3 11. Based on Cherry's recommendation, that same day, Customer A authorized the purchase of a variable  
4 annuity through American General Life for \$120,000. Customer A was named as the annuitant and  
5 her husband was named as the beneficiary. The contract was allocated 100% of the funds into AGL's  
6 Balanced Portfolio. Cherry did not describe the composition of the "Balanced Portfolio" to Customer  
7 A.

8 12. Cherry failed to explain the operation of a variable annuity to Customer A. Customer A did not learn  
9 until almost one year after she made her investment that her principal was not guaranteed, except in the  
10 case of her death. Cherry did not explain that the annuity would not begin to pay out until Customer A  
11 reached age 85, on February 17, 2036. Cherry did not describe the surrender charges that would be  
12 assessed by AGL if Customer A wished to withdraw all or part (in excess of 15% as described above)  
13 of her investment prior to 2007. The annuity was subject to a surrender charge of 7% in year one, 6%  
14 in year two, 5% in year three, 4% in year four, 3% in year five, 2% in year six and 0% in year seven.

15 13. Cherry completed a new account form for Customer A. Under past investment experience, Cherry  
16 selected "cd's/bank accounts," "mutual funds" and "annuities." Customer A in fact had no previous  
17 investment experience with annuities. Cherry selected a time horizon of "10+ years," despite the fact  
18 that Customer A had explained her and her husband's medical problems, her inability to work, and her  
19 husband's impending retirement. When instructed to initial the new account form, Customer A did so,  
20 but due to her glaucoma she was unable to read what was printed on the form.

21 14. The \$120,000 invested in the AGL annuity represented approximately 42% of Customer A's liquid  
22 assets and approximately 21% of the Customer A's total net worth.

1 15. On September 30, 2000, Cherry received a total gross commission of \$6,600 from Customer A's  
2 purchase of the AGL annuity.

3 *"Customer B"*

4 16. Customer B is an 89 year-old widow who lives in a retirement home in Seattle, Washington. Her  
5 husband passed away in 1994. She is a high-school graduate and worked as a secretary for  
6 approximately twenty years while raising two children.

7 17. Customer B does not have experience in investing in the securities markets. Customer B's investment  
8 experience is limited to certificates of deposit (CDs) and Treasury bills. Customer B has banked with  
9 Washington Mutual for over 20 years.

10 18. On August 24, 2001, Customer B went to the Crown Hill Washington Mutual to renew a CD that was  
11 close to expiration. She was interested in renewing her CD for a six-month to one-year term. She was  
12 not interested in a long-term investment, due to her advanced age. She did not, however, require an  
13 investment that would pay current income.

14 19. A bank representative told Customer B that CDs were paying very little interest at the time and she  
15 was directed to speak with Mark Sigl ("Sigl"), Cherry's assistant. Sigl offered Customer B an annuity  
16 from Safeco and began to fill out the paperwork. After completing the paperwork, Sigl realized that  
17 Customer B could not purchase the Safeco annuity due to her age. In order to purchase the Safeco  
18 annuity in question, the annuitant had to be younger than 85 years of age. At the time, Customer B  
19 was 87 years of age.

20 20. Sigl then introduced Customer B to Cherry. Cherry told Customer B that she had an investment  
21 similar to a CD that would pay a rate of return of 7-10% and that was "guaranteed." Cherry did not tell  
22 Customer B that the investment was in a mutual fund that was subject to downside market risk. Had

1 Cherry disclosed that fact, Customer B would not have invested, since she limited her investments  
2 primarily to CDs. Customer B believed that with the recommended investment her principal would  
3 stay intact and only her interest rate would fluctuate.

4 21. On August 24, 2001, Cherry completed the paperwork for Customer B to invest \$11,205.05 in the WM  
5 Equity Income Mutual Fund (the "WM Fund"). According to WM Financial, the goal of the WM  
6 Fund is to provide high current income while achieving long-term growth of income and capital. The  
7 WM Fund primarily invests in dividend-paying common and preferred stock. Other investments  
8 include bonds, convertible securities, U.S. Government securities, American and European depository  
9 receipts, mortgage-backed securities, repurchase agreements and real estate investment trusts. Unlike a  
10 CD, the WM Fund is not bank insured and the value of an investor's principal may fluctuate.

11 22. The WM Fund Cherry purchased for Customer B had an upfront sales fee of 5.5%. Upfront fees are  
12 deducted before the customer's funds are invested. Thus, the amount actually invested is reduced by  
13 the amount of the upfront fee. Customer B paid \$616.28 to WM Financial, which immediately  
14 reduced her initial investment to \$10,588.77. Cherry failed to disclose both the actual amount, and the  
15 effect, of the upfront fee.

16 23. Cherry completed a new account form for Customer B. Under past investment experience, Cherry  
17 selected "cd's/bank accounts" and "mutual funds." Customer B in fact had no previous investment  
18 experience with mutual funds. Cherry selected a time horizon of "5-10 years", despite the fact that  
19 Customer B was 87 years old at the time. Cherry also selected a "moderate" risk tolerance for  
20 Customer B, despite Customer B's desire for an investment that guaranteed the security of her  
21 principal. When instructed to initial the new account form, Customer B did so, but was unable to  
22 understand what she was signing.

1 24. On or about September 25, 2001, Customer B discussed the investment with her son. After he  
2 reviewed the paperwork associated with the investment, he informed her that she had purchased a  
3 mutual fund. When Customer B's son confronted Cherry about the purchase, Cherry again falsely  
4 represented that the investment was "guaranteed."

5 25. As a result of written complaints to WM Financial by both Customer B and her son, on November 29,  
6 2001, WM Financial refunded the amount of Customer B's investment.

7  
8 Based upon the above Tentative Findings of Fact, the following Conclusions of Law are made:

9 **CONCLUSIONS OF LAW**

- 10 1. Joyce Cherry's recommendations of unsuitable securities, as set forth in the Tentative Findings of Fact  
11 above, constitute a dishonest and unethical practice in the securities business. WAC 460-22B-090(7)  
12 defines recommending the purchase or sale of a security without reasonable grounds to believe that  
13 such a transaction is suitable for that customer as a "dishonest and unethical practice" as that term is  
14 used in RCW 21.20.110(1)(g). Such practice is a ground for suspending or revoking Joyce Cherry's  
15 securities salesperson's registration pursuant to RCW 21.20.110(1)(g).
- 16 2. Joyce Cherry has committed a dishonest and unethical practice under RCW 21.20.110(1)(g), as set  
17 forth in the Tentative Findings of Fact above, by misrepresenting the investment time horizon and  
18 previous investment experience of Customers A and B in order to make the recommended investments  
19 appear suitable. WAC 460-22B-090(3) defines the maintenance of an account containing fictitious  
20 information in order to execute transactions which would otherwise be prohibited as a "dishonest and  
21 unethical practice" as that term is used in RCW 21.20.110(1)(g). Such practice is a ground for

1 suspending or revoking Cherry's securities salesperson's registration pursuant to RCW  
2 21.20.110(1)(g).

3 3. Joyce Cherry, as set forth in the Tentative Findings of Fact above, in connection with the offer and sale  
4 of securities, made untrue statements of material fact or omitted to state material facts necessary in  
5 order to make the statements made, in light of the circumstances under which they were made, not  
6 misleading, in violation of RCW 21.20.010. Such practice is a ground for suspending or revoking  
7 Cherry's securities salesperson's registration pursuant to RCW 21.20.110(1)(b).

8 **NOTICE OF INTENT TO SUSPEND REGISTRATION**

9 Pursuant to RCW 21.20.110(1), and based upon the above Tentative Findings of Fact and  
10 Conclusions of Law, the Securities Administrator intends to order that the securities salesperson  
11 registration of the Respondent be suspended for a period of one year.

12 **NOTICE OF INTENT TO IMPOSE FINES**

13 Pursuant to RCW 21.20.110(1) and RCW 21.20.395, and based upon the above Tentative Findings  
14 of Fact and Conclusions of Law, the Securities Administrator intends to order that Respondent shall be  
15 liable for and pay a fine of \$30,000.

16 **NOTICE OF INTENT TO ORDER RESPONDENT TO CEASE AND DESIST**

17 Pursuant to RCW 21.20.390, and based upon the above Tentative Findings of Fact and Conclusions  
18 of Law, the Securities Administrator intends to order that the Respondent permanently cease and desist  
19 from violations of RCW 21.20.010.

20 **AUTHORITY AND PROCEDURE**

21 This Order is entered pursuant to the provisions of RCW 21.20.110 and RCW 21.20.390, and is  
22 subject to the provisions of RCW 21.20.120 and Chapter 34.05 RCW. The Respondent may make a

1 written request for a hearing as set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND  
2 OPPORTUNITY FOR HEARING accompanying this Order. If the Respondent does not request a  
3 hearing, the Securities Administrator intends to adopt the foregoing Tentative Findings of Fact and  
4 Conclusions of Law as final, and enter a permanent cease and desist order against the Respondent and  
5 enter an order suspending the Respondent's securities salesperson registration and imposing the fines sought.

6 DATED this 4 day of August, 2003.

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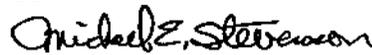
9 DEBORAH R. BORTNER  
10 Securities Administrator

11 Presented by:

12 

13 Andrea Y. Sato  
14 Enforcement Attorney

15 Approved by:

16 

17 Michael E. Stevenson  
18 Chief of Enforcement