

STATE OF MAINE
OFFICE OF SECURITIES
121 STATE HOUSE STATION
AUGUSTA, ME 04333

IN RE:

Commonwealth Financial Network,
Alan Perry Hess, David Linus Kelly,
and Peter Thompkins Wheeler

NOTICE OF INTENT TO CENSURE
AND IMPOSE A CIVIL PENALTY ON
BROKER-DEALER AND SALES
REPRESENTATIVES

01-108

ALLEGATIONS

1. Commonwealth Financial Network (CRD # 8032) (“Commonwealth”) is a business entity that has been licensed in Maine as a broker-dealer since at least March 21, 1984. Commonwealth is currently organized as a Massachusetts limited liability partnership under the name Commonwealth Equity Services, LLP. At all times relevant to this matter, Commonwealth was organized as a Massachusetts corporation under the name Commonwealth Equity Services, Inc. Commonwealth’s last known address is 29 Sawyer Road, Waltham, Massachusetts 02453-3483.
2. Alan Perry Hess (CRD # 802893) (“Hess”) is an individual who has been licensed in Maine as a sales representative with Commonwealth since May 22, 1998. Hess’ last known business address is 12 Stillwater Avenue, Bangor, Maine 04401.
3. David Linus Kelly (CRD # 1597375) (“Kelly”) is an individual who has been employed by Commonwealth since June 1991. At all times relevant to this matter, Kelly was Commonwealth’s Manager of Trading and Operations. Kelly’s last known business address is 29 Sawyer Road, Waltham, Massachusetts 02453-3483.
4. Peter Thompkins Wheeler (CRD # 1286415) (“Wheeler”) is an individual who has been employed by Commonwealth since May 1984. Wheeler’s last known business address is 29 Sawyer Road, Waltham, Massachusetts 02453-3483.
5. In April 1999, a Phippsburg, Maine, couple (the “Maine investors”) opened an account with Commonwealth (the “managed account”). The Maine investors opened the managed account with a Commonwealth sales representative whose business address was in Portland, Maine.
6. At the time the Maine investors opened the managed account, they transferred certain assets to the account. Specifically, they placed into the account funds that the wife had

received from a Workers Compensation settlement. They also transferred interests in three mutual funds to the account.

7. During December 1999 the Maine investors met with Hess to discuss their portfolio. On December 28, 1999, the Maine investors signed a Commonwealth Account Form that Hess signed as the “Registered Rep” and a Commonwealth Full Trading Authorization Form that Hess signed as the “Authorized Agent.”
8. Between December 31, 1999, and February 2, 2000, Commonwealth transferred the assets from the Maine investors’ managed account to a new Commonwealth account for which Hess was the Account Representative (the “Hess account”) and had discretionary authority to buy and sell securities for the account. The assets transferred to the Hess account were (a) interests in six mutual funds with a total market value of \$107,449.86 on the date of transfer and (b) cash and cash equivalents with a total value of \$634.16 on the dates of transfer. The mutual fund holdings reflected a relatively conservative and diversified portfolio.
9. Hess proceeded to sell the mutual fund interests and used his discretionary authority to purchase shares of relatively speculative stocks, largely in the technology sector, for the account. Hess also employed a short-term trading strategy with respect to some of the equities in the account.
10. By the time the Maine investors liquidated the Hess account in July 2001, the value of the account was approximately \$35,000 and consisted of interests in 8 individual equities and one mutual fund valued at under \$10,000.
11. At the time that they first met with Hess, the Maine investors were in their mid to late forties and were unsophisticated investors with little investment experience. Their account represented most of their liquid assets and they had no other funds saved for retirement. One of the Maine investors was unable to work because of a permanent disability and the other was a self-employed truck driver.
12. The investments that Hess made for the Maine investors were unsuitable.
13. At all times relevant to this matter, Kelly was the designated home office principal responsible for reviewing new account applications, and both Kelly and Wheeler were the designated home office principals responsible for reviewing all brokerage account equity transactions.
14. Commonwealth and Hess engaged in unethical conduct or practices in the securities business under 32 M.R.S.A. § 10313(1)(G) by making unsuitable investments for the Maine investors.
15. Commonwealth, Kelly, and Wheeler failed reasonably to supervise Hess under 32 M.R.S.A. § 10313(1)(J) in connection with the Maine investors’ account.

16. Pursuant to 32 M.R.S.A. § 10313(1), the Securities Administrator (“Administrator”) may, after notice and opportunity for hearing, issue an order censuring a licensee if she finds that the order is in the public interest and that the licensee has engaged in any unethical conduct or practice in the securities business or has failed reasonably to supervise sales representatives.
17. Pursuant to 32 M.R.S.A. §10602(1)(E) and 10 M.R.S.A. § 8003(5), the Administrator may, after notice and opportunity for hearing, by order, impose a civil penalty not exceeding \$1,500 for a single violation if the Administrator reasonably believes that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of the Act or any applicable rule or condition of licensure.

NOTICE

Pursuant to 32 M.R.S.A. § 10708(6), notice is hereby given that the Securities Administrator intends to issue an order censuring and imposing a civil penalty upon each of the respondents pursuant to 32 M.R.S.A. §§ 10313(1) and 10602(1)(E) and 10 M.R.S.A. § 8003(5).

Pursuant to 32 M.R.S.A. § 10708(2), interested parties have thirty (30) calendar days from the entry of this Notice of Intent to file a written request for a hearing.

Date: July 28, 2005

s/Christine A. Bruenn
Christine A. Bruenn
Securities Administrator

Reviewed by:

Date: July 28, 2005

s/Bonnie E. Russell
Bonnie E. Russell
Assistant Securities Administrator

Presented by:

Date: July 28, 2005

s/Michael W. Atleson
Michael W. Atleson
Staff Attorney