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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:

MICHAEL D. MONTGOMERY,

Respondent.

S-08-129-09-FO01

ENTRY OF FINDINGS OF FACT AND  
CONCLUSIONS OF LAW AND FINAL ORDER  
TO REVOKE REGISTRATIONS

THE STATE OF WASHINGTON TO:

Michael D. Montgomery (CRD #2029289)

On June 30, 2009, the Securities Administrator of the State of Washington issued a Statement of Charges and Notice of Intent to Revoke Securities Salesperson and Investment Adviser Representative Registration S-08-129-09-SC01, hereinafter referred to as "Statement of Charges," against Michael D. Montgomery.

The Statement of Charges, together with a Notice of Opportunity to Defend and Opportunity for Hearing, hereinafter referred to as "Notice of Opportunity for Hearing," and an Application for Adjudicative Hearing, hereinafter referred to as "Application for Hearing," were served on Michael D. Montgomery on July 26, 2009

The Notice of Opportunity for Hearing advised Michael D. Montgomery that a written application for an administrative hearing on the Statement of Charges must be received within twenty days from the date of receipt of the notice. Michael D. Montgomery returned the Application for Hearing and indicated that he waived the right to a hearing. In lieu of requesting a hearing, Michael D. Montgomery submitted a statement for consideration by the Securities Administrator.

ENTRY OF FINDINGS OF FACT AND  
CONCLUSIONS OF LAW AND FINAL ORDER  
TO REVOKE REGISTRATIONS

1 Finding no grounds for amendment of the Statement of Charges, the Securities Administrator will  
2 therefore adopt as final the findings of fact and conclusions of law as set forth in the Statement of  
3 Charges. The Securities Administrator finds as follows:  
4

## 5 **FINDINGS OF FACT**

### 6 Respondents

7 1. Michael D. Montgomery (“Montgomery”) is an individual with a last known residence in  
8 Gig Harbor, Washington. Montgomery was registered as a securities salesperson with the Washington  
9 State Securities Division from February 10, 1992 to May 6, 1998 with Merrill Lynch, Pierce, Fenner &  
10 Smith, Inc., and from June 18, 1998 to February 17, 2006 with Wachovia Securities Financial Network  
11 LLC. Montgomery is currently registered as a securities salesperson with Mutual Service Corporation,  
12 and has been since April 25, 2006. Montgomery is also currently registered as an investment adviser  
13 representative with Mutual Service Corporation, and has been since May 1, 2006.

### 14 Introduction

15 2. Michael D. Montgomery, while working as a securities salesperson and investment adviser  
16 representative, served as attorney in fact for an elderly Washington resident who was his client. He also  
17 acted as trustee of the client’s revocable living trust. Since at least 2002, Montgomery collected fees for  
18 these services. In addition, Montgomery signed promissory notes in 2003 and 2004 in which he  
19 borrowed up to \$546,000 from the same client. Between January and August of 2006, Montgomery  
20 wrote \$105,070 in checks to himself from the client’s accounts, purportedly for Power of Attorney  
21 services. Following the client’s death in July 2006, Montgomery wrote \$225,982 in checks to himself  
22

1 from the client's estate, purportedly for estate services. Montgomery failed to disclose these outside  
2 business activities to his employing firms.

### 3 Background

4 3. Michael D. Montgomery was employed as a securities salesperson in Washington with Merrill  
5 Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") beginning in 1992. Merrill Lynch terminated  
6 Montgomery on May 6, 1998 for marking an order ticket as "unsolicited" when it should have been marked  
7 as "solicited."

8 4. Subsequent to the termination, Merrill Lynch discovered that Montgomery had falsified his  
9 educational background. Montgomery claimed to have a degree from Stanford University. However,  
10 Montgomery had not attended Stanford University, and his degree was from a different school. The NASD  
11 issued a letter of reprimand to Montgomery for falsifying his educational background.

12 5. Following his termination from Merrill Lynch, Montgomery associated as an independent  
13 contractor securities salesperson with Wachovia Securities Financial Network LLC ("Wachovia").  
14 Montgomery began doing business as Montgomery Capital Management in Tacoma, Washington.  
15 Montgomery became a supervisor in the office, which also employed his wife as a registered representative.

### 16 Nature of the Conduct

17 6. In or about 1992, an elderly Washington resident became a client of Montgomery while  
18 Montgomery was with Merrill Lynch. The resident continued to be a client of Montgomery at Montgomery  
19 Capital Management. The Washington resident was not related to Montgomery.

20 7. On December 23, 1998, the Washington resident executed a Durable Power of Attorney which  
21 named Montgomery as his Attorney in Fact. The Durable Power of Attorney became effective upon the  
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1 disability or incompetence of the resident, or in the event that the resident became incapable of giving  
2 informed consent with respect to health care decisions.

3 8. On January 15, 1999, Montgomery was named in the Washington resident's restated revocable  
4 living trust as the successor trustee. Under the terms of the trust agreement, Montgomery would take over as  
5 trustee should the resident resign or become unable to act as trustee.

6 9. In or about 1999, the Washington resident, who was then 83 years old, moved to a nursing home  
7 facility. Montgomery assisted the Washington resident in selling his home and disposing of many of his  
8 possessions.

9 10. Sometime between 1999 and 2002 Montgomery began acting as attorney in fact and as trustee for  
10 the Washington resident. During this time, the Washington resident is believed to have held two bank  
11 accounts at Key Bank and a brokerage account with Wachovia in his revocable living trust. In addition, he  
12 held some personal property. The value of the living trust at the time is believed to be \$1.2 million. The  
13 Washington resident's expenses for his nursing home facility and other expenses were approximately  
14 \$80,000 a year. The expenses were paid from the Washington resident's social security income, investment  
15 income, and investment principal. As attorney in fact or trustee, Montgomery arranged for the payment of  
16 the expenses.

17 11. Montgomery began paying himself fees for services as attorney in fact and trustee at a rate of \$145  
18 an hour. Montgomery wrote and signed checks to payable to Michael Montgomery or Michael Montgomery  
19 Capital Management from the trust bank accounts. If there was not enough money in the account to pay the  
20 fees, Montgomery caused securities to be liquidated in the trust brokerage account, and transferred the  
21 proceeds to the trust bank accounts.

1 12. Between July 19, 1999 and February 15, 2002, Montgomery recorded the hours he expended  
2 assisting the Washington resident and a brief description of the work performed. He recorded 191 hours for  
3 1999; 216 hours for 2000; 212.5 hours for 2001; and 31 hours for 2002. On information and belief, in or  
4 about 2002, Montgomery paid himself for these hours at a rate of \$145 an hour.

5 13. Montgomery could not produce time records subsequent to February 15, 2002 to the Securities  
6 Division, nor estimate the amount he received in fees during the remainder of 2002, or for 2003 and 2004.  
7 On information and belief, Montgomery continued making payments to himself for services in 2002, 2003,  
8 and 2004. The value of the payments is unknown.

9 14. On January 7, 2003, Montgomery signed a promissory note in which he promised to pay to the  
10 Washington resident's living trust "the sum total of the loan(s) made to Michael D. Montgomery or  
11 Montgomery Capital Management up to Three Hundred Fifty Thousand Dollars (\$350,000.00) together with  
12 interest of 8.5% per annum on the unpaid balance." The note stated that the note was to be paid in a lump  
13 sum 60 months from the date initiated. Montgomery did not inform Wachovia that he borrowed from a  
14 client, nor that it was a client for whom he was acting as attorney in fact. At the time the note was signed,  
15 the Washington resident was 86 years old.

16 15. According to Montgomery, he borrowed the money from the Washington resident to pay his  
17 business and personal expenses. Montgomery could not account for the actual amount of money he received  
18 under the promissory note nor when he received it.

19 16. On May 14, 2003, Montgomery began transferring the Washington resident's brokerage account  
20 from Wachovia to Charles Schwab. The transfer documents and new account forms were signed by the  
21 Washington resident as trustee of his living trust. According to Montgomery, the transfer was made because  
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1 there was a conflict of interest with him serving as attorney in fact and trustee while also having the  
2 Washington resident as his client at Wachovia.

3 17. In letter sent to a trust beneficiary, Montgomery listed the value of the trust at \$1,251,456 at the  
4 end of 2003. Montgomery indicated that the Washington resident had \$66,732 in income for the year. He  
5 indicated that the Washington resident had \$80,788 in expenses for the year, which included \$9,200 in fees  
6 for Montgomery's services.

7 18. A year after he signed the first promissory note, Montgomery signed a second promissory note. In  
8 the second promissory note, dated January 15, 2004, Montgomery promised to pay to the Washington  
9 resident's living trust "the sum total of the loan(s) made to Michael D. Montgomery or Montgomery Capital  
10 Management up to One Hundred Ninety-Six Thousand Dollars (\$196,000.00) together with interest of 8.5%  
11 per annum on the unpaid balance." The note stated that the note was to be paid in a lump sum 60 months  
12 from the date initiated. Montgomery did not inform Wachovia that he borrowed from a client, nor that it  
13 was a client for whom he was acting as attorney in fact. At the time the note was signed, the Washington  
14 resident was 87 years old.

15 19. Montgomery could not account for the actual amount of money he received under the second  
16 promissory note nor when he received it.

17 20. Throughout 2005, Montgomery wrote checks to himself or his dba Montgomery Capital  
18 Management from the Washington resident's bank accounts. The checks contained no indication, on the  
19 memo line or otherwise, of what the payments represented. Montgomery wrote the following checks:

<u>Date</u>	<u>Payee</u>	<u>Amount</u>
1/3/05	Michael Montgomery	\$1,050
1/6/05	Michael Montgomery	\$850
1/14/05	Michael Montgomery	\$875

1	1/28/05	Michael Montgomery	\$4,800
	1/28/05	Montgomery Capital Management	\$6,000
2	1/31/05	Michael Montgomery	\$4,700
	1/31/05	Michael Montgomery	\$3,000
3	1/31/05	Montgomery Capital Management	\$6,500
	2/3/05	Michael Montgomery	\$570
4	2/6/05	Michael Montgomery	\$900
	2/14/05	Michael Montgomery	\$2,800
5	2/14/05	Montgomery Capital Management	\$5,000
	2/15/05	Michael Montgomery	\$3,500
6	2/16/05	Montgomery Capital Management	\$6,000
	2/22/05	Michael Montgomery	\$1,700
7	3/1/05	Michael Montgomery	\$540
	3/2/05	Michael Montgomery	\$1,600
8	3/11/05	Michael Montgomery	\$4,600
	3/14/05	Michael Montgomery	\$4,700
9	3/16/05	Montgomery Capital Management	\$11,130.13
	3/18/05	Michael Montgomery	\$1,500
10	3/21/05	Montgomery Capital Management	\$1,500
	4/1/05	Michael Montgomery	\$540
11	4/5/05	Michael Montgomery	\$2,800
	4/14/05	Michael Montgomery	\$3,900
12	4/18/05	Montgomery Capital Management	\$9,556.61
	4/20/05	Michael Montgomery	\$2,500
13	4/29/05	Michael Montgomery	\$1,325
	5/4/05	Michael Montgomery	\$950
14	5/6/05	Michael Montgomery	\$2,750
	5/13/05	Michael Montgomery	\$4,400
15	5/13/05	Montgomery Capital Management	\$9,498.01
	5/13/05	Michael Montgomery	\$4,600
16	5/18/05	Michael Montgomery	\$3,200
	5/23/05	Michael Montgomery	\$140
17	5/31/05	Michael Montgomery	\$540
	6/1/05	Michael Montgomery	\$2,800
18	6/10/05	Michael Montgomery	\$2,400
	6/13/05	Montgomery Capital Management	\$10,866.37
19	6/14/05	Michael Montgomery	\$4,450
	6/16/05	Michael Montgomery	\$4,350
20	6/28/05	Michael Montgomery	\$1,600
	6/30/05	Michael Montgomery	\$2,000
21	7/11/05	Michael Montgomery	\$550
	7/14/05	Michael Montgomery	\$3,700
22	7/14/05	Montgomery Capital Management	\$10,304.04

1	7/15/05	Michael Montgomery	\$2,900
	7/18/05	Michael Montgomery	\$2,950
2	7/26/05	Michael Montgomery	\$2,200
	8/3/05	Michael Montgomery	\$550
3	8/12/05	Michael Montgomery	\$3,400
	8/12/05	Montgomery Capital Management	\$8,636.93
4	8/12/05	Michael Montgomery	\$3,500
	8/15/05	Michael Montgomery	\$3,600
5	8/17/05	Michael Montgomery	\$2,400
	8/30/05	Michael Montgomery	\$2,000
6	10/3/05	Michael Montgomery	\$1,100
	10/19/05	Michael Montgomery	\$740
7	11/1/05	Michael Montgomery	\$200
	11/18/05	Michael Montgomery	\$200
8	11/22/05	Michael Montgomery	\$120
	11/30/05	Michael Montgomery	\$500
9	12/1/05	Michael Montgomery	\$500
	12/12/05	Michael Montgomery	\$5,000.27
10		<b>Total for 2005:</b>	<b>\$204,032.36</b>
11			

12 21. Montgomery failed to produce a record accounting for the hours spent on trust matters in 2005.

13 22. According to Montgomery, the checks he wrote himself from the Washington resident's bank  
14 account in 2005 were loan proceeds and fees for services. However, he was unable to determine which  
15 payments were loans proceeds and which were for services.

16 23. In 2006, Montgomery provided a trust beneficiary with a spreadsheet of the Washington resident's  
17 income and expenses for 2005. The spreadsheet indicated that the Washington resident had \$80,977 in  
18 income for 2005. The spreadsheet listed \$92,531 in expenses for 2005. The expenses listed included a fee  
19 of \$8,950 for services by Montgomery in 2005. The spreadsheet did not contain a value for the assets of the  
20 trust.

1 24. In or about January 2006, Montgomery and his wife divorced. They sold their personal residence.  
2 A portion of the proceeds from the residence totaling \$320,737 was deposited in the Washington resident's  
3 Charles Schwab account.

4 25. Montgomery left Wachovia on February 17, 2006. He associated as an independent contractor  
5 securities salesperson with Mutual Service Corporation on April 26, 2006. He became registered as an  
6 investment adviser representative for Mutual Service Corporation on May 1, 2006.

7 26. In 2006, Montgomery wrote checks to himself or his dba Montgomery Capital Management from  
8 the Washington resident's bank accounts. These checks had "POA services" on the memo line. Most  
9 checks included the number of hours of services provided. Montgomery paid himself at a rate of \$145 an  
10 hour. Montgomery wrote the following checks:

<u>Date</u>	<u>Payee</u>	<u>Amount</u>
1/3/06	Montgomery Capital Management	\$500
1/9/06	Michael Montgomery	\$2,500
1/16/06	Michael Montgomery	\$7,000
2/1/06	Michael Montgomery	\$600
2/2/06	Michael Montgomery	\$800
2/15/06	Michael Montgomery	\$2,610
3/1/06	Michael Montgomery	\$8,555
3/9/06	Michael Montgomery	\$580
3/15/06	Michael Montgomery	\$580
3/29/06	Michael Montgomery	\$8,120
4/6/06	Michael Montgomery	\$580
4/13/06	Michael Montgomery	\$5,800
4/28/06	Michael Montgomery	\$6,960
5/3/06	Michael Montgomery	\$1,450
5/11/06	Michael Montgomery	\$3,190
5/22/06	Michael Montgomery	\$217.50
5/25/06	Michael Montgomery	\$3,915
5/26/06	Michael Montgomery	\$7,250
6/12/06	Michael Montgomery	\$5,655
6/20/06	Michael Montgomery	\$580
6/21/06	Michael Montgomery	\$2,465

1	7/10/06	Michael Montgomery	\$5,800
	7/16/06	Michael Montgomery	\$11,600
2	7/20/06	Michael Montgomery	\$725
	7/26/06	Michael Montgomery	\$580
3	7/27/06	Michael Montgomery	\$3,480
	8/1/06	Michael Montgomery	\$6,380
4	8/4/06	Michael Montgomery	\$6,090
	8/9/06	Michael Montgomery	\$507.50
5		<b>Total for POA Services in 2006:</b>	<b>\$105,070.00</b>

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7 27. Montgomery failed to produce a record detailing how he spent over 723 hours on Power of  
8 Attorney services in 2006.

9 28. The Washington resident passed away on July 18, 2006. He was 90 years old.

10 Trust Administration

11 29. When the trustor of a living trust dies, the trust assets must be distributed by the successor trustee  
12 to the beneficiaries as named in the trust document. In an estate or trust administration, a reasonable fee may  
13 be paid to the trustee or administrator for services. Typically, fees are paid at the end of the estate or trust  
14 administration, prior to the final distribution to the beneficiaries.

15 30. Following the death of the Washington resident, Montgomery began work on the Washington  
16 resident's estate as trustee of the living trust. At the time of the resident's death, the trust held two Key Bank  
17 accounts, a brokerage account at Charles Schwab, and some personal possessions.

18 31. Almost immediately, Montgomery began paying himself for services to the estate. Montgomery  
19 wrote checks to himself from the Washington resident's account. These checks had "estate work" on the  
20 memo line and included the number of hours spent. Montgomery paid himself at a rate of \$145 an hour.

21 Montgomery wrote the following checks:

22	<u>Date</u>	<u>Payee</u>	<u>Amount</u>
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1	8/14/06	Michael Montgomery	\$2,030
2	8/25/06	Michael Montgomery	\$7,975
	9/5/06	Michael Montgomery	\$4,060
3	9/11/06	Michael Montgomery	\$1,160
	9/20/06	Michael Montgomery	\$1,160
4	10/2/06	Michael Montgomery	\$6,307.50
	10/10/06	Michael Montgomery	\$1,595
5	10/31/06	Michael Montgomery	\$12,470
	11/8/06	Michael Montgomery	\$6,090
6	11/14/06	Michael Montgomery	\$1,160
	11/20/06	Michael Montgomery	\$725
7	11/27/06	Michael Montgomery	\$5,220
	11/30/06	Michael Montgomery	\$10,730
8	12/6/06	Michael Montgomery	\$7,395
	12/11/06	Michael Montgomery	\$652.50
9	12/14/06	Michael Montgomery	\$6,960
	12/26/06	Michael Montgomery	\$6,525
10	1/3/07	Michael Montgomery	\$5,945
	1/22/07	Michael Montgomery	\$2,030
11	1/23/07	Michael Montgomery	\$362.50
	1/29/07	Michael Montgomery	\$8,990
12	2/7/07	Michael Montgomery	\$6,235
	2/13/07	Michael Montgomery	\$290
13	2/14/07	Michael Montgomery	\$2,610
	2/22/07	Michael Montgomery	\$2,175
14	2/28/07	Michael Montgomery	\$3,625
	3/7/07	Michael Montgomery	\$3,625
15	3/19/07	Michael Montgomery	\$8,700
	4/5/07	Michael Montgomery	\$4,930
16	4/18/07	Michael Montgomery	\$5,147.50
	5/3/07	Michael Montgomery	\$3,842.50
17	5/9/07	Michael Montgomery	\$5,220
	5/23/07	Michael Montgomery	\$1,740
18	5/29/07	Michael Montgomery	\$3,335
	5/31/07	Michael Montgomery	\$4,205
19	6/7/07	Michael Montgomery	\$6,525
	6/8/07	Michael Montgomery	\$6,815
20	6/11/07	Michael Montgomery	\$5,510
	6/12/07	Michael Montgomery	\$3,915
21	6/13/07	Michael Montgomery	\$3,190
	6/28/07	Michael Montgomery	\$4,495
22	7/6/07	Michael Montgomery	\$5,800

1	7/12/07	Michael Montgomery	\$5,800
	7/26/07	Michael Montgomery	\$4,930
2	8/1/07	Michael Montgomery	\$7,975
	8/13/07	Michael Montgomery	\$1,450
3	8/17/07	Michael Montgomery	\$4,495
	8/28/07	Michael Montgomery	\$5,800
4	9/6/07	Michael Montgomery	\$4,060
5		<b>Total Fees for Estate Work</b>	<b>\$225,982.50</b>

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32. On June 28, 2007, Montgomery signed and filed a 2006 1041 estate income tax return for the Washington resident's estate. According to the return, the estate paid only \$1,595 in fiduciary fees in 2006.

33. Despite charging \$225,985.50 in fees for estate work, Montgomery did not complete the trust administration, did not retitle or distribute trust assets, did not prepare a trust or estate inventory, and could not produce a record of how he spent 1,558.5 hours on estate work.

34. The trust beneficiaries requested an accounting of the trust through their attorney in a letter dated June 21, 2007. Montgomery responded in an undated letter in which he stated that the value of the estate might only be \$200,000. However, he did not provide an accounting for the trust.

35. The trust beneficiaries filed a motion in Pierce County Superior Court on August 8, 2007 requesting an accounting of the estate. Montgomery failed to provide an accounting of the trust. Montgomery was removed as trustee by court order on September 21, 2007.

36. Both promissory notes signed by Montgomery have come due. Montgomery has made no additional payments to the estate on the amount due under the promissory notes.

Failure to Disclose Outside Business Activities

37. Under NASD Conduct Rule 3030, no registered individual shall be employed by, or accept compensation from, any other person as a result of any business activity, other than a passive investment,

1 outside the scope of his relationship with the employing firm, unless he has provided prompt written notice  
2 to the employing firm. To comply with NASD Conduct Rule 3030, registered individuals must complete  
3 and update annual outside business disclosures for their employing firms.

4 38. Montgomery did not disclose to Wachovia that he was acting as attorney in fact and trustee for the  
5 Washington resident, nor did he disclose that he was receiving payment for these services. He did not  
6 disclose that he had borrowed money from the Washington resident while the resident was his client at  
7 Wachovia.

8 39. Montgomery did not disclose to Mutual Service Corporation that he was acting as attorney in fact  
9 and trustee for the Washington resident, nor did he disclose that he was receiving payment for these services.

10 The Outside Business Activities form for Mutual Service Corporation includes the following questions:

11 While associated with the Broker/Dealer, have you provided fiduciary services (such as  
12 acting as an executor, trustee, conservator, power of attorney or a guardian) for any  
13 person (except for immediate family)?

....

14 While associated with the Broker/Dealer, have you been engaged in any other business  
15 activity outside of your relationship with the Home Office either as a proprietor/owner,  
16 partner, officer, director, employee, trustee, co-trustee, agent or otherwise? This  
17 excludes your "Doing Business As" entity.

18 Montgomery answered "No" to both questions on his 2006 and 2007 Outside Business Activities forms.

19 Based upon the above Findings of Fact, the following Conclusions of Law are made:

### 20 CONCLUSIONS OF LAW

21 1. Michael D. Montgomery, as described above, engaged in one or more dishonest or unethical  
22 practices in the securities business, as defined by WAC 460-22B-090, by failing to disclose outside  
23 business activities to his registered firm as required by NASD Conduct Rule 3030, by borrowing money

1 from a client and failing to disclose it, and by embezzling funds from the client's estate. Such practices  
2 are grounds for the suspension or revocation of Montgomery's securities salesperson and investment  
3 adviser representative registration pursuant to RCW 21.20.110(1)(g).

4  
5 **FINAL ORDER**

6 It is hereby ORDERED that the securities salesperson registration for Michael D. Montgomery is  
7 revoked.

8 It is further ORDERED that the investment adviser representative registration of Michael D.  
9 Montgomery is revoked.

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11  
12 **AUTHORITY AND PROCEDURE**

13 This Final Order is entered pursuant to the provisions of RCW 21.20.110(1) and is subject to the  
14 provisions of RCW 21.20.120 and Chapter 34.05 RCW. Respondent has the right to petition the superior  
15 court for judicial review of this agency action under the provisions of chapter 34.05 RCW. For the  
16 requirements for filing a Petition for Judicial Review, see RCW 34.050.510 and sections following.  
17 Pursuant to 21.20.395, a certified copy of this order may be filed in Superior Court.

18 **WILLFUL VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.**

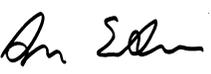
19 DATED AND ENTERED this 23rd day of September, 2009.

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MICHAEL E. STEVENSON  
Securities Administrator

Approved by:



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SUZANNE SARASON  
Chief of Enforcement

Presented by:



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JILL VALLELY  
Enforcement Attorney