

PRELIMINARY STATEMENT

Applicant John Lee Gravitt has never been registered with this Commission in any capacity. He was registered with the National Association of Securities Dealers (NASD) as early as 1990. In November 1991, he consented to sanctions and censure by the NASD, including a \$3,000 fine, for removing funds from a personal account when he knew or should have known that the funds had been credited to his account by error. In August 1993, the NASD again sanctioned Gravitt for entering unauthorized trades in a customer account. On this occasion, NASD censured Gravitt, assessed a \$15,000 fine against him, prohibited him from associating with any NASD member for thirty days, and required him to re-qualify in any position in the securities industry before acting in that capacity. On January 5, 1993 the NASD revoked Gravitt's registration on grounds that he had failed to pay the fine of \$15,000 imposed in August 1993. The revocation was rescinded in October 1996 after Gravitt paid the fine.

On or about September 19, 1996, Gravitt filed an application for registration with this Commission as a floor broker. On October 16, 1996, he withdrew the floor broker application, and filed for registration as a floor trader. On August 15, 1997 he withdrew his floor trader application. On October 6, 1997, Gravitt again filed an application for floor trader registration, and this application is the subject of this proceeding.

The trial of this matter took place on October 27, 1998, in Chicago, Illinois. The parties have filed post-trial briefs, with recommended findings of fact and conclusions of law. This matter is ready for decision.

FINDINGS OF FACT

1. In January 1990 Gravitt, at the age of 25, obtained employment as an account executive for Stuart-James, a securities dealer located in Dallas, Texas. On May 30, 1990, while employed at Stuart-James, Gravitt opened a personal account with Dreyfus Services Corporation. Gravitt deposited no funds in the account, but the very next day \$10,000 was erroneously credited to his Dreyfus account. (Tr. 233-34, 279)
2. Gravitt testified that upon receiving a statement from Dreyfus showing an erroneous deposit of \$10,000 he immediately called Dreyfus and informed someone there that the money was not his. Then, according to Gravitt, he informed the assistant manager of Stuart-James of the error. (Tr. 180-181) Gravitt further testified that he made a second call to Dreyfus and reported the error, and this person supposedly told Gravitt that "...if there is an error, it would go to the benefit of the customer." Both calls, according to Gravitt, were apparently made on recorded lines. He was assured, according to his testimony, that the money was his. (Tr. 181-184)
3. Tracy Hopkins, an employee of Dreyfus at relevant times, testified that \$10,000 was deposited to Gravitt's account on May 31, 1990. She further testified that had the owner of an account reported an erroneous deposit to his account, then Dreyfus would have put a stop on the account until the matter was researched. Research, testified Hopkins, would usually be completed in 24 hours, but that it could take up to three days. Hopkins further testified that Dreyfus had no record of receiving a telephone call from

Gravitt regarding an erroneous deposit. (Tr. 18-19) Hopkins was quite positive in testifying that a Dreyfus employee would not tell a customer that an erroneous deposit belonged to the customer. (Tr. 23)

4. Hopkins identified a letter dated April 8, 1991, and signed by John A. Pellicano of Dreyfus, which noted the erroneous deposit to Gravitt's account on May 31, 1990; that Gravitt had redeemed the funds on July 23, 1990; and that Stuart-James had refunded the money in December 1990. The letter continues to the effect that Dreyfus had no claims against Stuart-James or Gravitt. (DOE Ex. 7)

5. Brian Blakeman, witness for Gravitt, testified that he was a fellow employee of Gravitt at the time in question, and that he recalled overhearing Gravitt inform the assistant office manager, Reed Green, of the erroneous deposit to Gravitt's Dreyfus account. Blakeman stated that it was common knowledge in the Stuart-James office that the mistake had occurred, and that he overheard Reed Green tell Gravitt that if the true owner of the deposit was not located, the money belonged to Gravitt. (Tr. 333-338)

6. Under date of August 14, 1991, Blakeman wrote a letter to the NASD explaining that he had overheard the assistant manager at Stuart-James inform Gravitt that if no one claimed the erroneous deposit, it belongs to Gravitt. The letter also notes that the managers of the Stuart-James office, and many other employees, knew of the erroneous deposit. (Ex. R 2)

7. Blakeman testified that he left the securities industry in 1992, and that on October 26, 1998, he learned for the first time that in October 1993 the NASD had barred him from association with any broker-dealer and imposed a \$30,000 fine for unauthorized trading. (Tr. 339-340)

8. The Division called Reed Green as a rebuttal witness. He testified that he had no recollection of the erroneous deposit of \$10,000 in Gravitt's Dreyfus account, and that he had no verbatim recollection of any discussion with Gravitt concerning the erroneous deposit to Gravitt's Dreyfus account. In fact, Green could not recall Gravitt's name.

(Tr. 387) Green maintained that he would never have advised Gravitt to treat the money as his own. (Tr. 383)

9. In late July 1990 Gravitt had the erroneous deposit wired to his account with Stuart-James, and then transferred the entire amount to his personal account with an Oklahoma bank. (DOE Ex. 5A, 6, 5B, 6, 35; Tr. 185-186, 234, 240-241)

10. Gary Willikey, the manager of the Stuart-James office, called Gravitt to his office in early August 1990, and inquired about the erroneous deposit and the subsequent transfer of the funds to Gravitt's account with an Oklahoma bank. At Willikey's request, Gravitt returned the money to Stuart-James the next day. Gravitt was then terminated. (Tr. 184-188; DOE Ex. 2)

11. By letter dated August 7, 1990, Gravitt informed Dreyfus that there had been an erroneous deposit to his Dreyfus account on May 31, 1990; that Gravitt had transferred the funds in July 1990 to his personal account in an Oklahoma bank; and that the full amount plus interest would be made available to Dreyfus by August 10, 1990. (DOE Ex. 34) The inference is made that Gravitt wrote the letter at the direction of Willikey.

12. In late September 1990 Gravitt, through his attorney, informed Dreyfus that he had transferred \$10,000 to his account at Stuart-James for payment to Dreyfus. It was noted that Gravitt was "shocked" to learn that the funds had not been transferred to

Dreyfus. It was also noted that Gravitt was terminated by Stuart-James immediately after he deposited the funds in the Stuart-James account. (Ex. R-3)

13. On December 19, 1990, Stuart-James, at the request of Dreyfus, returned the \$10,000 to Dreyfus. (Ex.R-4) Thus, the erroneously deposited funds were under the control of Gravitt from May 31, 1990 to August 10, 1990, and under the control of Stuart-James from August 10, 1990 to December 19, 1990.

14. The NASD investigated Gravitt's termination from Stuart-James, and in November 1991 Gravitt accepted and consented to findings by the Association and to a sanction of a censure and a \$3,000 fine. (DOE Ex. 2, pages 38 and 37)

15. Gravitt was employed by a registered broker-dealer, by RAF Financial Corporation, from January 1991 to June 1992. (Tr. 200) Kenneth McArthur became a client of RAF in January 1991, and Gravitt served as his account executive. McArthur had no complaints about Gravitt during the first year of trading, and in fact he enjoyed his conversations with Gravitt. McArthur and Gravitt both testified that the procedure was for Gravitt to obtain McArthur's approval of a trade, and then execute the trade within three to five days after the trade was authorized. (Tr. 47-48, 223)

16. Gravitt left RAF in early June 1992, and the McArthur account was assigned to Max Gould, Jr. Gould testified that he called McArthur shortly after the assignment, at which time McArthur expressed no complaints about Gravitt. (Tr. 284-290) However, McArthur, in a letter dated June 22, 1992 complained that his account had been assigned to another person, and that Gravitt had made unauthorized trades in March 1992. He twice repeated his opinion that "...all you guys are crooks..."(DOE Ex. 44)

Gravitt was not employed by the firm at the time the letter was mailed to RAF. RAF made a \$144 adjustment in favor McArthur, and denied any other relief. (DOE Ex. 33)

17. When asked when he last discussed a purchase or sale with Gravitt, McArthur initially said that it was "Probably in March or April of 1992." After reviewing DOE Exhibit 46, he changed his testimony to show that he last discussed a transaction with Gravitt on March 9, 1992. He then testified that he last discussed a trade with Gravitt on March 8, 1992, at which time he authorized the sale of 500 shares of Pineland (Tr. 49-51)

18. McArthur testified that transactions made on March 11, 12, 16, 27 and 30 were unauthorized and that he may not have done anything after receiving the first confirmation on the claimed unauthorized trades, but that "...after I got another one and I knew I hadn't authorized them, I called RAF." (Tr. 55)

19. Contrary to his earlier testimony that he last spoke with Gravitt on March 8, McArthur said that after receiving the third confirmation slip on the claimed unauthorized trades, he called RAF "...got a hold of him (Gravitt) at one time; and he had opened a margin account...and that's what I was kind of worried about, and he said not to worry about it, and that was probably the end of that conversation." In response to a question from Division counsel, McArthur agreed that this conversation concerned trades he had just referred to, that is, trades made on March 11, 12, 16, 27, and 30. (Tr. 56) McArthur did not complain to RAF or demand a new account executive from the time of these alleged unauthorized trades to the time Gravitt left RAF.

20. Telephone records placed in evidence show two telephone calls between RAF and McArthur on March 9, 1992, one for .7 of a minute, and the second for 2.5 minutes.

(Ex. G. 22 and 23) Gravitt testified that during the longer telephone call, McArthur authorized the Teletek purchase of March 11, and the Anergen transaction of March 12.

(Tr. 220-222; Ex. R 23) On March 10, 1992 there were two telephone calls, one for .3 of a minute and the other for 3.6 minutes. The longer call was made after market close, and Gravitt testified that on this occasion the discussion concerned transactions made on March 11, 12 and 16. (Tr. 223; Ex. G-23)

21. Gravitt further testified that the Pinelands transaction on March 16, a sale, was within the 5 day window agreed to between McArthur and Gravitt, and that he was confident the delay in execution was due to price parameters. (Tr. 224)

22. The evidentiary record contains no records of telephone calls between RAF or Gravitt and McArthur after March 16, 1992, and through March 30, 1992. Counsel for Gravitt represented that the telephone records in evidence, marked as R-22 and R-23, were obtained during the arbitration proceeding. The inference is made that if telephone records presently existed showing that calls were made between RAF and McArthur at any time between March 16, 1992 and March 30, 1992, such records would have been introduced into the record by Gravitt. Likewise, if telephone records existed showing no calls between McArthur and the RAF offices, the Division would have introduced such records.

23. Gravitt left his employment with RAF in June 1992, and did not obtain employment with a securities dealer thereafter.

24. Max Gould, Jr., was a witness for Gravitt. Gould testified that he was currently a branch manager for a securities firm, and that he first met Gravitt in 1991. Gould had worked for RAF from 1985 to 1993, and he left on good terms. Gould testified that he

considered Gravitt to be up front with customers, trustworthy and honest. He further testified that no customer complaints had been filed against Gravitt at the time Gravitt left RAF. (Tr. 284-290) Gould gave credible testimony.

25. According to Gould, McArthur had no complaints about Gravitt until money was lost in liquidating MTC and Aneregen stocks in July or August 1992. McArthur then complained for the first time that Gravitt had purchased the stock without authorization. Gould told McArthur that he should put his complaint in writing and submit it to RAF. (Tr. 291-292)

26. Gould was particularly careful in his dealings with McArthur after McArthur stated he wished to file a complaint. (Tr. 292) Even after that date, Gould took an order from McArthur to purchase stock in another company. (Tr. 292) Gould was unable to continue as McArthur's account executive after MacArthur filed his complaint with NASD in December 1992. Gould believed that he was on "great" terms with McArthur at the time the account was assigned to someone else. (Tr. 293) Gould left RAF in 1993, and did not learn until 1995 that McArthur had amended his NASD complaint to include Gould. He was "stunned" to learn that McArthur had named him as a wrongdoer. (Tr. 296)

27. On learning that McArthur had named him in a complaint, Gould refused to settle, and instead attempted to counter-sue. The arbitration panel ultimately dismissed the complaint against Gould with prejudice. (Tr. 300)

28. NASD personnel had some difficulty in getting in touch with Gravitt regarding the McArthur complaint. When contacted by telephone on December 11, 1992, Gravitt informed the caller that he had received the McArthur complaint from RAF, and had

made a three page response to RAF. The caller informed Gravitt of the importance of notifying the NASD of any address changes, and of the fact that he had to file an answer to any NASD inquiries. Gravitt provided a new address. (DOE Ex. 14, 16)

29. Jackie Whelen, Regional Counsel for the NASD Denver office, testified on behalf of the Division of Enforcement. On receiving the McArthur complaint, Whelan testified that she obtained telephone records from RAF for the month of March 1992. She described the difficulties in locating the correct address of Gravitt, but noted that he had filed a hand-written response to McArthur's charges. (DOE 16) By Complaint issued June 17, 1993 Gravitt was charged with making unauthorized trades for McArthur on five occasions, from March 11, 1992 to March 30, 1992. (DOE Ex. 17)

30. NASD made several efforts to serve Gravitt with the complaint, but to no avail. The NASD office did not send the complaint to the address provided to the NASD by Gravitt on December 11, 1992, and recorded by one Tammy Craven. (DOE Ex. 14; Tr. 14) Instead, the complaint was served on an older address that was known to be incorrect. On August 12, 1993, Gravitt was found guilty of entering five unauthorized trades on McArthur's account. He was censured, fined \$15,000, suspended for 30 days from associating with any member of the NASD, and required to re-qualify in any capacity for which in which he seeks to act in the securities industry. (DOE Ex. 20) Gravitt, of course, did not participate in the NASD proceeding as he had not received actual service of the complaint.

31. McArthur filed an arbitration claim against RAF and Gravitt in September 1992 and did not even mention Gould's name. (DOE 45) In an amended complaint filed March 6, 1995, McArthur charged Gould with making unauthorized trades. (R. Ex. 9)

Gould participated in the proceeding and the claim against him was dismissed with prejudice.

32. Gravitt learned of the outstanding NASD disciplinary judgment against him by reason of a telephone call from Gould in May 1995. (Tr. 212) Gravitt sought counsel who responded to the arbitration claim, and attempted to reopen the disciplinary proceeding. Efforts to re-open the matter were to no avail. (Tr. 213-216) By letter dated October 21, 1996, the NASD confirmed to Gravitt that he had paid the full amount of the \$15,000 outstanding judgment. (Ex. R.19) Upon payment of the fine, the revocation of Gravitt's registration was rescinded. Gravitt also settled McArthur's claim against him for \$2,750. (Tr. 117)

33. David Beardsley was called as a witness for Gravitt. Beardsley had worked for RAF up through 1989, and then purchased a seat on the Chicago Mercantile Exchange. He has since traded S & P 500 Futures as a local trader. (Tr. 306) Beardsley met Gravitt through Gould in 1992. Gravitt was later hired as Beardsley's clerk. Beardsley testified that he considered Gravitt to be totally honest and trustworthy. As to Gravitt's transfer of funds from his Dreyfus account to Gravitt's Oklahoma account, Beardsley expressed the view that it was wrong to intentionally take another person's money. (Tr. 314) Concerning the alleged unauthorized trades on the McArthur account, Beardsley stated that "...I don't believe the situation calls for remorse" but then stated that Gravitt wished he had handled things differently. (Tr. 314-315)

34. Jill Eklund testified on behalf of Gravitt. She has worked for 14 years with her present employer, and is now vice president and chief financial officer for RB&H Financial Services. Eklund agreed to serve as the sponsor of Gravitt should he be

conditionally registered. Eklund further testified that she had sponsored one other person in the past, and that she currently manages 160 floor traders qualified with her firm.

Eklund was quite aware that there was liability in sponsoring a person. (Tr. 324-327)

35. John Oberman, co-owner and active manager of Chicago Futures Group at the Chicago Mercantile Exchange, testified on behalf of Gravitt. According to Oberman, Gravitt, as a pit clerk, would transmit orders for millions of dollars in the stock market. He gave instances in which Gravitt's honesty, competency, and reliability prevented large out trades, and produced the right results. In sum, Oberman felt that Gravitt was dependable, honest, and qualified to serve as a registrant. (Tr. 357-364)

36. Matthew Morgan testified on behalf of Gravitt. Morgan is a member of the Chicago Mercantile Exchange, and trades S & P 500 stock futures. Gravitt helped Morgan record transactions at a time Morgan had arm surgery and could not write clearly. Morgan testified that Gravitt was honest, trustworthy, reliable, and respected by persons he dealt with on the floor of the exchange. He testified without equivocation that Gravitt would not be a threat to the public if registered as a floor trader. Morgan expressed the view that Gravitt had learned how important it was to provide forwarding addresses. (Tr. 342-344)

37. It is concluded that the evidence adduced at trial, and set out in the findings above, mitigates the seriousness of the wrongdoing underlying Gravitt's statutory disqualification.

38. It is concluded that the record contains probative evidence that Gravitt has undergone rehabilitation since the time of the wrongdoing underlying the statutory disqualification.

39. It is further concluded that the conditioned registration of Gravitt as a floor trader will protect the public from harm, and that his registration will not pose a threat to the industry.

DISCUSSION

This statutory disqualification case is predicated essentially on two bad acts by Gravitt: 1) transferring \$10,000 erroneously credited to his personal account with a brokerage firm to his private banking account and 2) a finding by the NASD that he made five unauthorized trades for a customer in 1992. A third bad act charged is that Gravitt did not pay the \$15,000 fine, imposed for unauthorized trading in August 1993, until October 1996. It is undisputed that Gravitt paid the fine once he became aware that it had been imposed.

Three fact witnesses appeared and gave first hand testimony concerning the erroneous deposit: Gravitt, the applicant; Bryan Blakeman, a co-worker of Gravitt in the Stuart-James office at the time the erroneous deposit occurred; and Reed Green, the assistant manager of the Stuart-James office that employed Gravitt. None is currently engaged in the securities business. Green's testimony provided little help to the Division of Enforcement or Gravitt. Green could not even remember Gravitt's name. He made it clear, however, that he would never have told anyone that erroneous deposits would automatically become the property of an account owner. Gravitt and Blakeman both testified that Gravitt talked openly about the matter. The deposit occurred on May 31,

1990. Gravitt testified that shortly after learning of the erroneous deposit, he made two calls to Dreyfus to report the matter, and that the calls were made on what appeared to be recorded lines. He claims that Dreyfus told him that the money would be his if no one claimed it. It may be that Gravitt hoped that would be the case. While Gravitt may have called Dreyfus with some general inquiry as to the handling of misplaced funds, it is unlikely that Gravitt, prior to August 1990, provided anyone at Dreyfus with all relevant facts, such as his name, his account number, the date and the amount of the erroneous deposit, and so on.

Contrary to paragraph 6 of the Complaint, Dreyfus at no time ordered Gravitt to leave the funds in his Dreyfus account "...until the true owner of the funds"... was identified. Dreyfus did not even learn of its own mistake until it received a letter from Gravitt in early August 1990, a letter written at the direction of the Stuart-James manager. Dreyfus was again informed of the mishandling of this deposit when Gravitt's attorney, by letter dated September 25, 1990, reported that his client was "shocked" to learn that Stuart-James had not returned the funds to Dreyfus. On December 18, 1990, Dreyfus finally made a request for the return of the funds, and Stuart-James sent a check for \$10,000 to Dreyfus the next day. The misplaced funds were in accounts controlled by Gravitt from May 31, 1990 to August 10, 1990, slightly more than two months. For the next four months, from August 10, 1990 to December 19, 1990, the misplaced funds were under the control of Stuart-James. Dreyfus, by letter dated April 8, 1991, finally responded to the September 1990 letter from Gravitt's attorney, noting that "...Mr. Gravitt is in good standing with our company." Hopkins, a most impressive witness, testified that it would take 24 hours to three days to research a matter such as a

misdirected deposit. We find in the instant case that the deposit occurred on May 31, 1990; that notice certainly was provided to Dreyfus on or before August 10; and that the problem was not resolved prior to December 18, 1990, when Dreyfus requested the return of the funds from Stuart-James. In fact, this record does not show that the erroneous deposit was ever returned to the proper owner.

But that was not the end of the story. The NASD, on receiving Stuart-James' termination notice on Gravitt, initiated a disciplinary proceeding. Gravitt was censured, fined, and suspended for mishandling the \$10,000 erroneous deposit to his Dreyfus account. That misplaced deposit of \$10,000 in Gravitt's Dreyfus account has produced nothing but grief for Gravitt.

Gravitt's next visit with misfortune has to do with Kenneth McArthur, a customer of RAF, a securities firm. McArthur, by his own admission, has a low opinion of account executives in the securities business, and at trial he testified that he told Gravitt, before opening his RAF account, that "...all of you are crooks...", and confirmed that he was referring to those in the securities business. Despite that seemingly negative view of the securities industry McArthur opened an account with RA.F. in 1991, with Gravitt as his account executive. McArthur, who had traded securities through two other firms beforehand, testified that for the first year he got along well with Gravitt and enjoyed talking with him. His discontent arose from losses on his account, losses realized after Gravitt's departure from RAF. McArthur's unconvincing testimony and the telephone records in evidence lead to the conclusion that Gravitt received authorization for the March 11, 12, and 16 trades. Granted that the March 16 telephone call occurred after the close of the market, the transaction occurred within the time frame subscribed to by

McArthur and Gravitt, and the call may have been to inform McArthur about the results of the trade. In sum, there is persuasive evidence in the record to support a finding that the March 11, 12 and 16 transactions were authorized.

Gravitt testified that the trades made on March 27 and March 30 were also authorized. However, there are no telephone records showing communications between the two on or about those dates. It is clear from the record that McArthur failed to lodge a complaint of unauthorized trading after he received confirmation statements on the March 27 and 30 trades. Gould testified that the McArthur account was assigned to him in June 1992, shortly after Gravitt left the firm, and that pursuant to company policy he made a telephone call to McArthur within 48 hours after being assigned the account. Gould testified that McArthur had nothing negative to say about Gravitt during this telephone conversation. Months later, when the account began to lose money, McArthur for the first time complained that Gravitt had placed unauthorized trades on the account. In accord with company policy, Gould advised McArthur to file a written complaint of any unauthorized trades with the RAF branch manager. McArthur followed Gould's advice and in September 1992 filed a complaint with RAF. That complaint contains not one word about alleged wrongdoing on the part of Gould. Nevertheless, when McArthur filed his complaint with the NASD in December 1992 he named RAF, Gravitt and Gould as wrongdoers. Gould testified that he was "stunned" when he learned of this some two years after the fact. Naming Gould as a wrongdoer in the NASD complaint, and the ultimate dismissal of all charges against Gould, serves to erode the credibility of McArthur's charges against Gravitt and Gould.

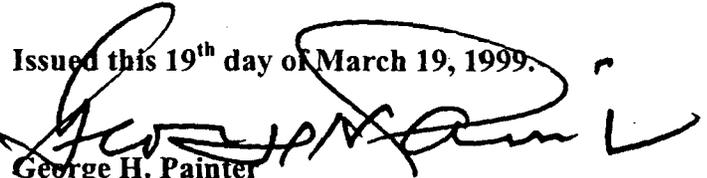
The NASD determined that Gravitt entered unauthorized trades on McArthur's account and nothing in this decision will alter that outcome. How much weight to accord that decision is another matter. McArthur was simply not a credible witness. Gravitt paid a heavy penalty, including a \$15,000 fine, because of his sloppiness in providing NASD with his address changes. Gravitt first learned of the fine in May 1995, and he paid off the fine in installments, the last paid in October 1996. After paying that fine, the NASD rescinded the revocation of his license. Gravitt ultimately settled the arbitration claim by McArthur.

The offenses that led to the NASD sanctions against Gravitt (excluding the late payment of the 1993 fine) occurred more than seven years ago. In the intervening time, Gravitt has led a productive life, and his associates and employers attest to his good standing in the business community. Gould was unstinting in his assessment of Gravitt's integrity, competency and honesty. Beardsley, a floor trader on the Chicago Mercantile Exchange, echoed those sentiments, and testified without equivocation that Gravitt was totally honest and trustworthy. Beardsley, who employs Gravitt as a clerk, expressed total confidence in Gravitt's honesty, competency, and reliability. John Oberman, co-owner and manager of Chicago Futures Group, testified that he had complete confidence in Gravitt's handling of huge orders as a pit clerk. He provided instances in which Gravitt clearly earned his reputation for honesty, competence and reliability. Jill Eklund, vice president and chief financial officer for RB&H, has worked for her current employer for 14 years. She agreed to serve as the sponsor of Gravitt should he be conditionally registered. Eklund has sponsored another person in the past, and she currently manages 160 floor traders qualified with her firm. Eklund proved to be a most

impressive witness. She was aware that in sponsoring an individual she is subject to some liability. A professional with Eklund's reputation and status would not assume sponsorship of an unreliable person with a propensity to violate the law. Matthew Morgan, a floor trader with the Chicago Mercantile Exchange, testified without equivocation that Gravitt would not be a threat to the public if registered as a floor trader. Morgan did opine that Gravitt had learned the importance of providing forwarding addresses to regulatory authorities.

ORDER

John Lee Gravitt's application for registration as a floor trader is **GRANTED**, subject to the conditions set forth in the Sponsor Certification Statement entered in evidence as exhibit R-21.

Issued this 19th day of March 19, 1999.

George H. Painter
Administrative Law Judge