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AZ CORP COMMISSION  
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**BEFORE THE ARIZONA CORPORATION COMMISSION**

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WILLIAM A. MUNDELL  
Chairman  
JIM IRVIN  
Commissioner  
MARC SPITZER  
Commissioner

In the matter of: )  
)  
PARIZEK CAPITAL MANAGEMENT, LLC )  
2618 E. Waverly Street )  
Tucson, Arizona 85716 )  
)  
-- and -- )  
)  
DAVID ALLEN PARIZEK, Jr. )  
2618 E. Waverly Street )  
Tucson, Arizona 85716 )  
)  
Respondents. )

DOCKET NO. S-03478A-02-0000  
**NOTICE OF OPPORTUNITY FOR  
HEARING REGARDING PROPOSED  
ORDER TO CEASE AND DESIST, OF  
REVOCATION, FOR ADMINISTRATIVE  
PENALTIES, AND FOR OTHER  
AFFIRMATIVE ACTION**

**NOTICE: RESPONDENTS HAVE 10 DAYS TO REQUEST A HEARING**

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that respondents have engaged in acts, practices and transactions, which constitute violations of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act"), and/or the Arizona Investment Management Act, A.R.S. § 44-3101 *et seq.* ("IM Act").

**I.**

**JURISDICTION**

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution, the Securities Act, and the IM Act.

**II.**

**RESPONDENTS**

2. Parizek Capital Management, LLC ("Parizek Capital"), is a Delaware limited liability company formed in April 2000. Its last known address is 2618 E. Waverly Street, Tucson, Arizona

1 85716. Parizek Capital became an Arizona-licensed investment advisory firm on March 22, 2001,  
2 and filed its request to terminate its license on Form ADV-W, on January 22, 2002.

3 3. David Allen Parizek, Jr. ("Parizek"), became an Arizona-licensed investment adviser  
4 representative, associated with Parizek Capital, on March 22, 2001. Parizek filed a request to  
5 terminate his license on Form U-5, on January 22, 2002. At all relevant times, Parizek has been the  
6 managing member of Parizek Capital, and its sole owner, officer and director. His last known  
7 address is 2618 E. Waverly Street, Tucson, Arizona 85716.

8 4. Parizek Capital and Parizek may be collectively referred to as "RESPONDENTS."

9 5. Pursuant to A.R.S. § 44-3202(D), the Commission has the power to bring this action,  
10 and to suspend or revoke RESPONDENTS' licenses, and to order them to pay administrative  
11 penalties, notwithstanding their requests for license terminations on January 22, 2002.

12 **III.**

13 **FACTS**

14 6. Parizek finished high school and began attending the University of Arizona, majoring  
15 in Wildlife and Fisheries Science, in or about 1984. He continued to take classes in that field, at the  
16 undergraduate and then graduate levels, over a period of about 16 years, until in or about May 2000.  
17 He did not complete a graduate degree. He claims he received a Bachelor of Science degree in 1993.  
18 Parizek worked part time for about four years in a video rental store owned by his father, then in  
19 January 1993 he began a sole proprietorship called Southwest Rodents. This business sold live  
20 rodents to wildlife rehabilitators and snake owners, as food for their animals. Parizek worked at this  
21 business part-time. The business failed, and Parizek liquidated the assets in July 1999.

22 7. In or about November 1997, Parizek and his wife commenced a bankruptcy case  
23 under the United States Bankruptcy Code, 11 U.S.C. § 101 *et seq.* Their debts at that time primarily  
24 consisted of credit card debts, car loans, a loan secured by a mobile home, student loans, and debts  
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1 owed to family members. The case resulted in a discharge in March 1998, except for certain student  
2 loans that are non-dischargeable.

3 8. Shortly after the bankruptcy, Parizek obtained several new credit cards and began to  
4 run up the balances on them. As of May 1, 2001, Parizek and his wife owed approximately \$20,000  
5 in credit card debt incurred subsequent to the bankruptcy, \$150,000 in student loan debt, and \$50,000  
6 in debts to family members. Parizek estimates their net worth as of May 1, 2001, as a negative  
7 \$213,000. As of March 2002, Parizek had been unable for some time to pay his telephone bill or to  
8 make the minimum monthly payments on his credit card debts, and he had received notices from  
9 collection companies as a result of falling behind on his payments. His net worth has not improved  
10 since May 1, 2001.

11 9. The home Parizek lives in is owned by his wife and her parents.

12 10. During at least the period from February 2000 through December 2000, Parizek  
13 maintained an account at Datek Online. This account was titled solely in Parizek's own name, and it  
14 had a checking feature. During the eleven-month period, Parizek wrote approximately 70 checks  
15 against this account, of which 26 (37% of the total) were dishonored for insufficient funds.

16 11. During at least the period from January 1999 through December 2001, Parizek and  
17 his wife maintained a joint checking account at Wells Fargo Bank. This account had an overdraft  
18 protection feature, and the bank charged a \$25 fee for each check written against insufficient funds.  
19 There were not fewer than 49 days during the period when the account had a negative balance at the  
20 end of the business day. During the period, Parizek and his wife incurred numerous overdraft fees.  
21 On at least one day the overdraft fees totaled \$200 (representing eight checks written against  
22 insufficient funds being presented to the bank on a single day).

23 12. During the ten month period March 2001 through December 2001, Parizek  
24 maintained a business checking account at Wells Fargo Bank, in the name of respondent Parizek  
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1 Capital. Parizek wrote not fewer than 13 checks against insufficient funds in that account during the  
2 ten months.

3 13. In or about January 1999, Parizek began trading securities with funds belonging to his  
4 family members, using accounts at one or more Internet-based ("online") brokerage firms.

5 14. In mid-2000 Parizek formed respondent Parizek Capital, and applied for Arizona  
6 investment adviser and investment adviser representative licenses for the firm and himself,  
7 respectively. Parizek passed the required Series 65 examination on July 17, 2000.

8 15. Shortly after obtaining licenses in March 2001, RESPONDENTS formed The Mars  
9 Fund, L.P. (the "Mars Fund"), a Delaware limited partnership of which respondent Parizek Capital  
10 was the general partner.

11 16. RESPONDENTS wrote, and mailed or delivered, a seven-page solicitation letter to  
12 approximately 20 potential investors, in or about April 2001. In this solicitation letter  
13 RESPONDENTS described Parizek's trading method, which he called the "Saturn Method," and  
14 announced the formation of the Mars Fund and another entity called The Saturn Fund.  
15 RESPONDENTS described these two entities as "hedge" funds. In the solicitation letter,  
16 RESPONDENTS touted Parizek's expertise as a trader, including three charts purporting to show his  
17 past trading results, and otherwise sought to convince the letter's recipients to invest in the Mars  
18 Fund and/or The Saturn Fund.

19 17. The April 2001 solicitation letter begins with this representation made by  
20 RESPONDENTS: "Greetings! For the last 2 years I have been trading stocks online for my living."

21 18. The representation just quoted was materially false and/or misleading. In fact, for  
22 calendar year 2000 Parizek lost a total of \$17,883.53 in the accounts belonging to Parizek and/or his  
23 wife. That is a loss of nearly \$1,500.00 per month, on average, for the 12 months. In addition,  
24 during at least the eight-year period 1993-2000, Parizek had obtained a substantial portion of the  
25 funds to cover his living expenses from student loan proceeds, credit card borrowing, proceeds of a  
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1 loan secured by a mobile home, and gifts and "loans" (which there is no reasonable expectation he  
2 will repay) from his wife and their family members.

3 19. In the next sentence of the solicitation letter, RESPONDENTS made this  
4 representation: "I made a 489% return for the year 2000."

5 20. The representation just quoted was materially false and/or misleading.

6 21. On the fourth page of the solicitation letter, RESPONDENTS made this  
7 representation: "My cumulative gain in the 12-month period from April 1999 – March 2000  
8 amounted to an astounding 13,000%."

9 22. The representation just quoted was materially false and/or misleading.

10 23. RESPONDENTS wrote, and mailed or delivered to at least three offerees during  
11 April or May 2001, an offering memorandum for the Mars Fund, dated April 10, 2001 (the "Mars  
12 Fund O.M.").

13 24. On page 20 of the Mars Fund O.M., RESPONDENTS represented that "Mr. Parizek  
14 is also the sole owner of Planet Hedge Fund, an Internet community site for people interested in  
15 hedge funds."

16 25. The representation just quoted was materially misleading in the context in which it  
17 was made. The context was the "management" section of the offering memorandum, which purports  
18 to describe the qualifications of Parizek to provide investment advice and otherwise to manage the  
19 Mars Fund and Parizek Capital. The representation was misleading, because the RESPONDENTS  
20 omitted to state that becoming the owner of an Internet website like "Planet Hedge Fund" requires no  
21 expertise in hedge funds or any other kind of investments, and requires only a little money.

22 26. On page 20 of the Mars Fund O.M., RESPONDENTS made this representation: "For  
23 the past several years, Mr. Parizek has spent much of his professional time trading equities and  
24 options using strategies similar to those that will be used by the [Mars Fund] Partnership."  
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1           27.     The representation just quoted was materially false and/or misleading, because the  
2 use of the word "professional" in this context with regard to Parizek was false and/or misleading, and  
3 because RESPONDENTS omitted to state that Parizek's trading experience was limited to a small  
4 amount of money belonging to his own family members.

5           28.     Neither the solicitation letter nor the Mars Fund O.M. disclosed Parizek's 1998  
6 bankruptcy discharge. Neither the solicitation letter nor the Mars Fund O.M. disclosed Parizek's  
7 failure to manage responsibly, checking accounts over which he had control during at least the period  
8 from January 1999 to mid-2001, when the solicitation letter and Mars Fund O.M. were provided to  
9 investors. The Mars Fund O.M. did not disclose the failure of Parizek's prior business venture,  
10 Southwest Rodents.

11           29.     Because of the omissions described in the preceding paragraph, among other things,  
12 the solicitation letter and/or the Mars Fund O.M. were materially misleading.

13           30.     Three persons invested money in limited partnership interests of the Mars Fund, in or  
14 about April or May, 2001. Each of these investors had received the solicitation letter, and the  
15 offering memorandum for the Mars Fund dated April 10, 2001, from RESPONDENTS.

16           31.     The total invested in the Mars Fund limited partnership interests by the three  
17 investors was \$16,700.

18           32.     The investors were friends of Parizek and/or his father.

19           33.     One investor made his investment of \$5,000, in cash, on or about April 13, 2001.

20           34.     RESPONDENTS accepted the cash, and deposited it in Wells Fargo Bank, in a  
21 business checking account of Parizek Capital over which Parizek had sole signature authority.

22           35.     One investor made his investment of \$6,700 in the following manner: Parizek's  
23 father owed the investor \$6,700 prior to the date on which the investor decided to purchase a limited  
24 partnership interest in the Mars Fund. When the investor made his decision to invest, he said that  
25 Parizek's father should repay the outstanding loan, by delivering \$6,700 to the Mars Fund for the  
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1 investor's account. On or about April 30, 2001, RESPONDENTS accepted two checks totaling  
2 \$6,700, representing repayment by Parizek's father of the \$6,700 that he owed to the investor, and  
3 deposited them in Wells Fargo Bank, in the business checking account of Parizek Capital over which  
4 Parizek had sole signature authority.

5 36. The account into which RESPONDENTS deposited the funds of the two investors  
6 just identified, was not an account containing only clients' funds, and it was not maintained in the  
7 name of Parizek Capital as agent or trustee for the investors. In fact, Parizek regularly used this  
8 account for personal expenditures, including rent or mortgage payments (relating to the mortgage  
9 loan on which his wife and her parents are the obligors) and debit card purchases of cigarettes and  
10 other items at Circle K stores.

11 37. On or after May 1, 2001, RESPONDENTS sent a check for \$5,000 drawn on the  
12 Parizek Capital account at Wells Fargo, to the Mars Fund account at Datek Online.  
13 RESPONDENTS credited this amount to the account of the investor who had given  
14 RESPONDENTS \$5,000 in cash, in RESPONDENTS' own ledger at Parizek's home.

15 38. On or after May 1, 2001, RESPONDENTS sent a check for \$6,700 drawn on the  
16 Parizek Capital account at Wells Fargo, to the Mars Fund account at Datek Online.  
17 RESPONDENTS credited this amount to the account of the investor to whom Parizek's father had  
18 previously owed \$6,700, in RESPONDENTS' own ledger at Parizek's home.

19 39. Between May 1, 2001, and December, 2001, RESPONDENTS traded securities using  
20 the investors' money in the Mars Fund account at Datek Online, together with \$10,000 that Parizek  
21 put into the account. The \$10,000 either belonged to Parizek's father, or was borrowed by Parizek  
22 from his father.

23 40. On or about November 20, 2001, RESPONDENTS notified the Division that  
24 RESPONDENTS intended to cease operating their investment advisory business.

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1           41.     The Mars Fund investors received back a small fraction of their investment funds  
2 from RESPONDENTS, in connection with RESPONDENTS' winding up of the investment  
3 advisory business. A majority of the investors' funds was lost through trading activity conducted by  
4 RESPONDENTS in the Datek Online account of the Mars Fund, and a small portion of their funds  
5 was paid to Datek Online as commissions for the trades. The Division found no evidence that any  
6 investor money had been misappropriated.

7           42.     Under their agreements with the investors, RESPONDENTS would have received  
8 compensation for their activities described above, had the Mars Fund realized any trading gains.  
9 RESPONDENTS expected to receive 35% of the gains, paid monthly. The investors paid no sales  
10 charge relating to their purchases of Mars Fund limited partnership interests.

11           43.     Mailing or delivering the solicitation letter to a potential investor constituted the  
12 provision of investment advisory services by RESPONDENTS, and/or an offer by RESPONDENTS  
13 to sell securities to the potential investor. RESPONDENTS did this within or from Arizona.

14           44.     Mailing or delivering the Mars Fund O.M. to a potential investor constituted the  
15 provision of investment advisory services by RESPONDENTS, and/or an offer by RESPONDENTS  
16 to sell securities to the potential investor. RESPONDENTS did this within or from Arizona.

17           45.     The limited partnership interests of the Mars Fund were securities.

18           46.     Both RESPONDENTS offered securities, including limited partnership interests in  
19 the Mars Fund, to approximately 20 investors. Both RESPONDENTS sold securities, specifically,  
20 limited partnership interests in the Mars Fund, to three investors.

21           47.     All such offers and sales were made by RESPONDENTS, within or from Arizona.

22           48.     The sales of limited partnership interests in the Mars Fund constituted transactions  
23 involving the provision of investment advisory services by the RESPONDENTS, and such sales took  
24 place within or from Arizona.



- 1 d. Omitting to disclose Parizek's inability and/or failure to maintain a checking  
2 account in a responsible manner;
- 3 e. Applying the description "professional" to Parizek's trading history, while  
4 inflating the results of that trading history, and while omitting to disclose the  
5 matters stated in paragraphs (c) and (d) above; and
- 6 f. Representing that Parizek's ownership of "Planet Hedge Fund" was one of his  
7 qualifications as investment adviser and manager for the Mars Fund, while  
8 omitting to state that website ownership requires no expertise in the securities  
9 industry generally, or in choosing investments or running a hedge fund  
10 particularly.

11 52. This conduct violates A.R.S. § 44-1991.

12 V.

13 **REVOCATION PURSUANT TO A.R.S. § 44-3201**

14 **(Denial, Revocation or Suspension of Investment Adviser**  
15 **or Investment Adviser Representative License)**

16 53. RESPONDENTS' conduct is grounds to revoke RESPONDENTS' licenses as an  
17 investment adviser (Parizek Capital) or investment adviser representative (Parizek) with the  
18 Commission, pursuant to A.R.S. § 44-3201. Specifically, revocation of both licenses would be in the  
19 public interest, and each RESPONDENT has:

- 20 a. Violated the Securities Act, specifically A.R.S. § 44-1991 as stated particularly in  
21 ¶¶ 51-52 above, which constituted engaging in dishonest or unethical practices in  
22 the securities industry, which is grounds for revocation pursuant to A.R.S.  
23 § 44-3201(A)(13);

- 1 b. Violated the IM Act, specifically A.R.S. § 44-3241, as stated particularly in  
2 ¶¶ 54-55 below, which is grounds for revocation pursuant to A.R.S.  
3 § 44-3201(A)(3); and/or  
4 c. Misrepresented, and/or omitted, material facts concerning RESPONDENTS'  
5 qualifications to provide investment advice, in communications to investment  
6 advisory clients and/or prospective clients, which A.A.C. R14-6-203 defines as  
7 "dishonest or unethical practices in the securities industry," which is grounds for  
8 revocation pursuant to A.R.S. § 44-3201(A)(13).

9 VI.

10 VIOLATION OF A.R.S. § 44-3241

11 (Fraud in the Provision of Investment Advisory Services)

12 54. In connection with a transaction or transactions within or from Arizona involving the  
13 provision of investment advisory services, RESPONDENTS directly or indirectly: (i) made untrue  
14 statements of material fact, or omitted to state material facts which were necessary in order to make  
15 the statements made not misleading, in light of the circumstances under which they were made;  
16 and/or (ii) engaged in transactions, practices or courses of business which operated or would operate  
17 as a fraud or deceit. RESPONDENTS' conduct includes, but is not limited to, the following:

- 18 a. Taking custody of funds belonging to their investment advisory clients, and  
19 depositing them in an account that did not contain only clients' funds and that  
20 was not maintained in the name of Parizek Capital as agent or trustee for such  
21 clients, which is defined as a fraudulent practice for purposes of A.R.S. § 44-  
22 3241(A)(4), by A.A.C. R14-6-206;  
23 b. Misrepresenting the results of Parizek's trading activity that had been carried out  
24 between April 1999 and December 2000;

- 1 c. Omitting to disclose that, during at least the eight year period immediately prior  
2 to RESPONDENTS soliciting persons to accept RESPONDENTS' investment  
3 advice and to invest in the Mars Fund, Parizek had obtained a substantial portion  
4 of the funds to cover his living expenses by borrowing (which he had consistently  
5 failed to repay when due) and by receiving gifts from family members, rather than  
6 by earning income (by trading or otherwise);
- 7 d. Omitting to disclose Parizek's inability and/or failure to maintain a checking  
8 account in a responsible manner;
- 9 e. Applying the description "professional" to Parizek's trading history, while  
10 inflating the results of that trading history, and while omitting to disclose the  
11 matters stated in paragraphs (c) and (d) above; and
- 12 f. Representing that Parizek's ownership of "Planet Hedge Fund" was one of his  
13 qualifications as investment adviser and manager for the Mars Fund and Parizek  
14 Capital, while omitting to state that website ownership requires no expertise in  
15 the securities industry generally, or in choosing investments or running a hedge  
16 fund particularly.

17 55. This conduct violates A.R.S. § 44-3241.

18 **VII.**

19 **REQUESTED RELIEF**

20 The Division requests that the Commission grant the following relief against  
21 RESPONDENTS:

- 22 1. Order RESPONDENTS to permanently cease and desist from violating the Securities  
23 Act and to permanently cease and desist from violating the IM Act, pursuant to A.R.S. §§ 44-2032  
24 and 44-3292;



1 shood@cc.state.az.us. Requests should be made as early as possible to allow time to arrange the  
2 accommodation.

3 Dated this 6<sup>TH</sup>, day of May, 2002.

4 

5 Mark Sendrow  
6 Director of Securities

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# Memorandum

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AZ CORP COMMISSION  
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**DATE:** May 6, 2002

**TO:** Nancy Cole  
Docket Control

**FROM:** Amy Leeson  
Securities Division



**RE:** Matter of Parizek Capital Management, LLC, et al.  
Docket No. S-03478A-02-0000  
Assigned Staff

**CC:** Mabel Aldridge

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This is to notify you that the following individuals have been assigned to the above-mentioned case.

- Mark Sendrow
- LeRoy Johnson
- Matthew Neubert

Amy Leeson (Staff Attorney)

Lisa Busse (Staff Investigator)

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**Note:** The Assistant Attorney General assigned to this matter is: Moira McCarthy.