

**STATE OF ILLINOIS
SECRETARY OF STATE
SECURITIES DEPARTMENT**

IN THE MATTER OF:

File Number: 0300728

**JAMES E. WHEELER II,
(CRD # 1953865).**

NOTICE OF HEARING

TO THE RESPONDENT: James E. Wheeler II
(CRD #: 1953865)
9911 Stoneglen Trail
Lonetree, CO 80124

c/o 1st Discount Brokerage, Inc.
1355 S. Colorado Blvd., Suite C120
Denver, CO 80222

You are hereby notified that, pursuant to Section 11.F of the Illinois Securities Law of 1953 (815 ILCS 5 et. seq.) (the "Act") and 14 Ill. Adm. Code 130, Subpart K (the "Rules"), a public hearing is scheduled to be held at 17 North State Street, Suite 1266, Chicago, Illinois 60602, on the 10th day of March 2004, at 10:00 a.m., or as soon thereafter as counsel may be heard, before Soula J. Spyropoulos, Esq., or another duly designated Hearing Officer of the Secretary of State.

Said hearing will be held to determine whether an Order shall be entered which would deny James E. Wheeler II's (the "Respondent") registration as a salesperson in the State of Illinois and/or granting such other relief as may be authorized under the Act including but not limited to the imposition of a monetary fine in the maximum amount pursuant to Section 11.F of the Act, payable within ten (10) business days of the entry of the Order.

The grounds for such proposed action are as follows:

1. On May 28, 2003, the National Association of Securities Dealers ("NASD") Market Regulation Department entered Letter of Acceptance, Waiver and Consent ("AWC") submitted by the Respondent in File No. C3A03033, which imposed the following sanctions:

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- a. A fine in the amount of \$8,600.00 to be paid by James Wheeler & Company, of which the amount of \$3,600.00 represents the disgorgement of financial benefit;
 - b. A suspension of James E. Wheeler II from association with any member of NASD in any capacity for a period of ten (10) business days; and
 - c. A requirement that James Wheeler & Company demonstrate to NASD staff, within ninety (90) days of the AWC becoming final, that:
 - i. It has established procedures requiring that (a) prior to recommending the purchase of mutual fund "B" shares, a registered representative or principal must prepare a written disclosure, on a form provided by the firm, comparing the cost of purchasing "B" shares with the cost of purchasing "A" shares of the same mutual fund, over at least seven years and including the effect of internal expenses, and (b) concurrent with the recommendation, the registered representative or principal must provide this written disclosure to the customer to whom the recommendation is being made, together with a written disclosure of the available sales charge breakpoints on the purchase of "A" shares; and
 - ii. It has required the attendance of its representatives and principals at a training program presented by an independent consultant not unacceptable to the staff that addresses the economic considerations applicable to the recommendation of "B" shares and the availability of sales charge breakpoints.
2. The aforementioned AWC states:
- a. James E. Wheeler II, entered the securities industry in July 1989 as a registered representative of a member of NASD. He became associated with James Wheeler & Company in May 1995 as the firm's President and Compliance Officer and is registered with the firm as a general securities principal at the present time. He was named as a respondent in two matters with respect to the firm.
 - b. On or about October 4, 1999, James Wheeler & Company, acting through James E. Wheeler II recommended to customer ZB and/or his legal representative that the ZB account purchase 24 mutual funds from 15 mutual fund families. Of the recommended transactions, 20 involved the purchase of mutual fund "B" shares. The ZB account made the purchases as recommended.

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- c. The recommendations were made without a reasonable basis for believing them to be suitable for the ZB account. By recommending the purchase of "B" shares in 24 funds from 15 fund families, the firm and Wheeler prevented ZB from obtaining the benefit of sales charge breakpoints to which he would have been entitled if the account had purchased "A" shares in fewer funds and fund families.
 - d. Further, the recommendation to purchase "B" shares was unsuitable because the internal expenses of the "B" shares over the period that ZB expected to hold the shares exceeded the amount of the sales charges that would have been paid on the purchase of "A" shares, thus costing ZB more to purchase and hold "B" shares than "A" shares.
 - e. The foregoing constituted a violation of NASD Conduct Rules 2110 and 2310 by James Wheeler & Company and James E. Wheeler II.
3. Section 8.E(1)(j) of the Act provides, inter alia, that the registration of a salesperson may be revoked if the Secretary of State find that such salesperson has been suspended by any self-regulatory organization registered under the Federal 1934 Act or the Federal 1974 Act arising from any fraudulent or deceptive act or a practice in violation of any rule, regulation, or standard duty promulgated by the self-regulatory organization.
 4. The NASD is a self-regulatory organization as specified in Section 8.E(1)(j) of the Act.
 5. By virtue of the foregoing, the Respondent's registration as a salesperson in the State of Illinois is subject to revocation pursuant to Section 8.E(1)(j) of the Act.

You are further notified that you are required pursuant to Section 130.1104 of the Rules and Regulations (14 Ill. Adm. Code 130) (the "Rules"), to file an answer to the allegations outlined above within thirty (30) days of the receipt of this Notice. A failure to file an answer within the prescribed time shall be construed as an admission of the allegations contained in the Notice of hearing.

Furthermore, you may be represented by legal counsel; may present evidence; may cross-examine witnesses and otherwise participate. A failure to so appear shall constitute default, unless any Respondent has upon due notice moved for and obtained a continuance.

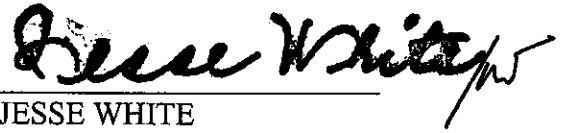
A copy of the Rules, promulgated under the Act and pertaining to Hearings held by the Office of the Secretary of State, Securities Department, is include with this Notice.

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Delivery of Notice to the designated representative of any Respondent constitutes service upon such Respondent.

DATED: This 23rd day of January 2004.

A handwritten signature in black ink that reads "Jesse White" with a stylized flourish at the end.

JESSE WHITE
Secretary of State
State of Illinois

Attorney for the Secretary of State:
Tina G. Stavrou
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Hearing Officer:
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