

1 **STATE OF WASHINGTON**
2 **DEPARTMENT OF FINANCIAL INSTITUTIONS**
3 **SECURITIES DIVISION**

3 IN THE MATTER OF DETERMINING) Order Number S-03-146-05-SC01
Whether there has been a violation of the)
4 Securities Act of Washington by:) STATEMENT OF CHARGES AND NOTICE
) OF INTENT TO ENTER ORDER TO CEASE
5 Professional Traders Fund, LLC; Marc) AND DESIST AND NOTICE OF INTENT
Swickle; Howard Berger; DirectNet) TO RECOVER COSTS
6 LLC; David Babich,)
)
7)
Respondents.)

8 THE STATE OF WASHINGTON TO: Professional Traders Fund, LLC
9 Marc Swickle
10 Howard Berger
DirectNet LLC
11 David Babich

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14 **STATEMENT OF CHARGES**

15 Please take notice that the Securities Administrator of the State of Washington has
16 reason to believe that Respondents, Professional Traders Fund, LLC, Marc Swickle, Howard
17 Berger, DirectNet LLC, and David Babich have each violated the Securities Act of
18 Washington and that their violations justify the entry of an order of the Securities
19 Administrator under RCW 21.20.390 against each to cease and desist from such violations.

20 The Securities Administrator finds as follows:
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23 STATEMENT OF CHARGES AND NOTICE OF
24 INTENT TO ENTER ORDER TO CEASE AND DESIST
AND NOTICE OF INTENT TO RECOVER COSTS

1

DEPARTMENT OF FINANCIAL INSTITUTIONS
Securities Division
PO Box 9033
Olympia, WA 98507-9033
360-902-8760

1 **TENTATIVE FINDINGS OF FACT**

2 **I. RESPONDENTS**

3 1. Professional Traders Fund, LLC (“PTF”) is a New York limited liability
4 company with its principal place of business at 1400 Old Country Road, Suite 206, Westbury,
5 NY 11590.

6 2. Marc Swickle (“Swickle”) is a co-founder of Professional Traders Fund, LLC.

7 3. Howard Berger (“Berger”) is a co-founder of Professional Traders Fund, LLC.

8 4. DirectNet LLC (“DirectNet”) is a Washington limited liability company with its
9 principal place of business at 8316 159th Place NE, Redmond, Washington, 98052.

10 5. David Babich (“Babich”) is the sole owner of DirectNet LLC.

11 **II. NATURE OF THE OFFERING**

12 6. PTF was originally funded through the sale of membership interests in the LLC
13 utilizing a private offering beginning in March of 2002. Approximately \$5 million was raised
14 in the sale of membership interests.

15 7. PTF wanted to increase its capital and sought individuals to enter into profit
16 sharing agreements. As part of the agreement the individuals, as independent contractors of
17 PTF, would be invited to effect trades in PTF’s account using PTF’s capital as leverage in
18 exchange for a percentage of the profits made on those trades. The individuals were to
19 purchase and sell securities only on behalf of PTF.

20 8. In order to enter into the profit sharing agreement, individuals were required to
21 invest funds in PTF. The investment was called a deposit, which was subject to 100% of the
22 losses the individuals incurred and various fees associated with trading.

1 9. Prior to trading in PTF's accounts, a trader was required to develop a trading
2 strategy with PTF. Although the investors engaged in the trading in the account, PTF set up
3 and determined the scope and rules for trading in the accounts and had discretion to limit or
4 halt trading at any time.

5 10. Approximately twelve Washington residents entered into profit sharing
6 agreements and became traders for PTF beginning in or around April of 2002 and continuing
7 until in or around August of 2003.

8 11. By the end of year 2003 PTF had raised, through profit sharing agreements,
9 approximately \$1.8 million of its approximately \$10 million in assets.

10 12. DirectNet assisted PTF in finding potential investors by advertising on the
11 DirectNet Trading website (www.directnettrading.com) and other websites. DirectNet was
12 paid a fee for its services.

13 13. Although the investors entered into profit sharing agreements, the trading on
14 behalf of PTF was unsuccessful and most of the investors lost on their investments.

15 III. MISREPRESENTATIONS AND OMISSIONS

16 14. PTF and DirectNet failed to disclose material information about the investment
17 described above including but not limited to the general and specific risks involved with the
18 investment, the large percentage of individuals that lost some or all of their investment while
19 engaged in trading for PTF, and the business history of both DirectNet and PTF.

20 IV. REGISTRATION STATUS

21 15. PTF is not currently registered to sell its securities in the state of Washington
22 and has not previously been so registered.

1 6. The offer and/or sale of said securities was made in violation of RCW 21.20.010
2 because, as set forth in the Tentative Findings of Fact, Respondents misstated material facts or
3 omitted to state material facts necessary in order to make the statements made, in light of the
4 circumstances under which they were made, not misleading.

5 **NOTICE OF INTENT TO ORDER THE RESPONDENT TO CEASE AND DESIST**

6 Based on the above Tentative Findings of Fact and Conclusions of Law, the Securities
7 Administrator intends to order that Respondents, Professional Traders Fund, LLC, Marc
8 Swickle, Howard Berger, DirectNet LLC, and David Babich, their agents and employees,
9 each cease and desist from violations of RCW 21.20.010, RCW 21.20.040, and RCW
10 21.20.140.

11 **NOTICE OF INTENT TO RECOVER COSTS**

12 Pursuant to RCW 21.20.390 and based upon the Tentative Findings of Fact and
13 Conclusions of Law, the Securities Administrator intends to order that Respondents,
14 Professional Traders Fund, LLC, Marc Swickle, Howard Berger, DirectNet LLC and David
15 Babich, shall be jointly and severally liable for and pay the costs, fees, and other expenses
16 incurred in the conduct of the administrative investigation of this matter, in an amount not less
17 than \$10,000.


18 **AUTHORITY AND PROCEDURE**

19 This Statement of Charges is entered pursuant to the provisions of 21.20.390 and
20 21.20.395 and is subject to the provisions of RCW 34.05. The Respondents, Professional
21 Traders Fund, LLC, Marc Swickle, Howard Berger, DirectNet LLC, and David Babich, may
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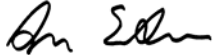
1 each make a written request for a hearing as set forth in the NOTICE OF OPPORTUNITY
2 TO DEFEND AND OPPORTUNITY FOR HEARING accompanying this order.

3 If a Respondent does not request a hearing, the Securities Administrator intends to
4 adopt the above Tentative Findings of Fact and Conclusions of Law as final and enter a
5 permanent order to cease and desist and recover costs as to that Respondent.

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7 Dated and Entered this 27th day of February, 2006

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10 MICHAEL E. STEVENSON
11 Securities Administrator

12 Approved by:

13 

14 Suzanne Sarason
15 Chief of Compliance &
16 Examinations

17 Presented by:

18 

19 Kate Reynolds
20 Financial Legal Examiner