BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

MARC SPITZER, Chairman
JIM IRVIN
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON

In the matter of: ROBERT C. FROST/ROBIN FROST, husband and wife, 6062 E. Ludlow Scottsdale, Arizona 85254 Respondents.	DOCKET NO. S-03493A-03-0000 **NOTICE OF OPPORTUNITY FOR HEARING REGARDING PROPOSED ORDER TO CEASE AND DESIST, FOR RESTITUTION, FOR ADMINISTRATIVE PENALTIES, OF SUSPENSION OR REVOCATION, AND FOR OTHER AFFIRMATIVE ACTION**

NOTICE: EACH RESPONDENT HAS 10 DAYS TO REQUEST A HEARING

EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that Respondent ROBERT C. FROST ("ROBERT FROST") engaged in acts, practices and transactions that constitute violations of the Securities Act of Arizona, A.R.S. §44-1801 *et seq.*, ("Securities Act").

I.

JURISDICTION

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Securities Act.

II.

RESPONDENT

2. ROBERT FROST is an individual whose last known address is 6062 E. Ludlow, Scottsdale, Arizona 85254.

3. ROBIN FROST was at all relevant times the spouse of ROBERT FROST. ROBIN FROST is joined in this action under A.R.S. §44-2031(C) solely for purposes of determining the liability of the marital community.

4. At all times relevant, ROBERT FROST and ROBIN FROST were acting for their own benefit and for the benefit or in the furtherance of the marital community.

III.

FACTS

5. ROBERT FROST was at all relevant times a registered securities salesman, NASD CRD #1709205, in association with securities dealer Morgan Stanley Dean Witter, Inc. ("MSDW"), NASD CRD # 7556.

6. The Devenneys are a retired couple ages 70 and 66 living in Arizona.

7. The Devenneys became ROBERT FROST's clients in late 1999.

8. The Devenneys are conservative, unsophisticated investors.

9. Prior to associating with ROBERT FROST, the Devenneys derived monthly retirement income from four sources: social security, a small pension fund, certificates of deposits ("CDs") and investments through A.G. Edwards.

10. At the time, the Devenney's CDs and A.G. Edwards investments (collectively their "retirement funds") totaled approximately $237,000. Approximately $199,000 or 84% of their funds were invested in CD's, cash, a corporate note (bond) and a unit investment trust corporate income intermediate bond fund. The balance of their funds, approximately $38,000 or 16%, were invested in income producing bond and equity mutual funds.

11. The Devenney's investment objectives were to preserve their capital while generating monthly income to supplement their pension and social security benefits and their investment portfolio was structured to achieve that objective with minimal risk.

12. Their CDs were safe, no-risk insured investments yielding a predictable monthly income. Their cash holdings presented a safety net for extraordinary unforeseen expenses. Their

corporate note, corporate income intermediate bond fund and equity income mutual fund holdings represented low-to-moderate risk stable income producing investments. Their only investments that presented greater risk were their high-yield bond fund and high income fund. However, these two investments comprised only 13% of their entire portfolio and were consistent with their objectives as income producing funds.

13. In late 1999, after friends suggested they could improve the performance of their retirement funds and at the recommendation of those friends, the Devenney's contacted ROBERT FROST. In or about November 1999 and again in or about early January 2000, the Devenneys met with ROBERT FROST to discuss moving their retirement funds from California to Arizona. They explained they were looking to increase their monthly income but not at the expense of their principal. ROBERT FROST convinced them he and MSDW could accomplish this objective.

14. ROBERT FROST recommended the Devenneys place all of their retirement funds into mutual funds maintaining it was a better strategy to invest in the stock market than CDs and bonds because the market paid higher returns. ROBERT FROST mentioned he did not like bond investments and assured the Devenneys his mutual fund recommendations would outperform their existing bond portfolio. The Devenneys accepted his recommendations because they believed he would structure a retirement plan that was in their best interest. The Devenneys viewed ROBERT FROST as an experienced investment professional specializing in investing for retired persons. They further believed ROBERT FROST understood it was essential that their retirement principal be preserved and not subject to risk of loss.

15. Between late December 1999 and early January 2000, the Devenneys transferred their entire A.G. Edwards' portfolio holdings plus cash to MSDW.

16. In concert with these transfers, on January 3, 2000, the Devenneys and ROBERT FROST executed a form (the "Authorization Form") authorizing the liquidation of securities transferred from A.G. Edwards to purchase shares in the MSDW American Opportunities Fund ("Opportunities Fund"). The Opportunities Fund was mutual fund with a long-term growth

objective investing approximately 65% in common stock and 35% in foreign non-exchange traded securities and other investments.

17. To justify the purchase, ROBERT FROST noted on the Authorization Form that the purchase was based on the Devenneys' objectives having changed to "growth". This was misleading. The Devenneys told ROBERT FROST that they were looking to increase their monthly income but not at the expense of risking their principal. The Devenneys emphasized that because their retirement funds represented the sum total of their retirement assets they could ill-afford to subject these assets to increased risk of loss.

18. Contrary to the executed Authorization Form, ROBERT FROST did not limit his purchases to the Opportunities Fund. Instead, he proceeded to purchase shares in four different growth funds. He allocated the proceeds between the Opportunities Fund, the MSDW Information Fund, the MSDW Mid-Cap Equity Trust Fund, and the MSDW S&P 500 Index Fund. Because the Devenneys had specifically directed that some of their funds be retained as cash for extraordinary unforeseen living expenses, ROBERT FROST allocated a portion of their A.G. Edwards investment proceeds to a MSDW money market fund.

19. ROBERT FROST knew the Devenneys maintained approximately 50% or about $100,000 of their retirement funds in CDs. He further knew those CDs would mature in early 2000. ROBERT FROST urged the Devenneys to use their CD proceeds to purchase additional MSDW proprietary mutual fund shares. This recommendation was contrary to the Devenney's practice of rolling over their CDs into new CDs. Once again, trusting ROBERT FROST's expertise, in late March 2000, the Devenneys deposited approximately $108,000 from three CDs to their MSDW accounts. Of that amount, $95,000 was used by ROBERT FROST to purchase shares in the Van Kampen Technology B Fund, the MSDW Small-Cap Growth Fund and additional shares in all of the mutual funds they now held except the S&P 500 Index Fund. The balance of CD proceeds, approximately $13,000, was added to their MSDW money market account. Thus, just prior to the

close of March 2000, the Devenneys had transferred all $237,000 of their retirement funds into MSDW investments.

20. From the time they completed transferring all of their retirement funds to MSDW, their investments began to lose money. In fact, they lost money in fifteen of the eighteen months from March 2000 through September 2001.

21. Even though they experienced continuing losses, the Devenneys sought ROBERT FROST's and MSDW's advice and counsel on several occasions expressing their concerns. Unfortunately, because their lack of investment experience led them to believe that ROBERT FROST was a trusted professional working for a reputable firm, they continued to rely to their detriment on ROBERT FROST's and MSDW's advice.

22. For example, in May 2000, they placed a telephone call to ROBERT FROST to express their concern about their account's continuing decline. While ROBERT FROST was unavailable to take their call, another unnamed MSDW representative assured them that their investments were "very good and not to worry."

23. In July 2000 they transferred $25,000 from their money market to a traditional savings account because they were extremely worried about the safety of their funds.

24. In or about October 2000, the Devenneys visited with ROBERT FROST who, while telling them he could not predict how the market would perform, offered no advice as to whether they should make any changes to their account. Though the Devenneys were very concerned about the losses in their accounts, they did not understand the risks and continued to trust ROBERT FROST.

25. The Devenneys again met with ROBERT FROST in April 2001. At this meeting they received assurances that the market would recover.

26. Finally, on September 17, 2001, the Devenneys formally complained in writing to ROBERT FROST's branch manager, Charles Cajera. Cajera advised that in order to stop any further losses, they could move their funds into MSDW money market accounts. Cajera cautioned,

however, that should they attempt to move their funds from MSDW they would incur financial penalties. The Devenney's did not understand why they would incur such penalties. Nevertheless, because they had already suffered substantial losses, they felt they could ill-afford to lose more money, let alone pay penalties. Thus, shortly after the "9-11" event when the market had taken a substantial beating, at Cajera's suggestion, the Devenneys liquidated most of their mutual fund holdings, thereby locking-in their losses, by transferring their funds into a MSDW money market where they remain to this date. Because they have lost such a substantial sum coupled with the fear of losing more money by incurring a withdrawal penalty, they feel trapped and have been unable to remove these funds from MSDW despite their desire to do so.

27. A review of the Devenneys' MSDW accounts shows their account lost more than 51% of its value or $123,906.71 through September 30, 2001, when they transferred their mutual fund investments into their MSDW money market account. Their loss is illustrated as follows:

a)	Total invested by Devenneys:	$236,673.04.
b)	Dividends and capital gains credited to the accounts:	$5,822.96.
	Subtotal Investment and Earnings:	$242,496.00
c)	Fees charged against the accounts:	<$140.00>
d)	Funds withdrawn and/or paid to the Devenneys:	<$30,360.63>
e)	Balance of funds as of 9/30/01 in money market account:	<$88,088.66>
e)	Net Profit/<loss>:	<$123,906.71>

28. ROBERT FROST's recommendations were unsuitable for the Devenneys. In fact, his recommendations were completely at odds with their past investment practices and expressed investment objectives. Comparing the Devenney's portfolio before and after associating with ROBERT FROST illustrates the significant change from an income producing portfolio with low risk to a growth oriented portfolio with considerably more risk. This change is illustrated by as follows:

Combined Devenney Retirement Funds	Pre-MSDW		MSDW		Type
CDs	45.5%	$107,780			Income
Cash	6.8%	$ 16,000			Income
Money Market	.01%	$ 294	13.0%	$31,267	Income
Bankers Trust NY Corp. Sub Note	9.7%	$ 23,032			Income
UTS Corporate Income Fund	21.7%	$ 51,395			Income
MFS Series Trust High-Income A	3.0%	$ 7,193			Income
Mainstay High-Yield Corp Bond Fund	9.8%	$ 23,049			Income
Federated Equity Income Fund B	3.5%	$ 8124			Income
MSDW Small Cap Growth			**9.6%**	**$ 23,247**	**Growth**
MSDW Information Fund B			**12.5%**	**$ 30,034**	**Growth**
MSDW Mid-Cap Equity Trust B			**9.0%**	**$ 21,667**	**Growth**
MSDW S&P 500 Index B			**2.8%**	**$ 6,731**	**Growth**
MSDW American Opportunities B			**46.1%**	**$110,904**	**Growth**
Van Kampen Technology B			**3.8%**	**$ 9,243**	**Growth**
MSDW Div Growth			**3.2%**	**$ 7,613**	**Growth**
	100%	$236,867	100%	$240,706	

29. The recording of the Devenney's investment objectives on their MSDW new account form is another example of ROBERT FROST's failure to adhere to the Devenney's stated investment objectives. The Devenneys' A.G. Edwards new account form lists their only investment objective as **aggressive taxable income.** Emphasis added. On the other hand, the investment objectives listed on the Devenneys' MSDW new account form are entirely out of character and contrary to their expressed wishes. ROBERT FROST recorded the Devenneys' investment objectives in order of importance as **capital appreciation**, **speculation**, **aggressive income** and lastly, **income**. Unlike the A.G. Edwards' new account form which requires the client's signature acknowledging the accuracy of the information, MSDW's new account had no such requirement. The Devenneys never saw their MSDW new account form so they had no opportunity to confirm that it accurately reflected their investment objectives.

30. The Devenneys were clear and unambiguous about their investment objectives; they wanted to increase their monthly income payout without risking their principal. However, ROBERT FROST listed income as the least important investment objective while listing capital appreciation as their primary investment objective. Furthermore, the fact that ROBERT FROST even listed speculation makes it clear he failed to follow the Devenneys' instructions. The Devenneys never discussed nor considered speculation as an investment objective as they had no intention of increasing their investment risk.

31. Contrary to the Devenneys' practice of and desire to maintain a conservative investment portfolio, ROBERT FROST improperly and inappropriately subjected approximately 87% of their retirement funds to substantially increased investment risk. It is clear from a review of the Devenneys' retirement portfolio mix before and after their involvement with ROBERT FROST that ROBERT FROST's recommendations were entirely inconsistent with what the Devenneys intended. The Devenneys were looking for investments that would provide stable income but without the risk of loss to their principal. ROBERT FROST's recommendations could not achieve that objective.

32. The Devenneys' prior investments were income producing from which the Devenney's withdrew, on a monthly basis, the income produced. These withdrawals did not result in the invasion of their capital. ROBERT FROST represented that by placing all of their retirement funds into mutual funds they could receive a monthly income draw that exceeded what they were then receiving. What the Devenneys did not understand and what ROBERT FROST did not explain was that the funds ROBERT FROST was recommending were not income producing investments. Instead, their ability to withdraw a monthly amount without invading principal depended entirely on sufficient continued growth of the market to translate into additional fund shares and an increase in net asset value. This change in the method of generating monthly income substantially increased the risk that the Devenney's would invade their principal.

33. All but one of the funds ROBERT FROST purchased were MSDW proprietary funds. In other words, funds offered only through MSDW. Even the nonproprietary Van Kampen Technology Fund was owned by MSDW. Several of the funds purchased by ROBERT FROST presented unacceptable risk to the Devenneys' account in terms of volatility, historical performance and lack of diversification.

34. As previously noted, ROBERT FROST purchased a MSDW "small-cap" fund. Small-cap funds invest in smaller, less well-established companies. Stocks in these companies are significantly more volatile than "blue chip" stocks. ROBERT FROST also purchased the Van

Kampen Technology Fund which was a sector fund that had only begun operations a few months before ROBERT FROST made the purchase. At the time, the fund had virtually no historical information from which to evaluate its performance, risk and suitability for any given investor. ROBERT FROST also purchased a MSDW Information Fund, which, like the Van Kampen fund, invested in industries heavily dependant upon technology. In fact, only one of the funds ROBERT FROST purchased reasonably conformed to their stated investment objective of income. Yet that purchase constituted less than 3% of the Devenneys overall portfolio. Thus, with no income producing funds and only 13% set aside as cash reserve in money market fund, the majority of the Devenneys' retirement funds were invested in investments that were neither consistent with their primary investment objective nor suitable.

V.

VIOLATION OF A.R.S. § 44-1991

(Fraud in Connection with the Offer or Sale of Securities)

35. In connection with the offer or sale of securities within or from Arizona, ROBERT FROST directly or indirectly made untrue statements of material fact or omitted to state material facts which were necessary in order to make the statements made not misleading in light of the circumstances under which they were made. ROBERT FROST's conduct includes, but is not limited to, the following:

a) recording investment objectives that bore no relation to the Devenneys' stated investment objectives;

b) purchasing funds that were not in keeping with the Devenneys' stated investment objectives;

c) failing to disclose to the Devenneys that the funds he was recommending and purchasing substantially increased the risk of loss to their investment principal; and

d) misleading the Devenneys by assuring them that the market would recover when in fact, ROBERT FROST could not make such a prediction.

36. This conduct violates A.R.S. § 44-1991.

IV.

REMEDIES PURSUANT TO A.R.S. § 44-1962

(Denial, Revocation or Suspension of Registration of Salesman; Restitution, Penalties, or other Affirmative Action)

37. ROBERT FROST's conduct is grounds to suspend or revoke ROBERT FROST's registration as a securities salesman with the Commission pursuant to A.R.S. § 44-1962. Given their age, financial standing, long-term investment practices and their stated investment objectives, ROBERT FROST recommended to the Devenneys the purchase of securities without reasonable grounds to believe that such recommendations were suitable within the meaning of A.R.S. § 44-1962(10) and A.A.C. Rule R14-4-130(A)(4).

38. ROBERT FROST's conduct is grounds to assess restitution, penalties and/or take appropriate affirmative action pursuant to A.R.S. § 44-1962. Given their age, financial standing, long-term investment practices and their stated investment objectives, ROBERT FROST recommended to the Devenneys the purchase of securities without reasonable grounds to believe that such recommendations were suitable within the meaning of A.R.S. § 44-1962(A)(10) and A.A.C. Rule R14-4-130(A)(4).

XII.

REQUESTED RELIEF

The Division requests that the Commission grant the following relief:

1. Order ROBERT FROST to permanently cease and desist from violating the Securities Act, pursuant to A.R.S. §§ 44-1962 and 2032;

2. Order ROBERT FROST to take affirmative action to correct the conditions resulting from his acts, practices or transactions, including a requirement to make restitution pursuant to A.R.S. §§44-1962 and 2032.

3. Order ROBERT FROST to pay the state of Arizona administrative penalties for each violation of the Securities Act, pursuant to A.R.S. §§ 44-1962 and 2036;

4. Order the suspension or revocation of ROBERT FROST's registration as a securities salesman for one year pursuant to A.R.S. § 44-1962;

5. Order that the marital community of ROBERT FROST and ROBIN FROST be subject to any order of restitution, rescission, administrative penalties, or other appropriate affirmative action pursuant to A.R.S. § 25-215; and

6. Order any other relief that the Commission deems appropriate.

XIII.

HEARING OPPORTUNITY

ROBERT FROST including ROBIN FROST may request a hearing pursuant to A.R.S. § 44-1972 and A.A.C. R14-4-306. **If any respondent requests a hearing, respondent must also answer this Notice.** A request for hearing must be in writing and received by the Commission within 10 business days after service of this Notice of Opportunity for Hearing. Each respondent must deliver or mail the request to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007. A Docket Control cover sheet must accompany the request. A cover sheet form and instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at www.cc.state.az.us/utility/forms/index.htm.

If a request for a hearing is timely made, the Commission shall schedule the hearing to begin 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the parties, or ordered by the Commission. If a request for a hearing is not timely made the Commission may, without a hearing, enter an order granting the relief requested by the Division in this Notice of Opportunity for Hearing.

Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting Shelly M. Hood, Executive Assistant to the Executive Secretary, voice phone number 602/542-3931, e-mail shood@cc.state.az.us. Requests should be made as early as possible to allow time to arrange the accommodation.

XIV.

ANSWER REQUIREMENT

Pursuant to A.A.C. R14-4-305, if ROBERT FROST or ROBIN FROST requests a hearing, ROBERT FROST or ROBIN FROST must deliver or mail an Answer to this Notice of Opportunity for Hearing to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007, within 30 calendar days after the date of service of this Notice. A Docket Control cover sheet must accompany the Answer. A cover sheet form and instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at www.cc.state.az.us/utility/forms/index.htm.

Additionally, ROBERT FROST or ROBIN FROST must serve the Answer upon the Division. Pursuant to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-delivering a copy of the Answer to the Division at 1300 West Washington, 3rd Floor, Phoenix, Arizona, 85007, addressed to Phillip A. Hofling, Esq.

The Answer shall contain an admission or denial of each allegation in this Notice and the original signature of each RESPONDENT or RESPONDENT's attorney. A statement of a lack of sufficient knowledge or information shall be considered a denial of an allegation. An allegation not denied shall be considered admitted.

When ROBERT FROST or ROBIN FROST intends in good faith to deny only a part or a qualification of an allegation, ROBERT FROST or ROBIN FROST shall specify that part or qualification of the allegation and shall admit the remainder. ROBERT FROST and ROBIN FROST waive any affirmative defense not raised in the answer.

The officer presiding over the hearing may grant relief from the requirement to file an Answer for good cause shown.

Dated this _3rd_ day of April, 2003.

_/s/ Mark Sendrow_____________________________
Mark Sendrow
Director of Securities