

**NASD
OFFICE OF HEARING OFFICERS**

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Department of Enforcement,

Complainant,

v.

CERTES CAPITAL SECURITIES, LLC
(CRD No. 124392),

JAMES KOZAK
(CRD No. 2237880),

DEAN HEDEKER
(CRD No. 2068563)

Respondents.

**Disciplinary Proceeding
No. C8A050023**

Hearing Officer Alan W. Heifetz

**ORDER ACCEPTING OFFER OF
SETTLEMENT**

Date: January 23, 2006

INTRODUCTION

Disciplinary Proceeding No. C8A0050023 was filed on April 18, 2005, by the Department of Enforcement of NASD ("Complainant"). Respondents Certes Capital Securities, LLC ("Certes"), James Kozak ("Kozak") and Dean Hedeker ("Hedeker") submitted an Offer of Settlement ("Offer") to Complainant on January 13, 2006. Pursuant to Code of Procedure Rule 9270(e), the Complainant and the National Adjudicatory Council ("NAC") Review Subcommittee or the Office of Disciplinary Affairs ("ODA") have accepted the uncontested Offer. Accordingly, this Order now is issued pursuant to Code of Procedure Rule 9270(e)(3).

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The findings, conclusions and sanctions set forth in this Order are those stated in the Offer as accepted by the Complainant and approved by the NAC.

Under the terms of the Offer, Respondents have consented, without admitting or denying the allegations of the Complaint, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of NASD, or to which NASD is a party, to the entry of findings and violations consistent with the allegations of the Complaint, and to the imposition of the sanctions set forth below, and fully understand that this Order will become part of Respondents' permanent disciplinary record and may be considered in any future actions brought by NASD.

BACKGROUND

Certes became registered with the Securities Exchange Commission ("SEC") and NASD as a broker-dealer on April 11, 2003 and its membership is in the process of being withdrawn from NASD.

Kozak became registered in May 1994 as a General Securities Representative and became registered as a General Securities Principal of a Member firm in July 2000. He became registered with Certes in those capacities on April 11, 2003 and was one of Certes' principals until June 20, 2005, when his registrations with Certes were terminated. Kozak is currently registered with another NASD Member.

Hedeker became registered in August 1999 as a General Securities Representative and as a General Securities Principal in April 2000. He became registered with Certes in those capacities on April 11, 2003 and was one of Certes principals and the executive Vice President of Operations and Finance, and a Compliance Principal of Certes until his registrations in those

capacities were terminated in September 2005. Hedeker is not currently registered with an NASD Member.

FINDINGS AND CONCLUSIONS

It has been determined that the Offer be accepted and that findings be made as follows:

1. At all times relevant to the allegations contained in the Complaint, Certes was a subsidiary of Certes Capital, LLC that had as its principal function the payment of expenses of Certes and its investment advisor affiliate, Certes Capital Wealth Management, from which Certes Capital, LLC derived its income.
2. At all times relevant to the allegations in the Complaint, Anthony Gaspero ("Gaspero"), was not registered in any capacity with NASD. Gaspero was a licensed psychologist who had a psychologist-client relationship with Hedeker for a number of years before Gaspero assisted in the formation of Certes and in the management of Certes, its parent, Certes Capital, LLC and its affiliate, Certes Capital Wealth Management. Gaspero loaned approximately \$125,000 to Hedeker and a business partner who became co-owners and founding principals of Certes. Gaspero's loan of \$125,000 was used as capital by Certes when it applied for membership as a broker-dealer of NASD in 2003. At that time, Gaspero represented in a written attestation to NASD that he would not be actively engaged or permitted to be actively engaged in the management of Certes' securities business, including the supervision, solicitation, contact of business, or the training of persons associated with the firm, as alleged in the First Cause of the Complaint. However, Gaspero engaged in numerous aspects of management of Certes and was involved in arranging for the two private placement offerings in which Respondent Certes participated as alleged in the Second Cause of the Complaint. Gaspero was compensated for the

work that he performed for Certes through a consulting firm, "Primary, The One For Solutions", by Certes Capital, LLC.

3. From approximately April 11, 2003 through January 14, 2004, Certes, acting through Kozak and Hedeker, failed to prevent Gaspero, an unregistered associated person of Certes, from controlling and actively engaging in the securities business of Certes throughout that period of time. Gaspero's activities included, but were not limited to, soliciting and introducing private placement issuers to Certes; interviewing, hiring, disciplining and terminating Certes' employees and principals; and resolving compensation disputes between Certes' principals and its employees and consultants.

4. During the aforementioned time period, Certes, acting through Kozak and Hedeker, failed to amend its Form BD to disclose Gaspero's role at the Firm.

5. The above conduct by Certes, acting through Kozak and Hedeker, is in violation of NASD Rule 2110, NASD Membership and Registration Rules 1021 and 1031; and NASD By-Laws Article II, Section 3(b); Article IV, Section 1 and Article V, Section 1, as alleged in the First Cause of the Complaint.

6. From approximately April 11, 2003 until August 31, 2003, Certes, acting through Kozak and Hedeker, received funds from members of the public for two private placement offerings, Certes Opportunity Fund I ("Fund I"), LLC, an offering with a minimum of \$500,000 and a maximum of \$3,000,000; and Certes Opportunity Fund II ("Fund II"), LLC, an all or none offering with a maximum of \$1,300,000.

7. From approximately April 11, 2003 until August 31, 2003, Certes, acting through Kozak and Hedeker, received funds from members of the public for two private placement offerings, Certes Opportunity Fund I ("Fund I"), LLC, an offering with a minimum of \$500,000 and a

maximum of \$3,000,000; and Certes Opportunity Fund II ("Fund II"), LLC, an all or none offering with a maximum of \$1,300,000.

8. From approximately April 11, 2003 until August 31, 2003, Certes received customer funds totaling approximately \$500,000 for investment in Fund I that were deposited into a checking account in the name of Fund I controlled by LM, a consultant paid by Certes parent company. This account was not an escrow account, and was not subject to an escrow agreement.

9. On August 1, 2003, customer funds in the amount of \$250,000 that had been deposited in the checking account for Fund I were released to the issuer, Certes Capital Wealth Management, before the required minimum of \$500,000 had been raised.

10. From approximately July 15, 2003 until August 31, 2003, Certes received customer funds for investment in Fund II that were deposited into a checking account in the name of Fund II controlled by Hedeker and LM. This account was not an escrow account, and was not subject to an escrow agreement.

11. By July 24, 2003, customer funds in the amount of \$705,000 had been deposited in the checking account for Fund II, at which time \$675,000 was released to the issuer, Certes Capital Wealth Management, before the required \$1,300,000 maximum had been raised.

12. The above conduct by Certes, acting through Kozak and Hedeker, constitutes separate and distinct violations of NASD Rules 2110 and SEC Rules 10b-9 and 15c2-4, as alleged in the Second Cause of the Complaint.

13. From approximately May 21, 2003 through September 29, 2003, Certes, acting through Kozak and Hedeker, failed to reasonably supervise Gaspero, an unregistered associated person of Certes, in that they permitted Gaspero to prepare and distribute correspondence and sales literature to the public for and on behalf of Certes that contained misleading information, and

Certes allowed Gaspero to exert control and/or direct certain operations of Certes, including participating in employment related decisions of Certes, such as recruiting, hiring, disciplining and terminating employees; and coordinating the firm's private placement offerings from April 11, 2003 until August 31, 2003, as alleged in the Third Cause of the Complaint.

14. The above conduct by Certes, acting through Kozak and Hedeker, is in violation of NASD Rules 2110 and 3010, as alleged in the Third Cause of the Complaint.

15. Based on these considerations, the sanctions hereby imposed by the acceptance of the Offer are in the public interest, are sufficiently remedial to deter Respondents Certes, Kozak and Hedeker from any future misconduct, and represent a proper discharge by NASD, of its regulatory responsibility under the Securities Exchange Act of 1934.

SANCTIONS

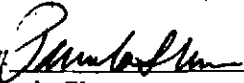
It is ordered that Respondents Certes, Kozak and Hedeker be:

1. Fined jointly and severally in the amount of \$40,000;
2. Censured.

The sanctions imposed herein shall be effective on a date set by NASD staff.

SO ORDERED.

NASD
Signed on behalf of the
Director of ODA, by delegated authority

By: 
Pamela Shu

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