

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

IN THE MATTER OF:

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GLORIA J. ASKINS,

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Case No. 2003-0208

Respondent.

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ORDER TO SHOW CAUSE

WHEREAS, the Maryland Securities Commissioner (the “Securities Commissioner”), pursuant to the authority granted in Section 11-701 of the Maryland Securities Act, Md. Ann. Code, Corps. & Ass’ns (1999 Repl. Vol. & Supp. 2005) (the “Securities Act”), initiated an investigation into the securities related activities of Respondent Gloria J. Askins (“Askins”); and

WHEREAS, on the basis of that investigation the Securities Commissioner has found that grounds exist to conclude that Respondent may have violated the Securities Act by engaging in acts or practices constituting violations of Sections 11-302, 11-303 and 11-411(d) of the Securities Act and COMAR .02.02.05.12; and

WHEREAS, the Commissioner has determined that it is in the public interest to issue this Order to Show Cause;

NOW, THEREFORE, pursuant to Sections 11-412 and 11-701.1 of the Securities Act, it is hereby:

ORDERED, that Respondent show cause why she should not be barred permanently from engaging in the securities and investment advisory business in Maryland or from acting as principal

or consultant for any such business, why she should not have her registrations revoked, why a monetary penalty of \$5,000 per violation should not be entered against her, and why any other sanction or combination of sanctions against Respondent as permitted under Section 11-701.1 should not be entered against her.

The Commissioner alleges the following as a basis for this Order to Show Cause:

I.
JURISDICTION

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

II.
RESPONDENT

2. Askins resides in Gaithersburg, Maryland. She has been a registered investment adviser representative and broker-dealer agent of Wachovia Securities, LLC (“Wachovia”) since July 1, 2003, when Wachovia acquired the assets of Prudential Equity Group, LLC (“Prudential”). Askins was a registered broker-dealer agent of Prudential from September 18, 1997 until July 1, 2003, and an investment adviser representative of Prudential and Wachovia registered with the Maryland Securities Division since January 1, 1999.

III.
STATEMENT OF FACTS

Joseph and Margaret Byrd

3. In the early 1990s, Askins became a friend of Joseph D. Byrd (“Joseph”) and his wife Margaret R. Byrd (“Margaret”) through their church. Over time, she not only served as their broker-

dealer agent and investment adviser representative, but assisted them with their personal affairs. She helped Joseph when he revised his trust and will and created a charitable foundation. She served as trustee for the trust, successor personal representative for Joseph's estate and officer and director of the foundation, without notifying her employers Prudential or Wachovia.

4. Askins and her family also personally benefitted by more than \$250,000 paid by the trust and by Margaret. Again, she did not notify her employers Prudential or Wachovia that she was receiving these benefits.

5. Askins began to handle Margaret's brokerage accounts in the summer or fall of 1998 and Joseph's accounts a few months later. Askins also handled the brokerage accounts of the Joseph D. Byrd Revocable Trust (the "Trust"), and the Joseph D. Byrd Foundation, Inc. (the "Foundation").

6. Joseph was born in May 1919 and lived all his life on a farm at 16310 Sugarland Road, Boyds, Maryland 20841 that he owned together in partnership with his brother Edward.

7. Margaret was born in June 1915. Neither Joseph nor Margaret had children.

8. Over the years, Joseph and his brother Edward sold some of their farm land and successfully invested the proceeds.

9. On July 22, 1993, Joseph executed the Joseph D. Byrd Revocable Trust Agreement (the "Agreement") according to which Joseph transferred to the Trust all his interests in stock, securities, real estate and any partnership. The Agreement designated Joseph as Trustee, his wife and brother as successor Co-Trustees and the lawyer who drafted the Agreement as further Successor Trustee. The Agreement provided for the care of Joseph during his life time and Margaret during hers. Upon the deaths of both Joseph and Margaret, the Agreement provided for payments to two not-for-profit organizations and the balance to the Frederick County Community Foundation, Inc.

for further distribution to other charitable organizations.

10. On July 21, 2000, Joseph formed the Joseph D. Byrd Foundation, Inc. as a charitable foundation. Joseph, Margaret and Askins were designated as the directors. Askins witnessed Joseph's signature on the document. She attended the first meeting of the incorporators on October 1, 2000, where she was named Secretary, Treasurer and member of the Board of Directors.

11. On January 5, 2001, Joseph amended his trust Agreement to name Margaret as a Co-Trustee and Askins and Askin's husband William as Successor Co-Trustee and further Successor Co-Trustee, respectively. The amendment also provided that the Foundation, of which Askins was an officer and Director, should be the beneficiary of the Trust after Joseph's death and the death of his wife. Askins signed the Amended Trust Agreement as Successor Co-Trustee.

12. On the same day, Joseph signed a new will (the "Will") that appointed Margaret as Personal Representative. Askins was to be Personal Representative if Margaret could not or would not serve. Askins' husband was to be Personal Representative if Askins could not or refused to serve. The Will gave the Personal Representative full discretionary powers of management and control of the trust estate. Askins witnessed Joseph's signature.

13. Joseph died on April 9, 2002, at the age of eighty-two. Margaret died on March 1, 2004, at the age of eighty-eight.

Private Litigation

14. On about July 13, 2004, Edwin Dudley and Emily Dudley, who were then serving as Trustees of the Trust, sued Prudential Securities, Inc., Wachovia Securities, LLC, Gloria J. Askins and others alleging generally that the Trust had suffered harm as a result of Askin's fraudulent, reckless and negligent conduct. The suit is referred to here as "the private litigation."

15. That suit was settled in or about February 2006.

Gloria Askins' Disclosure to her Firm of Her Outside Business Activities

16. Prudential's compliance manual permits its employees to engage in outside affiliations only as set forth in its policies. Wachovia, after it took over Prudential's retail operations in July 2003, continued to use Prudential's compliance procedures until September 2004. Prudential's Compliance Manual makes it clear that an employee must complete the "Employee Reporting Statement" disclosing all reportable outside affiliations, and report and obtain approval for any new outside affiliation and change in status of a previously approved affiliation.

17. Generally, the Compliance Manual provides that "no employee may: be employed or compensated by any other person or organization, or engage in any outside business activity outside the scope of the Firm's business, without obtaining prior written approval." Depending upon the activity, prior written approval must come from the employee's manager, from the Law Department or from the Compliance Department. For example, only the manager's approval is required before engaging in non-investment related community activities, sports or recreational work, or activities in the arts or entertainment fields. Law Department approval, in addition to the manager's approval, is required before the employee may "serve as an officer, director/trustee . . . for any business operation other than the Firm or its affiliates . . . [or] serve as a director/trustee, or officer of a charitable or non-profit organization which is, or expects within the next twelve months to be, raising capital by means of a tax-exempt bond offering."

18. An investment adviser representative ("IAR") faces even more stringent requirements. Prudential's policies generally prohibit its financial advisors from serving an estate account as both executor and financial advisor of record or serving a trust account as both trustee and financial advisor of record. The IAR must obtain prior written approval from the employee's manager and from the Compliance Department to "serve a . . . charitable organization as both an officer, director

. . . or in another managerial or financial capacity and Financial Advisor of record; serve an estate account as both executor and/or administrator and Financial Advisor of record; serve a trust/fiduciary account as both Trust/Fiduciary and Financial Advisor of record.” The branch is required to retain copies of any approvals.

19. These restrictions on an IAR’s activities are appropriate because an IAR has fiduciary responsibilities to its investment advisory clients that may conflict with its fiduciary responsibilities as an executor of an estate, trustee of a trust and officer or director of a charitable organization.

20. Among other questions that any Prudential or Wachovia employee must complete on the Employee Reporting Statement are the following:

Outside Affiliations [for years 2000 through 2003]

“Are you engaged in any outside business activity, and/or do you serve as an officer, director, or employee of another business organization? [bold added]

Note: Outside activities include outside employment, acting as a . . . director . . . or any activity outside your usual responsibilities at the Firm.

Without prior approval from your manager/supervisor, the Legal Division and/or Compliance Department you cannot: . . .

– be an officer, director, trustee . . . or consultant for outside businesses, public or private.
. . .

Please note:

Unless you are being compensated, you do not need approval to join a non-profit (unless you are an officer, director or trustee).”

Ethical practices/Conflict of Interest Questionnaire [for years 2001 through 2003]

“Were you during the last year, while affiliated with Prudential or Wachovia, a director, officer, . . . or trustee of . . . any business enterprise other than Prudential or Wachovia? [bold added]

The following need not be disclosed: Non-profit organizations

Did you, any family member, or any individual living in your household receive during

the last year, directly or indirectly any gift or entertainment of more than \$100 in value in connection with any business involvements or transactions of Prudential or Wachovia? [bold added]”

21. Askins answered these questions, or minor variations on them, “no,” even though she served as an officer and director of a charitable foundation, trustee of a trust, and received far more than \$100 in gifts or other benefit from her clients the Trust and Margaret Byrd.

22. Askins did not inform her firm, at or near the time of her appointment, of her roles as Foundation Officer and Director, Successor Trustee and Trustee for the Byrd Trust and Successor Personal Representative of Joseph Byrd’s Will.

23. Employees must also disclose on Form U4 any *approved* outside business affiliation. She never disclosed these activities on Form U4.

24. During the private litigation, Askins produced four memoranda that she addressed to branch office personnel at Prudential or Wachovia that purport to disclose her outside affiliations. The memoranda are dated between January 24, 2001 and September 12, 2003. The memoranda set out Askins’ affiliations such as the Potomac Irish Setter Club, the Darnesdown Presbyterian Church and the Modeling Muppets. They also disclose her position as director or officer of the Joseph D. Byrd Charitable Foundation, but do not disclose that she was Co-Trustee of the Trust after Joseph’s death, or successor personal representative for Joseph.

25. Askins produced to the Securities Division two additional memoranda addressed to her former branch office manager dated February 5, 1999 and February 3, 2003. The memoranda disclose various outside affiliations, including her position as officer of the Foundation in the 2003 memorandum. Askins did not produce the 1999 and 2003 memoranda to Prudential during the private litigation.

26. Neither Prudential nor Wachovia has any record of receiving any of these memoranda

before the private litigation.

27. Askins has not produced any records to show that her firms approved her outside affiliations, including her service as Officer and Director of the Foundation, Co-Trustee or successor Co-Trustee of the Trust, or successor Personal Representative of Joseph's estate.

28. Askins did not disclose her positions as Successor Trustee and Trustee of the Trust and Officer and Director of the Foundation as approved outside business activities on Form U4.

Payments for the Benefit of Gloria Askins from the Byrd Accounts

29. Askins and her family received benefits in excess of \$250,000 from the Trust and Margaret.

30. Askins, who describes the payments for her benefit as "gifts," did not disclose these benefits or seek approval from her firms before receiving these benefits, as required by her firms' compliance manual.

31. Upon information and belief, Askins was able to obtain substantial benefits from the Byrds and the Trust by using checks and addresses for the Trust's brokerage accounts that she controlled. It appears that Askins signed Margaret's name on numerous checks that benefitted Askins and her family.

32. Joseph applied for a commercial mailbox from Mail Boxes Etc. in October 2000, for a box at 13017 Wisteria Drive, Box 233, Germantown, MD 20874. Askins renewed the contract in January 1, 2003, after Joseph died, until March 1, 2004. On April 14, 2003, Askins applied for a second mailbox closer to her office, at Mail Boxes Etc., 4938 Hampden Lane, Box 208, Bethesda, MD 20814. She closed that box on May 15, 2005.

33. The mailing address for the Trust's Prudential account # 0GS-242058-56 was changed from the Byrd's home to the Wisteria Drive mailbox effective November 1, 2001.

34. There are two sets of checks for the Trust's account # 0GS-242058-56. One set with check numbers 1051 through 1211 uses the Byrd's home address on Sugarland Road. Checks with numbers 1251 through 1361 use the Wisteria Drive address. The dates overlap during which the two sets of checks were used.

35. Beginning on March 10, 2002, numerous checks drawn on the Trust account # 0GS-242058-56 using the Wisteria Drive address were written for the benefit of Askins and her family. Some of these checks were signed by Joseph as late as March 31, 2002, shortly before he died on April 9, 2002. Most checks bear the signature of Margaret Byrd. The Margaret Byrd signatures on the Wisteria Drive checks appear markedly different from the Margaret Byrd signatures on the Sugarland Road checks. The Wisteria Drive checks total \$242,409.03 and appear to be exclusively for Askin's benefit. These checks paid her credit card bills with MBNA (\$28,220), Citibank (\$15,020), Target (\$1,251), Hechts (\$5,171) and Discover Card (\$23,563); her daughter's school (\$9,772); two saddles for her daughter's horse (\$1,758); her telephone (\$1,206), water (\$678) and electric bills (\$2,702); her car (\$21,853); and her line of credit at the bank (\$117,425).

36. Checks using the Sugarland Road address appear to pay Joseph's and Margaret's bills.

37. In addition to payments from the Prudential account, Margaret wrote checks to Askins and her daughter on several bank accounts. These checks total more than \$16,000.

38. Margaret regularly wrote checks for work that Askins performed each month, generally for \$400, and gave Askins other checks for \$1,000 at Christmas time.

39. Askins explains the checks for her benefit by saying that Margaret insisted on paying for all the help that Askins gave. Thus, in addition to the Christmas gifts and the regular \$400 or so every month for work that Askins performed between April 2002 and July 2003, Askins explains

that Margaret insisted on paying Askins more than \$240,000 between March 2002 and February 2003.

COUNT I

(Fraud in Investment Advisory Activities; Section 11-302)

WHEREAS, Section 11-302 of the Securities Act makes it unlawful for any person who acts as an investment adviser or representative under Section 11-101(h) or (i) of the Securities

Act to:

- (1) employ any device, scheme or artifice to defraud;
- (2) engage in any act, practice or course of business which operates or would operate as a fraud or deceit on the other person;
- (3) engage in dishonest or unethical practices as the Commissioner may define by rule; and

WHEREAS, Respondent Askins violated Section 11-302 (a)(1) and (2) when she employed a device, scheme or artifice to defraud and engaged in a course of business which operates as a fraud, by concealing from her employer her roles as trustee, officer and director of clients for which she served as an investment adviser representative, by concealing substantial payments that she received from her clients, and by not disclosing these conflicts of interest to her employer; and

WHEREAS, Respondent Askins violated Section 11-302(a)(3) when she engaged in dishonest or unethical practices and failed to act primarily for the benefit of her clients, by using a commercial mail box for her clients' brokerage account statements and checks and by writing checks on her client's accounts for her personal benefit;

NOW, THEREFORE, IT IS HEREBY **ORDERED** that Respondent Askins show cause why a final order should not be entered that orders her to cease and desist from engaging in

activities in violation of Section 11-302, assesses a statutory penalty of up to \$5,000 per violation, permanently bars Respondent from the securities and investment advisory business in Maryland for or on behalf of others, or from acting as principal or consultant in any entity so engaged, and orders any other sanction or combination of sanctions against Respondent as permitted under Section 11-701.1.

COUNT II
(Misleading Filings - Section 11-303)

WHEREAS, Section 11-303 of the Securities Act makes it unlawful for any person to make or cause to be made, in any document filed with the Commissioner or in any proceeding under this title, any statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect; and

WHEREAS, Askins submitted to the Division two memoranda that purport to be memoranda provided to her employer disclosing her outside business activities, but her employer has no record of ever receiving the memoranda and the memoranda appear to be created in order to mislead the Division;

NOW, THEREFORE, IT IS HEREBY **ORDERED** that Respondent Askins show cause why a final order should not be entered that orders her to cease and desist from engaging in activities in violation of Section 11-303, assesses a statutory penalty of up to \$5,000 per violation, permanently bars Respondent from the securities and investment advisory business in Maryland for or on behalf of others, or from acting as principal or consultant in any entity so engaged, and orders any other sanction or combination of sanctions against Respondent as permitted under Section 11-701.1.

COUNT III
(Failure to File Correcting Amendment - Section 11-411)

WHEREAS, Section 11-411(d) of the Securities Act requires a registrant to promptly file a correcting amendment, if:

- (1) The information contained in any document filed with the Commissioner is or becomes inaccurate or incomplete in any material respect; and
- (2) The registrant has not provided notification of the correction under § 11-402 of this subtitle; and

WHEREAS, COMAR .02.02.05.12B provides that an investment adviser representative is under a continuing obligation to update information required by Form U4 as changes occur, to file promptly with the IARD any amendments to the representative's Form U4, and to file the amendment within thirty days of the event that requires the filing of the amendment; and

WHEREAS, Askins failed to update her Form U4 showing her outside business activities; and

NOW, THEREFORE, IT IS HEREBY **ORDERED** that Respondent Askins show cause why a final order should not be entered that orders her to cease and desist from engaging in activities in violation of Section 11-411 and COMAR .02.02.05.12, assesses a statutory penalty of up to \$5,000 per violation, permanently bars Respondent from the securities and investment advisory business in Maryland for or on behalf of others, or from acting as principal or consultant in any entity so engaged, and orders any other sanction or combination of sanctions against Respondent as permitted under Section 11-701.1.

COUNT IV
(Revocation of Registration - Section 11-412)

WHEREAS, Section 11-412(a)(2) of the Securities Act provides that the Commissioner by order may deny, suspend, or revoke any registration if the Commissioner finds that the order

is in the public interest and that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser, has willfully violated or willfully failed to comply with any provisions of this title, a predecessor act, or any rule or order under this title or a predecessor act; and

WHEREAS, Section 11-412(a)(7) of the Securities Act provides that the Commissioner by order may deny, suspend, or revoke any registration if the Commissioner finds that the order is in the public interest and that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser, has engaged in dishonest or unethical practices in the securities or investment advisory or any other financial services business; and

WHEREAS, Respondent Askins willfully violated or failed to comply with Sections 11-302, 11-303 and 11-411(d) of the Securities Act and COMAR .02.02.05.12 as detailed in this Order; and

WHEREAS, Respondent Askins engaged in dishonest and unethical practices, as set forth in this Order; and

WHEREAS, Askins is registered as a broker-dealer agent and an investment adviser representative in Maryland;

NOW, THEREFORE, IT IS HEREBY **ORDERED** that Respondent Askins show cause why a final order should not be entered that revokes her broker-dealer agent and investment advisory representative registrations and orders any other sanction or combination of sanctions as permitted under Sections 11-412 and 11-701.1.

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 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 to determine whether the Order should be vacated, modified, or entered as final will be scheduled in this matter if one is requested in writing. Failure by Respondent to file a request for a hearing in this matter within fifteen days of receipt of the Order shall be deemed a waiver by Respondent of the right to such a hearing.

Failure to file an Answer, including a request for a hearing, shall result in entry of a final order:

- (a) directing Respondent to permanently cease and desist from violation of the Securities Act; and
- (b) imposing a monetary penalty of up to \$5,000 per violation of the Securities Act; and
- (c) barring Respondent from engaging in the securities or investment advisory business in Maryland for or on behalf of others, or from acting as principal or consultant in any entity so engaged; and

- (d) revoking Respondent's securities and investment advisory registrations.

SO ORDERED:

DATED: _____, 2006

Melanie Senter Lubin
Securities Commissioner

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

IN THE MATTER OF:

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IN THE MATTER OF:

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Case No. 2003-0208

GLORIA J. ASKINS,

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Respondent.

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AFFIDAVIT OF COMPLIANCE WITH SECTION 11-802(b)

I hereby certify that, in accordance with section 11-802(b) of the Maryland Securities Act, Title 11, Corporations and Associations Article of the Annotated Code of Maryland, I have effected service upon the Respondent by serving the foregoing Order To Show Cause upon the Securities Commissioner, and then sending a copy of the Order and notice of service by certified mail, return-receipt-requested, to the Respondent at her last-known address and by serving counsel for the Respondent.

I solemnly affirm under the penalties of perjury and upon personal knowledge that the contents of the foregoing paper are true.

Dated: _____

Lucy A. Cardwell