

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 JEFF HATCH-MILLER, Chairman
4 WILLIAM A. MUNDELL
5 MARC SPITZER
6 MIKE GLEASON
7 KRISTIN K. MAYES

6 In the matter of) 7 AMERIPRISE FINANCIAL SERVICES,) 8 INC.) 9 Ameriprise Financial Center) 707 Second Avenue South) Minneapolis, MN 55474) 10 Respondent.)) DOCKET NO. S-20427A-05-0788) DECISION NO. <u>68316</u>) ORDER FOR RELIEF AND) CONSENT TO SAME
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11 Respondent AMERIPRISE FINANCIAL SERVICES, INC. fka AMERICAN EXPRESS
12 FINANCIAL ADVISORS INC. (“AMERIPRISE”) elects to permanently waive any right to a
13 hearing and appeal under Articles 11 and 12 of the Securities Act of Arizona, A.R.S. § 44-1801 *et*
14 *seq.* (“Securities Act”) with respect to this Order For Relief and Consent To Same (“Order”).
15 Respondent admits the jurisdiction of the Arizona Corporation Commission (“Commission”);
16 neither admits nor denies the Findings of Fact and Conclusions of Law contained in this Order;
17 and consents to the entry of this Order by the Commission.

18 **I.**

19 **FINDINGS OF FACT**

20 1. AMERIPRISE was at all relevant times a securities dealer registered with the Commission.
21 AMERIPRISE maintains corporate headquarters at 707 Second Avenue South, Minneapolis,
22 Minnesota, and maintains various branch office locations in Arizona.

23 2. In late 2004, AMERIPRISE voluntarily brought to the Commission’s attention an internal
24 investigation it had initiated as a result of a customer complaint against an Arizona registered
25 securities salesman, David John Palen (“Palen”). At the time, Palen operated in affiliation with
26 AMERIPRISE as both a securities representative and an investment adviser representative

1 (“Advisor”), out of his home, an AMERIPRISE registered branch office located at 11557 North
2 120th Street, Scottsdale, Arizona.

3 3. AMERIPRISE’s investigation revealed that Palen had signed customers’ names on financial
4 advisory service agreements without their knowledge and, through telephone instructions, initiated
5 redemptions from customers’ securities accounts, in order to obtain money from the customers in
6 the form of advice fees. AMERIPRISE’s investigation further revealed that Palen had not provided
7 financial plans or written advice deliverables, for which customers were charged advice fees.
8 AMERIPRISE received a portion of the advice fees generated by Palen’s unauthorized transactions.

9 4. AMERIPRISE policies and procedures required a customer-signed service agreement, and
10 payment in the form of cash, American Express Credit Card, or redemption from an AMERIPRISE
11 customer account, to trigger payment of an advice fee.

12 5. AMERIPRISE allows its Advisors, at the customer’s direction, to transact exchanges,
13 transfers, redemptions, and surrenders from customers’ accounts by telephone instructions, if the
14 customer has signed a form authorizing the Advisor to make telephone transactions when directed.
15 The process is known as the Advisor and Paraplanner-Assisted Telephone and Online Transaction
16 Authorization (“AATT”) process. The AATT form is maintained only by the Advisor, in the
17 customer’s file.

18 6. Upon being notified by AMERIPRISE of its internal investigation, the Securities Division
19 (“Division”) initiated its own investigation into Palen’s conduct. As summarized below, the
20 Division concluded that weaknesses in AMERIPRISE’s compliance policies and procedures,
21 surveillance, and supervisory practices contributed to Palen’s ability to conceal compliance
22 violations from AMERIPRISE and its customers, and to AMERIPRISE’s failure to discover
23 Palen’s misconduct in a timely manner to prevent losses to clients.

24 **AMERIPRISE’S INADEQUATE CONTROLS**

25 7. AMERIPRISE’s compliance policies and procedures require its Advisors to provide
26 Financial Advisory Service customers a written deliverable in the form of a financial plan or some

1 alternative written advice. AMERIPRISE has found no evidence that Palen provided financial
2 plans to 23 customers who were charged advice fees through redemptions in their securities
3 accounts initiated by Palen through the AATT process during the period of 1996 through 2004.

4 8. AMERIPRISE's supervisory policies and procedures require supervisors to obtain copies of
5 financial advice deliverables from Advisors, and to review them each year. AMERIPRISE has
6 found no evidence that any of Palen's supervisors received or reviewed any written financial
7 advice from Palen for the 23 customers who paid advice services through redemptions for the
8 relevant time period.

9 9. Weaknesses in AMERIPRISE's procedures for implementing supervision may have
10 contributed to inadequate supervision:

11 a) Until January 2005, AMERIPRISE had permitted Advisors, including Palen, to
12 select their own registered principal¹ to provide supervision. Palen changed his registered
13 principal at least six times during the relevant time period.

14 b) Until January 2005, AMERIPRISE had permitted its registered principals to
15 negotiate the fees they charged to Advisors for supervision.

16 c) Until January 2005, AMERIPRISE permitted its Advisors to pay supervisory fees
17 directly to the supervising registered principal, without AMERIPRISE's involvement in the
18 payment process.

19 d) AMERIPRISE placed no limit on the number of Advisors with whom a registered
20 principal could contract for supervisory services.

21 10. Weaknesses in AMERIPRISE's compliance policies and procedures, surveillance, and
22 supervision resulted in and/or contributed to AMERIPRISE's failure to discover Palen's
23 compliance violations in a timely manner to prevent customer losses:

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¹ A registered principal is an individual, qualified through examination, responsible for providing compliance supervision to registered and unregistered individuals associated with a financial services firm.

1 a) AMERIPRISE failed to discover that Palen was signing customers' names to
2 financial advisory service agreements, contrary to AMERIPRISE policies and procedures.

3 b) AMERIPRISE failed to discover that Palen's registered principals were not
4 reviewing or maintaining copies of written financial advice deliverables for Palen's
5 customers, as required by AMERIPRISE's policies and procedures.

6 c) AMERIPRISE failed to discover that Palen was not preparing written financial
7 advice deliverables for customers who paid for services through redemptions.

8 d) AMERIPRISE failed to reasonably investigate "red flag" behavior by Palen in a
9 timely manner, which is described in more detail below.

10 11. AMERIPRISE's surveillance and controls were inadequate to enable customers to
11 discover misconduct in a timely manner:

12 a) Policies and procedures did not require customer telephone contacts to verify that
13 redemptions through the AATT process were authorized.

14 b) Customer confirmations of account redemptions did not disclose that redemptions
15 were for the purpose of opening a financial advice account or for the payment of advice
16 fees.

17 c) Customer statements did not reflect that money from customers' accounts was used
18 to open a financial planning account or to pay advice fees.

19 12. Weaknesses in AMERIPRISE's surveillance and supervisory controls facilitated other
20 violations of the firm's policies and procedures: In January 2003, AMERIPRISE initiated a
21 procedure requiring any annual advice fee of \$10,000 or more to be authorized in writing by a
22 supervisor. There were several instances where Palen initiated redemptions for \$10,000 or more in
23 customer accounts to pay himself advice fees. There were also instances where Palen initiated
24 redemptions for advice fees two or three times in a year from the same customer's account,
25 resulting in total annual charges of \$10,000 or more. In all of these instances, AMERIPRISE
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1 opened financial advice accounts and paid Palen advice fees without receiving any signed
2 supervisory authorization forms.

3 13. AMERIPRISE failed to discover or investigate Palen's compliance violations in a
4 timely manner to prevent losses to investors: According to AMERIPRISE's records, from July
5 1996 through December 2004, Palen was paid advice fees through approximately 56 separate
6 redemption transactions in customer accounts. From 1998 through 2004, Palen opened financial
7 advisory service agreements with approximately 64 clients. Palen initiated redemptions in 23 of
8 those customers' accounts by telephone instructions, through the AATT process, which resulted in
9 advice fees paid to Palen. Not until after December 2004 did AMERIPRISE contact customers to
10 determine whether they approved the redemptions or received the financial advice. All of Palen's
11 customers who were charged advice fees through redemptions in their accounts, initiated by Palen
12 through the AATT process, have signed statements attesting that they did not sign the service
13 agreements that triggered those transactions. AMERIPRISE has confirmed that none of those
14 customers received financial plans in exchange for the advice fees paid through those redemptions.

15 14. From January through May 2005, AMERIPRISE has paid approximately \$475,000 in
16 refunds and interest to approximately 24 Arizona customers, reimbursing them for advice fees they
17 claim they did not authorize, and for which they received no written advice deliverables.

18 **AMERIPRISE'S PRIOR ORDER FOR FAILURE TO REASONABLY SUPERVISE**

19 15. On April 3, 2000, the Commission entered an Order against AMERIPRISE in Decision
20 No. 62430 ("Prior Order"), finding that AMERIPRISE failed to reasonably supervise one of its
21 Advisors in Arizona when the Advisor misappropriated funds from the accounts of an elderly
22 customer during the time period of 1997 through 1999. AMERIPRISE consented to the Prior
23 Order, which found that the Advisor made unauthorized redemptions from the customer's accounts
24 through the AATT process on 52 separate occasions, totaling \$226,000.

25 16. In the Prior Order, the Commission found that, although AMERIPRISE had supervisory
26 policies and procedures in place for AATT transactions and redemptions from customer accounts,

1 including weekly manager review and customer telephone contact for advisor assisted telephone
2 transactions, on only one occasion did AMERIPRISE question the activity in the customer's
3 accounts as provided by its own policies and procedures.

4 17. In the Prior Order, the Commission required AMERIPRISE to pay \$125,000 and to
5 undertake remedial measures that were intended to raise "red flags" to prevent a recurrence of the
6 same type of misconduct.

7 18. The Commission further ordered AMERIPRISE to conduct a dedicated mandatory
8 training session for all field supervisory personnel in the Arizona/Las Vegas market group, and in
9 particular, to include a review of AATT reports and redemption/purchase reports focusing on the
10 detection of "red flag" behavior. The Prior Order expressly required that the training focus on
11 when compliance supervisors should contact customers to review possible "red flag" behavior.
12 A new compliance position was created in Arizona for the purpose of enhancing the supervision
13 and compliance efforts, including those addressed in the Prior Order.

14 19. AMERIPRISE agreed to implement stronger measures to control fraud from the use
15 of the AATT process. However, sometime after the Commission's 2000 Order, AMERIPRISE
16 discontinued its supervisory policies and procedures requiring weekly manager review and
17 customer telephone contact for advisor assisted telephone transactions.

18 **AMERIPRISE'S FAILURE TO REASONABLY INVESTIGATE "RED FLAGS"**

19 20. Beginning in or around 1998 through 2004, AMERIPRISE was on notice of red flag
20 behavior involving Palen, and failed to take appropriate follow-up action.

21 21. AMERIPRISE failed to reasonably follow-up on red flags raised in investigations of
22 customer complaints: In or around August 1998, one of Palen's customers filed a complaint
23 claiming that she did not authorize a transaction in her account, and that the signature on the
24 account application was not hers. AMERIPRISE found that the signature on the application was
25 not consistent with the customer's signatures on other documents. AMERIPRISE compliance
26 personnel interviewed Palen, who stated that he could not recall if he witnessed the signature or

1 mailed the application to the customer. AMERIPRISE was unable to determine who forged the
2 signature. AMERIPRISE waived the surrender charges associated with the transaction and
3 cautioned Palen about the importance of witnessing clients' signatures on all applications and
4 documenting meetings. AMERIPRISE closed the case on January 20, 1999, with no further
5 investigation or customer contacts.

6 22. AMERIPRISE failed to reasonably follow-up on red flags discovered in compliance
7 audits:

8 a) In May 2003, AMERIPRISE's Arizona Field Compliance Director ("FCD"), a
9 position created as a result of the Commission's April 2000 Order against AMERIPRISE for
10 failure to reasonably supervise, reviewed Palen's supervising registered principal. The FCD
11 commented in her review that Palen's registered principal had no reviews of financial plans on file,
12 and there was no evidence of approval for financial plans with a fee of \$10,000 or more, as
13 required by AMERIPRISE effective January 1, 2003. AMERIPRISE conducted no further
14 investigation of the compliance violations identified in the May 2003 review of Palen's supervisor.

15 b) Palen was under special supervision at the time of the FCD's review of his
16 registered principal, because of an outstanding debt owed to the firm resulting from commission
17 reversals. AMERIPRISE had instructed Palen's supervisor that the existence of a debt under these
18 circumstances of a negative balance could require additional supervision of Palen to ensure that he
19 did not engage in redemption or purchase activity, make unsuitable sales or otherwise obtain
20 customer money. However, the FCD did not review any of Palen's customer files, or discover that
21 Palen had delivered no financial plans to customers. Just one month prior to the FCD's review,
22 Palen had initiated a \$10,000 redemption for an advice fee in one customer's account, through the
23 AATT process, which the customer later claimed was unauthorized. On or about August 18, 2003,
24 after Palen had paid the debt owed to the firm, AMERIPRISE discontinued Palen's heightened
25 supervision.

1 23. AMERIPRISE failed to enforce its own policies and procedures, or to reasonably
2 investigate red flags, involving Palen's conduct related to charging high advice fees:

3 a) On or about February 2, 2000, during the course of a routine monitoring of Palen's
4 advice fees, AMERIPRISE discovered that Palen had charged advice fees over \$10,000 for some
5 of his customers, and opened an internal review. AMERIPRISE instructed supervisory personnel
6 to review Palen's customer files and advice fees, but did not initiate or require any customer
7 contacts, and took no disciplinary action against Palen.

8 b) On or about January 1, 2003, AMERIPRISE adopted a requirement for written
9 supervisor authorization before an Advisor could charge advice fees of \$10,000 or more. Pursuant
10 to the new requirement, the Advisor was to submit an Advice Fee Approval form to document
11 approval to the corporate office with the signed service agreement, in order to open a financial plan
12 account. AMERIPRISE paid the advice fees without receiving any Advice Fee Approval forms in
13 the corporate office as required by its policies and procedures.

14 c) In January 2004, AMERIPRISE received a customer complaint against Palen
15 involving failure to disclose advice fees and surrender charges, and reviewed Palen's compliance
16 history. Although AMERIPRISE denied that customer's claim, AMERIPRISE found that there
17 appeared to be several outstanding financial plans for large amounts, and opened a special
18 investigation involving a more thorough review of all Palen's financial plans. No action was
19 taken against Palen as a result of that investigation until after AMERIPRISE received the
20 December 2004 customer complaint refuting any authorization for advice fees.

21 **AMERIPRISE'S REMEDIAL EFFORTS**

22 24. Since December of 2004, AMERIPRISE has implemented or begun to implement the
23 following changes in policies and procedures related to provision of financial advisory services:

24 a) Beginning in September of 2005, AMERIPRISE began sending separate "time of
25 sale" confirmations to customers entering into any new financial advisory services agreement,
26 confirming that an advisory services contract has been established, identifying the fee, and

1 identifying the manner of initial payment.

2 b) During the course of 2006, AMERIPRISE will begin sending confirmations for
3 “good until changed or cancelled” advisory services contracts that are renewed or that are
4 amended in scope.

5 c) Beginning in the fall of 2005 (and to be fully implemented by January 2006),
6 AMERIPRISE will require Advisors in all cases to use Financial Advisory Services fee
7 worksheets with all advisory services clients in order to establish and disclose advisory services
8 fees. Formerly, “case complexity worksheets” were optional for Advisors in setting fees. The
9 revised pricing worksheets will require customer signature. Registered principals will review
10 and approve Advisor fee schedules.

11 d) Increasing training and awareness for the detection and prevention of signature
12 violations, including forgery and other signature issues.

13 e) Revising and reissuing its existing compliance bulletin regarding forgery and
14 other signature violations, and issuing a communication from the Chief Compliance Officer,
15 stating a “zero tolerance” policy for client forgeries, and stating that all client forgeries by
16 Ameriprise Advisors or staff will result in discipline up to and including termination.

17 f) Implementing new home office surveillance to detect inappropriate activities
18 related to financial advisory services and to monitor Advisor sales of financial advice products.

19 g) Requiring Advisors to pay all supervisory fees directly to AMERIPRISE.

20 h) Implementing a system that assigns compliance supervision based on geographic
21 proximity, assigns an on-site supervisor where one exists, and restricts the ability of Advisors to
22 choose their own compliance supervisor.

23 25. AMERIPRISE has fully cooperated with the Commission’s investigation by:

24 a) promptly bringing this matter to the attention of the Commission, and fully
25 sharing the results of its investigation;

26 b) providing the Commission with prompt access to personnel; and

1 c) complying with requests for information from the Commission.

2 **REMEDIAL MEASURES ORDERED**

3 26. AMERIPRISE has initiated or agrees to initiate and implement certain changes to its
4 supervisory and compliance procedures in accordance with an action plan submitted to the
5 Division, that includes:

6 a) Beginning in January 2006, enhance supervision at the registered principal level of
7 the use of redemptions in securities accounts to pay for advice fees.

8 b) Strengthen requirements for registered principals to contact clients in the course of
9 supervision to detect fraudulent sales practices.

10 c) Conduct two annual dedicated mandatory training sessions for all field supervisory
11 personnel in the Arizona market group, regarding the review of AMERIPRISE generated
12 compliance reports. The training will include a review of advisor assisted telephone
13 transaction reports and redemption/purchase reports, among others, focusing on the
14 detection of “red flag” behavior. The training will also focus on when compliance
15 supervisors should contact customers to review possible “red flag” behavior.

16 d) Conduct internal reviews resulting in a report to be delivered to the Commission by
17 March 31, 2006 making recommendations on how AMERIPRISE will strengthen processes
18 or procedures related to the following:

19 i) controls for preventing and discovering unauthorized redemptions and
20 surrenders from customer accounts utilizing the advisor assisted telephone
21 transaction process; and

22 ii) implementation of new home office surveillance to detect inappropriate
23 activities related to redemptions in customers’ accounts; and

24 iii) registered principal and compliance customer contact procedures.

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1 **II.**

2 **CONCLUSIONS OF LAW**

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

5 2. AMERIPRISE is under a duty to reasonably supervise its registered securities salesmen,
6 pursuant to A.R.S. §§ 44-1961(A)(12).

7 3. AMERIPRISE was on notice of potential violations but did not discover misconduct
8 in a timely manner and thereby failed to reasonably supervise pursuant to the provisions of
9 A.R.S. § 44-1961(A)(12).

10 4. AMERIPRISE's conduct is grounds for administrative penalties under A.R.S. § 44-
11 1961(B)(1).

12 **III.**

13 **ORDER**

14 THEREFORE, on the basis of the Findings of Fact, Conclusions of Law, and Respondent's
15 consent to the entry of this Order, attached and incorporated by reference, the Commission finds
16 that the following relief is appropriate, in the public interest, and necessary for the protection of
17 investors:

18 IT IS ORDERED that Respondent comply with the attached Consent to Entry of Order.

19 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-1961, that AMERIPRISE shall pay
20 administrative penalties in the amount of \$1,000,000. Payment shall be made in full by cashier's
21 check or money order on the date of this Order, payable to the "State of Arizona."

22 IT IS FURTHER ORDERED, that AMERIPRISE shall comply with the Remedial Measures
23 set forth in this Order.

24 IT IS FURTHER ORDERED, that AMERIPRISE shall submit to the Division on a quarterly
25 basis from the date of this Order, a written report summarizing all customer complaints involving
26 Arizona residents for four years from the date of this Order.

1 IT IS FURTHER ORDERED, that AMERIPRISE shall submit to the Division on a quarterly
2 basis from the date of this Order for a period of two years from the date of this Order, a written report
3 summarizing all remedial action taken in response to this Order.

4 IT IS FURTHER ORDERED, that if Respondent fails to comply with this order, the
5 Commission may bring further legal proceedings against Respondent, including application to the
6 superior court for an order of contempt.

7 IT IS FURTHER ORDERED that this Order shall become effective immediately.

8 BY ORDER OF THE ARIZONA CORPORATION COMMISSION

9
10 /s/ Jeffrey M. Hatch-Miller

/s/ William A. Mundell

11 CHAIRMAN

COMMISSIONER

12
13 /s/ Lowell Gleason

/s/ Kristin K. Mayes

COMMISSIONER

COMMISSIONER

COMMISSIONER

14 IN WITNESS WHEREOF, I, BRIAN C. McNEIL,
15 Executive Director of the Arizona Corporation
16 Commission, have hereunto set my hand and caused the
17 official seal of the Commission to be affixed at the
18 Capitol, in the City of Phoenix, this 5th day of
December, 2005.

19 /s/ Brian C. McNeil

BRIAN C. McNEIL

Executive Director

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22 DISSENT

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24 DISSENT

25 This document is available in alternative formats by contacting Linda Hogan, Executive Assistant
26 to the Executive Director, voice phone number 602-542-3931, E-mail lhogan@cc.state.az.us.
(ptj)

CONSENT TO ENTRY OF ORDER

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2 1. AMERIPRISE FINANCIAL SERVICES, INC. (“AMERIPRISE”) admits the
3 jurisdiction of the Commission over the subject matter of this proceeding. AMERIPRISE
4 acknowledges that it has been fully advised of its right to a hearing to present evidence and call
5 witnesses and AMERIPRISE knowingly and voluntarily waives any and all rights to a hearing
6 before the Commission and all other rights otherwise available under Article 11 of the Securities
7 Act, and Title 14 of the Arizona Administrative Code. AMERIPRISE acknowledges that this
8 Final Order For Relief and Consent To Same (“Order”) constitutes a valid final order of the
9 Commission.

10 2. AMERIPRISE knowingly and voluntarily waives any right under Article 12 of the
11 Securities Act to judicial review by any court by way of suit, appeal, or extraordinary relief
12 resulting from the entry of this Order.

13 3. AMERIPRISE acknowledges and agrees that this Order is entered into freely and
14 voluntarily and that no promise was made or coercion used to induce such entry.

15 4. AMERIPRISE neither admits nor denies the Findings of Fact and Conclusions of Law
16 contained in this Order.

17 5. By consenting to the entry of this Order, AMERIPRISE agrees not to take any action or
18 to make, or permit to be made, any public statement denying, directly or indirectly, any Finding of
19 Fact or Conclusion of Law in this Order or creating the impression that this Order is without
20 factual basis. AMERIPRISE will undertake steps necessary to assure that all of its agents and
21 employees understand and comply with this agreement.

22 6. While this Order settles this administrative matter between AMERIPRISE and the
23 Commission, and fully resolves, with respect to AMERIPRISE, all matters brought to the attention
24 of the Commission in the course of its investigation into this matter, AMERIPRISE understands
25 that this Order does not preclude the Commission from instituting other administrative proceedings
26 based on violations that are not addressed by this Order.

1 7. AMERIPRISE understands that this Order does not preclude the Commission from
2 referring this matter to any governmental agency for administrative, civil, or criminal proceedings
3 that may be related to the matters addressed by this Order.

4 8. AMERIPRISE understands that this Order does not preclude any other agency or
5 officer of the state of Arizona or its subdivisions from instituting administrative, civil or criminal
6 proceedings that may be related to matters addressed by this Order.

7 9. AMERIPRISE agrees that it will continue to cooperate with the Securities Division
8 including, but not limited to, providing complete and accurate testimony at any hearing in this
9 matter and cooperating with the state of Arizona in any related investigation or any other matters
10 arising from the activities described in this Order.

11 10. AMERIPRISE agrees that it will make full restitution to any additional former clients
12 of Palen who are found to have been victims of fraudulent conduct as described in this Order.

13 11. AMERIPRISE consents to the entry of this Order and agrees to be fully bound by its
14 terms and conditions, including undertaking and completing the Remedial Measures set forth in
15 the Order.

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1 12. John C. Junek represents that he is Executive Vice President and General Counsel of
2 AMERIPRISE and has been authorized by AMERIPRISE to enter into this Order for and on behalf
3 of it. John C. Junek represents that he is authorized by law to enter into this Order for and on
4 behalf of AMERIPRISE.

5 AMERIPRISE FINANCIAL SERVICES, INC.

6
7 BY: /s/ John C. Junek
8 John C Junek

9 TITLE: Executive Vice President and General
10 Counsel

11 State of Minnesota)
12)
13 County of Hennepin)

14 SUBSCRIBED TO AND SWORN BEFORE me this 15 day of November,
15 2005.

16 /s/ Cynthia A. Willis
17 NOTARY PUBLIC

18 My Commission Expires: January 31, 2010
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