

ADMINISTRATIVE PROCEEDING  
BEFORE THE  
SECURITIES COMMISSIONER OF MARYLAND

IN THE MATTER OF:

INFINITY FINANCIAL INVESTMENT  
CORPORATION

and

WALLSTREET-ANALYSIS INVESTMENTS  
and

MICHAEL J. LUTHER,

RESPONDENTS.

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Securities Division No.2004-0425

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**SUMMARY ORDER TO CEASE AND DESIST**

WHEREAS, the Securities Division of the Office of the Maryland Attorney General, pursuant to the authority granted in section 11-701 of the Maryland Securities Act, Title 11, Corporations and Associations Article, Annotated Code of Maryland (1999 Repl. Vol. & Supp. 2005) (the "Securities Act"), undertook an investigation into the securities-related activities of Infinity Financial Investment Corporation, WallStreet-Analysis Investments, and Michael Luther (collectively the "Respondents"); and

WHEREAS, on the basis of that investigation the Securities Commissioner (the "Commissioner") has determined that the Respondents have engaged and may continue to engage in an act or practice constituting a violation of the registration and antifraud provisions of the Securities Act; and

WHEREAS, the Commissioner has determined that immediate action against the Respondents is in the public interest;

NOW THEREFORE, pursuant to section 11-701.1(a) of the Securities Act, it is hereby:

**ORDERED**, that Infinity Financial Investment Corporation, WallStreet-Analysis Investments, Michael Luther, and each of them, their officers, directors, employees, agents and anyone else involved in the offer or sale of investments in or through the Respondents, immediately cease and desist from soliciting

investment in, or offering or selling securities in the form of shares or interests or other instruments in or from Maryland, and immediately cease and desist from providing investment advice to others in or from Maryland, pending a hearing in this matter or until such time as the Commissioner modifies or rescinds this Order. Willful violation of this Order is punishable as a criminal offense under section 11-705 of the Securities Act by a fine not exceeding \$50,000 or imprisonment not exceeding three years, or both.

IT IS FURTHER **ORDERED** that each Respondent show cause why a final order should not be issued against it, assessing that Respondent the statutory penalty of \$5,000 per violation of the Securities Act, and permanently barring that Respondent from engaging in the securities or investment advisory business in or from Maryland.

## **I. JURISDICTION**

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

## **II. RESPONDENTS**

2. Infinity Financial Investment Corporation (“IFI”), with an office address in Columbia, Maryland, holds itself out as a Delaware corporation engaged in the business, *inter alia*, of conducting asset allocation for investors, and soliciting funds for investment in WallStreet-Analysis Investments and/or the WallStreet-Analysis Total Return Fund or WallStreet-Analysis Total Return Investment Fund (“TRF”), or other funds or investments.

3. WallStreet-Analysis Investments (“WSA”), with an office address in Columbia, Maryland, holds itself out on its website ([www.wallstreet-analysis.com](http://www.wallstreet-analysis.com)) as a trademark of IFI and as a “private investment management firm... helping [individuals and businesses] develop long-term savings and retirement plans through investing in high-quality equities.” At all relevant times WSA has been engaged, *inter alia*, in soliciting or effecting transactions in investments in IFI and/or WallStreet-Analysis Investments and/or the TRF.

4. Michael Luther ("Luther"), with an office address in Columbia, Maryland, and a residence in Carroll County, Maryland, is the President or principal of IFI, and holds himself out as the Investment Manager of WSA.

### **III. STATEMENT OF FACTS**

On information and belief, the Commissioner alleges the following as the basis for this Order.

5. At some time in 2001, IFI established the IFI ESOP Trust Benefit Plan (the "ESOP").

6. On September 28, 2001, IFI entered into an employment contract with a Maryland resident. The employee was not a full time employee, and was to be paid \$1 per year in addition to being able to participate in the ESOP. At that time, the employee invested \$24,000 to purchase shares of IFI stock. That investor paid for that stock by wire transfer on September 28, 2001 to an IFI account.

7. Subsequently that investment allegedly was converted to ownership of shares or an interest in the WallStreet-Analysis Total Return Fund ("TRF"), WSA's "flagship investment fund," which purportedly was administered by WSA and by Luther.

8. The investor, at Luther's solicitation, invested another \$16,000 into IFI for interests in TRF. The money was sent by wire, but the transfer could not be completed. The investor then sent a check for \$16,000 to IFI on September 27, 2003.

9. Luther and WSA had control over IFI/WSA/TRF and the funds invested therein.

10. Account statements sent to the investor from WSA showed a balance on February 29, 2004 of over \$6 million, in an account that had been funded with \$40,000.

11. In June 2004, the investor directed Luther to sell some of his shares in WSA/TRF. There was no response from Luther or WSA. The investor has not received any return of principal, or any other payment for or from the stock.

12. Attempts by the investor to communicate with Luther were unsuccessful. Luther's, IFI's, and WSA's telephones and internet were disconnected, and for an extended period of time Luther was absent

from his home address, and the business addresses were abandoned.

13. Shortly thereafter, Luther reportedly was confined to a state facility, and was convicted of misdemeanors involving use of a weapon. After his release, the WSA website appeared.

14. The “initial investment requirements” to open an account is stated on the website as \$40,000.

15. The website states that WSA has a performance record showing a 1-year rate of return of 12.30%; a 10-year rate of return of 11.38%; and a 20-year rate of return of 12.39%. No details are provided to support these figures, nor a company history to explain a 20-year performance history for a business incorporated in 2001.

16. The website claims that “the Principals of [WSA] have a long and proven track record of successfully executing on [WSA’s} investment strategy.” No details are given to identify the principals or support this claim.

17. The website claims that “the Principals... through their backgrounds in investments, have a long and successful history of investing, returning 34.76% to fund-holders last year.” No details are provided to verify this statement.

18. Kenneth Gimbert was listed on the website as the President of WSA. Gimbert, who is Luther’s brother-in-law, denies any knowledge of that listing, and denies being President or having any involvement with WSA. His name was very recently removed from the website.

19. Joel Joseph was listed on the website as the Compliance Officer/Attorney of WSA. Joseph, who represents Luther in a private matter brought by an investor, denies holding that office or having any involvement in WSA. His name was very recently removed from the website.

20. Michael Luther is listed on the website as the WSA “investment manager.”

21. A response by Luther to Division subpoenas sent to him, WSA and IFI contained no information about other investors or company finances. Subsequent subpoenas to WSA and IFI have yielded no response.

22. The IFIESOP plan is not registered with the Securities Division, and no claim of exemption or federal preemption has been filed.

23. The Securities Division has no record of securities registration for an offering by or in the name of Infinity Financial Investments Corporation, nor has any claim of exemption or status as a federal-covered security been made with the Division with respect to any such offering.

24. The Securities Division has no record of securities registration for an offering by or in the name of WallStreet-Analysis Investments or WallStreet-Analysis Total Performance Fund, nor has any claim of exemption or status as a federal-covered security been made with the Division with respect to any such offering.

25. IFI is not registered in Maryland as a securities broker-dealer or as an agent, or as an investment adviser or investment adviser representative.

26. WSA is not registered in Maryland as a securities broker-dealer or agent, or as an investment adviser or investment adviser representative.

27. Luther is not registered in Maryland as a securities broker-dealer or agent, or as an investment adviser or investment adviser representative.

**COUNT I**  
(Offer and Sale of Unregistered Securities)

WHEREAS, section 11-501 of the Securities Act makes it unlawful for any person to offer or sell a security in this state unless the security is registered, is exempt from registration under Subtitle 6 of the Act, or is a federal covered security; and

WHEREAS, the shares or interests in WSA investments, including TRF, that have been and are offered and sold by the Respondents are stock, participatory interests in a profit-sharing agreement, and evidences of indebtedness, which constitute "securities" within the meaning of section 11-101 of the Securities Act; and

WHEREAS, there is no record of registration, a claim of exemption from registration, or qualification as a federal covered security filed with the Division by or on behalf of IFI or WSA; and

WHEREAS, Respondents have offered securities in violation of the registration requirements of section 11-501 of the Securities Act;

NOW, THEREFORE, IT IS HEREBY **ORDERED** that Respondents, their officers, directors, employees, agents and anyone else involved in the offer or sale of the IFI or WSA securities, cease and desist from offering and selling securities in or from Maryland, pending a hearing in this matter or until such time as the Commissioner modifies or rescinds this Order. Willful violation of this Order could result in criminal penalties under section 11-705 of the Securities Act.

IT IS FURTHER **ORDERED** that Respondents show cause why a final order should not be issued against them, assessing Respondents the statutory penalty of \$5,000 per violation of section 11-501, and permanently barring Respondents from the securities business in Maryland.

**COUNT II**  
(Unregistered Broker-Dealer and/or Agent)

WHEREAS, section 11-401 of the Securities Act makes it unlawful for any person to transact business in the offer and sale of securities in this state as a broker-dealer or agent unless that person is registered as such pursuant to the Securities Act; and

WHEREAS, the stock, participatory interests in a profit-sharing agreement, and evidences of indebtedness of IFI and WSA, including TRF, offered and sold by Respondents are securities under the Securities Act; and

WHEREAS, the Securities Act defines "broker-dealer" to mean a person engaged in the business of effecting transactions in securities for the account of others or for his own account; and

WHEREAS, the Securities Act defines "agent" to mean an individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect the purchase or sale of securities; and

WHEREAS, IFI and Luther acted as a broker-dealer or agent of WSA and TRF, and engaged in effecting transactions in securities in the form of stock, participatory interests in a profit-sharing agreement, and evidences of indebtedness in this state; and

WHEREAS, IFI and Luther are not registered with the Division as a broker-dealer or an agent to transact securities business within this state;

NOW, THEREFORE, IT IS HEREBY **ORDERED** that Respondents IFI and Luther, their officers, directors, employees, agents and anyone else involved in the offer or sale of the IFI or WSA securities, cease and desist from acting as broker-dealers or agents in this state pending a hearing in this matter or until such time as the Commissioner modifies or rescinds this Order. Willful violation of this Order could result in criminal penalties under section 11-705 of the Securities Act.

IT IS FURTHER **ORDERED** that Respondents IFI and Luther show cause why a final order should not be issued against them, assessing Respondents the statutory penalty of \$5,000 per violation of the section 11-401 broker-dealer and agent registration provisions, and permanently barring Respondents from the securities business in Maryland.

### **COUNT III**

(Employment of Unregistered Agent for Sale of Securities)

WHEREAS, under section 11-101(k) of the Securities Act, an "issuer" is defined as a person, including a corporation, that issues or proposes to issue a security; and

WHEREAS, the stock, participatory interests in a profit-sharing agreement, and evidences of indebtedness of IFI, WSA, and TRF offered and sold by Respondents are securities under the Securities Act; and

WHEREAS, Respondent IFI is an issuer under the Securities Act; and

WHEREAS, Respondent WSA is an issuer under the Securities Act; and

WHEREAS, under section 11-101(c) of the Securities Act, a "broker-dealer" is defined as a person

engaged in the business of effecting transactions in securities for the account of others or for his own account; and

WHEREAS, under section 11-101(b) of the Securities Act, an "agent" is defined as an individual other than a broker-dealer, including a partner, officer or director of an issuer, who represents a broker-dealer or issuer in effecting or attempting to effect the purchase and sale of securities; and

WHEREAS, under section 11-402(a) of the Securities Act it is unlawful for any broker-dealer or issuer to employ or associate with an agent unless the agent is registered pursuant to the Securities Act; and

WHEREAS Luther, as an agent of IFI and WSA, solicited offers to purchase, offered to sell, and sold securities issued by IFI and WSA; and

WHEREAS, the Division's files contain no record of the registration of Luther as a broker-dealer or agent in this state, pursuant to the Securities Act;

NOW, THEREFORE, IT IS HEREBY **ORDERED** that Respondents IFI and WSA cease and desist from employing unregistered agents for the offer or sale of securities in or from this state, pending a hearing in this matter or until such time as the Commissioner modifies or rescinds this Order. Willful violation of this Order could result in criminal penalties under section 11-705 of the Securities Act.

IT IS FURTHER **ORDERED** that Respondents IFI and WSA show cause why a final order should not be issued against them, assessing Respondents the statutory penalty of \$5,000 per violation of the section 11-402 broker-dealer and agent registration provisions, and permanently barring Respondents from the securities business in Maryland.

#### **COUNT IV**

(Unregistered Investment Adviser or Investment Adviser Representative)

WHEREAS, section 11-101(h) of the Securities Act defines an investment adviser as "a person who, for compensation: (i) Engages in the business of advising others ... as to the value of securities or as to the advisability of investing in, purchasing, or selling securities...;" and

WHEREAS, section 11-101(i) of the Securities Act defines an investment adviser representative to include a partner or other person employed by or associated with an investment adviser, who makes recommendations or otherwise renders investment advice to clients; and

WHEREAS, section 11-401(b) of the Securities Act make it unlawful for any person to transact business in Maryland as an investment adviser or investment adviser representative unless that person is registered as such, with exceptions not applicable here; and

WHEREAS, the Respondents IFI, WSA, and Luther advised clients about and offered investors the opportunity to invest in stock, participatory interests in a profit-sharing agreement, and evidences of indebtedness of IFI and WSA, which were securities; and

WHEREAS, none of the Respondents is registered with the Division as an investment adviser or investment adviser representative;

NOW, THEREFORE, IT IS HEREBY **ORDERED** that Respondents IFI, WSA, and Luther, their officers, directors, employees, agents and anyone else involved in the offer or sale of the IFI or WSA securities, cease and desist from acting as investment advisers or investment adviser representatives in this state pending a hearing in this matter or until such time as the Commissioner modifies or rescinds this Order. Willful violation of this Order could result in criminal penalties under section 11-705 of the Securities Act.

IT IS FURTHER **ORDERED** that Respondents IFI, WSA, and Luther show cause why a final order should not be issued against them, assessing Respondents the statutory penalty of \$5,000 per violation of the section 11-401 investment adviser and investment adviser representative registration provisions, and permanently barring Respondents from the securities and investment advisory business in Maryland.

**COUNT V**  
(Employing Unregistered Person to Provide Investment Advice)

WHEREAS, section 11-101(h) of the Securities Act defines an investment adviser as “a person who, for compensation: (i) Engages in the business of advising others ... as to the value of securities or as to the

advisability of investing in, purchasing, or selling securities...;”and

WHEREAS, section 11-101(i) of the Securities Act defines an investment adviser representative to include a partner or other person employed by or associated with an investment adviser, who makes recommendations or otherwise renders investment advice to clients; and

WHEREAS, under section 11-402(b) of the Securities Act, it is unlawful for any investment adviser required to be registered to employ or associate with an unregistered investment adviser representative; and

WHEREAS, IFI, WSA, and Luther provided advice about investing in, solicited offers to purchase, offered to sell and sold securities that were issued by IFI and WSA; and

WHEREAS, the Division’s files contain no record of the registration of Luther as an investment adviser or investment adviser representative pursuant to the Act; and

WHEREAS, IFI and WSA employed Luther to provide investment advice and to offer and sell stock, participatory interests in a profit-sharing agreement, and evidences of indebtedness in violation of section 11-402(b) of the Act;

NOW, THEREFORE, IT IS HEREBY **ORDERED** that Respondents IFI and WSA cease and desist from employing unregistered investment advisers or investment adviser representatives in this state, pending a hearing in this matter or until such time as the Commissioner modifies or rescinds this Order. Willful violation of this Order could result in criminal penalties under section 11-705 of the Securities Act.

IT IS FURTHER **ORDERED** that Respondents IFI and WSA show cause why a final order should not be issued against them, assessing Respondents the statutory penalty of \$5,000 per violation of the section 11-402 investment adviser and investment adviser representatives registration provisions, and permanently barring Respondents from the securities and investment advisory business in Maryland.

**COUNT VI**  
(Material Misrepresentation or Omission in Sale of Securities)

WHEREAS, section 11-301 of the Securities Act prohibits 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 a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading; or (3) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit on any person; and

WHEREAS, the stock, participatory interests in a profit-sharing agreement, and evidences of indebtedness of IFI and WSA offered and sold by Respondents are securities under the Securities Act; and

WHEREAS, in connection with offering those securities of IFI and WSA, Respondents made materially false or misleading statements regarding the history, management, and performance of the investment; and

WHEREAS, in connection with the offer and sale of the IFI and WSA securities Respondents omitted material facts that were necessary to make statements that were made not misleading, including Respondents' lack of appropriate registration, full representation of the risks associated with an investment in IFI or WSA, and the status of WSA;

NOW, THEREFORE, IT IS HEREBY **ORDERED** that Respondents, their officers, directors, employees, agents and anyone else involved in the offer or sale of the IFI or WSA securities cease and desist from engaging in misrepresentation in connection with the offer or sale of securities, in violation of section 11-301 of the Securities Act, pending a hearing in this matter or until such time as the Commissioner modifies or rescinds this Order. Willful violation of this Order could result in criminal penalties under section 11-705 of the Securities Act.

IT IS FURTHER **ORDERED** that Respondents show cause why a final order should not be issued against them, assessing Respondents the statutory penalty of \$5,000 per violation of section 11-301, and permanently barring Respondents from the securities business in Maryland.

## COUNT VII

(Misrepresentation or Omission in Investment Advisory Activities)

WHEREAS, section 11-302 of the Securities Act makes it unlawful for any person who receives, directly or indirectly, any consideration from another person for advising the other person as to the value of securities or their purchase or sale, to: employ any device, scheme or artifice to defraud the other person; engage in any act, practice, or course of business which operates or would operate as a fraud or deceit on the other person; engage in dishonest or unethical practices as the Commissioner may define by rule; .... and to knowingly make any untrue statement of material fact, or omit 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

WHEREAS, Respondents offered and advised investment in stock, participatory interests in a profit-sharing agreement, and evidences of indebtedness of IFI and WSA by making materially false or misleading statements regarding the history, management, and performance of the investment; and

WHEREAS, in offering and advising investments in the IFI or WSA investments, Respondents omitted material facts necessary to make statements that were made not misleading, including Respondents' lack of appropriate registration, full representation of the risks associated with an investment in IFI/WSA, and current status and performance data;

NOW, THEREFORE, IT IS HEREBY **ORDERED** that Respondents, their officers, directors, employees, agents and anyone else involved in the offer or sale of the IFI or WSA securities cease and desist from engaging in misrepresentation in connection with the provision of investment advisory services in violation of section 11-302 of the Securities Act, pending a hearing in this matter or until such time as the Commissioner modifies or rescinds this Order. Willful violation of this Order could result in criminal penalties under section 11-705 of the Securities Act.

IT IS FURTHER **ORDERED** that Respondents show cause why a final order should not be issued against them, assessing Respondents the statutory penalty of \$5,000 per violation of section 11-302, and permanently barring Respondents from the securities and investment advisory business in Maryland.

**REQUIREMENT OF ANSWER AND  
NOTICE OF OPPORTUNITY FOR HEARING**

\_\_\_\_\_ IT IS FURTHER **ORDERED**, pursuant to section 11-701.1 of the Securities Act and COMAR 02.02.06.06, that each Respondent shall file with the Securities Commissioner a written Answer to this Order within fifteen days of service of the Order. The Answer shall admit or deny each factual allegation in the Order and shall set forth affirmative defenses, if any. A Respondent without knowledge or information sufficient to form a belief as to the truth of an allegation shall so state.

The Answer also shall indicate whether the Respondent requests a hearing. A hearing will be scheduled in this matter if one is requested in writing. Failure by any Respondent to file a written request for a hearing in this matter shall be deemed a waiver by that Respondent of the right to such a hearing.

Failure of a Respondent to file an Answer or a request for a hearing shall result in entry of a final order directing that Respondent to permanently cease and desist from violation of the Securities Act and imposing the sanctions sought in this Order.

SO ORDERED:

\_\_\_\_\_, 2005

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MELANIE SENTER LUBIN  
SECURITIES COMMISSIONER