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**STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
SECURITIES DIVISION**

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

S-02-235-03-TO01

DAVE H. TRINH,

SUMMARY ORDER TO CEASE AND
DESIST

Case No. S-02-235

Respondent.

THE STATE OF WASHINGTON TO: Dave H. Trinh

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STATEMENT OF CHARGES

Please take notice that the Securities Administrator of the State of Washington has reason to believe that Respondent, Dave H. Trinh, has violated the Securities Act of Washington and that his violations justify the entry against each of an order of the Securities Administrator under RCW 21.20.390 to cease and desist from such violations. The Securities Administrator finds that delay in ordering the Respondent to cease and desist from such violations would be hazardous to the investors and to the public and that a Summary Order to Cease and Desist should be entered immediately. The Securities Administrator finds as follows:

TENTATIVE FINDINGS OF FACT

I. Respondent

1. **DAVE H. TRINH** (“Trinh”) was registered with the state of Washington as a securities salesperson with MML Investors Services, Inc. (“MML”) from October of 1997 until his termination in December of 1999. Trinh was also registered with the state of Washington as a securities salesperson for

1 BMA Financial Services, Inc. from June of 1997 to October of 1997. Trinh is a Washington state
2 licensed insurance agent. His last known residence was located in Renton, Washington.

3 **II. Nature of the Conduct**

4 2. Mr. G.¹, a Washington resident, was initially contacted by Trinh in approximately April of
5 1998. Mr. G. met with Trinh to review his finances. At that meeting, Mr. G. told Trinh that he wanted to
6 move his pension funds and invest them in stock. Trinh told Mr. G. that he could assist him.

7 3. Trinh recommended that Mr. G. purchase a variable annuity. On or about April 24, 1998
8 and upon Trinh's recommendation, Mr. G. applied for and purchased a Single Purchase Payment
9 Variable Annuity from Massachusetts Mutual Life Insurance Company ("MassMutual").

10 4. Later in 1998, Trinh recommended that Mr. G. purchase a second variable annuity. On or
11 about September 22, 1998, upon Trinh's recommendation, Mr. G. applied for a Flexible Purchase
12 Payment Variable Annuity ("Flexible Annuity"), and agreed to an initial payment of \$14,000. Trinh also
13 recommended that Mr. G. purchase 500 shares of Elk City Mining stock for \$1,000. On or about
14 September 22, 1998, Mr. G. gave Trinh a personal check dated September 22, 1998 for \$15,000 payable
15 to "MassMutual". This check was given to Mr. G. for the purpose of investing \$14,000 in the Flexible
16 Annuity, and \$1,000 in the Elk City Mining stock. At that time, Trinh had only passed the Investment
17 Company Products/Variable Contracts Limited Representative examination (Series 6), which limited him
18 to the purchase or sale of investment company securities and variable contracts. Therefore, Trinh was
19 prohibited from executing Mr. G.'s Elk City Mining stock trade. Rather than informing Mr. G. of this
20 fact, Trinh instead opened an account at a broker-dealer he did not work for, Web Street Securities, Inc.

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23 ¹ The person's full name is omitted for the purposes of privacy protection.

1 (“Web Street”). On or about October 2, 1998, Trinh affixed the signature of Mr. G. to an account
2 application to open a securities account at Web Street in Mr. G.’s name without his knowledge, consent
3 or authorization. Trinh provided his own telephone number and e-mail address in the application, falsely
4 representing that they were Mr. G.’s telephone number and e-mail address. On or about October 9, 1998,
5 an account was opened in Mr. G.’s name at Web Street. Trinh deposited Mr. G.’s check to Trinh’s own
6 personal bank account, but later deposited \$1,000 to Mr. G.’s Web Street account. The \$14,000 was used
7 by MassMutual to fund the Flexible Annuity purchased by Mr. G.

8 5. On or about October 30, 1998, Mr. G. received an account statement from Web Street
9 reflecting the purchase of 500 shares of Elk City Mining stock. Mr. G. was confused as to why he was
10 getting statements from Web Street rather than MassMutual, and questioned Trinh about it. Trinh told
11 Mr. G. that MassMutual was affiliated with Web Street. In reality, MassMutual is not, nor has it ever
12 been affiliated with Web Street.

13 6. On or about January 19, 1999, Mr. G. gave Trinh a personal check dated January 19, 1999
14 for \$25,000 payable to Web Street for the purpose of purchasing Immunex stock. On or about February
15 3, 1999, Mr. G. received a confirmation notice from Web Street for the purchase of 166 shares of
16 Immunex at \$150 per share. Mr. G. contacted Trinh and complained to him about the fact that the
17 purchase of the Immunex stock occurred nearly three weeks after he had placed the order. Trinh told Mr.
18 G. that to compensate him for this error, Web Street would purchase six additional shares of Immunex
19 stock for him at no cost. On or about February 5, 1999, Mr. G. received a confirmation notice from Web
20 Street for the purchase of six shares of Immunex stock. However, Mr. G.’s funds were used for this
21 purchase. Web Street did not purchase six additional shares of Immunex stock for Mr. G. at no cost as
22 Trinh had represented.

1 7. On or about February 10, 1999, Trinh told Mr. G. that MassMutual was “switching”
2 affiliations from Web Street to MML. At Trinh’s request, Mr. G. completed a MML Investor Account
3 Form that he returned to Trinh. Trinh did nothing with the form and did not open an account at MML for
4 Mr. G. As a result of Trinh’s misrepresentations, Mr. G. believed an account had been opened in his
5 name at MML and that his securities were going to be held there.

6 8. On or about February 10, 1999, Mr. G. gave Trinh a personal check dated February 10,
7 1999 for \$24,916.50 payable to “WebStreet/Dave Trinh” for the purpose of purchasing 196 shares of
8 Immunex stock. Trinh deposited the check to his personal bank account on February 11, 1999. On
9 February 17, 1999, Trinh authorized a wire transfer of \$24,916.50 from his own bank account to Mr. G.’s
10 Web Street account. On or about February 25, 1999, Trinh submitted a purchase order for Immunex
11 shares, but subsequently cancelled the purchase. When Mr. G. received a confirmation notice from Web
12 Street of the cancellation, Mr. G. questioned Trinh about it. Trinh then misled Mr. G. by telling him that
13 despite the cancellation notice, the Immunex stock had been purchased and he actually owned the shares.

14 9. On or about February 17, 1999, Trinh affixed the signature of Mr. G. to a margin agreement
15 for Mr. G.’s Web Street account without Mr. G.’s knowledge, consent or authorization.

16 10. On or about March 16, 1999, Trinh affixed the signature of Mr. G. to a facsimile transmittal
17 sheet addressed to Web Street, without Mr. G.’s knowledge, consent or authorization. The facsimile
18 transmittal sheet requested that the address for Mr. G.’s account of record at Web Street be changed to
19 Trinh’s own home address. Mr. G.’s Web Street account statements were now being sent directly to
20 Trinh, further shielding Mr. G. from his actual financial position.

21 11. In March, May, June, July, August and November of 1999, Mr. G. received account
22 statements via first class mail, purportedly from MML. In fact, Trinh created the account statements in

1 order to conceal his activities. These fabricated statements matched Trinh's oral misrepresentations and
2 therefore misrepresented Mr. G.'s account holdings.

3 12. On or about May 27, 1999, Trinh affixed the signature of Mr. G. on a check dated May 27,
4 1999 for \$24,000 payable to "Dave Trinh" and drawn on Mr. G.'s Web Street money market funds,
5 without Mr. G.'s knowledge, consent or authorization. On May 28, 1999, Trinh deposited the check to
6 his personal bank account.

7 13. On or about September 14, 1999, Mr. G. contacted Trinh and requested the purchase of
8 1,000 shares of Watchguard Technologies, Inc. ("Watchguard"). Trinh purchased the stock in Mr. G.'s
9 Web Street account on margin. Trinh's utilized margin without Mr. G.'s knowledge, consent, or
10 authorization. The purchase of Watchguard stock on margin created a debit balance in Mr. G.'s Web
11 Street account of over \$16,000.

12 14. On or about October 5, 1999, Mr. G. received a form via first class mail, purportedly from
13 MML, confirming the purchase of 1,000 shares of Watchguard and requesting that Mr. G. mail a check
14 for \$17,279.95 to pay for the stock. Trinh created this form in furtherance of his attempt to mislead Mr.
15 G. into believing his securities were being held at MML. Mr. G. mailed a personal check to Trinh dated
16 October 5, 1999 for \$17,279.95 payable to "US Clearing". Trinh forwarded the check to Web Street in
17 payment for the stock.

18 15. MML terminated Trinh in December of 1999. Trinh concealed his termination from Mr. G.

19 16. In approximately March of 2000, Mr. G. contacted Trinh and requested that he sell 1,000
20 shares of Watchguard. Trinh failed to follow Mr. G.'s instructions to sell the stock. On or about July 27,
21 2000, Mr. G. contacted Trinh and requested that he sell 4,416 shares of Immunex. Trinh subsequently
22 sold 2,000 shares of Immunex at \$66 per share, but failed to sell the remaining shares.

1 17. As a result of Trinh's usage of Mr. G.'s investment funds, Mr. G. lost approximately
2 \$270,000.

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

4 **CONCLUSIONS OF LAW**

5 1. The offer and/or sale of the investments described above constitutes the offer and/or sale of
6 a security as defined in RCW 21.20.005(10) and (12), to wit: stock.

7 2. The offer and/or sale of said securities was made in violation of RCW 21.20.010 because,
8 as set forth above in paragraphs 4 through 17 of the Tentative Findings of Fact, Respondent made untrue
9 statements of material fact and/or omitted to state material facts necessary in order to make the
10 statements made, in light of the circumstances under which they were made, not misleading.

11 3. Respondent has violated RCW 21.20.040 by offering said securities while not being
12 registered as a broker-dealer or securities salesperson in the state of Washington.

13 **EMERGENCY**

14 The Securities Administrator finds that an emergency exists and that the continued violations of
15 RCW 21.20.010 constitute a threat to the investing public. Accordingly, a Summary Order to Cease and
16 Desist from those violations is in the public interest and necessary for the protection of the investing
17 public.

18 **SUMMARY ORDER**

19 Based upon foregoing, NOW, THEREFORE, IT IS HEREBY SUMMARILY ORDERED that
20 Dave H. Trinh cease and desist from violating RCW 21.20.010, the anti-fraud section of the Securities Act.

21 It is further SUMMARILY ORDERED that Dave H. Trinh cease and desist from violating RCW
22 21.20.040 by acting as a securities broker-dealer or securities salesperson without being so registered.

1 **AUTHORITY AND PROCEDURE**

2 This Order is entered pursuant to the provisions of RCW 21.20.390 and is subject to the
3 provisions of Chapter 34.05 RCW. The Respondent may make a written request for a hearing as set forth
4 in the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING
5 accompanying this Order.

6 If the Respondent does not request a hearing, the Securities Administrator intends to adopt the
7 foregoing Tentative Findings of Fact and Conclusions of Law as final and make the Summary Order to
8 Cease and Desist permanent as to the Respondent.

9 **WILLFUL VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.**

10 DATED this 4th day of February 2003.

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14 DEBORAH R. BORTNER
15 Securities Administrator

16 Approved by:

17 Presented by:

18 Michael E. Stevenson
19 Chief of Enforcement

20 Chad Standifer
21 Staff Attorney