

STATE OF ILLINOIS
SECRETARY OF STATE
SECURITIES DEPARTMENT

IN THE MATTER OF: MICHAEL C. KIZMAN

FILE NO. 0900379

NOTICE OF HEARING

TO THE RESPONDENT: Michael C. Kizman
(CRD #: 229844)
7 N. 325 Windsor Drive
St Charles, Illinois 60175

Michael C. Kizman (CRD #:229844)
C/o Merrill Lynch, Pierce, Fenner & Smith, Inc.
901 W Trade Street NC1-003-04-26
Charlotte, North Carolina 28255

You are hereby notified that pursuant to Section 11.F of the Illinois Securities Law of 1953 [815 ILCS 5] (the "Act") and 14 Ill. Adm. Code 130, Subpart K, a public hearing will be held at 69 West Washington Street, Suite 1220, Chicago, Illinois 60602, on the 3rd day of February, 2010 at the hour of 10:00 a.m. or as soon as possible thereafter, before James L. Kopecky Esq., or such other duly designated Hearing Officer of the Secretary of State.

Said hearing will be held to determine whether an Order shall be entered revoking Michael C. Kizman's (the "Respondent") registration as a salesperson and as an investment adviser representative 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.E (4) 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 That at all relevant times, the Respondent was registered with the Secretary of State as a salesperson and investment adviser representative in the State of Illinois pursuant to Section 8 of the Act.

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2. That on July 14, 2009 FINRA entered a Letter Of Acceptance, Waiver And Consent (AWC) submitted by the Respondent regarding File No. 2005002254704 Which sanctioned the Respondent as follows:
 - a. 15 business day suspension from association with any FINRA member firm in any capacity; and
 - b. fine in the amount of \$10,000.
3. That the AWC found:

FACTS AND VIOLATIVE CONDUCT
Merrill's CEF Program

Between March 2003 and August 2006 (the "relevant period"), Merrill underwrote 114 initial public offerings ("IPO") of closed end funds ("CEFs"). CEFs are investment companies that sell a fixed number of shares in an initial public offering, after which the shares typically trade on a secondary market. The sales charges to the customer are built into the offering price of the CEF purchased at the initial public offering. During the relevant period, the CEFs at issue included a sales load of 4.5%, from which the underwriters' fee and sales concession were paid. The proceeds, after the expenses, were then invested by the CEF based on the investment objectives of the CEF.

The CEFs had a "stabilization period," which was the period of time immediately following the IPO in which the lead underwriter (at least in theory) generally supported the price of the fund. The CEFs' prospectuses generally noted that the underwriter may purchase common shares to stabilize the fund's price or to reduce short positions, and that this may cause the price of the common shares to be higher than it might otherwise be. Stabilization periods did not exceed 90 days and were generally shorter in duration.

Following the stabilization period, the price of CEF shares in the secondary market was determined by the market and may have reflected either a premium or a discount of the shares' net asset value ("NAV") excluding the offering expenses. Since expenses to the customer at the time of the IPO were built into the offering price of the CEF, its market price generally declined after the stabilization period. Without trading at a discount or a premium, all other factors being equal, it would have been reasonable to expect the market price of the CEF at the end of the stabilization period to be approximately 4.5% below the initial offering price.

The Respondent's Unsuitable Recommendations

From April 2003 through August 2006, the Respondent recommended that certain of his customers purchase CEFs in the initial public offerings. Generally, he received a production credit of 3% of the value of the shares his customers purchased at IPO. These production credits were applied to his commission grid or pay-out percentage such that he typically received a commission equal to approximately 75 - 1.25% of the value of the shares purchased by his clients.

Despite the generally long term nature of these investments, and based in part on his erroneous belief that the customers did not pay the initial fee., the Respondent consistently recommended that they sell these CEFs in the short term, defined as less than 120 days after they were purchased in the initial public offering. The Respondent recommended a sale within 120 days of purchasing the CEF in the initial public offering in 80% of the customer accounts to which he recommended an IPO purchase. Close to 70% of the shares his customers bought in the initial public offering were sold on his recommendation within 120 days of the IPO.

The Respondent made the recommendations to buy the CEFs in the initial public offering and sell them in the short term without a sufficient understanding of the pricing of CEFs and the risks and rewards of the investment. The Respondent mistakenly believed that closed end fund IPOs would behave like equity IPOs. Prior to a Merrill Lynch internal investigation, he did not understand the stabilization period associated with closed end funds, and had an incorrect understanding of the expenses associated with closed end fund IPOs, including the impact of the underwriting fee on the aftermarket price. The Respondent's recommendations to buy the CEPs in the initial public offering and sell them in the short term contributed to his customers losing approximately \$411,000.

Before recommending a transaction, NASD Rule 2310 requires a broker to "have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs." A broker cannot determine whether a recommendation is suitable for a specific customer unless the broker understands the nature of the product, as well as the potential risks and rewards associated with the product. Because the Respondent failed to fully understand the pricing of CEFs and the risks and rewards of the investment, the Respondent did not have reasonable grounds for believing that his recommendations that his customers purchase CEFs in the initial public offering and sell them in the short term were suitable.

By engaging in the course of conduct described above, the Respondent violated NASD Conduct Rules 2310 and 2110.

4. That 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 finds that such Salesperson

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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 duly promulgated by the self-regulatory Organization.

5. That FINRA is a self-regulatory organization as specified in Section 8.E(1)(j) of the Act.
6. That 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 Link for the Rules, promulgated under the Act and pertaining to hearings held by the Office of the Secretary of State, Securities Department, is included with this Notice. <http://www.cyberdriveillinois.com/departments/securities/lawrules.html>

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

Dated: This 1st day of December, 2009



JESSE WHITE
Secretary of State
State of Illinois

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Hearing Officer:
James L. Kopecky