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**STATE OF CALIFORNIA
BUSINESS, TRANSPORTATION AND HOUSING AGENCY
DEPARTMENT OF CORPORATIONS**

TO: John Hart Polhemus, Sr.
25 Upper Alcatraz
Mill Valley, CA 94941

ORDER WITHDRAWING DESIST AND REFRAIN ORDER

It is hereby ordered that the Desist and Refrain Order issued on February 22, 2007,
against John Hart Polhemus, Sr. is withdrawn as of the date set forth below.

Dated: January 13, 2010
Los Angeles, California

PRESTON DuFAUCHARD
California Corporations Commissioner

By _____
Alan S. Weinger
Deputy Commissioner
Enforcement Division

1 **STATE OF CALIFORNIA**
2 **BUSINESS, TRANSPORTATION AND HOUSING AGENCY**
3 **DEPARTMENT OF CORPORATIONS**

4 **TO:** John Hart Polhemus, Sr.
5 25 Upper Alcatraz
6 Mill Valley, CA 94941

7 **DESIST AND REFRAIN ORDER**
8 **(For violations of section 25401 of the California Corporations Code)**

9 The California Corporations Commissioner finds that:

10 1. John Hart Polhemus, Sr. (“Polhemus”) who resides in California is employed in the
11 securities industry as a registered representative. The National Association of Securities Dealers
12 (“NASD”) maintains the qualification, employment and disclosure histories of persons in the securities
13 industry in its Central Registration Depository (“CRD”). According to NASD Polhemus’ CRD
14 number is 365067 and from 1993 until recently he was employed by securities broker Morgan Stanley
15 DW Inc. (“Morgan Stanley”) at their offices located at 1101 Fifth Avenue in San Rafael, California.

16 2. While employed by Morgan Stanley, Polhemus served as a registered representative
17 directly handling client’s investment accounts. Polhemus also served as Morgan Stanley’s branch
18 manager and supervised registered representatives and their handling of clients’ investment accounts.
19 During all times Polhemus was required to comply with the requirements of the Corporate Securities
20 Law of 1968 found in California Corporations Code section 25000 et seq., and California Code of
21 Regulations, title 10, section 260.000 et seq.

22 3. Polhemus acquired a number of Morgan Stanley’s brokerage clients and was directly
23 responsible for handling their respective investment accounts. Some of Polhemus’ clients were
24 unsophisticated investors and included elderly individuals, with little or no background in
25 investments.

26 4. Polhemus while at Morgan Stanley was involved in investment recommendations
27 concerning an elderly client’s estate and investment portfolio that were not in the best interest of
28 the client but which generated commissions at the client’s expense.

1 5. Although Polhemus did not have discretionary authority to engage in securities trading
2 for a client, he nonetheless did so. Polhemus did not obtain prior approval for securities trades he
3 made. Moreover, some of the transactions that Polhemus engaged in involved the purchase of
4 investment products that were unsuitable for a particular client such as high-risk technology stocks,
5 variable annuities and mutual fund Class B shares.

6 6. Polhemus was responsible for transactions involving mutual funds shares, specifically
7 Class B shares. The various classes of shares in a given mutual fund only differ in the amount of
8 expenses paid by the investor. Even though Class B mutual funds shares do not have a front-end
9 fee associated with the purchase, they do have a contingent deferred sales charge (“CDSC”).
10 Polhemus did not disclose to investors the disadvantages of Class B shares, including: (1) Class B
11 shares must be held a number of years to avoid the CDSC; (2) Class B shareholders indirectly pay
12 higher annual fees, referred to as 12b-1 fees; and, (3) purchasers of Class B shares cannot take
13 advantage of breakpoint discounts available on large purchases of Class A shares. Polhemus’ sale
14 of a client’s Class B shares before the time expired to avoid the CDSC resulted in a client paying
15 larger commissions and significantly diminished a client’s overall return, especially when coupled
16 with the higher annual expenses, all facts Polhemus did not disclose.

17 7. Polhemus’ supervision of registered representatives as a branch manager at Morgan
18 Stanley required his approval of their trades and authorization of securities transactions made on
19 behalf of clients of Morgan Stanley. However, Polhemus did not disclose to Morgan Stanley’s
20 clients that he was not qualified to supervise registered representatives because he had not passed or
21 even taken the required NASD examinations.

22 8. Polhemus’ offer and sale of securities and other financial products were made by means
23 of misrepresentations and omissions of material fact including, but not limited to, the amount of the
24 commissions or compensation, the unsuitability of some investments, and his lack of qualification to
25 act as a supervisor of Morgan Stanley registered representatives.

26 Based upon the foregoing, the California Corporations Commissioner is of the opinion
27 that John Hart Polhemus, Sr., offered or sold securities in this State by means of written or oral
28 communications which included an untrue statement of a material fact or omitted to state a

1 material fact necessary in order to make the statements made, in the light of the circumstances
2 under which they were made, not misleading, in violation of Corporations Code section 25401.

3 Pursuant to Corporations Code section 25532, John Hart Polhemus, Sr., is hereby ordered
4 to desist and refrain from offering or selling or buying or offering to buy any security in the State
5 of California by means of any written or oral communication which includes an untrue statement
6 of a material fact or omits to state a material fact necessary in order to make the statements
7 made, in the light of the circumstances under which they were made, not misleading.

8 This Order is necessary, in the public interest, for the protection of investors and
9 consistent with the purposes, policies and provisions of the Corporate Securities Law of 1968.

10 Dated: February 22, 2007
11 Los Angeles, California

12 PRESTON DuFAUCHARD
13 California Corporations Commissioner

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15 By _____
16 ALAN S. WEINGER
17 Lead Corporations Counsel
18 Enforcement Division
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