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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

JEFF HATCH-MILLER, Chairman
WILLIAM A. MUNDELL
MIKE GLEASON
KRISTIN K. MAYES
BARRY WONG

In the matter of:)	DOCKET NO. S-20426A-05-0768
GARY WAYNE HARDY, CRD#1298371,)	AMENDED 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
individually and dba HARDY ASSET MANAGEMENT)	
HARDY ASSET MANAGEMENT,)	
CRD#116821, 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 respondent GARY WAYNE HARDY dba HARDY ASSET MANAGEMENT (“HARDY”) and 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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1 **II.**

2 **RESPONDENTS**

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. HARDY was registered in Arizona in association with Allmerica Investments,
6 Inc. (“Allmerica”) from August 8, 1984 to July 31, 2000. From August 17, 2000, HARDY was
7 registered in Arizona in association with SunAmerica Securities, Inc. (“SunAmerica”), until he
8 resigned on or about June 9, 2005. HARDY is currently not affiliated with any securities dealer.

9 3. HARDY ASSET MANAGEMENT, CRD# 116821, a sole proprietorship owned and
10 operated by HARDY, was at all pertinent times an Arizona licensed investment adviser since
11 October 1, 2000, in the business of offering financial services including securities sales and
12 investment advice to clients for a fee. From August 17, 2000 until June 9, 2005, the office of
13 HARDY ASSET MANAGEMENT was a branch office of SunAmerica, and HARDY was the
14 branch supervisor.

15 4. HARDY and HARDY ASSET MANAGEMENT may be referred to herein as
16 “Respondents”.

17 **III.**

18 **FACTS**

19 5. After HARDY resigned from SunAmerica on June 9, 2005, SunAmerica obtained all
20 of HARDY’s customer files from HARDY’S branch office, and notified HARDY’s customers that
21 HARDY was no longer affiliated with SunAmerica.

22 6. On or about June 18, 2005, a SunAmerica customer informed SunAmerica of his
23 purported purchase of securities in the form of certificates of deposit (“CDs”) called “Internotes”
24 from HARDY in late February 2005. The customer sent HARDY a check for \$50,000 payable to
25 HARDY ASSET MANAGEMENT. HARDY sent the customer a document purportedly showing
26 \$50,000 worth of “Selected Bonds” that he claimed to have acquired for the customer. These

1 purported bonds were not SunAmerica-approved products and SunAmerica had no knowledge of
2 HARDY's outside sales activity involving "Internotes". The customer complaint suggested that
3 HARDY had engaged in prohibited "selling away" and other misconduct.

4 7. Upon questioning by SunAmerica, on June 20, 2005, HARDY claimed that he had
5 misappropriated funds from between eight and twelve investors. Further investigation has revealed
6 that HARDY misappropriated approximately \$612,500 from nine customers between 1998 and
7 2005.

8 8. HARDY directed customers to write checks to HARDY ASSET MANAGEMENT,
9 to purchase purportedly existing CDs, bonds and "private CD annuities"—i.e., unregistered
10 securities, which were not approved by his dealers.

11 9. Investors received no confirmations, statements, or other written information about
12 the securities. HARDY sent some customers HARDY ASSET MANAGEMENT statements or
13 "customer reports" reflecting their purchase of the purported securities, while other customers
14 received no information or documents concerning how HARDY invested their money.

15 10. HARDY's misrepresentations, omissions of material facts, and misappropriation of
16 customer funds in connection with the sale of the purported CDs, bonds and annuities constituted
17 dishonest and unethical conduct in business and financial matters.

18 11. In or around April 2006, HARDY accepted and consented to the following findings
19 contained in a with the National Association of Securities Dealers ("NASD") Letter of Acceptance,
20 Waiver and Consent, NOs. 2005002188401 and 20050024315, without admitting or denying the
21 findings, and solely for the purposes of the NASD proceeding:

22 a) During the period of September 1998 through February 1999, HARDY,
23 while registered with Allmerica Investments, Inc., misused investment funds belonging to customer
24 identified by the NASD as "RB". Specifically, without RB's knowledge or consent, HARDY
25 deposited approximately \$100,000.00 of RB's investment funds into a bank account that he
26 controlled, thereby converting RB's funds to his own use and benefit.

- c) Failing to disclose that the investments were not approved by HARDY's dealers;
- d) Engaging in unauthorized transactions in clients' accounts; and
- e) Misappropriating investment funds.

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

V.

REMEDIES PURSUANT TO A.R.S. § 44-1962

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

15. HARDY's conduct is grounds to revoke HARDY's registration as a securities salesman with the Commission and order restitution, 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);
- b) Is subject to an order of an administrative tribunal, an SRO or the SEC denying, suspending or revoking membership or registration as a broker or dealer in securities or an investment adviser or investment adviser representative for at least six months, within the meaning of A.R.S. § 44-1962(A)(8).
- c) Has engaged in dishonest or unethical practices in the securities industry, within the meaning of A.R.S. § 44-1962(A)(10), including:
 - (i) 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);
 - (ii) 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

1 (iii) Engaging in dishonest or unethical practices within the meaning of A.R.S. § 44-
2 1962(10) as defined by A.A.C. R14-4-130(A)(17), by selling securities that were not recorded on the
3 records of the dealer with whom he was registered at the time of the transactions.

4 **VI.**

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

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

8 16. Respondents' conduct is grounds to revoke HARDY ASSET MANAGEMENT's
9 license as an investment adviser with the Commission pursuant to A.R.S. § 44-3201, and revocation
10 of HARDY ASSET MANAGEMENT's license would be in the public interest. Specifically:

11 a) HARDY is subject to an order of an SRO denying, revoking or suspending
12 membership, licensure or registration as a broker or dealer in securities for at least six months,
13 within the meaning of A.R.S. § 44-3201(A)(10); and

14 b) Respondents have engaged in dishonest or unethical practices in business
15 or financial matters, within the meaning of A.R.S. § 44-3201(A)(14).

16 **VII.**

17 **REQUESTED RELIEF**

18 The Division requests that the Commission grant the following relief:

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

21 2. Order HARDY to take affirmative action to correct the conditions resulting from their acts,
22 practices or transactions, including a requirement to make restitution pursuant to A.R.S. §§ 44-2032
23 and 44-1962;

24 3. Order HARDY to pay the state of Arizona administrative penalties of up to five thousand
25 dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;

26

1 4. Order HARDY to pay the state of Arizona administrative penalties, pursuant to A.R.S. § 44-
2 1962;

3 5. Order the revocation of HARDY's registration as a securities salesman pursuant to A.R.S. §
4 44-1962;

5 6. Order the revocation of HARDY ASSET MANAGEMENT's license as an investment
6 adviser pursuant to A.R.S. § 44-3201;

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

8 **IX.**

9 **HEARING OPPORTUNITY**

10 Respondents may request a hearing pursuant to A.R.S. § 44-1972 [44-3212] and A.A.C. R14-
11 4-306. **If any Respondent requests a hearing, the Respondent must also answer this Notice.** A
12 request for hearing must be in writing and received by the Commission within 10 business days after
13 service of this Notice of Opportunity for Hearing. Each Respondent must deliver or mail the request
14 to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona
15 85007. A Docket Control cover sheet must accompany the request. A cover sheet form and
16 instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's
17 Internet web site at www.cc.state.az.us/utility/forms/index.htm.

18 If a request for a hearing is timely made, the Commission shall schedule the hearing to begin
19 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the
20 parties, or ordered by the Commission. If a request for a hearing is not timely made, the Commission
21 may, without a hearing, enter an order against each Respondent granting the relief requested by the
22 Division in this Notice of Opportunity for Hearing.

23 Persons with a disability may request a reasonable accommodation such as a sign language
24 interpreter, as well as request this document in an alternative format, by contacting Linda Hogan,
25 Executive Assistant to the Executive Director, voice phone number 602/542-3931, e-mail
26

1 lhogan@azcc.gov. Requests should be made as early as possible to allow time to arrange the
2 accommodation.

3 **X.**

4 **ANSWER REQUIREMENT**

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

12 Additionally, Respondent or Respondents must serve the Answer upon the Division.
13 Pursuant to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-
14 delivering a copy of the Answer to the Division at 1300 West Washington, 3rd Floor, Phoenix,
15 Arizona, 85007, addressed to Pamela T. Johnson.

16 The Answer shall contain an admission or denial of each allegation in this Notice and the
17 original signature of Respondent or Respondents or their attorneys. A statement of a lack of
18 sufficient knowledge or information shall be considered a denial of an allegation. An allegation
19 not denied shall be considered admitted.

20 When Respondent or Respondents intend in good faith to deny only a part or a
21 qualification of an allegation, Respondent or Respondents shall specify that part or qualification of
22 the allegation and shall admit the remainder. Respondent or Respondents waive any affirmative
23 defense not raised in the answer.

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1 ORIGINAL and 13 copies of the foregoing
hand-delivered this 1st day of August, 2006 to:

2 Docket Control
3 Arizona Corporation Commission
1200 West Washington Street
4 Phoenix AZ 85007

5 COPY of the foregoing hand-delivered
this 1st day of August , 2006 to:

6 Mark Stern, Esq.
7 Administrative Law Judge
8 Arizona Corporation Commission
1200 West Washington Street
9 Phoenix AZ 85007

10 COPY of the foregoing mailed
11 this 1st day of August , 2006 to:

12 Gary Hardy, ADC #202334
13 Arizona State Prison, Florence North
PO 8000 Yard 3, T4DB8
14 Florence, AZ 85232

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17 By: /s/ Meg Kennedy
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