

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2  
3 WILLIAM A. MUNDELL  
Chairman  
4 JIM IRVIN  
Commissioner  
5 MARC SPITZER  
Commissioner

6 **In the matter of** )

DOCKET NO. S-03280A-00-0000

7 JOSEPH MICHAEL GUESS, SR. )  
2911 E. Calavar Road )  
8 Phoenix, Arizona 85032 )

DECISION NO. 63390

9 PROGRESSIVE FINANCIAL MANAGEMENT )  
2911 E. Calavar Road )  
10 Phoenix, Arizona 85032 )

**ORDER TO CEASE AND DESIST,  
ORDER OF RESTITUTION AND  
ORDER FOR ADMINISTRATIVE  
PENALTIES**

11 JAMES DOUGLAS SHERRIFFS )  
5544 East Helena Drive )  
12 Scottsdale, Arizona 85254 )

**RE: PROGRESSIVE FINANCIAL  
MANAGEMENT, RGD, RGD  
ENTERPRISES, INC. AND BALLY  
OVERSEAS TRADING, INC.**

13 RICHARD GORDON DAVIS )  
4330 North 30<sup>TH</sup> Street )  
14 Phoenix, Arizona 85016 )

15 RGD )  
4330 North 30<sup>TH</sup> Street )  
16 Phoenix, Arizona 85016 )

17 RGD ENTERPRISES, INC. )  
4330 North 30<sup>TH</sup> Street )  
18 Phoenix, Arizona 85016 )

19 IRA JOE PATTERSON )  
4330 North 30<sup>th</sup> Street )  
20 Phoenix, Arizona 85016 )

21 RANDALL WAYNE SMITH, JR. )  
1905 Springlake Court )  
22 Birmingham, Alabama 35215 )

23 BALLY OVERSEAS TRADING INC. )  
1905 Springlake Court )  
24 Birmingham, Alabama 35215, )

25 **Respondents.** )  
26

1 On April 6, 2000, the Securities Division (“Division”) of the Arizona Corporation Commission  
2 (“Commission”) issued a Notice of Opportunity for Hearing Regarding Proposed Order for Relief  
3 (“Notice”) in this matter against the above-captioned respondents. On April 13, 2000, Progressive Financial  
4 Management (“PFM”) was duly served with the Notice through its agent Joseph Michael Guess, Sr.  
5 (“Guess”) and RGD Enterprises, Inc. (“RGD Enterprises”) was served through its agents Guess and Richard  
6 Gordon Davis (“Davis”). RGD was also served that day through its agents Guess and Davis and again on  
7 June 21, 2000 through its agent James Douglas Sherriffs (“Sherriffs”). Bally Overseas Trading, Inc.  
8 (“Bally”) was thereafter served with the Notice on June 28, 2000 through its agent AMS Trustees Limited.  
9 The Notice included an advisory that any respondent would be afforded a hearing who filed a written  
10 request with the Commission within ten days after service. Respondents PFM, RGD Enterprises, RGD and  
11 Bally failed to timely request a hearing following the above service.

12 An administrative hearing was conducted in this matter on July 25-27 and August 31, 2000.  
13 Respondents PFM, RGD, RGD Enterprises and Bally entered no appearance during this hearing. On  
14 September 14, 2000, a Birmingham, Alabama attorney representing respondent Randall Wayne Smith, Jr.  
15 (“Smith”), acting on behalf of Smith, also accepted service of the Notice on Bally. The attorney thereafter  
16 executed and caused to be docketed with the Commission on September 18, 2000 a Request for Hearing  
17 on behalf of Bally. The Division docketed a response on September 22, 2000 opposing the latter request on  
18 grounds of untimeliness. On September 26, 2000, the Hearing Division issued a Procedural Order denying  
19 the Bally request for untimeliness.

## 20 I.

### 21 FINDINGS OF FACT

22 1. PFM, also known as PFM/ J. Michael Guess, is a D. B. A. (doing business as) name for a  
23 sole proprietorship that conducted business within or from Arizona. At relevant times, PFM was  
24 represented as Manager and Managing Partner of a Joint Venture Investment Management Program. The  
25 last known PFM address is 2911 E. Calavar Road, Phoenix, Arizona 85032.

26 2. RGD, also known as R.G.D., was represented as a “Joint Venture” and operated under the

1 auspices of respondent RGD Enterprises. The last known RGD business address is 4330 North 30<sup>th</sup> Street,  
2 Phoenix, Arizona 85016. At relevant times, RGD was used to operate the Joint Venture Investment  
3 Management Program, also known as the Joint Venture Private Placement Asset Management Program, in  
4 Arizona in conjunction with Bally and other respondents.

5 3. RGD Enterprises is an Arizona corporation whose last known business address is 4330  
6 North 30<sup>th</sup> Street, Phoenix, Arizona 85016.

7 4. Bally is a British Virgin Islands company with a “communications office” at 1905 Springlake  
8 Court, Birmingham, Alabama 35215. As Joint Venture Managing Partner, Bally operated a Joint Venture  
9 Investment Management Program, also known as the Joint Venture Private Placement Asset Management  
10 Program, in Arizona in conjunction with PFM, RGD, RGD Enterprises and other respondents.

11 5. From at least February 1997, Bally and other respondents offered and sold to the general  
12 public within Arizona financial interests in Joint Venture Investment Management Programs, also known  
13 variously as Joint Venture Private Placement Asset Management Programs and/or Private Placement  
14 Investment Trading Programs and/or Asset Enhancement Programs and/or Asset Enhancement Trading  
15 Programs and/or Capital Management Programs and/or High Yield Investment Programs.

16 6. According to program offering documents and related oral representations, offerees could  
17 invest money for a period of time as Limited Venture Partners and their funds pooled for safekeeping in an  
18 escrow account with those of other investors at Regions Bank in Birmingham, Alabama, until transferred to a  
19 trading bank for exclusive use in the trading of discounted debt instruments issued by major world banks.

20 7. Bally and its control person offered successive programs with total initial investment  
21 principals of from one million to ten million dollars with 108% of each program principal guaranteed by a top  
22 fifty West European Bank.

23 8. Programs offered weekly or later monthly returns of trading profits varying respectively from  
24 12% weekly to 12% or even 18% monthly. Bally would retain a 10% share of such investor profits as a fee  
25 for administration.

26 9. Investors would execute a Specific Power of Attorney to a Bally control person to manage

1 their program investment account as a fiduciary.

2 10. On behalf of Bally, that control person would execute Joint Venture Investment  
3 Management Program Agreements or Joint Venture Private Placement Asset Management Agreements with  
4 investors, along with Escrow Agreements and Joint Venture Profit Share Agreements.

5 11. From at least March 1997, various respondents formed RGD as a "Joint Venture" under the  
6 auspices of RGD Enterprises to offer and sell within and from Arizona the above investment program  
7 operated by Bally and its control person. The RGD manager was lead salesman. RGD used the RGD  
8 Enterprises corporate mantle for tax reporting and other purposes.

9 12. RGD entered into agreements with investors that tracked the terms of those used by Bally,  
10 except that RGD reduced the monthly profit returnable to most of its investors to 4.5% or 5%, with only one  
11 later investor receiving 10%.

12 13. These RGD investor agreements in turn provided for RGD to retain any profits exceeding  
13 these investor returns as its fee for administration.

14 14. Funds from RGD investors were pooled in an RGD escrow bank account in Arizona for  
15 safekeeping until transfer to the trading company or trading bank. While so aggregating RGD investor funds,  
16 RGD then entered into agreements with Bally to invest these funds at the higher 12% weekly or 18%  
17 monthly return on principal offered by the latter.

18 15. RGD would thereby retain as its profit share the spread between the returns it offered to its  
19 investors and the returns it received from Bally. RGD investors would execute a Specific Power of Attorney  
20 to the RGD manager to manage their program investment account as a fiduciary.

21 16. Besides the anticipated profit sharing described above, the RGD principals were also paid  
22 directly by a Bally control person to promote their recruitment of investors. In each of the months of April,  
23 May, June and July 1997, this Bally control person sent them about \$31,100 to divide among themselves  
24 and others. These payments ceased after July 1997. Out of the \$124,400 total thus provided, three RGD  
25 principals each took over \$20,000. A portion of these promotional funds were also paid to some investors  
26 as purported profits earned from their investments. Some of these funds were also used to pay for expenses

1 incurred in organizing and operating RGD.

2           17.       The halt in monthly payments from the Bally control person after July 1997 caused a  
3 shortage of funds for RGD to make payments. In the second half of August, an RGD investor was solicited  
4 for a \$10,000 loan to RGD repayable in one week with \$500 in interest. The loan principal was paid to a  
5 respondent who in turn transferred the funds to RGD. Before the end of August, another investor was  
6 solicited for a \$25,000 “bridge” loan to RGD repayable in thirty days with \$12,500 interest. This loan  
7 principal was paid directly to RGD. Both loans constituted the sale of notes. The \$25,000 loan principal was  
8 later rolled over into a new investment in the RGD program.

9           18.       From at least November 1997, PFM was operated instead of RGD to continue the offer  
10 and sale of similar Joint Venture Investment Management Program within or from Arizona.

11           19.       Under its agreements with new investors, PFM received their funds for safekeeping until  
12 transfer into a trading bank where the initial principal would be guaranteed to 106% by a top fifty West  
13 European Bank.

14           20.       New investors were variously promised profits of from five up to fifteen percent each four-  
15 to-six week “trading cycle,” with ten or twelve cycles per year. PFM was to receive profits earned in excess  
16 of the investor share.

17           21.       Instead of safekeeping the investor funds, PFM and another respondent misused them for  
18 his personal expenses and for purported profit distributions to PFM as well as former RGD investors.

19           22.       PFM was also used to induce an RGD investor to loan \$50,000 to PFM for the exclusive  
20 use of a third party for ninety days with a promise of \$25,000 interest. This loan constituted the sale of a  
21 note. However, only \$25,000 of the loan proceeds were paid to the third party and the remainder misused  
22 for personal expenses.

23           23.       During the administrative hearing in the matter, a schedule of investors, investments and  
24 investor losses pertaining to PFM and RGD was admitted into evidence on August 31, 2000 as Exhibit S-  
25 133. According to this uncontested hearing exhibit, at least \$598,500 was invested through RGD in at least  
26 15 transactions by eight individuals or couples who have since lost over \$232,075 of that total. At least

1 \$225,000 was invested through PFM in seven transactions by six individuals who have since lost \$182,250  
2 of that amount.

3 24. From about February 1997 or thereafter, PFM, RGD and Bally offered and sold securities  
4 within or from Arizona in the form of investment contracts and certificates of participation in a profit-sharing  
5 agreement.

6 25. From August 1997 or thereafter, PFM and RGD offered and sold securities within or from  
7 Arizona in the form of notes.

8 26. The securities offered and sold by PFM, RGD and Bally were not registered under A.R.S.  
9 §§ 44-1871 through 44-1875, or 44-1891 through 44-1902; were not securities for which a notice filing  
10 has been made under A.R.S. § 44-3321; were not exempt under A.R.S. §§ 44-1843 or 44-1843.01; were  
11 not offered or sold in exempt transactions under A.R.S. § 44-1844; and were not exempt under any rule or  
12 order promulgated by the Commission.

13 27. In connection with their offers to sell and their sale of securities, PFM, RGD, and Bally  
14 acted as dealers or salesmen within or from Arizona, although not registered pursuant to the provisions of  
15 Article 9 of the Securities Act of Arizona (“Securities Act”), A.R.S. § 44-1801 *et seq.*

16 28. In connection with the offers and sales of securities within or from Arizona, PFM, RGD,  
17 RGD Enterprises and Bally directly or indirectly made untrue statements of material fact or omitted to state  
18 material facts which were necessary in order to make the statements made not misleading in light of the  
19 circumstances under which they were made, as follows:

20 A. Stated there was a European trading market for discounted debt instruments from major  
21 banks that generated very high profits with no risk to the investor, while in fact no such market exists.

22 B. Stated that investor funds would be held in escrow for safekeeping until transfer to the  
23 trading bank, while in fact funds were misused for other purposes.

24 C. Stated the investment principal would be protected by a bank guarantee, while in fact no  
25 such guarantee could be obtained for funds invested in the RGD or Bally trading program.

26 D. Failed to disclose the business experience and background of respondents Smith, Guess,

1 Sherriffs and Davis.

2 E. Failed to disclose financial statements reflecting the financial condition of RGD, PFM and  
3 Bally.

4 F. PFM and RGD failed to disclose their misuse of investor funds for personal expenditures.

5 G. PFM and RGD failed to disclose their misuse of investor funds for payments to investors.

6 29. In connection with the offers and sales of securities within or from Arizona, PFM and RGD  
7 directly or indirectly engaged in transactions, practices or courses of business which operated or would  
8 operate as a fraud or deceit upon offerees and investors, as follows:

9 A. PFM and RGD misused investor proceeds for personal and other unauthorized uses.

10 B. PFM and RGD misused investor proceeds to make Ponzi-type payments to investors that  
11 were falsely represented as trading profits.

12 **II.**

13 **CONCLUSIONS OF LAW**

14 1. The Commission has jurisdiction over these matters pursuant to Article XV of the Arizona  
15 Constitution and the Securities Act.

16 2. PFM, RGD and Bally offered or sold securities within or from Arizona, within the meaning  
17 of A.R.S. §§ 44-1801(15), 44-1801(21), and 44-1801(26).

18 3. PFM, RGD and Bally violated A.R.S. § 44-1841 by offering or selling securities that were  
19 neither registered nor exempt from registration.

20 4. PFM, RGD and Bally violated A.R.S. § 44-1842 by offering or selling securities while  
21 neither registered as a dealer or salesman nor exempt from registration.

22 5. PFM, RGD, RGD Enterprises and Bally violated A.R.S. § 44-1991 by making untrue  
23 statements or misleading omissions of material facts.

24 6. PFM and RGD violated A.R.S. § 44-1991 by engaging in transactions, practices or courses  
25 of business which operate or would operate as a fraud or deceit.

26 **III.**

**ORDER**

1  
2           THEREFORE, on the basis of the Findings of Fact and Conclusions of Law, the Commission finds  
3 that the following relief is appropriate, in the public interest, and necessary for the protection of investors:

4           IT IS ORDERED, pursuant to A.R.S. § 44-2032, that PFM, RGD, RGD Enterprises and Bally, and  
5 any agents, employees, successors and assigns of each of these respondents, permanently cease and desist  
6 from violating the Securities Act.

7           IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032, that PFM shall pay restitution to its  
8 investors as shown on the records of the Commission in the amount of \$182,250, plus interest at the rate of  
9 10% per annum from the date of each investment until paid in full. PFM shall pay restitution jointly and  
10 severally with any other respondent in this matter who may be separately ordered by the Commission to pay  
11 restitution to PFM investors.

12           IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032, that RGD, RGD Enterprises and Bally  
13 shall, jointly and severally, pay restitution to RGD investors shown on the records of the Commission in the  
14 amount of \$232,075, plus interest at the rate of 10% per annum from the date of each investment until paid in  
15 full. RGD, RGD Enterprises and Bally shall pay restitution jointly and severally with any other respondent in  
16 this matter who may be separately ordered by the Commission to pay restitution to RGD investors.

17           IT IS FURTHER ORDERED that payment of restitution shall be made by cashier's check or money  
18 order payable to the "State of Arizona" to be placed in an interest-bearing account maintained and controlled  
19 by the Arizona Attorney General. The Arizona Attorney General shall disburse the funds on a pro rata basis  
20 to investors. Any funds that the Attorney General is unable to disburse shall revert to the state of Arizona.

21           IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that PFM, RGD, RGD Enterprises  
22 and Bally shall each pay an administrative penalty in the following amounts: PFM shall pay \$100,000; RGD  
23 shall pay \$100,000; RGD Enterprises shall pay \$50,000; Bally shall pay \$100,000. Payment shall be made  
24 in full by cashier's check or money order payable to the "State of Arizona."

25           IT IS FURTHER ORDERED that this Order shall become effective immediately.

26           **BY ORDER OF THE ARIZONA CORPORATION COMMISSION**

DECISION NO.   63390



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/s/ William A. Mundell  
CHAIRMAN

Jim Irvin \_\_\_\_\_  
COMMISSIONER

Marc Spitzer \_\_\_\_\_  
COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 16th day of February, 2001.

/s/ Brian C. McNeil \_\_\_\_\_  
BRIAN C. McNEIL  
Executive Secretary

\_\_\_\_\_  
DISSENT