

**BEFORE THE COMMISSIONER OF COMMERCE AND INSURANCE  
OF THE STATE OF TENNESSEE AT NASHVILLE**

<b>TENNESSEE SECURITIES DIVISION,</b>	)	
	)	
<b>Petitioner,</b>	)	
	)	
<b>vs.</b>	)	<b>File No. 98-003</b>
	)	
<b>NATIONSSECURITIES,</b>	)	
	)	
<b>Respondent.</b>	)	

**CONSENT ORDER**

The Tennessee Securities Division (the "Division") and NationsSecurities agree to the entry of this Consent Order in accordance with Tenn. Code. Ann. § 48-2-116 of the Tennessee Securities Act, as amended, Tenn. Code Ann. §§ 48-2-101, et seq. (the "Act"), which states that the Commissioner of Commerce and Insurance (the "Commissioner"), from time to time, may make such orders as are necessary to carry out the provisions of the Act.

**FINDINGS OF FACT**

1. The Act places the responsibility for its administration upon the Commissioner. The Division is the lawful agent through which the Commissioner discharges his responsibilities. Tenn. Code Ann. § 48-2-115.

2. NationsSecurities (CRD 32542) was registered as a broker-dealer with the Division pursuant to the Act at all times relevant to this Order. NationsSecurities was registered with the Division since 1993. NationsSecurities

was acquired as of January 1, 1998, by NationsBanc Investments, Inc., which maintains its business address at 101 South Tryon Street, Charlotte, North Carolina 28255.

3. On September 11, 1995, then Assistant Commissioner for the Division, Kenneth T. McClellan, entered an Order of Investigation into the sales practices of NationsSecurities and its Tennessee-based agents in relation to two investment products, Nations Government Income Trust 2003, Inc. ("2003") and Nations Government Income Trust 2004, Inc. ("2004"). On July 30, 1996, Assistant Commissioner McClellan entered an Order amending and supplementing his Order of September 11, 1995.

4. NationsSecurities, through its Tennessee-based agents, sold shares of 2003 and 2004 to approximately 767 Tennessee residents.

5. Were the Division to institute an administrative proceeding against NationsSecurities on the basis of the results of its investigation, the following would be alleged:

- a. NationsSecurities, through its Tennessee-based agents, sold 2003 and 2004 to some Tennessee investors, for which the securities were unsuitable;
- b. NationsSecurities, through its Tennessee-based agents, made untrue statements of material facts and omitted necessary material facts to some Tennessee investors regarding the nature and structure of 2003 and 2004 and the potential risks associated with the two products; and

- c. NationsSecurities failed to reasonably supervise its Tennessee-based agents.

6 Were the Division to institute administrative proceedings against NationsSecurities on the allegations set forth in paragraph 5, supra, NationsSecurities would respond as follows:

- a. NationsSecurities did not sell 2003 or 2004 to Tennessee investors for whom the securities were unsuitable for their investment objectives
- b. NationsSecurities did not make any untrue statements as to material facts nor omit necessary material facts regarding the nature and structure of 2003 and 2004 or the potential risks associated with the two products; and
- c. NationsSecurities did not fail to reasonably supervise its Tennessee-based agents.

### CONCLUSIONS OF LAW

7. Pursuant to Tenn. Code. Ann. § 48-2-115(a), the Commissioner has the responsibility for administering the Act. The Division is the lawful agent through which the Commissioner discharges his responsibilities.

8. Pursuant to Tenn. Code Ann. § 48-2-112(a)(2)(B), the Commissioner may by order deny, suspend or revoke any registration under this part if the Commissioner finds that the order is in the public interest and for the protection of investors and if he finds that the registrant, or in the case of a broker-dealer, any

officer, director or any person occupying a similar status or performing similar functions, has willfully violated or willfully failed to comply with any provision, rule or order under the Act.

9. Rule 0780-4-3-.02(6)(a) states, in pertinent part, that the following shall be deemed a violation of the Act by a broker-dealer: "...(3.) Recommending to a customer the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the customer on the basis of the information furnished by the customer after reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other information known by the broker-dealer.'

Tenn. Code Ann. § 48-2-121(a) [prior to May 2, 1997] stated, in pertinent part, that it "is unlawful for any person, in connection with the sale or purchase of any security in this state, directly or indirectly, to: .. (2) make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statement made, in the light of the circumstances under which they are made, not misleading ..

Tenn. Code Ann. § 48-2-112(a)(2)(J) provides that the Commissioner may by order deny, suspend or revoke any registration under this part if the Commissioner finds that the order is in the public interest and for the protection of investors and if he finds that the registrant has failed to supervise reasonably such person's agents if the person is a broker-dealer.

12. If proven true, the allegations of paragraph 7(a), (b), or (c), supra, would constitute practices by NationsSecurities which would authorize entry of an

order of sanctions against NationsSecurities pursuant to Tenn. Code Ann. § 48-2-112(a)(2)(B) or Tenn. Code Ann. § 48-2-112(a)(2)(J).

13. If the Division failed to prove any of the allegations contained in paragraph 7(a), (b), or (c), supra, no entry of an order of sanctions would be appropriate.

### **ORDER**

NOW, THEREFORE, on the basis of the foregoing, and NationsSecurities' waiver of its right to a hearing, and if necessary, an appeal under the Tennessee Securities Act and Tennessee's Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-101 et seq., and NationsSecurities' admission of jurisdiction of the Commissioner, the Commissioner finds that NationsSecurities, for the sole purpose of settling the matter and without admitting or denying the matters herein, has consented to the entry of this Order and that the following Order is appropriate and is in the public interest.

IT IS ORDERED, pursuant to Tenn. Code Ann. § 48-2-116(a) of the Tennessee Securities Act, that:

1. NationsSecurities shall fully comply with the Tennessee Securities Act, as amended, and all rules promulgated thereunder.

2. NationsSecurities shall contribute, to the Department of Commerce and Insurance, the sum of One Hundred Fifty Thousand Dollars (\$150,000.00), said sum to be paid into the Investor Education Fund of the Tennessee Securities

Division. Said sum shall be due and paid in full within thirty days of the entry of this Order. Payment shall be mailed to

State of Tennessee  
Department of Commerce and Insurance  
Attention Fiscal Officer  
500 James Robertson Parkway  
Nashville, Tennessee 37243

3. NationsSecurities shall establish and maintain a minimum ratio of 1/25 for Series 24 supervisors to Series 7 agents in the State of Tennessee.


4. NationsSecurities shall provide to the Tennessee Securities Division a list of all of the Tennessee residents who invested in 2003 and 2004, with the names divided according to the investor subclasses that were the subject of the Texas-based class action lawsuit filed against NationsSecurities in connection with the sale of shares in 2003 and 2004. This list shall also indicate whether each investor "opted out" of the class, and the form and/or amount received by each investor either as a result of the class action lawsuit or individual legal action.

**IT IS ORDERED** that this Order represents the complete and final resolution of, and discharge with respect to, all administrative and civil, claims, demands, actions, and causes of action by the Commissioner against NationsSecurities, its successors, agents, officers, and directors, for violations of the Act arising from the sale of the Nations Government Income Trust 2003, Inc. and the Nations Government Income Trust 2004, Inc. in Tennessee by NationsSecurities in September 1993 and February 1994, respectively.

This Consent Order is in the public interest and in the best interests of the parties, and represents a compromise and settlement of the controversy between the

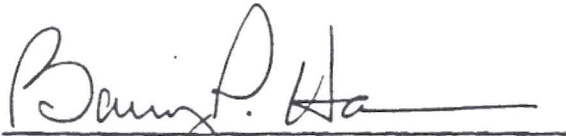
parties and is for settlement purposes only. By the signatures affixed below, NationsSecurities affirmatively states that it has freely agreed to the entry of this consent Order, that it has been advised by the undersigned counsel of record in this matter, that it waives its right to a hearing on the matters underlying this Consent Order and to a review of the Findings of Fact and Conclusions of Law contained herein, and that no threats or promises of any kind have been made by the Commissioner, the Division, or any agent or representative thereof. The parties, by signing this Consent Order, affirmatively state their agreement to be bound by the terms of this Consent Order and aver that no promises or offers relating to the circumstances described herein, other than the terms of settlement set forth in this Consent Order, are binding upon them.


ENTERED this 13<sup>th</sup> day of February, 1998.

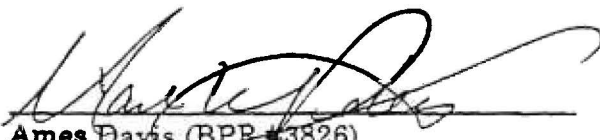
  
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Douglas M. Sizemore, Commissioner  
Department of Commerce and Insurance


**APPROVED FOR ENTRY:**

**NATIONSBANC INVESTMENTS, INC.,  
as successor to NATIONSSECURITIES**

  
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