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**BEFORE THE ARIZONA CORPORATION COMMISSION**

**COMMISSIONERS**

JEFF HATCH-MILLER, Chairman  
WILLIAM A. MUNDELL  
MARC SPITZER  
MIKE GLEASON  
KRISTIN K. MAYES

In the matter of:	)	DOCKET NO. S-20426A-05-0768
GARY WAYNE HARDY, CRD#1298371,	)	<b>NOTICE OF OPPORTUNITY FOR HEARING REGARDING PROPOSED ORDER TO CEASE AND DESIST, ORDER FOR RESTITUTION, FOR ADMINISTRATIVE PENALTIES, OF REVOCATION, AND FOR OTHER AFFIRMATIVE ACTION</b>
dba HARDY ASSET MANAGEMENT, and	)	
SHERRY HARDY, husband and wife	)	
1711 W. Gary Drive	)	
Chandler, AZ 85224	)	
HARDY ASSET MANAGEMENT, a sole	)	
proprietorship	)	
4625 S. Wendler Drive, Suite 111	)	
Tempe, AZ 85282	)	
Respondents.	)	

**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 respondents GARY WAYNE HARDY (“HARDY”) dba HARDY ASSET MANAGEMENT have engaged in or are about to engage in acts and practices that constitute violations of the Securities Act of Arizona, A.R.S. § 44-1801, *et seq.* (“Securities Act”), and the Arizona Investment Management Act, A.R.S. § 44-3101 *et seq.* (“IM Act”).

**I.  
JURISDICTION**

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

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**II.**

**RESPONDENTS**

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3           2.       HARDY is and was at all pertinent times a registered securities salesman in Arizona,  
4 since August 1984, CRD# 1298371, and operated as a registered securities salesman and an  
5 investment adviser representative. HARDY's last known address is 1711 W. Gary Drive,  
6 Chandler, Arizona 85224. HARDY was registered in Arizona in association with Allmerica  
7 Investments, Inc. ("Allmerica") from August 8, 1984 to July 31, 2000, when he was permitted to  
8 resign. From August 17, 2000, HARDY was registered in Arizona in association with SunAmerica  
9 Securities, Inc. ("SunAmerica"), until he resigned on or about June 9, 2005. HARDY is currently  
10 not affiliated with any securities dealer.

11           3.       HARDY ASSET MANAGEMENT, sole proprietorship owned and operated by  
12 HARDY, is an Arizona licensed investment adviser since October 1, 2000, located at 4625 S.  
13 Wendler Drive, Suite 111, Tempe, Arizona 85282. HARDY ASSET MANAGEMENT was at all  
14 pertinent times in the business of offering financial services including securities sales and  
15 investment advice to clients for a fee. From August 17, 2000 until June 9, 2005, the office of  
16 HARDY ASSET MANAGEMENT was a branch office of SunAmerica, and HARDY was the  
17 branch supervisor.

18           4.       SHERRY HARDY was at all pertinent times the spouse of HARDY. SHERRY  
19 HARDY is joined in this action under A.R.S. § 44-2031(C), solely for purposes of determining the  
20 liability of the marital community.

21           5.       At all relevant times, HARDY and SHERRY HARDY were acting for their own  
22 benefit and for the benefit or in furtherance of the marital community.

23           6.       HARDY, SHERRY HARDY, and HARDY ASSET MANAGEMENT may be  
24 referred to collectively herein as "RESPONDENTS".

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V.

**REMEDIES PURSUANT TO A.R.S. § 44-1962**

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

16. HARDY's conduct is grounds to revoke HARDY's registration as a securities salesman with the Commission, pursuant to A.R.S. § 44-1962. Specifically, HARDY:

a) Has violated § 44-1991, the anti-fraud provisions of the Securities Act, within the meaning of A.R.S. § 44-1962(A)(2); and

b) Has engaged in dishonest or unethical practices in the securities industry, within the meaning of A.R.S. § 44-1962(A)(10), including:

(i) Executing transactions on behalf of customers without authority to do so, as defined by A.A.C. Rule R14-4-130(6);

(ii) Employing, in connection with the purchase or sale of a security, a manipulative or deceptive device or contrivance, as defined by A.A.C. Rule R14-4-130(14);

(iii) Making unauthorized use of securities or funds of a customer or converting customer securities or funds for personal benefit, as defined by A.A.C. Rule R14-4-130(16); and

(iv) Engaging in dishonest or unethical practices within the meaning of A.R.S. § 44-1962(10) as defined by A.A.C. R14-4-130(A)(17), by selling securities that were not recorded on the records of the dealer with whom he was registered at the time of the transactions.

VI.

**REMEDIES PURSUANT TO A.R.S. § 44-3201**

**(Denial, Revocation or Suspension of Investment Adviser or Investment Adviser Representative License; Restitution, Penalties, or other Affirmative Action)**

17. HARDY ASSET MANAGEMENT's conduct is grounds to revoke its license as an investment adviser with the Commission pursuant to A.R.S. § 44-3201, and revocation of HARDY

1 ASSET MANAGEMENT's license would be in the public interest. Specifically, HARDY ASSET  
2 MANAGEMENT has:

3 a) Engaged in a transaction or transactions within or from Arizona involving the  
4 provision of investment advisory services in which HARDY ASSET MANAGEMENT, directly or  
5 indirectly: (i) employed a device, scheme or artifice to defraud; (ii) made untrue statements of  
6 material fact or omitted to state material facts which were necessary in order to make the statements  
7 made not misleading in light of the circumstances under which they were made; (iii) misrepresented  
8 professional qualifications with the intent that the client rely on the misrepresentation; or (iv)  
9 engaged in transactions, practices or courses of business which operated or would operate as a fraud  
10 or deceit, in violations of A.R.S. § 44-3241, as described in paragraph 19 below, within the meaning  
11 of A.R.S. § 44-3201(A)(3);

12 b) Permitted HARDY to render investment advice in violation of A.R.S. § 44-  
13 3241, within the meaning of A.R.S. § 44-3201(A)(6);

14 c) Failed to reasonably supervise HARDY, in violation of A.R.S. §§ 44-3151  
15 and 44-3241, within the meaning of A.R.S. § 44-3201(A)(12);

16 d) Engaged in dishonest or unethical practices in the securities industry,  
17 within the meaning of A.R.S. § 44-3201(A)(13) and as defined by A.A.C. Rule R14-6-203(17),  
18 by committing any act that results in denial, revocation, or suspension by an agency of any state  
19 of a license or registration relating to securities, where such denial, revocation, or suspension  
20 arises out of any scheme, act, practice, or course of business that operates or would operate as  
21 fraud or deceit, or arises out of a violation of Article 13 of the Securities Act, defining fraudulent  
22 practices, or the rules promulgated thereunder.

23 18. HARDY ASSET MANAGEMENT's conduct is grounds to assess restitution,  
24 penalties, and/or take appropriate affirmative action within the meaning of A.R.S. § 44-3201.

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**VII.**

**VIOLATION OF A.R.S. § 44-3241**

**(Fraud in the Provision of Investment Advisory Services)**

19. HARDY ASSET MANAGEMENT engaged in a transaction or transactions within or from Arizona involving the provision of investment advisory services in which HARDY ASSET MANAGEMENT, directly or indirectly: (i) employed a device, scheme or artifice to defraud; (ii) 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; (iii) misrepresented professional qualifications with the intent that the client rely on the misrepresentation; or (iv) engaged in transactions, practices or courses of business which operated or would operate as a fraud or deceit. HARDY ASSET MANAGEMENT's conduct includes, but is not limited to, the following:

- a) Misrepresenting and/or failing to disclose the use of the customers' investment funds;
- b) Misrepresenting and/or failing to disclose background or financial information about the purported investments;
- c) Failing to disclose risks of the purported investments;
- d) Engaging in unauthorized transactions in clients' accounts; and
- e) Misappropriating investment funds.

20. This conduct violates A.R.S. § 44-3241.

**VIII.**

**REQUESTED RELIEF**

The Division requests that the Commission grant the following relief:

1. Order RESPONDENTS to permanently cease and desist from violating the Securities Act and the IM Act, pursuant to A.R.S. §§ 44-2032, 44-3292, 44-1962, and 44-3201;



1 Docket Control cover sheet must accompany the request. A cover sheet form and instructions may  
2 be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web  
3 site at [www.cc.state.az.us/utility/forms/index.htm](http://www.cc.state.az.us/utility/forms/index.htm).

4 If a request for a hearing is timely made, the Commission shall schedule the hearing to begin  
5 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the  
6 parties, or ordered by the Commission. If a request for a hearing is not timely made the Commission  
7 may, without a hearing, enter an order granting the relief requested by the Division in this Notice of  
8 Opportunity for Hearing.

9 Persons with a disability may request a reasonable accommodation such as a sign language  
10 interpreter, as well as request this document in an alternative format, by contacting Linda Hogan,  
11 Executive Assistant to the Executive Secretary, voice phone number 602/542-3931, e-mail  
12 [lhogan@cc.state.az.us](mailto:lhogan@cc.state.az.us). Requests should be made as early as possible to allow time to arrange the  
13 accommodation.

14 **X.**

15 **ANSWER REQUIREMENT**

16 Pursuant to A.A.C. R14-4-305, if HARDY, HARDY ASSET MANAGEMENT, and/or  
17 SHERRY HARDY requests a hearing, HARDY, HARDY ASSET MANAGEMENT, and/or  
18 SHERRY HARDY must deliver or mail an Answer to this Notice of Opportunity for Hearing to  
19 Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona  
20 85007, within 30 calendar days after the date of service of this Notice. A Docket Control cover  
21 sheet must accompany the Answer. A cover sheet form and instructions may be obtained from  
22 Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at  
23 [www.cc.state.az.us/utility/forms/index.htm](http://www.cc.state.az.us/utility/forms/index.htm).

24 Additionally, HARDY, HARDY ASSET MANAGEMENT, and/or SHERRY HARDY  
25 must serve the Answer upon the Division. Pursuant to A.A.C. R14-4-303, service upon the  
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1 Division may be made by mailing or by hand-delivering a copy of the Answer to the Division at  
2 1300 West Washington, 3<sup>rd</sup> Floor, Phoenix, Arizona, 85007, addressed to Pamela T. Johnson.

3 The Answer shall contain an admission or denial of each allegation in this Notice and the  
4 original signature of HARDY, HARDY ASSET MANAGEMENT, and/or SHERRY HARDY or  
5 their attorneys. A statement of a lack of sufficient knowledge or information shall be considered a  
6 denial of an allegation. An allegation not denied shall be considered admitted.

7 When HARDY, HARDY ASSET MANAGEMENT, and/or SHERRY HARDY intends in  
8 good faith to deny only a part or a qualification of an allegation, HARDY, HARDY ASSET  
9 MANAGEMENT, and/or SHERRY shall specify that part or qualification of the allegation and  
10 shall admit the remainder. HARDY, HARDY ASSET MANAGEMENT, and/or SHERRY  
11 HARDY waive any affirmative defense not raised in the answer.

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

14 Dated this 27 day of October, 2005.

16 /s/ Matthew J. Neubert  
17 Matthew J. Neubert  
18 Director of Securities  
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