

DENISE VOIGT CRAWFORD  
SECURITIES COMMISSIONER

JOHN R. MORGAN  
DEPUTY SECURITIES COMMISSIONER

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MEMBER

## Texas State Securities Board

208 E. 10th Street, 5th Floor  
Austin, Texas 78701-2407  
www.ssb.state.tx.us

**SSB Docket No. 03-015**

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IN THE MATTER OF THE  
DEALER REGISTRATION OF  
JAMES WHEELER & CO.  
INVESTMENTS, INC.

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**Order No. CEN/SUS-1506**

TO: James Wheeler & Co. Investments, Inc. (CRD # 38157)  
c/o Douglas C. Group, Senior Vice President  
1355 S. Colorado Boulevard, Suite C120  
Denver, Colorado 80222

### DISCIPLINARY ORDER

Be it remembered that James Wheeler & Co. Investments, Inc. ("Respondent"), by and through Douglas C. Group ("Group"), its Senior Vice President, appeared before the Securities Commissioner of the State of Texas ("Securities Commissioner") and consented to the entry of this Order and Undertaking, and the Findings of Fact and Conclusions of Law contained herein.

### FINDINGS OF FACT

1. Respondent has waived (a) Respondent's rights to notice and hearing in this matter; (b) Respondent's rights to appear and present evidence in this matter; (c) Respondent's right to appeal this Order; and (d) all other procedural rights granted to Respondent by The Securities Act, TEX. REV. CIV. STAT. ANN. art. 581-1 et seq. (Vernon 1964 & Supp. 2003) ("Texas Securities Act"), and the Administrative Procedure Act, TEX. GOV'T CODE ANN. § 2001.001 et seq. (Vernon Supp. 2003) ("Administrative Procedure Act").
2. Respondent has been registered with the Securities Commissioner as a dealer since on or about April 9, 1996. Respondent has been registered as a NASD member since on or about May 24, 1995.
3. Group is currently the Senior Vice President and an authorized signatory of Respondent.

4. Respondent maintained a branch office at 701 Brazos Street, Suite 500, Austin, Texas 78701, from on or about June 2, 2001, to during or about January of 2002. Respondent maintained a branch office located at 5 Pillow Road, Austin, Texas 78745, from during or about January of 2002, to on or about October 31, 2002.
5. Respondent represented to the Securities Commissioner via filings on the Form BD that it operated a registered branch office located at 701 Brazos Street, Suite 500, Austin, Texas 78701, from on or about June 2, 2001, to on or about October 31, 2002.
6. Pursuant to Sections 101.2(c) and 133.33(a)(7) of the Board Rules, certain forms required to be filed with the Securities Commissioner, including the Form BD, have been adopted as Board Rules.
7. Pursuant to Section 115.9(a)(6) of the Board Rules, a dealer registered with the Securities Commissioner shall report any change in information previously disclosed to the Securities Commissioner on any application form or filing within thirty (30) days of such change.
8. Respondent did not update the Form BD to reflect that Respondent no longer operated a branch office at 701 Brazos Street, Suite 500, Austin, Texas 78701, from during or about January of 2002, to on or about October 31, 2002. Respondent did not update the Form BD to reflect that, from during or about January of 2002, to on or about October 31, 2002, the branch office at the above address was relocated to 5 Pillow Road, Austin, Texas 78745.
9. At least one Texas resident (the "Agent") was registered with the Securities Commissioner as an agent of Respondent at all times material to the events described herein.
10. Pursuant to Sections 101.2(c) and 133.33(a)(4) of the Board Rules, certain forms required to be filed with the Securities Commissioner, including the Form U-4, have been adopted as Board Rules.
11. Respondent, by and through Group, filed a Form U-4 with the Securities Commissioner that indicated that the Agent maintained an employment as a "registered investment adviser" conducting business in Texas.
12. Group acknowledged on the Agent's Form U-4 filed with the Securities Commissioner that Group had taken appropriate steps to verify the accuracy and completeness of the information contained in and with the Agent Form U-4 filing. The Agent has represented to Respondent and Group that the Agent was registered with the Securities Commissioner as an investment adviser. Respondent and Group neither verified the accuracy of this representation nor independently determined whether the Agent was in fact registered as an investment adviser before acknowledging and making this representation to the Securities Commissioner on the Agent's Form U-4.

13. Rule 3010 of the NASD Code of Conduct Rules creates a responsibility and duty upon each member to ascertain by investigation the good character, business repute, qualifications and experience of any person prior to making a certification in the application of such person for registration with the NASD.
14. The Agent was neither registered nor had submitted a notice filing with the Securities Commissioner as an investment adviser or investment adviser representative from on or about January 1, 2001, to the present. The Agent was not registered as an investment adviser with the United States Securities and Exchange Commission at any time material to the events described herein.
15. Respondent did not take appropriate steps to verify the accuracy and completeness of information contained in and with the aforementioned Form U-4.
16. The Agent rendered investment advisory services separate and apart from Respondent from on or about March 29, 2001, to on or about October 31, 2002. The Agent executed securities transactions on behalf of the Agent's investment advisory clients and received management fees attributable to such client accounts.
17. Rule 3040 of the NASD Code of Conduct Rules requires a member to record on the member's books and records those private securities transactions of an associated person and requires the member to supervise those transactions as if the transactions were executed on behalf of the member.
18. Respondent neither recorded on Respondent's books and records those private securities transactions executed by the Agent on behalf of the Agent's investment advisory clients nor supervised such private securities transactions.
19. The Agent executed transactions totaling approximately four hundred thousand dollars (\$400,000) for at least fifteen (15) Texas, non-institutional clients whereby securities were sold by the Agent, as an agent of Respondent, to such clients on a discretionary basis from on or about February 22, 2002, to on or about April 1, 2002. Respondent realized commissions on such transactions and paid the Agent commissions for such transactions.
20. Rule 2310 of the NASD Code of Conduct Rules requires a member to make reasonable efforts to obtain information concerning the customer's financial status, tax status and investment objectives prior to the execution of a transaction recommended to a non-institutional customer.
21. Respondent's written supervisory procedures require that new account forms be completed and reviewed by a designated principal prior to allowing an order to be entered. Respondent, through a designated principal, never completed or reviewed those new account forms for those transactions described in Finding of Fact 19.

22. Respondent did not maintain new account forms and suitability questionnaires for those aforementioned client transactions resulting in the payment of commissions to Respondent and its Agent.

### UNDERTAKING

Respondent hereby agrees to cooperate with any investigation by the Enforcement Division of the Texas State Securities Board or other law enforcement agencies relating to any current or former employee, agent or independent contractor who has engaged in the offer and/or sale of securities or the rendering of investment advisory services including, but not limited to, providing information or documents and testifying in any civil, administrative or criminal proceeding brought by this Agency or any other law enforcement entity or self-regulatory organization.

### CONCLUSIONS OF LAW

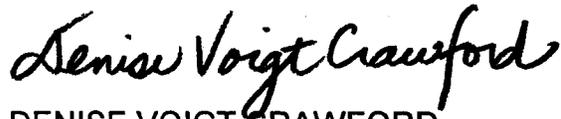
1. Respondent's failure to report a change in its branch office location within thirty (30) days constitutes a violation of Section 115.9 of the Board Rules.
2. Respondent's failure to register its branch office location at 5 Pillow Road, Austin, Texas 78745, constitutes a violation of Section 115.2(c) of the Board Rules.
3. Respondent's failure to take appropriate steps to verify the accuracy and completeness of information contained in and with the application for the agent registration of the Agent with Respondent at times when Respondent represented, by and through its agents, to the Securities Commissioner that Respondent had taken such steps constitutes a violation of Section 133.33 (a)(4) of the Board Rules and a material misrepresentation to the Securities Commissioner.
4. Respondent's violation of Rule 3010 of the NASD Code of Conduct Rules constitutes an inequitable practice in the sale of securities.
5. Respondent's failure to record and supervise private securities transactions executed by its agent in violation of Rule 3040 of the NASD Code of Conduct Rules constitutes an inequitable practice in the sale of securities.
6. Respondent's failure to obtain information concerning the customer's financial status, tax status and investment objectives prior to the execution of transactions recommended to a non-institutional customer violated Rule 2310 of the NASD Code of Conduct Rules and Respondent's written supervisory procedures which constitutes an inequitable practice in the sale of securities and a violation of Section 115.10 of the Board Rules.
7. Respondent's failure to maintain books and records for client securities transactions constitutes a violation of Section 115.5 of the Board Rules.

8. Pursuant to Sections 14.A(3), 14.A(6) and 14.A(7) of the Texas Securities Act, the foregoing violations constitute bases for the issuance of an order reprimanding and suspending Respondent.

ORDER

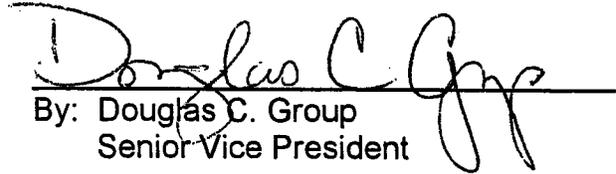
1. It is therefore ORDERED that James Wheeler & Co. Investments, Inc., is hereby REPRIMANDED.
2. It is further ORDERED that James Wheeler & Co. Investments, Inc., is hereby SUSPENDED from opening new accounts for Texas investors for a period of three hundred sixty-five (365) days from the date of the signing and entry of this Disciplinary Order by the Securities Commissioner.
3. It is further ORDERED that James Wheeler & Co. Investments, Inc., COMPLY with the terms of the Undertaking contained herein.

SIGNED AND ENTERED BY THE SECURITIES COMMISSIONER this 14<sup>th</sup> day  
of April, 2003.

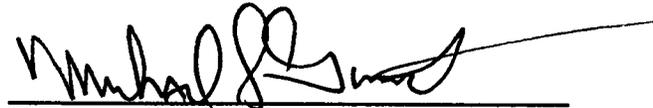
  
DENISE VOIGT CRAWFORD  
Securities Commissioner

Respondent:

James Wheeler & Co. Investments, Inc.

  
By: Douglas C. Group  
Senior Vice President

Approved as to Form:

  
Michael S. Gunst  
Director  
Inspections and Compliance Division

  
David Grauer  
Director  
Enforcement Division

**ACKNOWLEDGMENT**

On the 7 day of April, 2003, James Wheeler & Co. Investments, Inc. ("Respondent"), by and through Douglas C. Group, its Senior Vice President, appeared before me and executed the foregoing Order, and acknowledged that:

1. Douglas C. Group is duly authorized to enter into the foregoing Order on behalf of Respondent;
2. Douglas C. Group has read the foregoing Order;
3. Respondent has been fully advised of its rights under the Texas Securities Act and the Administrative Procedure Act;
4. Respondent knowingly and voluntarily consents to the entry of the foregoing Order and Undertaking, and the Findings of Fact and Conclusions of Law contained therein; and,
5. Respondent, by consenting to the entry of the foregoing Order, has knowingly and voluntarily waived its rights as set forth therein.



[affix notary seal here]

Nancy L. Little  
Notary Public in and for  
the State of Colorado

My commission expires on: 4-03-06