0000044311

NEW

RECEIVED

2002 MAY -6 P 3:31

AZ CORP COMMISSION
DOCUMENT CONTROL

BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
Chairman
JIM IRVIN
Commissioner
MARC SPITZER
Commissioner

In the matter of: PARIZEK CAPITAL MANAGEMENT, LLC 2618 E. Waverly Street Tucson, Arizona 85716 -- and -- DAVID ALLEN PARIZEK, Jr. 2618 E. Waverly Street Tucson, Arizona 85716 Respondents.	DOCKET NO. S-03478A-02-0000 **NOTICE OF OPPORTUNITY FOR HEARING REGARDING PROPOSED ORDER TO CEASE AND DESIST, OF REVOCATION, FOR ADMINISTRATIVE PENALTIES, AND FOR OTHER AFFIRMATIVE ACTION**

NOTICE: RESPONDENTS HAVE 10 DAYS TO REQUEST A HEARING

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that respondents have engaged in acts, practices and transactions, which constitute violations of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act"), and/or 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.

II.

RESPONDENTS

2. Parizek Capital Management, LLC ("Parizek Capital"), is a Delaware limited liability company formed in April 2000. Its last known address is 2618 E. Waverly Street, Tucson, Arizona

85716. Parizek Capital became an Arizona-licensed investment advisory firm on March 22, 2001, and filed its request to terminate its license on Form ADV-W, on January 22, 2002.

3. David Allen Parizek, Jr. ("Parizek"), became an Arizona-licensed investment adviser representative, associated with Parizek Capital, on March 22, 2001. Parizek filed a request to terminate his license on Form U-5, on January 22, 2002. At all relevant times, Parizek has been the managing member of Parizek Capital, and its sole owner, officer and director. His last known address is 2618 E. Waverly Street, Tucson, Arizona 85716.

4. Parizek Capital and Parizek may be collectively referred to as "RESPONDENTS."

5. Pursuant to A.R.S. § 44-3202(D), the Commission has the power to bring this action, and to suspend or revoke RESPONDENTS' licenses, and to order them to pay administrative penalties, notwithstanding their requests for license terminations on January 22, 2002.

III.

FACTS

6. Parizek finished high school and began attending the University of Arizona, majoring in Wildlife and Fisheries Science, in or about 1984. He continued to take classes in that field, at the undergraduate and then graduate levels, over a period of about 16 years, until in or about May 2000. He did not complete a graduate degree. He claims he received a Bachelor of Science degree in 1993. Parizek worked part time for about four years in a video rental store owned by his father, then in January 1993 he began a sole proprietorship called Southwest Rodents. This business sold live rodents to wildlife rehabilitators and snake owners, as food for their animals. Parizek worked at this business part-time. The business failed, and Parizek liquidated the assets in July 1999.

7. In or about November 1997, Parizek and his wife commenced a bankruptcy case under the United States Bankruptcy Code, 11 U.S.C. § 101 *et seq.* Their debts at that time primarily consisted of credit card debts, car loans, a loan secured by a mobile home, student loans, and debts

owed to family members. The case resulted in a discharge in March 1998, except for certain student loans that are non-dischargeable.

8. Shortly after the bankruptcy, Parizek obtained several new credit cards and began to run up the balances on them. As of May 1, 2001, Parizek and his wife owed approximately $20,000 in credit card debt incurred subsequent to the bankruptcy, $150,000 in student loan debt, and $50,000 in debts to family members. Parizek estimates their net worth as of May 1, 2001, as a negative $213,000. As of March 2002, Parizek had been unable for some time to pay his telephone bill or to make the minimum monthly payments on his credit card debts, and he had received notices from collection companies as a result of falling behind on his payments. His net worth has not improved since May 1, 2001.

9. The home Parizek lives in is owned by his wife and her parents.

10. During at least the period from February 2000 through December 2000, Parizek maintained an account at Datek Online. This account was titled solely in Parizek's own name, and it had a checking feature. During the eleven-month period, Parizek wrote approximately 70 checks against this account, of which 26 (37% of the total) were dishonored for insufficient funds.

11. During at least the period from January 1999 through December 2001, Parizek and his wife maintained a joint checking account at Wells Fargo Bank. This account had an overdraft protection feature, and the bank charged a $25 fee for each check written against insufficient funds. There were not fewer than 49 days during the period when the account had a negative balance at the end of the business day. During the period, Parizek and his wife incurred numerous overdraft fees. On at least one day the overdraft fees totaled $200 (representing eight checks written against insufficient funds being presented to the bank on a single day).

12. During the ten month period March 2001 through December 2001, Parizek maintained a business checking account at Wells Fargo Bank, in the name of respondent Parizek

Capital. Parizek wrote not fewer than 13 checks against insufficient funds in that account during the ten months.

13. In or about January 1999, Parizek began trading securities with funds belonging to his family members, using accounts at one or more Internet-based ("online") brokerage firms.

14. In mid-2000 Parizek formed respondent Parizek Capital, and applied for Arizona investment adviser and investment adviser representative licenses for the firm and himself, respectively. Parizek passed the required Series 65 examination on July 17, 2000.

15. Shortly after obtaining licenses in March 2001, RESPONDENTS formed The Mars Fund, L.P. (the "Mars Fund"), a Delaware limited partnership of which respondent Parizek Capital was the general partner.

16. RESPONDENTS wrote, and mailed or delivered, a seven-page solicitation letter to approximately 20 potential investors, in or about April 2001. In this solicitation letter RESPONDENTS described Parizek's trading method, which he called the "Saturn Method," and announced the formation of the Mars Fund and another entity called The Saturn Fund. RESPONDENTS described these two entities as "hedge" funds. In the solicitation letter, RESPONDENTS touted Parizek's expertise as a trader, including three charts purporting to show his past trading results, and otherwise sought to convince the letter's recipients to invest in the Mars Fund and/or The Saturn Fund.

17. The April 2001 solicitation letter begins with this representation made by RESPONDENTS: "Greetings! For the last 2 years I have been trading stocks online for my living."

18. The representation just quoted was materially false and/or misleading. In fact, for calendar year 2000 Parizek lost a total of $17,883.53 in the accounts belonging to Parizek and/or his wife. That is a loss of nearly $1,500.00 per month, on average, for the 12 months. In addition, during at least the eight-year period 1993-2000, Parizek had obtained a substantial portion of the funds to cover his living expenses from student loan proceeds, credit card borrowing, proceeds of a

loan secured by a mobile home, and gifts and "loans" (which there is no reasonable expectation he will repay) from his wife and their family members.

19. In the next sentence of the solicitation letter, RESPONDENTS made this representation: "I made a 489% return for the year 2000."

20. The representation just quoted was materially false and/or misleading.

21. On the fourth page of the solicitation letter, RESPONDENTS made this representation: "My cumulative gain in the 12-month period from April 1999 – March 2000 amounted to an astounding 13,000%."

22. The representation just quoted was materially false and/or misleading.

23. RESPONDENTS wrote, and mailed or delivered to at least three offerees during April or May 2001, an offering memorandum for the Mars Fund, dated April 10, 2001 (the "Mars Fund O.M.").

24. On page 20 of the Mars Fund O.M., RESPONDENTS represented that "Mr. Parizek is also the sole owner of Planet Hedge Fund, an Internet community site for people interested in hedge funds."

25. The representation just quoted was materially misleading in the context in which it was made. The context was the "management" section of the offering memorandum, which purports to describe the qualifications of Parizek to provide investment advice and otherwise to manage the Mars Fund and Parizek Capital. The representation was misleading, because the RESPONDENTS omitted to state that becoming the owner of an Internet website like "Planet Hedge Fund" requires no expertise in hedge funds or any other kind of investments, and requires only a little money.

26. On page 20 of the Mars Fund O.M., RESPONDENTS made this representation: "For the past several years, Mr. Parizek has spent much of his professional time trading equities and options using strategies similar to those that will be used by the [Mars Fund] Partnership."

27. The representation just quoted was materially false and/or misleading, because the use of the word "professional" in this context with regard to Parizek was false and/or misleading, and because RESPONDENTS omitted to state that Parizek's trading experience was limited to a small amount of money belonging to his own family members.

28. Neither the solicitation letter nor the Mars Fund O.M. disclosed Parizek's 1998 bankruptcy discharge. Neither the solicitation letter nor the Mars Fund O.M. disclosed Parizek's failure to manage responsibly, checking accounts over which he had control during at least the period from January 1999 to mid-2001, when the solicitation letter and Mars Fund O.M. were provided to investors. The Mars Fund O.M. did not disclose the failure of Parizek's prior business venture, Southwest Rodents.

29. Because of the omissions described in the preceding paragraph, among other things, the solicitation letter and/or the Mars Fund O.M. were materially misleading.

30. Three persons invested money in limited partnership interests of the Mars Fund, in or about April or May, 2001. Each of these investors had received the solicitation letter, and the offering memorandum for the Mars Fund dated April 10, 2001, from RESPONDENTS.

31. The total invested in the Mars Fund limited partnership interests by the three investors was $16,700.

32. The investors were friends of Parizek and/or his father.

33. One investor made his investment of $5,000, in cash, on or about April 13, 2001.

34. RESPONDENTS accepted the cash, and deposited it in Wells Fargo Bank, in a business checking account of Parizek Capital over which Parizek had sole signature authority.

35. One investor made his investment of $6,700 in the following manner: Parizek's father owed the investor $6,700 prior to the date on which the investor decided to purchase a limited partnership interest in the Mars Fund. When the investor made his decision to invest, he said that Parizek's father should repay the outstanding loan, by delivering $6,700 to the Mars Fund for the

investor's account. On or about April 30, 2001, RESPONDENTS accepted two checks totaling $6,700, representing repayment by Parizek's father of the $6,700 that he owed to the investor, and deposited them in Wells Fargo Bank, in the business checking account of Parizek Capital over which Parizek had sole signature authority.

36. The account into which RESPONDENTS deposited the funds of the two investors just identified, was not an account containing only clients' funds, and it was not maintained in the name of Parizek Capital as agent or trustee for the investors. In fact, Parizek regularly used this account for personal expenditures, including rent or mortgage payments (relating to the mortgage loan on which his wife and her parents are the obligors) and debit card purchases of cigarettes and other items at Circle K stores.

37. On or after May 1, 2001, RESPONDENTS sent a check for $5,000 drawn on the Parizek Capital account at Wells Fargo, to the Mars Fund account at Datek Online. RESPONDENTS credited this amount to the account of the investor who had given RESPONDENTS $5,000 in cash, in RESPONDENTS' own ledger at Parizek's home.

38. On or after May 1, 2001, RESPONDENTS sent a check for $6,700 drawn on the Parizek Capital account at Wells Fargo, to the Mars Fund account at Datek Online. RESPONDENTS credited this amount to the account of the investor to whom Parizek's father had previously owed $6,700, in RESPONDENTS' own ledger at Parizek's home.

39. Between May 1, 2001, and December, 2001, RESPONDENTS traded securities using the investors' money in the Mars Fund account at Datek Online, together with $10,000 that Parizek put into the account. The $10,000 either belonged to Parizek's father, or was borrowed by Parizek from his father.

40. On or about November 20, 2001, RESPONDENTS notified the Division that RESPONDENTS intended to cease operating their investment advisory business.

41. The Mars Fund investors received back a small fraction of their investment funds from RESPONDENTS, in connection with RESPONDENTS' winding up of the investment advisory business. A majority of the investors' funds was lost through trading activity conducted by RESPONDENTS in the Datek Online account of the Mars Fund, and a small portion of their funds was paid to Datek Online as commissions for the trades. The Division found no evidence that any investor money had been misappropriated.

42. Under their agreements with the investors, RESPONDENTS would have received compensation for their activities described above, had the Mars Fund realized any trading gains. RESPONDENTS expected to receive 35% of the gains, paid monthly. The investors paid no sales charge relating to their purchases of Mars Fund limited partnership interests.

43. Mailing or delivering the solicitation letter to a potential investor constituted the provision of investment advisory services by RESPONDENTS, and/or an offer by RESPONDENTS to sell securities to the potential investor. RESPONDENTS did this within or from Arizona.

44. Mailing or delivering the Mars Fund O.M. to a potential investor constituted the provision of investment advisory services by RESPONDENTS, and/or an offer by RESPONDENTS to sell securities to the potential investor. RESPONDENTS did this within or from Arizona.

45. The limited partnership interests of the Mars Fund were securities.

46. Both RESPONDENTS offered securities, including limited partnership interests in the Mars Fund, to approximately 20 investors. Both RESPONDENTS sold securities, specifically, limited partnership interests in the Mars Fund, to three investors.

47. All such offers and sales were made by RESPONDENTS, within or from Arizona.

48. The sales of limited partnership interests in the Mars Fund constituted transactions involving the provision of investment advisory services by the RESPONDENTS, and such sales took place within or from Arizona.

49. The trading activity of RESPONDENTS described in paragraph 39 above, constituted transactions involving the provision of investment advisory services by the RESPONDENTS. RESPONDENTS did this trading within or from Arizona.

50. Revocation of the licenses of RESPONDENTS to transact investment advisory business in Arizona would be in the public interest.

IV.

VIOLATION OF A.R.S. § 44-1991

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

51. In connection with the offer or sale of securities within or from Arizona, RESPONDENTS directly or indirectly made untrue statements of material fact, and/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. RESPONDENTS' conduct includes, but is not limited to, the following:

a. Misrepresenting the results of Parizek's trading activity that had been carried out between April 1999 and December 2000;

b. Omitting to disclose Parizek's bankruptcy, and/or omitting to disclose the failure of Parizek's Southwest Rodents business;

c. Omitting to disclose that, during at least the eight year period immediately prior to RESPONDENTS soliciting persons to accept RESPONDENTS' investment advice and to invest in the Mars Fund, Parizek had obtained a substantial portion of the funds to cover his living expenses by borrowing (which he had consistently failed to repay when due) and by receiving gifts from family members, rather than by earning income (by trading or otherwise);

d. Omitting to disclose Parizek's inability and/or failure to maintain a checking account in a responsible manner;

e. Applying the description "professional" to Parizek's trading history, while inflating the results of that trading history, and while omitting to disclose the matters stated in paragraphs (c) and (d) above; and

f. Representing that Parizek's ownership of "Planet Hedge Fund" was one of his qualifications as investment adviser and manager for the Mars Fund, while omitting to state that website ownership requires no expertise in the securities industry generally, or in choosing investments or running a hedge fund particularly.

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

V.

REVOCATION PURSUANT TO A.R.S. § 44-3201

(Denial, Revocation or Suspension of Investment Adviser or Investment Adviser Representative License)

53. RESPONDENTS' conduct is grounds to revoke RESPONDENTS' licenses as an investment adviser (Parizek Capital) or investment adviser representative (Parizek) with the Commission, pursuant to A.R.S. § 44-3201. Specifically, revocation of both licenses would be in the public interest, and each RESPONDENT has:

a. Violated the Securities Act, specifically A.R.S. § 44-1991 as stated particularly in ¶¶ 51-52 above, which constituted engaging in dishonest or unethical practices in the securities industry, which is grounds for revocation pursuant to A.R.S. § 44-3201(A)(13);

b. Violated the IM Act, specifically A.R.S. § 44-3241, as stated particularly in ¶¶ 54-55 below, which is grounds for revocation pursuant to A.R.S. § 44-3201(A)(3); and/or

c. Misrepresented, and/or omitted, material facts concerning RESPONDENTS' qualifications to provide investment advice, in communications to investment advisory clients and/or prospective clients, which A.A.C. R14-6-203 defines as "dishonest or unethical practices in the securities industry," which is grounds for revocation pursuant to A.R.S. § 44-3201(A)(13).

VI.

VIOLATION OF A.R.S. § 44-3241

(Fraud in the Provision of Investment Advisory Services)

54. In connection with a transaction or transactions within or from Arizona involving the provision of investment advisory services, RESPONDENTS directly or indirectly: (i) 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; and/or (ii) engaged in transactions, practices or courses of business which operated or would operate as a fraud or deceit. RESPONDENTS' conduct includes, but is not limited to, the following:

a. Taking custody of funds belonging to their investment advisory clients, and depositing them in an account that did not contain only clients' funds and that was not maintained in the name of Parizek Capital as agent or trustee for such clients, which is defined as a fraudulent practice for purposes of A.R.S. § 44-3241(A)(4), by A.A.C. R14-6-206;

b. Misrepresenting the results of Parizek's trading activity that had been carried out between April 1999 and December 2000;

c. Omitting to disclose that, during at least the eight year period immediately prior to RESPONDENTS soliciting persons to accept RESPONDENTS' investment advice and to invest in the Mars Fund, Parizek had obtained a substantial portion of the funds to cover his living expenses by borrowing (which he had consistently failed to repay when due) and by receiving gifts from family members, rather than by earning income (by trading or otherwise);

d. Omitting to disclose Parizek's inability and/or failure to maintain a checking account in a responsible manner;

e. Applying the description "professional" to Parizek's trading history, while inflating the results of that trading history, and while omitting to disclose the matters stated in paragraphs (c) and (d) above; and

f. Representing that Parizek's ownership of "Planet Hedge Fund" was one of his qualifications as investment adviser and manager for the Mars Fund and Parizek Capital, while omitting to state that website ownership requires no expertise in the securities industry generally, or in choosing investments or running a hedge fund particularly.

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

VII.

REQUESTED RELIEF

The Division requests that the Commission grant the following relief against RESPONDENTS:

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

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

3. Order RESPONDENTS to pay the state of Arizona administrative penalties of up to one thousand dollars ($1,000) for each violation of the IM Act, pursuant to A.R.S. § 44-3296;

4. Order the revocation of Parizek Capital Management, LLC's license as an investment adviser and order the revocation of David Allen Parizek, Jr.'s license as an investment adviser representative, pursuant to A.R.S. § 44-3201; and

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

VIII.

HEARING OPPORTUNITY

RESPONDENTS may request a hearing pursuant to A.R.S. §§ 44-1972 and 44-3212, and A.A.C. R14-4-306. A request 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 against each RESPONDENT 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.

Dated this 6TH, day of May, 2002.

Mark Sendrow
Director of Securities

N:\ENFORCE\CASES\Parizek.ajl\PLEADING\Notice May 3 version.doc