

**ADMINISTRATIVE PROCEEDING  
BEFORE THE  
SECURITIES COMMISSIONER OF MARYLAND**

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IN THE MATTER OF:

\*

MARK EDWARD PHILLIPS a/k/a  
MARK LE ROY AARON

\*

No. 2003-0508

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and

\*

PHYDEA EQUITY FUND, LLC

\*

Respondents.

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**FINAL ORDER TO CEASE AND DESIST**

WHEREAS, the Securities Division of the Office of the Attorney General (the “Division”), pursuant to the authority granted in Section 11-701 of the Maryland Securities Act, Md. Ann. Code, Corps. & Ass’ns (1999 Repl. Vol. & Supp. 2002) (the “Securities Act”), initiated an investigation into the securities-related activities of Respondents Mark Edward Phillips a/k/a Mark Le Roy Aaron (“Phillips”) and Phydea Equity Fund, LLC (“Phydea”) (collectively the “Respondents”); and

WHEREAS, on the basis of that investigation the Maryland Securities Commissioner (the “Securities Commissioner”) found that grounds existed to determine that Respondents violated the

Securities Act by engaging in an act or practice constituting violations of Sections 11-301, 11-302, 11-401, 11-402 and 11-501 of the Securities Act; and

WHEREAS, on September 3, 2003, the Securities Commissioner issued a Summary Order to Cease and Desist (the “Summary Order”), which ordered Respondents and anyone under their direction, control or employment to cease and desist immediately from violations of Sections 11-301, 11-302, 11-401, 11-402 and 11-501 of the Securities Act pending a hearing in the matter or until such time as the Securities Commissioner modified or rescinded the Summary Order; and

WHEREAS, the Summary Order ordered that each Respondent show cause why that person should not be barred permanently from engaging in the securities and investment advisory business in Maryland, and why a monetary penalty should not be entered against that person; and

WHEREAS, the Summary Order ordered that each Respondent show cause why a final order should not be entered against that person, ordering that person to cease and desist from further violations of Sections 11-301, 11-302, 11-401, 11-402 and 11-501 of the Securities Act; and

WHEREAS, on September 30, 2003, Respondents filed a response to the Summary Order requesting a hearing in this matter and requesting a stay of this proceeding pending the outcome of a criminal investigation by the U.S. Attorney’s Office (the “Criminal Case”); and

WHEREAS, on January 30, 2004, the Securities Commissioner issued a stay pending the outcome of the Criminal Case; and

WHEREAS, on November 30, 2006, in response to the resolution of the Criminal Case, the Securities Commissioner issued an Order Lifting Stay; and

WHEREAS, on April 30, 2007, the Securities Commissioner referred this matter to the Office of Administrative Hearings (“OAH”) for a hearing and proposed decision; and

WHEREAS, this matter was assigned to the Honorable Yolanda L. Curtin, Administrative Law Judge, who, on May 15, 2007, sent the parties a Notice of Telephone Pre-hearing Conference directing the parties to be available for a telephone pre-hearing conference on Friday, July 6, 2007 at 10:00 a.m.; and

WHEREAS, on July 6, 2007, Judge Curtin convened the pre-hearing conference as scheduled; and

WHEREAS, Assistant Attorney General Katharine Weiskittel, representing the Division, participated by telephone in the pre-hearing conference; and

WHEREAS, neither of the Respondents nor any representatives on their behalf contacted OAH to participate in the telephone pre-hearing conference; and

WHEREAS, after Respondents failed to appear, the Division made a motion for default against the Respondents; and

WHEREAS, on July 10, 2007, Judge Curtin, citing COMAR 02.02.06.15B and 28.02.01.20A, issued a Proposed Default Order finding Respondents in default, which Proposed Default Order included instructions for filing a motion to vacate or modify that order; and

WHEREAS, neither Respondents nor the Division made any subsequent filings in this matter; and

NOW, THEREFORE, the Securities Commissioner finds that it is in the public interest to issue this Final Order, and THE SECURITIES COMMISSIONER FINDS, CONCLUDES AND ORDERS:

## **I. JURISDICTION**

1. The Securities Commissioner has jurisdiction in this proceeding pursuant to Section 11-701.1 and 11-801 of the Securities Act.

## **II. RESPONDENTS**

2. Respondent Mark Edward Phillips a/k/a Mark Le Roy Aaron resided in Elkton, Maryland. Phillips is a principal, founder, and chief operating officer of Phydea

3. Respondent Phydea conducted business from Elkton, Maryland . On information and belief, Phydea is a Delaware limited liability corporation.

## **III. FINDINGS OF FACT**

4. Phillips never has been registered with the Division as a securities agent, investment adviser or investment adviser representative.

5. Phydea Equity Fund, LLC never has been registered with the Division, nor has a claim of exemption or preemption been filed with the Division.

6. Phydea offered investments in the Phydea Equity Fund, LLC, through a website at [www.phydea.com](http://www.phydea.com), which fund was advertised as a pooled investment fund investing in the stocks recommended by Phydea Financial Stock Report. The page advertising Phydea claimed that it was for “informational purposes only,” that “this is not an announcement or advertisement,” that “this is not a public offering,” and that “this is a private investment company.” A hyperlink entitled “additional information,” however, explained that “[y]ou can easily join with an Initial Membership Contribution of a minimum of \$500.00 or a maximum of \$250,000.00.” The website provided the investor contract on-line, which was to be submitted on-line or printed and mailed.

7. Despite claims in the contract to the contrary, investors were not required to have a

prior relationship with Phydea to invest. Some investors learned of the fund through the internet offering, through advertisements in the Investors Business Daily, or through personal contact with Phillips at a gym where he belonged.

8. There were at least 89 investors throughout the country who invested a total of at least \$600,436. Respondents instructed investors to make their checks payable to either E\*Trade Securites, LLC, TD Waterhouse Investor Services, Inc., or Phydea, depending upon where Phillips maintained his personal accounts at the time.

9. On May 25 ,1999, Phillips opened an account with E\*Trade Securities, LLC (“E\*Trade”). He closed that account in August 22, 2002 with a negative balance. During the time the account was opened, investors were instructed to make their checks payable to E\*Trade. Those checks, totaling at least \$384,000, were deposited directly into the account of Mark E. Phillips and Matthew Zaccaria<sup>1</sup> at E\*Trade. Phillips transferred from the E\*Trade account at least \$87,563.32 into his personal bank account at the Peoples Bank of Elkton. On information and belief, the balance was lost through unsuccessful trading practices by Phillips. E\*Trade has no record of an account in the name of Phydea.

10. On September 17, 2001, Phillips opened an account in his own name at TD Waterhouse Investor Services, Inc. (“TD Waterhouse”) with a \$10,000 wire transfer from his bank account at the Peoples Bank of Elkton. During the time the account was active, investors were told to make checks payable to TD Waterhouse. Those checks, totaling at least \$26,000, were deposited into Phillips’ personal account at TD Waterhouse. The account was placed on a fraud watch by TD

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<sup>1</sup> Matthew Zaccaria is the owner of the gym where Phillips has a membership and is an investor in Phydea.

Waterhouse because of the numerous third party checks deposited into the account. Phillips stopped trading in the account in approximately August 2002. Phillips transferred from the TD Waterhouse account at least \$22,197.42 into his personal bank account at the Peoples Bank of Elkton, and withdrew several thousand dollars in cash from the brokerage account with an ATM card. At the time of the Summary Order, there was \$.66 in the account. TD Waterhouse has no record of an account in the name of Phydea.

11. On October 30, 2002, Phillips opened a checking account in the name of Mark E. Phillips DBA Phydea at the Peoples Bank of Elkton (“Phydea bank account”). Thereafter, investors were told to make their checks payable to Phydea. Those checks, totaling at least \$164,000, were deposited in the Phydea bank account. Between March and June of 2003, there were four \$10,000 wire transfers of funds from the Phydea bank account to an account at Ameritrade, Inc. (“Ameritrade”) in the name of Mark Phillips. Phillips also withdrew from the Phydea bank account at least \$10,232 in checks made out to himself, and made over \$7,000 in ATM cash withdrawals. Phillips paid for personal expenses, such as the purchase of wedding rings, with funds from the Phydea bank account. As of June 30, 2003, the Phydea bank account held \$5,952.58.

12. On December 30, 2002, Phillips opened an account in his own name at Ameritrade. As of July 25, 2003, there was a negative \$20,491 balance in the account. On information and belief, all of the funds in the account were lost through unsuccessful trading practices. Ameritrade has no record of an account in the name of Phydea.

13. During these periods, Respondents sent investors monthly statements that showed that their investments were profitable. Respondents did not disclose to investors that substantially all of their investments had been lost.

14. Respondents did not disclose that they were depositing investor funds in Phillips' personal brokerage accounts.

15. Respondents did not disclose that investor funds would be used for Phillips' personal expenses.

16. Respondents did not disclose that performance figures advertised on the Phydea website were not based on actual investor returns. Nor did Respondents disclose to potential investors that past investors had lost substantially all of their investments.

18. Respondents did not disclose that Phillips filed for bankruptcy on October 23, 2000 and December 1, 1994.

19. Investors placed funds in Phydea as a passive investment expecting profits from the expertise and efforts of Respondents. Investors had no control over how funds were used once they invested in Phydea.

#### **IV. CONCLUSIONS OF LAW**

20. Respondents Phydea and Phillips violated Section 11-501 of the Securities Act by offering and selling securities in this State that were neither registered, exempt, nor preempted from registration.

21. Respondent Phillips violated Section 11-401 of the Securities Act by acting in this State as an unregistered broker-dealer, agent, investment adviser and investment adviser representative.

22. Respondent Phydea violated Section 11-402 of the Securities Act by employing in this State an unregistered agent.

24. Respondents Phydea and Phillips violated Section 11-301 of the Securities Act, in

connection with the offer, sale or purchase of a security, by employing a device, scheme or artifice to defraud, making an untrue statement of a material fact and omitting to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, and engaging in an act, practice or course of business which operates or would operate as a fraud or deceit on any person.

25. Respondents Phydea and Phillips, in connection with investment advisory activities, violated the antifraud provisions of Section 11-302 of the Securities Act and the dishonest and unethical practices provisions of COMAR 02.02.05.03.

#### **V. ORDER**

**NOW, THEREFORE, IT IS HEREBY ORDERED**, and the Securities Commissioner has determined that it is in the public interest to enter this Final Order, that:

1. Respondents, jointly and severally, pay a monetary penalty of \$2,500 for each violation of the Securities Act for each of the 89 investors, which totals \$890,000. The monetary penalty will be offset by any restitution made by Respondent Phillips in connection with the sentence imposed in US v. Mark Phillips, Criminal No. JFM-05-0165.
2. Respondents are barred from engaging in the securities and investment advisory business in Maryland for or on behalf of any others, or from acting as a principal in any firm so engaged.
3. Respondents cease and desist permanently from further violation of the provisions of the Securities Act.



**VI. NOTICE OF APPEAL RIGHTS**

Pursuant to COMAR 02.02.06.24, each Respondent has the right to file an appeal of this Final Order with the circuit court. Any appeal must be filed within 30 days from the date this Final Order is mailed by the Division.

**SO ORDERED:**

**Commissioner's signature is  
on file with original document**

DATED: March 7, 2008

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Melanie Senter Lubin  
Securities Commissioner

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