

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

4 IN THE MATTER OF DETERMINING
5 Whether there has been a violation of the
6 Securities Act of Washington by:

7 Valerie D'Andrea;

8 Respondent

Order Number S-09-022-10-SC01

STATEMENT OF CHARGES AND NOTICE
OF INTENT TO ENTER ORDER TO CEASE
AND DESIST, IMPOSE FINES, AND
CHARGE COSTS

9 THE STATE OF WASHINGTON TO:

Valerie D'Andrea

10 **STATEMENT OF CHARGES**

11 Please take notice that the Securities Administrator of the State of Washington has reason
12 to believe that Respondent Valerie D'Andrea has violated the Securities Act of Washington and
13 that her violations justify the entry of an order of the Securities Administrator under RCW
14 21.20.390 against her to cease and desist from such violations. The Securities Administrator
15 finds as follows:
16

17 **TENTATIVE FINDINGS OF FACT**

18 Respondent

- 19 1. Valerie D'Andrea ("D'Andrea") is a King County, Washington resident.

20 Nature of the Offering

- 21 2. In 1995, D'Andrea started trading futures and futures options through her own
22 accounts with various trading companies. D'Andrea learned about futures and commodities
23 through some college classes and a correspondence course. D'Andrea does not currently hold,
24 and has never held, licenses to sell securities, commodities, or futures.
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STATEMENT OF CHARGES AND NOTICE OF
INTENT TO ENTER ORDER TO CEASE AND DESIST,
IMPOSE FINES, AND CHARGE COSTS

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DEPARTMENT OF FINANCIAL INSTITUTIONS
Securities Division
PO Box 9033
Olympia, WA 98507-9033
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1 3. Beginning no later than 2004, D'Andrea began telling acquaintances that she was
2 a futures trader and approached them about investing money with her. D'Andrea told these
3 individuals that she would take the money they invested with her and invest it in the futures
4 market. D'Andrea told at least one investor that she sought funds because her profits would be
5 greater if she had larger amounts of money to invest.

6 4. Between January 2004 and September 2008, D'Andrea sold to thirteen
7 individuals, including nine Washington residents, investments evidenced by 29 promissory notes
8 from D'Andrea totaling approximately \$525,000 in principal. Those notes called for D'Andrea
9 to make payments to investors totaling approximately \$1.5 million. D'Andrea met some of the
10 investors through her softball team. Three relatives of D'Andrea also invested with her.

11 5. Term lengths of the notes lasted between 12 months and 120 months with most
12 lasting 60 months. Most investors received monthly interest payments, but six notes deferred all
13 payments until the end of the promissory note. Interest rates offered on the notes varied
14 depending on the type of payment chosen. Investors who received monthly payments had annual
15 percentage rates between 30% and 52.149%. Investors who deferred payment until the end of
16 the note received annual percentage rates between 12% and 15%.

17 6. Investors purchased their investments from D'Andrea by check or bank transfer.
18 D'Andrea deposited investor funds into her personal bank accounts and did not have a tracking
19 system to account for those funds.
20

21 7. Nineteen promissory notes D'Andrea issued to investors included a clause that
22 stated that proceeds from the note would be used "exclusively to engage in speculative
23 investment activities for profit" and that no portion of the funds would be used for "any
24
25

1 consumer, personal, family, or household purpose.” Investors believed that their funds would be
2 used by D’Andrea only for trading in financial markets.

3 8. In the years 2004 through 2008, D’Andrea lost approximately \$270,000 from her
4 trading activities. In 2004, D’Andrea lost approximately \$20,000. D’Andrea made almost
5 \$39,000 in profit in 2005, but followed that with losses of approximately \$1,600, \$160,000, and
6 \$126,000 in the next three years.

7
8 9. Each year D’Andrea faced increasing debt obligations. Payments to investors
9 increased from approximately \$16,000 in 2005, to \$54,000 in 2006, \$97,000 in 2007, and
10 \$98,000 in 2008. Investors provided the majority of funds available to D’Andrea during this
11 time period. In order to make these increasing payments to investors, D’Andrea continually
12 needed to borrow more money. D’Andrea entered into more promissory notes with investors
13 each year and borrowed from credit cards, home equity loans, and other sources.

14 10. In November 2007, D’Andrea stopped making monthly payments on \$80,000
15 worth of notes with her then husband’s uncle. Then, in January 2008, D’Andrea negotiated
16 dropping all interest on those notes and resuming payments on the principal beginning in August
17 2008. D’Andrea states that her now ex-husband’s uncle eventually forgave the notes entirely.

18
19 11. In May 2008, D’Andrea continued to seek new investors. She sent an email to
20 family members seeking more funds to trade and told them that she made her income through the
21 futures market and had “managed to do pretty well” for herself. D’Andrea’s sister sent funds to
22 D’Andrea pursuant to this email at the end of May 2008. The sister never received a promissory
23 note and D’Andrea claimed that her sister decided to gift those funds. D’Andrea also told
24 another investor in May that she was doing well and asked if this investor’s friends might be
25 interested in becoming clients.

1 12. A few weeks later, in June 2008, D'Andrea contacted one of her investors and
 2 told the investor that D'Andrea was overwhelmed and would not be able to make payments on
 3 her note or anyone else's. D'Andrea told the investor that she had made a bad trade in August of
 4 2007 that had caused her problems. D'Andrea lost over \$97,000 in August 2007. D'Andrea
 5 asked, and the investor agreed, to reduce the monthly payments on her note to interest only
 6 payments. D'Andrea entered into six promissory notes after August 2007 totaling \$207,000.
 7

8 13. Despite admitting to one investor in June that she was in trouble and struggling to
 9 make payments, D'Andrea entered into a promissory note with her girlfriend's brother in
 10 September 2008.

11 14. D'Andrea filed for chapter 7 bankruptcy on December 18, 2008 and all payments
 12 to investors stopped.

13 15. In bankruptcy proceedings, D'Andrea admitted that she used funds from these
 14 promissory notes to make payments for house payments, food, electricity and other living
 15 expenses. D'Andrea also admitted using promissory note funds to make payments to other note
 16 holders.

17 Misrepresentations and Omissions

18 16. D'Andrea failed to provide material information regarding the promissory note
 19 investments, including but not limited to: financial statements, information on her financial
 20 condition and her ability to repay debts, and the general and specific risks of investing in futures
 21 trading.
 22

23 17. D'Andrea misrepresented the risk of investing to some investors by telling them
 24 that she had a life insurance policy to protect investors if she died. D'Andrea caused at least one
 25 investor to believe the policy protected the investor if D'Andrea went bankrupt. D'Andrea did

1 have a life insurance policy, but she failed to disclose to investors that her husband was the
2 beneficiary on the contract.

3 18. D'Andrea represented to at least two investors that she had worked for a
4 brokerage firm in the past. D'Andrea has never worked for a brokerage firm. D'Andrea told
5 those investors that she felt that brokerage firms were reckless with people's money and did not
6 care about their clients. D'Andrea explained that brokerage firms had no pressure to perform.
7 She claimed that her use of promissory notes put the risk on her and away from her clients.
8

9 19. D'Andrea failed to disclose material information regarding the number and dollar
10 amount of outstanding promissory notes between D'Andrea and other investors.

11 20. D'Andrea failed to disclose material information regarding other debt obligations.
12 At the time of her bankruptcy filing D'Andrea and her ex-husband owed approximately
13 \$500,000 on their home and car. D'Andrea and her ex-husband also had unsecured debts
14 totaling approximately \$125,000; not including the debts to investors.

15 21. D'Andrea misrepresented to investors the success of her trading activities.
16 During the time period D'Andrea issued promissory notes, she lost approximately \$270,000 from
17 her trading activities.

18 22. D'Andrea misrepresented the use of investor funds. D'Andrea told investors their
19 funds would be used for trading. D'Andrea failed to disclose that she used investor funds to pay
20 her debt obligations including her mortgage, home equity line of credit, student loans, car
21 payments, credit cards, other living expenses, and to make payments to other investors.
22

23 23. D'Andrea failed to disclose to investors that her ability to repay the notes was
24 heavily dependent upon her ability to continue to bring in new funds from other investors.
25

Registration Status

24. D'Andrea is not currently registered to sell her securities in the state of Washington and has not previously been so registered, nor has she filed a claim of exemption from registration.

25. D'Andrea is not currently registered as a securities salesperson in the state of Washington and has not previously been so registered.

Based upon the Tentative Findings of Fact, the following Conclusions of Law are made:

CONCLUSIONS OF LAW

1. The offer or sale of the promissory notes described above constitutes the offer and/or sale of a security as defined in RCW 21.20.005(10) and (12).

2. The offer or sale of said securities violated RCW 21.20.140 because no registration for such offer or sale was on file with the Securities Administrator.

3. Valerie D'Andrea violated RCW 21.20.040 by offering or selling said securities while not registered as a securities salesperson in the state of Washington.

4. The offer or sale of said securities was made in violation of RCW 21.20.010 because, as set forth in the Tentative Findings of Fact, D'Andrea made untrue statements of material fact and omitted to state material facts necessary in order to make the statements made, in light of circumstances under which they were made, not misleading.

NOTICE OF INTENT TO ORDER THE RESPONDENT TO CEASE AND DESIST

Based on the above Tentative Findings of Fact and Conclusions of Law, the Securities Administrator intends to order, pursuant to RCW 21.20.390(1), that Valerie D'Andrea cease and desist from violations of RCW 21.20.010, RCW 21.20.040, and RCW 21.20.140.

1 **NOTICE OF INTENT TO IMPOSE FINES**

2 Pursuant to RCW 21.20.395, and based upon the Tentative Findings of Fact and
3 Conclusions of Law, the Securities Administrator intends to order that Valerie D'Andrea shall be
4 liable for and pay a fine of \$30,000. Payment of the fine is to be deferred until the D'Andrea
5 promissory note investors have been repaid in full.
6

7 **NOTICE OF INTENT TO CHARGE COSTS**

8 Pursuant to RCW 21.20.390(5), and based upon the Tentative Findings of Fact and
9 Conclusions of Law, the Securities Administrator intends to order that Respondent Valerie
10 D'Andrea shall be liable for and pay the costs, fees, and other expenses incurred in the
11 investigation of this matter.

12 **AUTHORITY AND PROCEDURE**

13 This Statement of Charges is entered pursuant to the provisions of the Securities Act and
14 is subject to the provisions of RCW 21.20 and RCW 34.05. The respondent, Valerie D'Andrea,
15 may make a written request for a hearing as set forth in the NOTICE OF OPPORTUNITY TO
16 DEFEND AND OPPORTUNITY FOR HEARING accompanying this order.

17 If the respondent does not request a hearing, the Securities Administrator intends to adopt
18 the above Tentative Findings of Fact and Conclusions of Law as final and enter an order to cease
19 and desist permanent as to that Respondent, and impose the fines and costs sought.
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21 DATED and ENTERED this 24th day of March, 2010

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24 SUZANNE SARASON
25 Chief of Enforcement

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Presented by:



Jack McClellan
Financial Legal Examiner