

STATE OF OKLAHOMA  
DEPARTMENT OF SECURITIES  
FIRST NATIONAL CENTER, SUITE 860  
120 NORTH ROBINSON  
OKLAHOMA CITY, OKLAHOMA 73102



In the Matter of:

Kimberly Securities, Inc., Kimberly Jean Misaraca  
aka Kimberly Carrella, Michael C. Robbins,  
John Patrick Donovan II, Anthony J. Giunta,  
and Philip Joseph Hourican,

Respondents.

File No. ODS 01-193

**AFFIDAVIT OF COMPLIANCE**  
**AND**  
**NOTICE OF SERVICE ON THE ADMINISTRATOR**

STATE OF OKLAHOMA    )  
                                          )  
COUNTY OF OKLAHOMA)    SS.

The undersigned affiant, of lawful age, being first duly sworn upon oath deposes and states:

1. That he is the Administrator of the Oklahoma Department of Securities (Department).

2. A copy of the Notice of Opportunity for Hearing (Notice) with the Recommendation to Revoke Registration (Recommendation) attached was delivered to Affiant in the office of the Administrator pursuant to Section 413(g) of the Oklahoma Securities Act (Act), Okla. Stat. tit. 71, §§ 1-413, 501, 701-703 (1991 & Supp. 2000).

3. A copy of the Notice, with the Recommendation attached, is being sent this 21st day of December, 2001, by certified mail, return receipt requested, delivery restricted to addressees, to the last known address of Kimberly Securities, Inc., (Kimberly) Kimberly Jean Misaraca aka Kimberly Carrella (Misaraca) Michael C. Robbins (Robbins), John Patrick Donovan II (Donovan), Anthony J. Giunta (Giunta), and Philip Joseph Hourican (Hourican) in compliance with Section 413(g) of the Act.

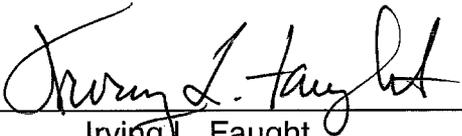
4. This Affidavit of Compliance shall serve as notice to Kimberly, Misaraca, Robbins, Donovan, Giunta and Hourican that service of process has been effected on Kimberly, Misaraca, Robbins, Donovan, Giunta, and Hourican by service on the Administrator pursuant to Section 413(g) of the Act.

5. That this Affidavit of Compliance is declared filed of record as of the date set forth below in compliance with Section 413(g) of the Act.

FURTHER AFFIANT SAYETH NOT.

Dated this 21st day of December, 2001.

(SEAL)

  
\_\_\_\_\_  
Irving L. Faught  
Administrator

Subscribed and sworn to before me this 21st day of December, 2001.

(NOTARY SEAL)

  
\_\_\_\_\_  
Brenda Gordon Smith  
Notary Public

My Commission Expires:

August 26, 2005

STATE OF OKLAHOMA  
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**NOTICE OF OPPORTUNITY FOR HEARING**

1. Pursuant to his authority under Section 405 of the Oklahoma Securities Act (Act), Okla. Stat. tit. 71, §§ 1-413, 501, 701-703 (1991 & Supp. 2000), the Administrator of the Oklahoma Department of Securities (Department) authorized an investigation into the registration of Kimberly Securities, Inc., (Kimberly), Kimberly Jean Misaraca aka Kimberly Carrella (Misaraca), Michael C. Robbins (Robbins), John Patrick Donovan II (Donovan), Anthony J. Giunta (Giunta) and Philip Joseph Hourican (Hourican).

2. On the 21st day of December, 2001, the attached Recommendation to Revoke Registration (Recommendation) was left in the office of the Administrator.

3. Pursuant to Section 406(b) of the Act, the Administrator hereby gives notice to Kimberly, Misaraca, Robbins, Donovan, Giunta and Hourican of their right to request a hearing to show why an order based on the Recommendation should not be issued.

4. The request for a hearing on the Recommendation must be received by the Administrator within fifteen (15) days after service of this Notice. Pursuant to Section 406(b) of the Act, failure to request a hearing as provided for herein shall result in the issuance of an order to revoke the registration of Kimberly, Misaraca, Robbins, Donovan, Giunta and Hourican under the Act.

5. The request for hearing shall be in writing and Kimberly, Misaraca, Robbins, Donovan, Giunta and Hourican shall specifically admit or deny each allegation in said request as required by 660:2-9-1(c) of the Rules of the Oklahoma Securities Commission and the Administrator of the Department of Securities (Rules).

6. Upon receipt of a written request, pursuant to 660:2-9-2 of the Rules, a hearing on this Notice shall be set within sixty (60) days or a written order denying hearing shall be issued.

7. Notice of the date, time and location of the hearing shall be given to Kimberly, Misaraca, Robbins, Donovan, Giunta and Hourican not less than ten (10) days in advance thereof pursuant to 660:2-9-3(a) of the Rules. Additionally, the notice may contain matters to supplement this Notice and the Recommendation attached hereto.

Witness my Hand and the Official Seal of the Oklahoma Department of Securities this 21st day of December, 2001.

(SEAL)



IRVING L. FAUGHT, ADMINISTRATOR OF THE  
OKLAHOMA DEPARTMENT OF SECURITIES

CERTIFICATE OF MAILING

The undersigned hereby certifies that on the 21st day of December, 2001, a true and correct copy of the above and foregoing Notice of Opportunity for Hearing and attached Recommendation to Revoke Registration was mailed by certified mail, return receipt requested, delivery restricted, with postage prepaid thereon addressed to:

Kimberly Securities, Inc.  
775 Park Ave., Suite 145  
The Huntington Atrium  
Huntington, NY 11743

Kimberly Jean Misaraca  
775 Park Ave., Suite 145  
The Huntington Atrium  
Huntington, NY 11743

Michael C. Robbins  
The Huntington Atrium  
775 Park Ave., Suite 145  
Huntington, NY 11743

John Patrick Donovan II  
The Huntington Atrium  
775 Park Ave., Suite 145  
Huntington, NY 11743

Anthony J. Giunta  
The Huntington Atrium  
775 Park Ave., Suite 145  
Huntington, NY 11743

Philip Joseph Hourican  
The Huntington Atrium  
775 Park Ave., Suite 145  
Huntington, NY 11743

Kimberly Jean Misaraca  
54 Association Ave.  
Bellport, NY 11713

Kimberly Jean Misaraca  
31 Harbour Dr.  
Blue Point, NY 11715

Michael C. Robbins  
166 Auburn Ave.  
Shirley, NY 11950

John Patrick Donovan II  
24 Indiana Ave.  
North Babylon, NY 11706

Anthony J. Giunta  
92 Shinnecock Ave.  
Mastic, NY 11950

Philip Joseph Hourican  
87 Hitherdell Lane  
North Babylon, NY 11703

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**RECOMMENDATION TO REVOKE  
REGISTRATION**

Pursuant to the Oklahoma Securities Act (Act), Okla. Stat. tit. 71, §§ 1-413, 501, 701-703 (1991 & Supp. 2000), an investigation was conducted into the registrations under the Act of Kimberly Securities, Inc., (Kimberly), Kimberly Jean Misaraca aka Kimberly Carrella (Misaraca), Michael C. Robbins (Robbins), John Patrick Donovan II (Donovan), Anthony J. Giunta (Giunta) and Philip Joseph Hourican (Hourican). Based thereon, the following Findings of Fact, Authorities and Conclusions of Law are submitted to the Administrator of the Oklahoma Department of Securities (Administrator) in support of the issuance of an order to revoke the registration under the Act of Kimberly as a broker-dealer and the registrations of Misaraca, Robbins, Donovan, Giunta and Hourican as agents of a broker-dealer.

**Findings of Fact**

1. Kimberly, Central Registration Depository System (CRD) No. 19241, became registered as a general securities broker-dealer with the National Association of Securities Dealers, Inc. (NASD) on April 28, 1987. Kimberly became registered as a general securities broker-dealer under the Act on May 5, 1987.

2. Misaraca, CRD No. 2879704, is the president of Kimberly. Misaraca was registered under the Act as an agent of Kimberly on June 13, 2000. Misaraca became registered in the capacity of a general securities principal with the NASD on February 3, 2000. Misaraca's registration as a general securities principal with the NASD was terminated on January 11, 2001. Misaraca again became registered with the NASD in the capacity of a general securities principal on July 9, 2001.

3. Robbins, CRD No. 4206092, was registered under the Act as an agent of Kimberly on May 14, 2001.

4. Donovan, CRD No. 2967475, was registered under the Act as an agent of Kimberly on June 13, 2000. Donovan terminated his employment with Kimberly on May 29, 2001.

5. Giunta, CRD No. 4199665, was registered under the Act as an agent of Kimberly on June 5, 2001.

6. Hourican, CRD No. 2068322, was registered under the Act as an agent of Kimberly from June 13, 2000 until July 25, 2000, and from June 5, 2001 to the present.

7. According to Kimberly's Written Supervisory Procedures Manual (Manual), dated February 4, 2000, Yuri T. Hanja (Hanja) and Misaraca were designated joint principals for Kimberly. Hanja terminated his employment with Kimberly on August 2, 2000, leaving Misaraca as the designated principal responsible for supervising the activities of Kimberly's agents and enforcing Kimberly's supervisory systems.

8. The Manual provides that "Every RR [registered representative] must be registered in each state in which he conducts business and is prohibited from soliciting or doing business in any state in which he is not registered." The Manual further provides that the designated principal should be watchful for problems such as the "failure to register persons required to be registered or permitting a person required to be registered to function as a registered representative before the registration becomes effective." Further, the Manual provides that the Designated Principal "is responsible for the administration and supervision of the software program to comply with the blue sky registrations of the firm and RRs."

### **Michael C. Robbins**

9. On March 14, 2001, M. Rinker (Rinker), an Oklahoma resident, received an unsolicited telephone call (or "cold-call" as that term is used in the industry) from Robbins. Robbins introduced himself and told Rinker about how much money he (Robbins) had made for other people, how much money he could make for Rinker and how he could change Rinker's life. Robbins recommended that Rinker purchase shares of common stock in Valicert Inc. (VLCT). On March 14, 2001, Kimberly and Robbins purchased 200 shares of Valicert Inc. common stock for Rinker's account. Misaraca approved Rinker's new account form.

10. Subsequent to Rinker's purchase of Valicert Inc. common stock, Robbins called Rinker on an almost daily basis attempting to persuade Rinker to make additional purchases of stock. On April 17, 2001, Kimberly and Robbins purchased 100 shares of common stock in Intel Corp. (INTC) for Rinker's account. On April 23, 2001, Kimberly and Robbins purchased 350 shares of common stock in Ariba Inc. (ARBA) for Rinker's

account. On May 10, 2001, Kimberly and Robbins purchased 200 shares of common stock in Ciena Corp. (CIEN) for Rinker's account.

11. On numerous occasions, Rinker advised Robbins that he did not want to purchase any stock unless he could "pay for it with cash." On May 17, 2001, Robbins telephoned Rinker and recommended that Rinker purchase additional shares of common stock in Ciena Corp. Rinker told Robbins that he did not want to purchase the stock and that he did not want to make any further trades in his account. Disregarding Rinker's instructions, Kimberly and Robbins purchased Ciena Corp. common stock, on margin, for Rinker's account. Shortly thereafter, Rinker received a confirmation notice reflecting that he had made a margin purchase of 200 shares of Ciena Corp. common stock as of May 17, 2001.

12. On March 28, 2001, Kimberly and Robbins purchased 1000 shares of common stock in Valicert Inc. for the account of J. Williams (Williams), an Oklahoma resident. On May 8, 2001, Kimberly and Robbins sold 100 shares of common stock in Valicert Inc. from Williams' account and sold 400 shares of Ariba Inc. from Williams' account. Misaraca approved Williams' new account form.

13. On March 30, 2001, Kimberly and Robbins sold 200 shares of common stock in Valicert Inc. for the account of J. Willis (Willis), an Oklahoma resident. Between April 16, 2001, and May 7, 2001, Kimberly and Robbins executed nine (9) additional trades for Willis. Misaraca approved Willis' new account form.

14. On April 3, 2001, Kimberly and Robbins purchased 100 shares of common stock in Valicert Inc. for the account of M. Alexander (Alexander), an Oklahoma resident. Between April 16, 2001, and May 2, 2001, Kimberly and Robbins executed an additional five (5) trades in Alexander's account. Misaraca approved Alexander's new account form.

### **John Patrick Donovan II**

15. On January 10, 2001, J. Miller (Miller), an Oklahoma resident, received an unsolicited telephone call from Donovan. Donovan advised Miller that the price of the common stock of Valicert Inc. would double or triple within sixty (60) days. Miller agreed to purchase 1000 shares of Valicert Inc. The purchase was made on January 10, 2001. Misaraca approved Miller's new account form.

16. Over the next few weeks, Miller authorized trades in his account in accordance with Donovan's recommendations. On February 13, 2001, Miller telephoned Donovan and requested Donovan to sell all of the stocks in his Kimberly account and to send him the proceeds. Instead, Kimberly and Donovan executed one (1) or more unauthorized trades in Miller's account between February 13, 2001, and March 31, 2001.

**Anthony J. Giunta**

17. On or about March 30, 2001, Kimberly and Giunta purchased 400 shares of common stock in Valicert Inc. for the account of B. Henderson, an Oklahoma resident. On or about April 2, 2001, Kimberly and Giunta purchased 100 shares of common stock in Ariba Inc. for the account of Henderson. On or about April 2, 2001, Kimberly and Giunta sold Henderson's common stock in Valicert Inc. Misaraca approved Henderson's new account form.

18. On or about April 19, 2001, Kimberly and Giunta purchased 500 shares of common stock in Valicert Inc. for the account of P. Hubbard (Hubbard), an Oklahoma resident. On or about April 26, 2001, Kimberly and Giunta sold Hubbard's common stock in Valicert Inc. Misaraca approved Hubbard's new account form.

**Philip Joseph Hourican**

19. On or about April 27, 2001, Kimberly and Hourican purchased 100 shares of common stock in Valicert Inc. for the account of P. Hurlburt (Hurlburt), an Oklahoma resident. On or about May 8, 2001, Kimberly and Hourican purchased 2,000 shares of common stock in Ariba Inc. for the account of Hurlburt. On or about May 8, 2001, Kimberly and Hourican sold Hurlburt's common stock in Ariba. Misaraca approved Hurlburt's new account form.

20. On or about April 12, 2001, Kimberly and Hourican purchased 100 shares of common stock in Valicert Inc. for the account of T. Sweatte (Sweatte), an Oklahoma resident. Misaraca approved Sweatte's new account form.

**Kimberly Jean Misaraca**

21. At Misaraca's request, on or about April 26, 2001, L. Brown (Brown), an Oklahoma resident, filled out an Option Account Information Form. Brown mailed the completed form to Kimberly. When Kimberly returned a copy of the form to Brown, the information on the form had been altered to reflect that Brown had past investment experience in options, stocks and bonds.

22. Misaraca willfully failed to supervise the registration status and activities of Kimberly agents as required by the Manual.

23. Based upon the foregoing, it is in the public interest to revoke the registration of Kimberly as a broker-dealer and of Misaraca, Robbins, Donovan, Giunta, and Hourican, as agents of a broker-dealer.

24. To the extent any of these Findings of Fact are more properly characterized as Conclusions of Law, they should be so considered.

## Authorities

1. Section 2 of the Act provides in pertinent part:

- (d) "Agent" means any individual other than a broker-dealer who represents a broker dealer or issuer in effecting or attempting to effect purchases or sales of securities.

\* \* \*

- (t)(2) "Offer" or "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value.

\* \* \*

- (v) "Security" means any:

\* \* \*

(2) stock[.]

2. Section 201 of the Act provides in pertinent part:

- (a)(1) It is unlawful for any person to transact business in this state as a broker-dealer or agent unless the person is so registered under this act or unless the person is exempt from registration as provided in paragraph (2) or (3) of this subsection.
- (b) It is unlawful for any broker-dealer or issuer to employ an agent unless the agent is registered or is exempt from registration.

3. Section 204 of the Act provides in part:

- (a) The Administrator may issue a final order denying effectiveness to, or suspending or revoking the effectiveness of, any registration or impose any sanction authorized by Section 406 of this title if the Administrator 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:

\* \* \*

(2) has willfully violated or willfully failed to comply with any provision of the Oklahoma Securities Act or a predecessor act or any rule or order under this act or a predecessor act;

\* \* \*

(8) has engaged in dishonest or unethical practices in the securities business;

\* \* \*

(12) has failed to exercise reasonable supervision of its agents if a broker-dealer or a designated principal, or of its investment adviser representatives if an investment adviser to ensure compliance with the Oklahoma Securities Act[.]

4. 660:10-5-42 of the Rules provides in part:

(a) Purpose. This rule is intended to be in definition of the phrase "unethical practices in the securities business" as set forth in Section 204(a)(2)(G)[(a)(8)] of the Securities Act. Any noncompliance with the Standards of Ethical Practices specified in this Section will constitute unethical practices in the securities business, as the same is set forth in Section 204(a)(2)(G)[(a)(8)] of the Securities Act. The standards shall be interpreted in such manner as will aid in effectuating the policy and provisions of the Securities Act, and so as to require that all practices of broker-dealers, and their agents in connection with their activities in this state shall be just, reasonable and not unfairly discriminatory. The standards shall not be construed to apply to contracts made prior to the effective date hereof. The standards set forth in this Section shall apply to all broker-dealers and their agents if applicable. A broker-dealer or agent whose registration has been suspended shall be considered as nonactive during the period of suspension for purposes of applying the provisions of the standards. Nevertheless, such persons shall have all of the obligations imposed by the Securities Act, these Standards of Ethical Practices and other applicable rules and regulations of the Administrator and/or the Commission.

(b) Standards.

(1) A broker-dealer and his agents, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade. A broker-dealer and his agents shall not violate any rule of a national securities exchange or national securities association of which it is a member with

respect to any customer, transaction or business effected in this state.

(2) In recommending to a customer the purchase, sale or exchange of any security, the broker-dealer and his agents shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs. Prior to making a recommendation to a customer a broker-dealer shall also make reasonable efforts to obtain information concerning the customer's financial background, tax status, and investment objectives, and such other information used or considered to be reasonable and necessary by such broker-dealer or registered agent in making such recommendation.

\* \* \*

(13) The following standards shall apply to discretionary accounts:

\* \* \*

(B) No broker-dealer or agent of a broker-dealer shall exercise any discretionary power in a customer's account unless such customer has given prior written authorization to a stated individual or individuals and the account has been accepted by the broker-dealer, as evidenced in writing by the broker-dealer or the partner, officer, or manager duly designated by the broker-dealer, in accordance with paragraph (22) hereof.

\* \* \*

(22) The following standards shall apply to supervisory procedures:

(A) Each broker-dealer shall establish, maintain and enforce written procedures which will enable it to supervise properly the activities of each registered agent and associated person to assure compliance with applicable securities laws, rules, regulations and statements of policy promulgated by the Administrator and/or the Commission under the Securities Act.

(B) Final responsibility for proper supervision shall rest with the broker-dealer, the principal(s) of the broker-dealer registered in accordance with 660:10-5-11, and the principal(s) of the broker-dealer in each OSJ, including the

main office, and the registered representatives in each non-OSJ branch office designated by the broker-dealer to carry out the supervisory responsibilities assigned to that office by the broker-dealer pursuant to the rules and regulations of the NASD. A copy of the written supervisory procedures shall be kept in each office of supervisory jurisdiction and each non-OSJ branch office.

(C) Each broker-dealer shall be responsible for keeping and preserving appropriate records for carrying out such broker-dealer's supervisory procedures. Each broker-dealer shall review and endorse in writing, on an internal record, all transactions and all correspondence of its registered agents pertaining to the solicitation or execution of any securities transaction.

### **Conclusions of Law**

1. Shares of common stock of Valicert Inc., Intel Corp., Juniper Networks, Ariba Inc. and Ciena Corp. are securities as defined by Section 2(v) of the Act.

2. Kimberly, Misaraca, Robbins, Donovan, Giunta and Hourican offered and/or sold securities to Oklahoma residents.

3. Robbins, Giunta and Hourican transacted business in this state as agents of Kimberly while not registered under the Act, in violation of Section 201 of the Act. Based thereon, and based on Section 204 of the Act, the Administrator is authorized to impose any sanction set forth in Section 204 of the Act.

4. Kimberly has employed, supervised, or been represented by or associated with unregistered agents in violation of Section 201 of the Act.

5. Kimberly, Misaraca, Robbins and Donovan engaged in dishonest or unethical practices in the securities business as defined in 660:10-5-42 of the Rules. Based thereon, and based on Section 204, the Administrator is authorized to impose any sanction set forth in Section 204 of the Act.

6. Kimberly willfully failed to properly supervise the activities of Misaraca to assure her compliance with the Act, in violation of 660:10-5-42 of the Rules. Based thereon, and based on Section 204 of the Act, the Administrator is authorized to impose any sanction set forth in Section 204 of the Act.

7. Misaraca, as the president of Kimberly and acting in the capacity of a supervisor without benefit of registration, willfully failed to properly supervise the activities of Robbins, Donovan, Giunta and Hourican to assure their compliance with the Act, in violation of 660:10-5-42 of the Rules. Based thereon, and based on Section 204

of the Act, the Administrator is authorized to impose any sanction set forth in Section 204 of the Act.

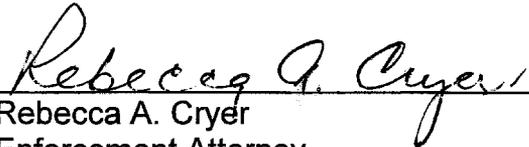
8. It is in the public interest to revoke the registration of Kimberly as a broker-dealer under the Act and the registrations of Misaraca, Robbins, Donovan, Giunta and Hourican as agents under the Act.

9. To the extent any of these Conclusions of Law are more properly characterized as Findings of Fact, they should be so considered.

**WHEREFORE**, it is recommended that the Administrator issue a final order to revoke the registration of Kimberly as a broker-dealer under the Act and the registrations of Misaraca, Robbins, Donovan, Giunta and Hourican as agents under the Act and/or impose any other sanctions as deemed appropriate and as authorized by the Act.

Dated this 21<sup>st</sup> day of December, 2001.

Respectfully Submitted,

  
\_\_\_\_\_  
Rebecca A. Cryer

Enforcement Attorney  
Oklahoma Department of Securities  
120 North Robinson, Suite 860  
Oklahoma City, OK 73102  
(405) 280-7700