Division of Securities
Utah Department of Commerce
160 East 300 South
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Salt Lake City, Utah 84145-6760
Telephone: (801) 530-6600

BEFORE THE DIVISION OF SECURITIES

OF THE DEPARTMENT OF COMMERCE

OF THE STATE OF UTAH

IN THE MATTER OF THE LICENSES OF:	**PETITION FOR ORDERS REVOKING, CENSURING SUSPENDING OR BARRING LICENSES**
ACCESS FINANCIAL;	**Docket No.** SD-00-0041
ANTHONY PAPPAS;	**Docket No.** SD-00-0042
VICTOR CHIGAS SR.;	**Docket No.** SD-00-0044
RICHARD KONST; and	**Docket No.** SD-00-0045
TODD DAVIS	**Docket No.** SD-00-0043
Respondents.	

Pursuant to the authority of Utah Code Ann. § 61-1-6, the Utah Division of Securities, ("Division"), hereby petitions the Director of the Division, ("Director") to enter an Order, subject to the approval of a majority of the Securities Advisory Board, to suspend, revoke, censure, bar or sanction Access Financial, Anthony Pappas, Victor Chigas Sr., Richard Konst, and Todd Davis, (collectively "Respondents") and to assess fines against Access, Pappas, Chigas, Konst, jointly and severally, of up to $250,000. In furtherance of this petition, the Division alleges:

STATEMENT OF FACTS

1. Access Financial ("Access")(BD#33065) is a broker-dealer licensed by the Division. Access is a brokerage operation based in Chicago, Illinois. Access does not maintain an office in Utah.

2. Anthony Pappas, ("Pappas")(CRD#2160492) is an individual who at all relevant times was the Branch Manager of Access. The Division is informed, and believes, that Pappas lives in or near Chicago, Illinois.

3. Victor Chigas Sr. ("Chigas")(CRD#45714) is an individual who at all relevant times was a principal in Access. The Division is informed, and believes, that Chigas lives in or near Chicago, Illinois.

4. Richard Konst, ("Konst")(CRD#273746) is an individual who at all relevant times was a principal in Access. The Division is informed, and believes, that Konst lives in or near Chicago, Illinois.

5. Todd Allen Davis ("Davis")(CRD#2095162) is an individual who was an agent of Access from October 1995 until January 2000. The Division is informed, and believes, that at all times relevant to this Action, Davis lived in or near Lake Bluff, Illinois.

6. In October 1997, Davis came to Utah to conduct a seminar, the content of which was not approved by Access or the National Association of Securities Dealers ("NASD"). At this seminar, Davis met Craig Wennerholm ("Wennerholm"), a resident of Utah.

7. Craig Wennerholm maintained a small account at Access Financial. This account had limited activity and assets. The Division is not alleging any improper activity associated with this account.

8. Wennerholm was in control of his parents' assets during a three-year period while his parents were out of the country serving a mission for their church. It was from these assets that he obtained the money to invest with Davis.

9. Davis solicited Wennerholm to invest approximately $300,000.00 of his parent's assets, ("Wennerholm account").

10. At all times relevant to this action, Davis was aware that the money in the Wennerholm account belonged to Wennerholm's parents.

11. Wennerholm had little experience with stocks and investing at the time and was relying upon the investment expertise of Davis and Access.

12. The securities recommended for the Wennerholm account were not suitable for a 66-year-old retired investor.

13. Davis exercised discretionary trading authority on The Wennerholm account. This was done without the proper paperwork being signed by Wennerholm.

14. Davis excessively traded securities in The Wennerholm account to generate commissions, otherwise known as "churning."

15. Davis received $25,795.19 in commissions from The Wennerholm account.

16. The annual "turnover ratio" for the Wennerholm account was 7.5. This turnover ratio is well in excess of industry standards and was inconsistent with the Wennerholms' investment objectives.

17. The cost/equity ratio for The Wennerholm account was 22.59%, again far in excess of industry standards. Twelve to 18 percent has been found to constitute excessive trading.

18. Davis placed a large number of the trades in the Wennerholm account that were unauthorized.

19. When opening the account, Wennerholm indicated on his application form that his parents' primary objective was growth. Wennerholm believed the money in the account would be invested safely and wisely. Davis, however, purchased primarily high-risk, low-price speculative securities that are traded on the NASDAQ Bulletin Board.

20. During the time the account was open, the total securities purchases were $1,102,598.76. Davis' trading activities in the Account resulted in an out-of-pocket loss of $203,792.87 for Wennerholm in just over one year.

21. Davis caused The Wennerholm account to incur more than $7,000 in margin interest.

22. Access has an audio recording system where it records all of the conversations of its agents.

23. To substantiate Wennerholm's accusation of unauthorized trades, the Division requested and listened to the taped conversations on the days that the trades took place.

24. On the dates in question, there was only one conversation between Wennerholm and Davis. In that conversation, there was a discussion of placing trades for the purpose of tax losses. Davis and Wennerholm did not discuss what to sell, when to sell or how much to sell. There were no other conversations between Davis and Wennerholm on the days these transactions occurred.

25. Davis engaged in schemes with others to manipulate the price and volume of publicly traded securities. Davis placed trades to support the price of stocks in his clients' accounts, without their knowledge or approval. Davis was using the collective buying power of his clients' accounts as if it were his own money.

26. Davis worked with promoters who released false and misleading information.

27. Through his conversations with the promoters, Davis learned of non-public information. With knowledge of this non-public information, Davis purchased stock in certain companies for his clients' accounts.

28. In his representations to Wennerholm and his other clients, Davis omitted material facts of which he had knowledge. These material facts include, but are not limited to:

    A. His involvement with promoters to manipulate the price of securities;

    B. False press releases being issued;

    C. Knowledge of insider, non-public information;

D. Stock being purchased to help support the price of the stock or to increase trading volume; and

E. His arrangements for the purchase and sale of securities between his clients' accounts at a price below the current market value.

29. Davis facilitated transactions that were not on the books and records of the firm. On two occasions, Davis wired money from Access to North Shore Community Bank. This money was wired from the accounts of Utah residents to PayDay Funding LLC. The money was used to purchase shares of VictorMaxx Technologies.

30. Davis was engaged in business activities outside of Access that were not disclosed to Access or reported to the Central Registration Depository ("CRD") as required by the NASD.

31. Access, Pappas, Chigas, and Konst had access to recordings of Davis' conversations, and could have easily identified Davis' illegal conduct had they monitored any of Davis' taped conversations.

32. Although Access, Pappas, Chigas, and Konst were aware of Davis' compliance problems in the past, they failed to adopt, implement, and follow adequate supervisory and compliance procedures relating to Davis. Davis' complaint file includes:

A. A customer complaint on August 19, 1999 claiming unauthorized use of discretion, investing in high risk and speculative stocks, unsuitable transactions, employing a device, scheme, or artifice to defraud, and negligence.

B. Wennerholm's complaint on March 30, 1999 alleging churning, unauthorized trades and unsuitable trades.

C. A customer complaint on February 2, 1999 alleging churning, unsuitable recommendations, misrepresentation, and hinting at Davis' knowledge of insider information. The incidents complained of occurred between 1996 and 1998. The matter was settled, without a hearing, on October 11, 1999 with a payment of $50,000.

D. A customer complaint on June 23, 1998 alleging reckless misconduct and breach of fiduciary duty. The information contained in this complaint referred to Davis' knowledge of insider information, guaranteeing profits, and involved a company in which Davis had a large concentration of his clients' funds invested. The complaint also states that Davis solicited the customer to buy CAM-NET and that CAM-NET was delisted by the NASDAQ because the company paid brokers to sell its stock. The complainant sought $56,000 in damages. The NASD awarded complainant $32,000 ($27,000 in actual damages and $5,000 in attorneys fees).

E. A customer complaint on August 9, 1994 alleging unauthorized discretionary trading while Davis was employed with Thomas James Associates. This complaint was later withdrawn.

33. In addition, Pappas, Chigas and Konst knew, or should have known, that Davis maintained a large concentration of highly speculative stocks. An audit by the Division revealed:

A. The Wennerholm account contained a high concentration and was actively traded into and out of low priced speculative stocks.

B. The low-price stocks Davis had large concentrations in and discussed with promoters include: Dauphin, Smartek, Organogenesis, IVP Technologies, Biocontrol Technologies, Malibu Inc., Dataflex, Artisoft Inc., Dynagen, Focus Enhancements Inc., Invest Holding Group Inc., Global Intellicom Inc., Storage Dimensions Inc., Artecon Inc., Omni USA Inc., and Aware Inc.

C. Upon further investigation, the Division found that many of Davis' clients held many of these same stocks.

D. In a review of recorded telephone conversations provided by Access, it was apparent that Davis spoke primarily to promoters and insiders at many these companies and rarely, if ever, spoke to clients about trades.

E. By trading these large concentrations of stocks, Davis was able to manipulate the stock prices for his own personal gain.

34. The above facts, which were easily discoverable by Access, should have caused Access to question Davis' practices. Access made no investigation into these allegations even after the Division's formal audit.

35. Pappas, Chigas and Konst were in supervisory positions with Access and were consequently liable for the acts and misconduct of Davis.

GROUNDS FOR RELIEF

36. Jurisdiction is vested in the Director, pursuant to § 61-1-18 of the Act.

37. Respondents' acts, as described above, constitute fraudulent practices in violation of Utah Code Ann. § 61-1-1 which states:

It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly to:

> **(1) Employ any device, scheme, or artifice to defraud.**
> **(2) Make any untrue statement of material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading.**
> **. .**
> **(3) engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person.**

38. Section 61-1-6(1), 61-1-6(1)(b), 61-1-6(1)(g), and 61-1-6(1)(j) of the Act provide that upon approval by a majority of the Securities Advisory Board, the Director, by means of adjudicative proceedings conducted in accordance with the Administrative Procedures Act, codified at Utah Code Annotated, Title 63, Chapter 46b; may issue an order revoking any license granted by the Division, and may impose a fine if he finds that it is in the public interest, and that the licensee has (1) willfully violated or willfully failed to comply with any provision of this chapter. . . Or any rule or order under this chapter, (2) engaged in dishonest or unethical practices in the securities business, or (3) failed to reasonably supervise its agents or employees.

38. Respondents actions, as described above, conform to the definition of "dishonest or unethical practices" as defined by Rule 164-6-1(g) of the Utah Administrative Code, ("U.A.C.") which states, in relevant part:

(C) Broker-Dealers
In relation to Broker-Dealers, as used in Subsection 61-1-6(1)(g) "dishonest or unethical practices" shall include:

(2) inducing trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account.
(3) recommending to a customer the purchase, sale or exchange of any security without reasonable grounds to believe that such transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment
objectives, financial situation and needs, and any other relevant information known by the broker-dealer.
(4) executing a transaction on behalf of a customer without prior authorization to do so.
(5) exercising any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time or price for the execution of orders, or both.
. . .
(9) entering into a transaction with or for a customer at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit.
. . .
(15) effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive or fraudulent device, practice, plan, program, design or contrivance, which may include but not be limited to:
(15)(a) effecting any transaction in a security which involves no change in the beneficial ownership thereof;
(15)(b) entering an order or orders for the purchase or sale of a security with the knowledge that an order or orders of substantially the same size, at substantially the same time and substantially the same price, for the sale of the security, has been
or will be entered by or for the same or different parties for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security; provided, however,
nothing in this subparagraph shall prohibit a broker-dealer from entering bona fide agency cross transactions for its customers;
or
(15)(c) effecting, alone or with one or more other persons, a series of transactions in any security creating actual or apparent active trading in a security or raising or depressing the price of a security, for the purpose of inducing the purchase or sale of the security by others.
. . .

(24) permitting an agent to open or transact business in an account other than the agent's own account, unless the agent discloses in writing to the broker-dealer or issuer with which the agent associates the reason therefor.

. . .

(28) failing to comply with any applicable provision of the Conduct Rules of the NASD or any applicable fair practice or ethical standard promulgated by the SEC or by a self-regulatory organization to which the broker-dealer is subject and which is
approved by the SEC.
(29) any acts or practices enumerated in Section R164-1-3.
(D) Agents.
In relation to agents of broker-dealers or agents of issuers, as used in Subsection 61-1-6(1)(g) "dishonest or unethical practices" shall include:

. . .

(2) effecting securities transactions not recorded on the regular books or records of the broker-dealer which the agent represents, in the case of agents of broker-dealers, unless the transactions are authorized in writing by the broker-dealer prior
to execution of the transaction.
(3) establishing or maintaining an account containing fictitious information in order to execute transactions which would otherwise be prohibited.

. . .

(7) engaging in conduct specified in subsections (C)(2), (C)(3), (C)(4), (C)(5), (C)(6), (C)(9), (C)(10), (C)(15), (C)(16), (C)(17), (C)(18), (C)(24), (C)(25), (C)(26), (C)(28), (C)(29) or (C)(30) of Rule R164-6-1g.

39. Respondents Access, Pappas, Chigas and Konst had a duty in accordance with Utah Code Ann. § 61-1-6(1)(j) to reasonably supervise their agent, Davis. Respondents failed to do so.

40. It is in the public interest that Respondents' licenses to act as a broker-dealer and/or broker-dealer agent be revoked, suspended or barred.

REQUEST FOR RELIEF

Wherefore, the Division respectfully requests that the Director enter an Order, subject to the approval of the Securities Advisory Board, and pursuant to Utah Code Ann. § 61-1-6 providing:

1. That Respondents' broker-dealer and/or broker-dealer agent licences be revoked, censured, suspended or barred; and
2. That Respondents Access, Pappas, Chigas and Konst be ordered to pay to the Division a fine, jointly and severally, of up to $250,000.

DATED this 26th day of June, 2000.

Utah Division of Securities

George Robison
Chief of Licensing and Compliance

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BEFORE THE DIVISION OF SECURITIES

OF THE DEPARTMENT OF COMMERCE

OF THE STATE OF UTAH

IN THE MATTER OF	**NOTICE OF AGENCY ACTION**
	Docket no.
Access Financial;	**SD-00-0041**
Anthony Pappas;	**SD-00-0042**
Victor Chigas Sr.;	**SD-00-0044**
Richard Konst; and	**SD-00-0045**
Todd Davis	**SD-00-0043**
Respondents.	

THE DIVISION OF SECURITIES TO THE ABOVE-NAMED RESPONDENT:

The purpose of this Notice of Agency Action is to inform you that the Division hereby commences an formal adjudicative proceeding against you as of the date of mailing of the Petition for Orders Revoking, Censuring, Suspending or Barring Licenses. The authority and procedure by which this proceeding is commenced are provided by Utah Code Ann. § 63-46b-3 and Utah Code Ann. §§ 63-46B-6 through 11. The facts on which this action is based are set forth in the foregoing Petition for Orders Revoking, Censuring, Suspending or Barring Licenses.

Within thirty (30) days of the date of this notice, you are required to file a written response with the Division. The response you file may be helpful in clarifying, refining or narrowing the facts and violations alleged in the Petition for Orders Revoking, Censuring, Suspending or Barring Licenses.

You must attend a hearing that will occur at **160 East 300 South, 2nd Floor, Room #205, Salt Lake City, Utah; at 9:00 a.m.; on August 10, 2000.**

If you fail to file a written response, as set forth herein, or fail to appear at the hearing, you will be held in default and an Order Revoking, Censuring, Suspending or Barring Licenses

will be entered and a fine may be imposed against you in accordance with Utah Code Ann. §63-46b-11.

The presiding officer in this case is S. Anthony Taggart, Director, Division of Securities, 160 East 300 South, Box 146760, Salt Lake City, Utah 84114-6760, telephone (801) 530-6600. The hearing, will be conducted by J. Steven Eklund, Administrative Law Judge, Utah Department of Commerce, 160 East 300 South, Box 146701, Salt Lake City, Utah 84114-6701, telephone (801) 530-6648. At such hearing, the Division will be represented by the Utah Attorney General's Office, Box 140872, 160 East 300 South, Salt Lake City, Utah, 84114, telephone (801) 366-0310. At the hearing, you may appear and be heard and present evidence on your behalf.

You may attempt to negotiate a settlement of the matter without proceeding to the hearing. Should you so desire, please contact the Utah Attorney General's Office. Questions regarding the Petition and Notice of Agency Action may be directed to Don Hansen, Assistant Attorney General, 160 East 300 South, Box 140872, Salt Lake City, Utah 84114-0872, telephone (801) 366-0310.

DATED this 5th day of July, 2000.

S. Anthony Taggart
Director, Division of Securities
Utah Department of Commerce

CERTIFICATE OF SERVICE

I certify that on the 6 day of July, 2000. I mailed, by certified mail, a true and correct copy of the Petition for Orders Revoking, Censuring, Suspending or Barring Licenses and Notice of Agency Action to the following Respondents: Access Financial, 118 N Clinton St, Ste 250, Chicago, IL 60661, Anthony James Pappas, 438 W. Arboretum Drive, Lombard, IL 60148, Richard Irl Konst, 734 Chilton Lane, Wilmette, IL 60091. Victor Christ Chigas, 400 E. Randolph, Unit 3005, Chicago IL 60601, Todd Allen Davis, 29530 N Birch Ave, Lake Bluff, IL 60044.

Certified Mail # : Z 228 159 737
Z 228 159 736
Z 228 159 735
Z 228 159 733
Z 228 159 732

Lori Massey
Executive Secretary