SECURITIES AND EXCHANGE COMMISSION
Washington D.C.

SECURITIES ACT OF 1933
Rel. No.8344 / December 11, 2003

SECURITIES EXCHANGE ACT OF 1934
Rel. No.48903 / December 11, 2003

Admin. Proc. File No. 3-10310

In the Matter of

WILLIAM C. PIONTEK
830 East Morningside Drive
Atlanta, Georgia 30324

OPINION OF THE COMMISSION

BROKER-DEALER PROCEEDING
CEASE-AND-DESIST PROCEEDING

Grounds for Remedial Action

Unauthorized Trading

Unsuitable Recommendations and Trading

Associated person of former registered broker-dealer engaged in unauthorized trading and unsuitable recommendations and trading in customers' accounts. Held, it is in the public interest to bar respondent from association with a broker or dealer or with a member of a national securities exchange or of a registered securities association, provided, that respondent may apply to become associated in a non-supervisory, non-proprietary capacity after two years; to order respondent to cease and desist from committing or causing any violations or any future violations of Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934 and Exchange Act Rule 10b-5; and to order respondent to pay a civil money penalty in the amount of $50,000.

APPEARANCES:

Thomas D. Carter, for the Division of Enforcement.

S. Lawrence Polk, Sutherland Asbill & Brennan LLP, for William C. Piontek.

Appeal filed: February 25, 2003
Last brief received: May 15, 2003

I.

The Division of Enforcement appeals the sanctions imposed by an administrative law judge. 1/ The law judge found that William C. Piontek, who, at the time of the events at issue, was associated with a registered broker-dealer, willfully violated Section 17(a) of the Securities Act of 1933, 1/ Section 10(b) of the Securities Exchange Act of 1934, 1/ and Exchange Act Rule 10b-5, 1/ by engaging in unauthorized trading and recommending and effecting unsuitable investments in two customers' accounts. The law judge ordered Piontek "barred from associating with any broker or dealer, [or a] member of a national securities exchange or registered securities association for six months," and ordered Piontek to cease and desist from committing or causing violations and future violations of these provisions of the Securities Act and the Exchange Act. We base our findings on an independent review of the record, except with respect to those findings not challenged on appeal. 1/

II.

1/ The Commission originally instituted these proceedings against respondents Dale E. Frey, Roger A. Rawlings, and William C. Piontek. Without admitting or denying the allegations, Mr. Frey and Mr. Rawlings settled with the Commission. Dale E. Frey, Order Making Findings And Imposing Remedial Sanctions Against Dale E. Frey, Exchange Act Rel. No. 44982 (Oct. 25, 2001), 76 SEC Docket 315 (imposing censure and suspension from association in a supervisory or proprietary capacity with any broker or dealer for twelve months); Roger A. Rawlings, Order Making Findings And Imposing Remedial Sanctions Against Roger A. Rawlings, Exchange Act Rel. No. 44634 (Aug. 1, 2001), 75 SEC Docket 1551 (imposing censure and suspension from association in a supervisory or proprietary capacity with any broker or dealer for one year).

2/ 15 U.S.C. § 77q(a).

3/ 15 U.S.C. § 78j(b).

4/ 17 C.F.R. § 240.10b-5.

5/ See Section IV., infra.

From 1994 through July 1999, Piontek was the principal and branch manager of the Atlanta, Georgia office of D.E. Frey & Company, Inc. ("Frey"). 1/ Immediately prior to coming to Frey, Piontek was associated with Dean Witter Reynolds Inc. At issue in this proceeding are Piontek's activities with respect to two customers.

Albert D. Dean, Jr.

Albert D. Dean, Jr. was a pilot for Eastern Airlines. Dean began investing with Piontek in 1983. In 1988, when Dean was fifty-eight, he retired, and received

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6/ Frey was registered as a broker-dealer and investment adviser with the Commission. Without admitting or denying the allegations that it failed reasonably to supervise certain sales persons, Frey settled an administrative proceeding with the Commission. D.E. Frey & Company, Inc., Order Instituting Public Proceedings Pursuant to Sections 51(b) and 19(h) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, Exchange Act Rel. No. 43354 (Sept. 26, 2000), 73 SEC Docket 1240 (imposing censure, ordering compliance with certain undertaking to ensure that its supervisory and compliance policies, procedures and systems were adequate, and ordering a civil money penalty of $100,000).

approximately $430,000 as a lump-sum retirement benefit. He deposited this sum into an IRA account with Piontek at Dean Witter. Dean transferred his IRA account to Frey in 1994 when Piontek became associated with Frey.

Dean and his wife reported income of $145,593 on their joint federal income tax return for 1997, of which $100,000 represented his individual income. For 1998, his joint income was $126,465, and his individual income was $90,000.

When Dean opened his account at Frey, he signed documents ranking his investment objectives as first, conservative (favoring income, growth, investment-grade securities), and last, speculation. Dean testified that his investment objectives never changed throughout his years of investing. Dean believed pilots were not good money managers and followed Piontek's recommendations.

Dean informed Piontek that he wanted to spend only the interest earned in the account, not the principal. With Piontek's knowledge, Dean withdrew approximately $3,700 a month from his IRA account for living expenses. Piontek knew that Dean, who was then sixty-nine, favored conservative, income-producing investments, and depended on the IRA account for a significant part of his income.

Frey had not approved Dean's account for options trading. Frey's Compliance Manual required that, in order to trade options, a client complete an Options Qualifications Form and an Options Agreement, which disclosed risks of options trading. 1/ The Compliance Manual also required that the Frey "Senior Equity Registered Options Principal," or "Equity Compliance Registered Options Principal" review the information contained in the Qualifications Form and Option Agreement and approve options trading in the account. In 1998, Scott Gillespie was the Frey Senior Equity Registered Options Principal. 1/ The Compliance Manual prohibited the execution of option trades in a client's account until such approval had been obtained. 1/

7/ The Qualification Form focused on customer suitability. The Compliance Manual identified factors to be considered in determining whether options were suitable for a customer, including: age, marital status and number of dependents, earned and unearned income, total net worth and liquid net worth, market and financial sophistication and experience, investment objectives, understanding of the potential risks and rewards of a proposed transaction or strategy, ability to undertake the potential financial risks, occupation and previous investment experience.

8/ The record does not identify the Equity Compliance Registered Options Principal.

9/ Dean had signed a Qualification Form and an Options Agreement in 1994 and 1995, but neither the Frey Senior Equity Registered Options Principal nor the Equity Compliance Registered Options Principal had reviewed the forms or

approved options trading for Dean's account. Dean's 1994 Qualification Form contains no signature by a registered options principal. Piontek testified that in 1994, when he moved to Frey, he was not a registered options principal. On the 1995 form, Piontek signed the form as "ROP" (i.e., registered options principal).

Dean testified that he never intended these documents to serve as a general authorization to engage in options trading. Rather, in 1994 and 1995, part of his account was invested in an investment trust, and he signed these documents solely for use in connection with that investment. The record contained a Qualification Form purportedly for Dean, dated September 22, 1998, but someone other than Dean completed it, and Dean never executed that form.

Near the end of August 1998, the value of Dean's IRA account had declined almost fifty percent. 1/ Dean expressed alarm to Piontek. Piontek recommended that Dean invest his IRA funds in NASDAQ 100 Index Options ("NASDAQ Options"), in order to recoup some of his declining IRA principal quickly. Piontek knew that NASDAQ Options were "very speculative" and that a customer could lose all of his or her money within a few days.

Dean understood the risks of options trading and agreed to purchase one or two NASDAQ Options. Dean believed he could afford to risk between $9,000 to $18,000 of his remaining $230,000 account.

Frey's supervisory procedures required that any grant to a sales person of discretion over a customer's account be in writing. Dean had not granted Piontek discretionary authority over his account. Despite the fact that Dean authorized the purchase of, at most, two NASDAQ Options, during the last week of August 1998, Piontek made a series of trades in these options for Dean's account, without Dean's knowledge. 1/ Finally, on September 1, 1998, Piontek purchased eight NASDAQ put options for Dean's account.

10/ This decline included a one-year drop of $131,000 between July 1997 and June 1998.

11/ Beginning on August 26, 1998, Piontek made day-trades, buying, and then

selling, ten NASDAQ put options, risking over $41,000, and buying and selling seven NASDAQ call options, risking over $20,000. On August 28, 1998, Piontek again day-traded into and out of fourteen NASDAQ call options, risking over $40,000. Three days later, Piontek bought and sold two NASDAQ put options, risking over $20,000.

Dean first learned of Piontek's final purchase of the eight NASDAQ Options in late September 1998, when Piontek asked him to participate in a conference call meeting with Scott Gillespie and Kathy Dominick, Frey's Director of Compliance. 1/ Gillespie had discovered the options trading in Dean's account and determined that the account was not approved for options trading. Moreover, Gillespie had determined that Dean's account did not have sufficient funds to pay for the eight NASDAQ Options held in his account. 1/

12/ Dean testified that Piontek told Dean about purchase of the eight put options and that he agreed to participate in the conference call. Piontek, however, did not tell Dean of the thirty-three trades in his account that Piontek had made the previous week, and Dean did not learn of these trades until he received confirmations of the trades later in September 1998.

13/ On September 2, 1998, Gillespie instructed Piontek to provide Gillespie with copies of Qualification Forms for fourteen accounts that Piontek represented. On September 16, 1998, Gillespie sent Piontek a memorandum forbidding Piontek from opening options accounts and entering orders until Gillespie had reviewed the account information and approved the trades.

Dominick followed this memorandum with a letter to Piontek, dated September 24, 1998, which stated that the Frey Compliance Steering Committee had

Before the conference call, Piontek told Dean that, to keep the potentially lucrative NASDAQ Options in his account, Dean would have to tell Gillespie and Dominick that he wanted the options. During the conference call, Dean did not mention that the trades were not authorized, and he told Gillespie that he wanted the options. After speaking with Dean, Gillespie determined to sell three NASDAQ Options, since Dean's account did not have sufficient funds, but allowed Dean to keep the five remaining NASDAQ Options.

In early October, the options were worth twice what

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prohibited Piontek from executing option transactions in IRA or pension accounts. Dominick's memorandum also noted that options transactions in other types of accounts should not exceed ten percent of a customer's liquid net worth. It further recommended that Piontek obtain letters from customers stating that they wanted options in their accounts. In late September (three weeks after the last trade in Dean's account), Piontek tried to persuade Dean to execute paperwork authorizing options transactions, but Dean refused.

they had cost. Dean informed Chip Owens 1/ and Piontek that he wanted to sell the options. Piontek recommended that Dean maintain the position. Dean followed Piontek's advice. The options expired worthless on October 17, 1998, and Dean lost his entire investment.

Robert E. and Bonnie Hamby

In 1998, Robert E. Hamby was sixty-two years old and the sole owner of a roofing company in Georgia. Hamby's and his wife's 1997 joint federal tax return showed joint income of approximately $400,000, and short-term capital gains of approximately $700,000. In 1998, the Hambys' joint income was $114,000, and they had short-term capital gains of over $1.3 million.

Since the late seventies, Hamby maintained an investment account at Merrill Lynch. Hamby testified that his investment objectives were conservative. He had granted Merrill Lynch written discretionary authority to trade for him. In 1997 and 1998, Hamby's Merrill Lynch account was valued at approximately $3 million. Although Hamby subscribed to The Wall Street Journal and watched financial television shows, the law judge found that Hamby lacked knowledge of the market and, as a result, depended on Merrill Lynch.

William Murray, a long-time friend of Hamby and one of Piontek's then-existing customers, recommended that Hamby contact Piontek and open an account with him. In May 1998, Hamby, Murray, and Piontek participated in a three-way conference call to open an account for Hamby at Frey. During this call, Hamby told Piontek that he liked "Murray's program" and that he "wanted to make investments similar to those in [Murray's] account," but, at the same time, wanted those investments to be more conservative. Piontek told Hamby that Murray was an "extremely aggressive speculator," who day-traded, invested in small-priced over-the-counter stocks (sometimes on margin), sold stock short, and bought options. While Hamby expressed an interest in mirroring Murray's program, he stated that he did not want to invest in "futures," because his family had lost a large amount of money in futures during the Depression. Hamby thought futures and options were similar instruments.

14/ Frey listed Chip Owens as the account executive for Dean's account. However, all the trades in Dean's account that are at issue here were effected by Piontek.

The day of the conference call, Hamby sent Piontek a check for $50,000 to open a joint account for his wife and him. Piontek sent Hamby a number of documents to sign, including a Qualifications Form and an Options Agreement. Hamby recognized that the Options Agreement authorized options trading and did not sign it. Hamby testified that Frey subsequently sent him additional copies of the Options Agreement two or three times. Hamby did not sign any of them because he felt that options were too risky. Hamby also requested that Frey stop sending him documents to authorize options trading, stating that he did not want to trade in them.

Hamby executed a Qualification Form on June 4, 1998. 1/ On the Qualification Form, Hamby stated that he was retired and described his investment objectives as conservative. 1/ Hamby stated that his investment objectives were income, growth, and investment-grade securities. 1/ Hamby did not list speculation as an objective. Hamby stated that his investment history consisted of his Merrill Lynch account, which had been invested in equities and bonds, but not futures. Hamby left all spaces on the Qualifications Form related to options trading blank. Piontek initialed Hamby's Qualification Form as "ROP," (i.e., registered options principal). Piontek did not send Hamby's Qualification Form to Gillespie or the Frey Equity Compliance Registered Options Principal for review and approval, as required by Frey's Compliance Manual.

15/ Hamby's wife never spoke with Piontek or signed any forms.

16/ Hamby testified that he had hoped to retire at this time, but he subsequently continued working.

17/ Hamby defined conservative investing as managing risks by liquidating any investment that fell more than ten percent.

Other than time and price discretion, Hamby did not grant Piontek discretionary authority over the Hambys' account. 1/ With one exception, a purchase of IBM stock that Hamby initiated, Hamby followed Piontek's recommendations. As soon as Hamby opened the account, Piontek began making short-term trades and short-sales. Hamby was aware of these trades. 1/ By August 1998, the Hambys' account had declined from $50,000 to approximately $29,000. Hamby complained to Piontek about the losses.

At the beginning of September 1998, the only profitable investment in the Hambys' account was the IBM stock that Hamby had purchased. The balance of the account was in a money market fund. Despite Hamby's repeated rejection of options trading, Piontek spoke generally with Hamby about purchasing NASDAQ Options to recoup the losses in the account. 1/ Although Piontek also discussed generally with Hamby the risks involved in investing in these options, the law judge found that Hamby did not understand Piontek's explanation.

On September 4, 1998, without the Hambys' authorization, Piontek liquidated the Hambys' position in IBM and used the proceeds and the balance of the account in the money market fund to purchase NASDAQ put options. Piontek informed Hamby of the IBM sale and the options purchases only after the fact, telling Hamby that the

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18/ Frey's Supervisory Procedure Manual required all grants of discretion, other than time and price discretion, to be in writing.

19/ The law judge found that, despite his authorization of these trades, Hamby did not understand the nature of short-sales or the significant risks involved.

20/ Piontek believed that Hamby could tolerate the risk of losing everything in his account.

investment could make $100,000. Hamby did not understand what Piontek had done, and initially thought that Piontek had purchased a stock called "PUT."

According to Piontek, over the month of September 1998, the puts had become almost worthless. However, by October 6, 1998, they had rebounded and were worth approximately what Hamby had paid for them. According to Piontek, when Piontek called Hamby, Hamby stated that he would not lose money because he had not signed an Options Agreement. Piontek threatened to liquidate the Hambys' position if Hamby did not immediately provide Piontek with a letter or document accepting the risk of the trade. 1/ Hamby responded by sending a short letter to Piontek dated October 6, 1998, which stated:

> Bill,
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> I am not into futures but - - We are into these Puts, and you have informed me that we are back even on this.
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> We authorize you to do this. If these these [sic] Puts go the wrong way over 10% SELL them. Other than that, use your smarts and get all you can. You, Murray, And [sic] me should meet soon and clear all the smoke.

21/ Hamby testified that Piontek told Hamby that both Piontek and Murray maintained positions in the puts. In fact, Piontek did not have a position in puts on that date, and Murray sold his position two days later, October 8, 1998.

Piontek stated that he considered the letter to be "totally unacceptable." 1/

On October 7, 1998, Piontek informed Hamby that the value of the options doubled. Piontek again urged Hamby to ratify the trades by signing an Options Agreement and Qualification Form. Hamby was reluctant to ratify the trades. Piontek told Hamby that, if he did not sign options papers immediately, Frey would liquidate his position. Hamby signed an Options Agreement dated October 9, 1998.

Piontek did not thereafter contact Hamby. The options expired worthless on October 17, 1998.

22/ According to Piontek, given the size of the spread between the bid and the ask prices, the ten percent stop loss order would have immediately triggered a sale of the NASDAQ Options. Hamby did not recall Piontek telling him this.

III.

Piontek complains that the Order Instituting Proceedings alleged that Piontek had made unauthorized trades and unsuitable recommendations in "two customer accounts," without specifying the accounts. In its response to Piontek's Motion For Definite Statement, the Division identified the Hambys' account. However, the Division did not identify the Dean account in that response or in its prehearing brief. Piontek claims that the Division did not assert that Piontek engaged in violative activity in Dean's account until the commencement of the hearing before the law judge.

The Order Instituting Proceedings alleged:

> In 1998, Piontek made unsuitable trade recommendations involving options transactions to at least two Frey accounts who were not approved for the transactions. One customer of Piontek was averse to investing in options and did not complete Frey's customer option agreement. . . . Another customer of Piontek maintained an IRA account at Frey with stated investment objectives of preservation of capital and avoidance of risk. The customer did not sign an options agreement and his account was not approved for options trading.

Dean was on the Division's witness list, and his participation in the hearing was discussed at the pre-hearing conference. Piontek was able to review documents, question Dean before his testimony and at the hearing, and otherwise fully prepare his case. We find that Piontek "understood the issue[s]" and "was afforded full opportunity" to litigate the issues concerning the Dean account." 1/ Thus, he had sufficient notice of the charges against him and opportunity to prepare and present his defense.

23/ See, e.g., KPMG Peat Marwick LLP, Exchange Act Rel. No. 44050 (Mar. 8, 2001), 74 SEC Docket 1351, 1354, quoting Aloha Airlines v. CAB, 598 F.2d 250, 262 (D.C. Cir. 1979) ("notice is sufficient if the respondent 'understood the issue' and 'was afforded full opportunity' to justify its conduct during the course of

IV.

As described in Section I, supra, the Division's Petition for Review challenged only the sanctions imposed by the law judge, and Piontek did not file a petition for review. In his brief on appeal, however, Piontek asserts that Dean and the Hambys authorized the trades at issue and, if not, subsequently ratified them. He also argues that his recommendations were suitable for both of them because they were wealthy and experienced investors, each had a history of speculative investments, and each understood the risks associated with the investments. Because Piontek did not file his own petition challenging the Initial Decision, the Initial Decision's conclusions that Piontek engaged in unauthorized and unsuitable

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litigation.").

trades are not subject to review. 1/ However, in our consideration of whether sanctions are in the public interest, we will consider Piontek's arguments.

Unauthorized Trades

A salesperson may not effect trades for a customer's account unless the customer has granted the salesperson discretion over the account, or the salesperson receives the customer's authorization before the particular trade. A broker who trades in a customer's account without authorization commits fraud if there is accompanying

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24/ Id. See also Sandra K. Simpson, Exchange Act Rel. No. 45923 (May 14, 2002), 77 SEC Docket 1983, 2007 n.50.

Piontek has not challenged any of the facts that support the law judge's findings. In his brief, Piontek noted that the law judge's finding of violations were "[b]ased upon careful consideration of the evidence and testimony."

deceptive conduct. 1/ The deceptive element is established when the broker omits "to inform the customer of the materially significant fact of the trade before it is made." 1/

Piontek did not have discretion to effect trades in either Dean's or the Hambys' account. The law judge found that Dean authorized the purchase of, at most, two NASDAQ Options, for an amount Dean thought he could lose. Without Dean's knowledge or permission, Piontek engaged in a series of trades in Dean's account, ultimately making a single trade for eight NASDAQ Options for Dean's account (four times the amount that Dean had authorized). The law judge also found that, without prior consent and against Hamby's instructions, Piontek liquidated the Hambys' IBM shares and invested their entire account in NASDAQ put options.

25/ Simpson, 77 SEC Docket at 2001, citing Donald A. Roche, 53 S.E.C. 16, 24 (1997) and Messer v. E.F. Hutton & Co., 847 F.2d 673, 678 (11th Cir. 1987) (other citations omitted).

26/ Roche, 53 S.E.C. at 24.

Piontek argues that his conduct was not egregious because both of the customers subsequently ratified these trades. We have held that after-the-fact acceptance of an unauthorized trade does not transform it into an authorized trade. 1/

Unsuitable Recommendations and Trades

A broker has a duty to make investment recommendations that are suitable for the investor when evaluated in terms of the investor's financial situation, tolerance for risk, and investment objectives. 1/ Frey's Compliance Manual directed Piontek, in determining suitability, to consider a series of factors, including: age, occupation, earned and unearned income, investment objectives, and understanding of the potential risks. Moreover, Piontek did not have the authority to approve options trading for any customer. The Compliance Manual required that options trading in any account be approved by the Frey Senior Equity Registered Options Principal or the Frey Equity Compliance Registered Options Principal.

27/ See Simpson, 77 SEC Docket at 2002-03. See also Justine Susan Fischer, 53 S.E.C. 734, 742 (1998)(NYSE case).

28/ J. Stephen Stout, Exchange Act Rel. No. 43410 (Oct. 4, 2000), 73 SEC Docket 1441, 1460. See also Donald T. Sheldon, 51 S.E.C. 59, 74 n.59 (1992) ("the broker has a duty to satisfy himself that speculative investments are suitable for the customer and that the customer understands and is willing to undertake the risks."), aff'd, 45 F.3d 1515 (11th Cir. 1995).

Dean was sixty-nine years old. He had retired as an airline pilot over ten years earlier. Dean's IRA account was the remainder of his lump sum retirement payment, upon which he depended for a significant part of his income. Dean's investment objectives were (in order) income, growth, investment-grade securities, and (last) speculation. By August 1998, Dean's IRA account had been substantially depleted. Piontek knew that the NASDAQ Options were speculative and that their purchase could result in loss of the entire investment. In recommending options for Dean's account, Piontek recklessly disregarded Dean's financial situation, investment objectives, and needs and, instead, recommended extremely risky trades as a remedy for Dean's declining account balance. 1/

Piontek's options trades were also unsuitable for the Hambys. The record supports the law judge's finding that, although Hamby had an active securities account elsewhere, he did not manage this account, but depended on his broker. Hamby had not designated "speculation" as an investment objective on his Qualification Form. Hamby reiterated that he did not want to trade in "futures," which he thought encompassed options, and he repeatedly refused to sign documents authorizing options trading. Hamby did not understand options trading or the risks associated with options trading. Piontek recklessly ignored Hamby's clear wish not to engage in options trading and Hamby's lack of understanding of the risks of options trading.

Piontek also repeatedly ignored or attempted to circumvent Frey's procedures for options trading approval. He failed to submit either Dean's or the Hambys' accounts for Frey's prior approval.

Piontek argues that his recommendations were suitable for both Dean and the Hambys because they were wealthy. While both Dean and the Hambys may have been

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29/ The Division's expert witness testified that the day-trading and purchasing of index options in an IRA account constituted an extreme deviation from the standards of the industry.

well-off, that fact did not make speculative investments suitable for either of them. We have repeatedly held that "[a] customer's wealth [and sophistication] does not give a [registered representative] a license to disregard the customer's investment objectives." 1/

Piontek argues that both customers had a history of speculative investments. The law judge, however, found that Hamby relied on his Merrill Lynch salesperson to direct his trades. While Piontek notes that Dean previously engaged in speculative investments and signed Option Agreements three years before the events at issue, that is not dispositive. Whether Dean had been willing to speculate in the past (in some instances more than twenty years earlier) did not make options trading suitable for Dean in 1998, particularly given his long-standing retirement and reduced IRA account.

Piontek also asserts that both customers understood the risk of options trading. While the law judge found that Dean understood the risks, Dean attempted to limit that risk to no more than two options. Piontek ignored this restriction. The law judge found that Hamby did not understand these risks.

Piontek suggests that Dean and Hamby wanted to speculate, and accepted his recommendations to try to recoup their losses. We have found that most of these trades were unauthorized. Nonetheless, assuming that Dean and Hamby did want to invest in speculative securities, that did not affect Piontek's responsibility to recommend

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30/ See Henry James Faragalli, Jr., 52 S.E.C. 1132, 1141 (1996); see also Arthur Joseph Lewis, 50 S.E.C. 747, 749 (1991)("[t]he fact that a customer . . . may be wealthy does not provide a basis for recommending risky investments"); David Joseph Dambro, 51 S.E.C. 513, 517 (1993) ("[s]uitability is determined by the appropriateness of the investment for the investor, not simply whether the salesman believes that the investor can afford to lose the money invested.").

suitable investments. The test for whether Piontek's recommendations were suitable is not whether Dean or Hamby acquiesced in them, but whether his recommendations were consistent with their respective financial situations and needs. 1/

31/ See John M. Reynolds, 50 S.E.C. 805, 809 (1992)(regardless of whether customer wanted to engage in aggressive and speculative trading, representative was obligated to abstain from making recommendations that were inconsistent with the customer's financial situation), amended on other grounds, Exchange Act Rel. No. 30036A (Feb. 25, 1992), 50 SEC Docket 1839. See also Gordon Scott Venters, 51 S.E.C. 292, 294-95 (1993)(notwithstanding client's interest in investing in speculative securities, broker had duty to refrain from recommending such investments when he learned about his customer's age and financial situation); F.J. Kaufman and Company of Virginia, 50 S.E.C. 164, 168 (1989)("[t]he suitability rule . . . requires a broker to make a customer-specific determination of suitability and to tailor his recommendations to the customer's financial profile and investment objectives").

The Division asks that we bar Piontek permanently from associating with a broker or dealer, or with a member of a national securities exchange or registered securities association, and that we impose upon him a civil money penalty of $110,000. The imposition of sanctions is, as the Supreme Court has held, within the administrative agency's expertise. 1/ Section 15(b)(6)(A)(i) of the Exchange Act authorizes the Commission to bar any associated person of a broker-dealer who willfully violates the Securities Act, the Exchange Act or any rule thereunder if it is in the public interest. 1/

32/ Butz v. Glover Livestock Comm'n Co., Inc., 411 U.S. 182, 185 (1973).

33/ 15 U.S.C. § 78o(b)(6)(A)(i). See also Exchange Act

§ 19(h)(3)(B), 15 U.S.C. § 78s(h)(3)(B) (authorizing the Commission to suspend or bar a respondent from association with a member of an exchange or a registered securities association). In imposing sanctions against a respondent, we consider the egregiousness of the respondent's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of any assurances against future violations, the respondent's recognition of the wrongful nature of the conduct, and the likelihood that the respondent's occupation will present opportunities for future violations. See Joseph J. Barbato, 53 S.E.C. 1259, 1281 n.31 (1999); Sheldon, 51 S.E.C. at 86; see also Steadman v. S.E.C., 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981).

Piontek's conduct demonstrates scienter and a lack of appreciation of the responsibility a securities professional has to a public customer. Moreover, Piontek has a prior disciplinary history. Four state securities agencies, in 1994 and 1995, conditioned Piontek's registration by restricting the activities in which he could engage, requiring special supervisory procedures, or prohibiting him from acting in a supervisory capacity. 1/ We recognize that Piontek is not currently in the industry. However, we believe a bar is in the public interest. A bar will require Piontek to seek permission from a self-regulatory organization before he re-enters the industry. That organization will have the opportunity to examine any proposed employment to determine whether it is appropriate to impose necessary procedures or limitations on Piontek. Accordingly, we find that it is in the public interest to bar Piontek from association with any broker or dealer, or a member of a national securities exchange or registered securities association, with the right to reapply in a non-supervisory, non-proprietary capacity after two years.

We also believe that a cease-and-desist order is in the public interest. Section 8A of the Securities Act 1/ and Section 21C of the Exchange Act 1/ provide that the

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34/ It appears that the state actions responded in part to Piontek's history of customer and arbitration complaints for recommending unsuitable or unauthorized trades. The record and CRD show that, since 1994, Piontek had been the subject of at least thirty customer complaints.

35/ 15 U.S.C. § 77h-1.

36/ 15 U.S.C. § 78u-3.

Commission may enter an order against a person who is violating, has violated, or is about to violate any provision of the Securities Act or the Exchange Act to cease and desist from committing or causing violations and future violations of the provisions of

these Acts. In issuing a cease-and-desist order, we must find a risk of future violations. 1/ We believe that, given his conduct and prior history, there is a risk that Piontek will engage in future securities violations.

We assess civil money penalties pursuant to Section 21B of the Exchange Act. 1/ The amount of penalty assessed depends on a finding that such an assessment is in the public interest. 1/ Section 21B(c) specifies certain factors to consider in determining the penalty amount. The factors relevant here are fraud, harm to others, unjust

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37/ KPMG, LLP v. S.E.C., 289 F.3d 109, 124 (D.C. Cir. 2002)("[a]bsent evidence to the contrary, a finding of past violation raises sufficient risk of future violation.").

38/ 15 U.S.C. § 78u-2.

39/ 15 U.S.C. § 78u-2(a). Section 21B(b) of the Exchange Act, 15 U.S.C. § 78u-2(b), provides for three tiers of civil money penalties. For violations occurring after December 9, 1996, and before February 2, 2001, the maximum first tier penalty against a natural person is $5,500 for each act or omission. 17 C.F.R. § 201.1001. The second tier maximum amount is $55,000 when the act or omission involves fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement. Id. The Division requests the third tier maximum penalty of $110,000, which applies when, in addition to the above, there are substantial losses, or a significant risk of substantial losses, to the customer or pecuniary gain to the actor. Id.

enrichment, prior violations, deterrence, and such other matters as justice may require. 1/ The law judge found that no monetary penalty was necessary.

40/ 15 U.S.C. § 78u-2(c).

While it is true that Piontek did not receive substantial enrichment from his conduct, that conduct involved fraud and harm to others. We also believe a civil money penalty would deter others. We, therefore, impose upon him a second tier civil monetary penalty of $50,000.

An appropriate order will issue. 1/

By the Commission (Chairman DONALDSON and Commissioners GLASSMAN, GOLDSCHMID, ATKINS and CAMPOS).

Jonathan G. Katz
Secretary

41/ We have considered all of the contentions advanced by the parties. We have rejected or sustained them to the extent that they are inconsistent or in accord with the views expressed in this opinion.

SECURITIES AND EXCHANGE COMMISSION
Washington D.C.

SECURITIES ACT OF 1933
Rel. No.8344 /December 11, 2003

SECURITIES EXCHANGE ACT OF 1934
Rel. No.48903 / December 11, 2003

Admin. Proc. File No. 3-10310

In the Matter of

WILLIAM C. PIONTEK
830 East Morningside Drive
Atlanta, Georgia 30324

ORDER IMPOSING REMEDIAL SANCTIONS

On the basis of the Commission's opinion issued this day, it is

ORDERED that William C. Piontek ("Piontek") be barred from association with any broker or dealer or with any member of a national securities exchange or of a registered securities association, provided, that he may apply to become so associated in a non-supervisory, non-proprietary capacity after two years; and it is further

ORDERED that Piontek cease and desist from committing or causing any violations or any future violations of Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934, and Exchange Act Rule 10b-5; and it is further

ORDERED that Piontek pay a civil money penalty of $50,000.

Piontek's civil money penalty shall be: (i) made by United States postal money order, certified check, bank cashier's check, or bank money order; (ii) made payable to the Securities and Exchange Commission; (iii) delivered by hand or courier to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, Virginia 22312 within thirty days of the date of this order; and (iv) submitted under cover letter which identifies

Piontek as the respondent in Administrative Proceeding No. 3-10310. A copy of this cover letter and check shall be sent to Thomas D. Carter, Counsel for the Division of Enforcement, Securities and Exchange Commission, 1801 California Street, Suite 1500, Denver, Colorado 80202.

By the Commission.

Jonathan G. Katz
Secretary