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BEFORE THE ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION  
DOCUMENT CONTROL

1  
2  
3 WILLIAM A. MUNDELL  
Chairman  
4 JIM IRVIN  
Commissioner  
5 MARC SPITZER  
Commissioner

6 In the matter of:  
7 PARIZEK CAPITAL MANAGEMENT, LLC  
2618 E. Waverly Street  
8 Tucson, Arizona 85716  
9 -- and --  
10 DAVID ALLEN PARIZEK, Jr.  
2618 E. Waverly Street  
11 Tucson, Arizona 85716  
12 Respondents.

) DOCKET NO. S-03478A-02-0000  
)  
) NOTICE OF FILING  
) RESPONDENTS' ANSWER TO THE  
) ALLEGATIONS OF THE NOTICE OF  
) OPPORTUNITY FOR HEARING

13  
14 PLEASE TAKE NOTICE that the Securities Division ("Division") of the Arizona  
15 Corporation Commission ("Commission") has filed with the Commission's Docket Control, a copy  
16 of the letter addressed "To Whom It May Concern," from both Respondents (*pro se*), dated May 19,  
17 2002 (the "Answer"), which was received by the Division. This document appears to the Division to  
18 be intended as an Answer to the allegations made in the Notice of Opportunity for Hearing, dated  
19 May 6, 2002 (the "Notice").

20 Because the Notice is not "a pleading to which a responsive pleading is required" (*cf.* Rule  
21 8(d), Ariz. R. Civ. Proc.), the Division believes that the averments of the Notice should not be  
22 deemed admitted, regardless of whether or not they are specifically denied in the Answer.

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Arizona Corporation Commission  
**DOCKETED**

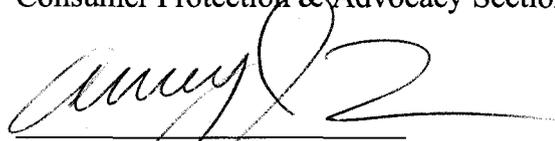
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Dated this 5<sup>th</sup> day of June, 2002.

**Janet Napolitano**  
Attorney General  
Consumer Protection & Advocacy Section



**Amy J. Leeson**  
Special Assistant Attorney General  
Attorney for the Securities Division of the  
Arizona Corporation Commission

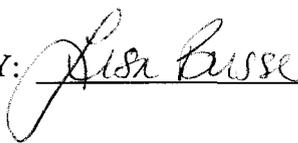
ORIGINAL AND TEN COPIES  
filed with Docket Control  
on June 5, 2002

COPY delivered by hand to office of  
Hearing Officer Marc Stern  
on June 5, 2002

COPY served upon Respondents by  
1<sup>st</sup> class mail on June 5, 2002, at their  
address:

David Allen Parizek  
Parizek Capital Management, LLC  
2618 East Waverly Street  
Tucson, Arizona 85716

Respondents, *pro se*

BY:  \_\_\_\_\_

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Dave Parizek, Jr.  
Parizek Capital Management, LLC  
2618 E. Waverly Street  
Tucson, AZ 85716  
520.245.1787

May 19, 2002

Securities Division  
Arizona Corporation Commission  
1300 W. Washington 3<sup>rd</sup> Floor  
Phoenix, AZ 85007-2996

To Whom It May Concern:

I, David Parizek, Jr., on behalf of myself and Parizek Capital Management, LLC (PCM), requested a hearing on Docket No. S-03478A-02-0000 because I believe there are many mistakes in the Document and that the allegations against me are wrong and unwarranted. I discuss my concerns herein.

I will refer to the "Notice of Opportunity for Hearing..." as the "Document". I refer to the Securities Division of the Arizona Corporation Commission as the "Division."

On page 2 of the Document, line 21 under "Facts" it says my Southwest Rodents business failed. It did not fail; rather I closed it down so that I could put more of my focus into trading. It was a viable business that I did not work at part-time exclusively -- I worked at it full-time much of the time, part-time at times. I stated in my solicitation letter that I had closed it down. Attached is a copy of my 1999 tax return that shows a farm income for Southwest Rodents of \$1028. This number was small because in 1999 my focus had switched to trading and I only worked the rodent business part-time for half the year. However, I had an excellent customer base and felt I could have made \$30,000 per year from this business had I chosen to concentrate on it instead of trading. Anyway, the number was positive -- the business was not losing money and did not fail.

Regarding the 26 checks written on my Datek account that were "dishonored for insufficient funds." (Line 15 page 3 of the Document): Note that those were checks written against my trading capital to myself. They were written when I wanted to transfer funds from my Datek trading account to my Wells Fargo checking account. They were not checks written to third parties. Further, I had funds to cover the checks, but those funds may have been temporarily tied up in a trade, thus Datek would bounce them. I often let those checks bounce on purpose because it made good business sense to do so. The checks were written to me, so the only one to be hurt by their bouncing was me, as I would then have to pay Datek a 9.99 fee and Wells Fargo another fee for each check. However, if I expected to make \$200+ in a typical single trade in profits, then what did I

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care about the fees if I could continue the trade – the 9.99 fee is very small in relation to the profit potential I had in the short term by not ending my trade early to cover the check. The Document implies that bouncing checks is mismanagement of money, and should therefore be disclosed to investors. I argue that sometimes it is exactly the opposite, that bounced check fees can be a valid business expense, and that it is my prerogative to manage my personal checking accounts and any business checking accounts that are solely mine, in any way that I deem appropriate – and that provided I had rational reasons for managing them that way there is no need to disclose the practice. My choosing to “bounce” checks written to myself has no bearing on my ability to manage a hedge fund. Further, many of the checks bounced in my joint account were my wife’s fault and she has no hand in managing the hedge fund. Last, I did not have or seek checking privileges on the Mars Fund Datek account anyway, making the non-disclosure issue all the more irrelevant.

On page 4, lines 3-4, the Document states I started my trading with family money in January 1999. My initial trading was with my own money. I didn’t start trading accounts for my father until late 1999.

I did not lose money in my and my wife’s Datek accounts in 2000. I made \$11,086.75 in those 2 accounts in 2000. Further, I made \$75,611.16 in those 2 accounts in 1999. This amounts to \$86,697.91 over the 2 years, an average of \$43,348.96 per year. I had trading expenses that came out of that, but still made a good living from trading over the 2-year period. Please see Attachment A at the end of this response letter for further details of my monthly and yearly returns in absolute terms as opposed to percentages.

On page 4, lines 24-25 and continuing to the next page, it says I obtained a substantial portion of the funds to cover my living expenses by incurring debts. Whether or not this is relevant is questionable, I guess it would depend on what “substantial” means. Regardless, it should be noted that a sizable portion of this debt I was forced to incur because of a mistake on the part of the Heritage Fund. Master’s students in Wildlife and Fisheries Science at the University of Arizona are typically only admitted if they have at least 2 years of funding for their research. Heritage Fund awarded first year funding for me and led my major advisor to believe that 2<sup>nd</sup> year funding was a forgone conclusion. However, Heritage Fund was just starting up at the time, and the end result was they did not fund my 2<sup>nd</sup> year, and I had to fund the 2<sup>nd</sup> and subsequent years myself by going into debt. Note that while I have not yet finished my Master’s degree, I did complete all deliverables due for my funding, and I expect to still finish it sometime in the next 12 months. I have been in discussion with my advisors at the UA about what needs to be done to complete my degree and it is a manageable task that I intend to pursue.

Note I did earn a “substantial” amount of my living expenses through trading from 1999-2000. I had gross profits of \$86,000+ over that 2 year time period from trading in my and my wife’s Datek accounts.

On page 5, lines 1-2, it says there is no reasonable expectation that I will repay my debts. Such a statement is not consistent with my past actions. I paid back significant amounts

of money (at least \$20,000) owed to various people even though the debts were discharged or could have been discharged in my bankruptcy. I continued to make the payments on the mobile home that was discharged in my bankruptcy even though I did not use the mobile home or have to pay back that debt. I continued such payments until mid 2001, at which time my friend, who had purchased the mobile home with me, and who should have been making half the payments, finally took over the payments because it was past his turn to catch up on his share of the responsibility for the debt.

My mandate from my investors was to aggressively trade a very small portion of their total portfolios. I clearly presented it as high risk in all my communications with them. All 3 partners chose the Mars Fund over the Saturn Fund specifically because they preferred the higher risk, but potentially higher return, option of the two -- for the small portion of their money that they were investing. They all very clearly understood I did not have long and distinguished experience in the stock market. While I discuss specific statements in detail elsewhere in my response, it should be noted here that any statements in the Document to the effect that I misrepresented my experience are ridiculous in the light of the fact that my investors knew me and my background. They all knew I had been struggling financially off and on throughout my life, as is true of the majority of people in this world.

Given that all my investors knew this was high risk, and correctly approached it wisely with only small amounts of their money (and which I advised them to do, I said I wouldn't take that much in the beginning) it is clear my investors have not been significantly adversely affected by their losses in the Mars Fund. Further, I even offered to pay them back their losses over time. My expectation to pay them back in the short term was very poor, and I made that clear to them, but in the longer term I do believe I would get them paid back, just as I have paid back others in the past.

Yes, I have a high negative net worth at present. But much of that debt is long term. I am in deferment on the majority of it (the student loan debt) and after deferment I will be able to consolidate the debt into one loan that can be paid back over 30 years. My debt to my Dad is also fairly long-term. I am of above average intelligence, good at computer/technology work, and my wife has finally entered the work force as of late 2001. I have passed 4 of the 5 tests required for Oracle (database technology) certification. Oracle jobs pay very well. If my present efforts to make an above average income by selling used books online do not pan out in the short term, then I will convert that business to a part-time effort, and switch to putting my primary efforts into becoming an Oracle expert. I think it is a fair statement to say that if I pursue Oracle with all my energies that I have a very good shot at making a six figure salary within 5 years, maybe even in Tucson, AZ, but certainly if I move to a city/area with more technology jobs. Since my online used book business will be able to have grown in that time without the burden of me drawing from it, it could also be supplying me with substantial side income down the road. That coupled with my wife making even just \$50K (as a landscape architect with a Master's degree she should be able to make more like \$70K in 5 years, and she is expecting a raise to \$46,000 this July) will yield a lot of "debt paying off" power. I feel our joint future income potential is more than adequate to expect to be able

to pay back all our debts in full including interest. Contrary to the assertions on lines 1-2, page 5, and elsewhere, of the Document, there is certainly a reasonable expectation that I will pay back all of my debts.

On page 5 line 5 it claims I was lying when I claimed to make a 489% return for the year 2000. I did not lie, I did make said annualized return, and I went on in my charts to give more detail on this. On page 5, line 9 it claims I was lying when I claimed to have a 13,000% annualized return from April 1999 to March 2000. I did not lie, I did make said annualized return, and I went on in my charts to give more detail on this. I provided the Division with the programs and data that I used to calculate said returns. I even put them on a CD in electronic format to make it more convenient for them to exam the materials themselves. I based those programs on directions from the book "Understanding Partnership Accounting." I provide photocopies of relevant pages of that book as Attachment B at the end of this response letter. I have since rewritten the programs to double check that I wrote them correctly, and am willing to come up to division offices and walk thru the programs and data to show them that they are calculating my returns properly and not doing anything funny. Attachment A includes listings of the programs and data I used for the rewritten versions. There are slight discrepancies from my original programs/data provided to the Division on CD. I believe this is due to errors in Datek's data. Datek made errors and I had to constantly be after them to correct them, particularly when I did phone trades supplemental to trades placed online. My original data set, provided to the Division on CD, was built by me at the end of each day, when the trading was fresh in my mind, and is the most correct. My new data sets are cut and pasted from the History section of Datek's site, and may not exactly match the old set in small ways. Note, however, that any discrepancies in no way change my results in any significant way.

The Document claims my numbers are no good, but provides no alternative numbers as to what the Division calculates my returns as. It appears to me (based on the Divisions' actions and conversations with Division personnel) that the Division just ignored the information I sent up on CD, and just dismissed the returns as impossible out of hand without even performing their own calculations on the data. Ms. Amy Leeson of the Division claimed I did not provide proof of my returns in the CD I provided, however she has not made it clear what she wants to constitute proof. I believe that I did provide proof on the CD, or if not, I am confused at just what should I supply. I documented the data I used. I supplied listing of the programs. If the Division wants something more, what exactly do they want? If that is not the case -- if the Division has performed calculations on the data -- then I would like the opportunity to see how the Division performed any return calculations. Perhaps if there is an error in such calculations I may be able to spot it since I am more familiar with my trade data. Alternatively, if my programs are in error, perhaps examination of the Divisions techniques will shed light on how my programs are in error. Note that I attached a copy of my 1999 tax return that shows I claim a gross of \$76K in 1999 trading revenues, which is consistent with my programs.

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On page 5, line 19, it states that my mention of my creation of the Planet Hedge Fund website is misleading. The document states that such web site creation requires no expertise in hedge funds, but that is not correct. It definitely required an understanding of hedge funds and trading to create that site from scratch by myself. The point that it requires little money is irrelevant. Further, the document claims it is misleading because of where it was placed in the OM (under the management section). It was placed there not to claim that my creation of Planet Hedge Fund meant I was qualified to run a hedge fund, it was placed there to disclose that I did have other avocations that took up some of my time, which is an important thing to disclose. The Management Section's purpose is not solely to present qualifications, as suggested by the Document, it is rather to discuss the manager and management of the fund in a more general sense.

I believe the use of the word professional (see line 2, page 6 of the Document) was not false or misleading. I was pursuing it full time with all my energies in a professional manner, with the intent of making my living from it. The point of the sentence that was quoted was to stress I had been using the techniques that I would subsequently use for the Partnership. The sentence was clearly not about stressing I was a professional, even though that is what has been pulled out of the sentence by the Commission. In other words, this Document is twisting around the meaning of the sentence in the first place, and professional as an adjective as used was not misleading or false.

On page 6, lines 3-4 of the Document it says that Respondents omitted to state that Parizek's trading experience was limited to a small amount of money belonging to his own family members. This may not have been stated in the OM, but it was stated in other materials presented to investors and all investors were aware of this before investing. Note the first page 3<sup>rd</sup> paragraph of the 7-page solicitation letter stated that I started with \$4000 in capital and lost most of it. On the second page, note that I state "primarily because most of my available trading capital was in Dad's IRA account." Note that on the bottom of the 3<sup>rd</sup> page of my solicitation letter I begin with "[...], because it is unknown whether I would have still achieved the same percentage gains had I been trading a larger amount of money." and then continue on to spend almost a page and a half of the solicitation letter specifically discussing the fact that I was trading a small amount of money and that performance with a larger amount would not necessarily be as good. I report the amount of money I was trading (average assets under management each month) in the chart on the 4<sup>th</sup> page of the solicitation letter. Note on the 4<sup>th</sup> page of the solicitation letter I say "I took **huge risks** during the time I made the 13,000%, **because I didn't have much money to lose.**" (bold text added here for emphasis). The solicitation letter clearly states and discloses the fact I was not trading much money. Further note that after formation of the Mars Fund, and during the time it was actively traded, I was not managing a significantly different total amount of money than that I managed in year 2000.

On page 6, line 11, it says the solicitation letter and/or the Mars Fund OM were misleading. Those 2 documents did not disclose the failure of Southwest Rodents because Southwest Rodents did not fail, it was shut down by me, and I state that I shut it

down in the solicitation letter. I sold part of the business, discarded other parts, and discontinued the business, but it was not a failure, it was making money, and had good potential, I just chose to put all my efforts elsewhere.

I disclosed my bankruptcy to all my investors both via my Form ADV which I supplied to them and verbally before I accepted any funds from them. Therefore, it was not necessary to disclose it in the OM or solicitation letter. Further, all of the people solicited knew of my bankruptcy anyway because they are friends, family, and associates and I did not hide by bankruptcy from them, I told them all about it.

On page 7, paragraph 26 of the Document, it is noted that I deposited client funds into a checking account that was also used for personal transactions. It should be noted that all or a vast majority of such personal transactions occurred after client funds were transferred out of that account. Such personal business never dipped into client funds. Clients' funds were in that account for a very short period of time while being expeditiously transferred to the Mars Fund's Datek account, which was maintained solely for clients' funds with PCM as the trustee for the partnership, and where client funds spent the vast majority of the time. Note that I attempted to get clients to write checks directly to Datek so that I would not have to deposit them in my accounts, and it was solely for their convenience that the money ended up for a very short period of time in my accounts. Further, clients were timely notified of the bank name and account numbers in writing where their funds were deposited and notified again as the money was moved to Datek. In the case of Mr. McCaughey's \$6700 it should be noted that this money did not become client money until it reached the Datek account, because it was only then that the loan from Mr. McCaughey to my Dad was considered settled in full. In the case of Dr. Anderson's \$5000 cash, it should be noted that I had to deposit it into that account because of my fiduciary duty to Dr. Anderson. He handed me cash and when I realized after leaving his office that that was a bad idea, I could not initially reach him to return it. Rather than keep the cash on me, which would not have been prudent because of the possibility of theft, I deposited it my account to protect his interests. I then left a note at his office telling him where the money was. I called the next day to try to change to a check but Dr. Anderson was sick, and had to have surgery, and I was not able to reach him until it was a mute point because I was able to get the money into the Datek account, which was an appropriate account. In summary, because client funds were moved quickly to the Datek account, because clients at all times knew where their money was, because the very temporary use of my account was solely for the clients' convenience and to secure his best interests, and because client funds spent the vast majority of their tenure with PCM in an appropriate account, I did not break the intent of the law regarding the handling of such accounts.

Regarding item c, page 9 of the Document: all or most of the people solicited, and all of my investors, knew that I was not financially well off before they decided to invest with me. They knew this because they personally knew me and because I made that clear to them in verbal discussions with them. Further, why is it relevant how I made, or even whether I did make, money 6 or 7 years before I started the hedge fund, unless I had been in the securities or related industry? I disclosed my schooling and job history in my form

ADV. I have not consistently failed to repay debts, instead I have repaid many debts, even ones for which I could have not repaid because they were discharged in my bankruptcy.

Regarding item f, page 10 of the Document: I have discussed this issue in an earlier portion of this response. I would like to add here that it is self-evident to any reasonable and prudent person that creating a web site does not make one a great trader. It is ridiculous to suggest that any investor, prudent or otherwise, would take my statements that I was the owner/creator of the site to mean anything significant regarding my skills as a trader. They would take those statements to mean, yes, he has other things he spends his time on and yes, he had to know at least something about hedge funds in order to create a successful web site about hedge funds. And that is all they would take from it. They would not read that and mistakenly believe that it implied special expertise in running a hedge fund. Because the investor would not have been confused by this in the first place, there is no failure to omit anything.

All of the allegations against the RESPONDENTS in the Document are spurious and should be set aside. Revocation of the licenses of RESPONDENTS is not necessary or warranted for the protection of the public interest and our registrations should be allowed to be withdrawn as attempted in January. We the RESPONDENTS endeavored to provide our clients with an investment product in a responsible and forthright manner. I contacted the Commission and others numerous times prior to beginning the hedge fund in an attempt to make sure I was doing things right, ethically, and "by the book". My clients have even commented to me that I explained things to them much better than any other financially oriented person they have dealt with and that I provided way more information. Things ultimately turned out poorly -- my clients lost money. I also lost money, more than any other partner in the fund, and as much as all my clients put together, if you count the money I invested to start the hedge fund. So I am guilty of losing them money, but I am innocent of any lying, cheating, unethical intent/conduct, misrepresentation, or fraud. If anyone is guilty of misleading anyone, it is writers of the Document who are guilty. In preparing the Document and the allegations against me, they have consistently written it and used word choices that show a negative and incorrect bias. Such bias attempts to portray me as a nasty person. Instead it would be appropriate to portray events and myself in a neutral way, or if it wanted to be most truthful, as the imperfect but good, ethical, and forthright human that I am. The Document has taken sentences out of context, twisted the context of sentences in misleading ways, made untrue statements, and has in general not presented a fair, truthful, or forthright account of events.

Sincerely,



Dave Parizek, Jr.

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