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# BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

IN THE MATTER OF:

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

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

JAMES DOUGLAS SHERRIFFS
5544 East Helena Drive
Scottsdale, Arizona 85254

RICHARD GORDON DAVIS
4330 North 30th Street
Phoenix, Arizona 85016

RGD
4330 North 30th Street
Phoenix, Arizona 85016

RGD ENTERPRISES, INC.
4330 North 30th Street
Phoenix, Arizona 85016

IRA JOE PATTERSON
4330 North 30th Street
Phoenix, Arizona 85016

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

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

Respondents.

DOCKET NO. S-03280A-00-0000

Arizona Corporation Commission
DOCKETED
AUG 30 2001
DOCKETED BY

DECISION NO. 64005

**OPINION AND ORDER**

DATES OF PRE-HEARING CONFERENCES: May 11 and June 7, 2000

DATES OF HEARING July 25, 26, 27 and August 31, 2000

PLACE OF HEARING: Phoenix, Arizona

PRESIDING ADMINISTRATIVE LAW JUDGE: Marc E. Stern

APPEARANCES: Mr. Dale L. States, on behalf of Mr. Richard Gordon Davis; Mr. Joseph Michael Guess Sr., inprorpia persona; Mr. Ira Joe Patterson, in propria persona; and; Mr. Mark C. Knops, Senior Counsel, on behalf of the Securities Division of the Arizona Corporation Commission.

**BY THE COMMISSION:**

On April 6, 2000, the Securities Division ("Division") of the Arizona Corporation Commission ("Commission") filed a Notice of Opportunity for Hearing regarding proposed Order for Relief ("Notice") against Mr. Joseph Michael Guess, Sr., Progressive Financial Management, ("PFM"), Mr. James Douglas Sherriffs, Mr. Richard Gordon Davis, RGD, RGD Enterprises, Inc. ("RGD Inc."), Mr. Ira Joe Patterson, Mr. Randall Wayne Smith, Jr., and Bally Overseas Trading, Inc. ("Bally") (collectively the "Respondents") in which the Division alleged multiple registration and fraud violations of the Arizona Securities Act ("Act") in connection with the offer and sale of securities in the form of investment contracts and other securities within or from Arizona. With respect to Respondent Davis, the Division alleged only violations of the anti-fraud provisions of the Act. Additionally, the Division also alleged that Mr. Sherriffs committed violations of the Investment Management Act of Arizona ("IMA").

All Respondents were duly served with copies of the Notice.

Timely requests for hearing were filed by Mr. Davis, Mr. Guess, Mr. Patterson and Mr. Sherriffs.

PFM, RGD and RGD, Inc. did not file requests for hearing.

On May 11, 2000, a pre-hearing conference was held. Respondent Davis and the

Division were present with counsel. Respondents Guess, Patterson and Sherriffs were not present. Respondents Guess and Patterson had also requested continuances. After a discussion of certain procedural matters, it was agreed that an additional pre-hearing conference would be scheduled.

On May 25, 2000, by Procedural Order, an additional pre-hearing conference was scheduled.

On June 7, 2000, a pre-hearing conference was held with the Division and Respondents Guess and Patterson in attendance. A discussion was conducted on scheduling the hearing when witnesses and parties could be available.

On June 8, 2000, by Procedural Order, the hearing on this proceeding was scheduled to commence on July 25, 2000.

On July 25, 2000, a full public hearing was commenced before a duly authorized Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. Respondents Guess and Patterson appeared in propia persona. Mr. Sherriffs failed to appear. Mr. Davis and the Division appeared with counsel. Hearings were also conducted on July 26, July 27 and August 31, 2000. Testimony was taken from investor and expert witnesses and more than 130 exhibits were admitted into evidence during the course of the proceeding. Those Respondents present during the proceeding did not testify. Following the conclusion of the hearing, the parties agreed that closing memoranda were to be filed within 30 days.

On September 14, 2000, the Division filed a "Motion to Admit Three Post-Hearing Exhibits" which dealt with Respondent Smith who had pled guilty to conducting a wire fraud/securities/Ponzi scheme utilizing Bally and another Smith controlled entity, Oasis Cellular ("Oasis"). The exhibits consisted of documents relating to criminal charges and a plea agreement by Mr. Smith.

On September 18, 2000, Respondents Smith and Bally filed a request for a hearing.

On September 19, 2000, the documents related to Respondent Smith's guilty plea were admitted into evidence.

On September 22, 2000, the Division filed a response to the request for hearing by Respondents Smith and Bally arguing that they had been filed in an untimely fashion. The Division also requested a stay of the deadline for the filing of post-hearing memoranda due to the resulting delays brought about by the preparation of its response to Mr. Smith's and Bally's untimely requests for hearing.

On September 25, 2000, the Division filed a "Motion to Admit into Evidence Two Post-Hearing Exhibits" which established the verification of timely service of the Notice upon Respondents Smith and Bally.

On September 26, 2000, by Procedural Order, the request for hearing filed by Respondents Smith and Bally was denied. The parties were also granted an additional two weeks in which to file their closing memoranda, until October 16, 2000.

On October 11, 2000, Respondent Davis filed a "Motion to Admit into Evidence Two Post-Hearing Exhibits". The exhibits consisted of two Bank One wire transfers that had been referenced in an Examination Under Oath "(EUO") by Mr. Davis. The two transfers totaled $30,000 that he had testified that he had wired to Client Management Services ("CMS"), an accounting service for Bally, in early 1997.

On October 12, 2000, the Division filed a "Motion for Extension of Time to File its Post-Hearing Memorandum" by November 6, 2000.

On October 17, 2000, by Procedural Order, the Division's and Respondent Davis' exhibits were admitted into evidence and the parties were given until November 6, 2000, in which to file their post-hearing memoranda.

On January 4, 2001 and again on January 24, 2001, the Division respectively filed a "Motion to Admit into Evidence a Post-Hearing Exhibit," the former related to verification of

timely service on Respondent Smith and the latter to adjudication of his guilt and his sentencing in federal court. On April 24, 2001, by Procedural Order, the Division's last post-hearing exhibits were admitted into evidence. The matter was then taken under advisement pending submission or a recommended Opinion and Order to the Commission. On February 16, 2001, the commissioned filed Decision No. 63390 in this matter, which ordered defaulted Respondents PFM, RGD, RGD, Inc. and Bally to cease and desist from Securities Act violations and to pay restitution as well as administrative penalties.

* * * * * * * * * *

Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes and orders that:

**FINDINGS OF FACT**

1. Mr. Guess, whose last known address is 2911 East Calavar Road, Phoenix, Arizona 85032, was at all relevant times, the manager/sole proprietor of PFM and involved in the Joint Venture Investment Management Program ("Program")[1] offered and sold through PFM, RGD and/or RGD, Inc.[2]

2. Mr. Sherriffs, whose last known address is 5544 East Helena Drive, Scottsdale, Arizona 85254, was at all relevant times a public accountant and tax preparer who was involved in the offer and sale of various RGD Programs. He was also involved with the offer of Programs of the World Trading Alliance ("WTA").

3. Mr. Davis, whose last known address is 4330 North 30th Street, Phoenix, Arizona 85016, was at all relevant times the president and sole shareholder of RGD Inc., which was

[1] The purported investment Program(s) referenced hereinafter were offered and sold under a variety of names such as the Joint Venture Private Placement Asset Management Program or the Vantage Point Strategies Program or the Private Placement Investment Trading Program or the Asset Enhancement Program or the Addendum to Contract Program ("Addendum") or the High Yield Finance Program. Mr. Guess, Mr. Sherriffs and Mr. Patterson were each involved in one or more of these Programs as "aggregators" who recruited small investors so they could participate in the Programs. The Programs were designed to pool investor funds in an escrow account for "safe-keeping" before they were purportedly transferred by a managing partner to a Europe trading bank where investments were to be

utilized in the promotions of the RGD Programs.

4. Mr. Patterson, whose last known address is 4330 North 30th Street, Phoenix, Arizona 85016, was at all relevant times, acting as a sales representative for the various Programs which were primarily operated by Mr. Guess and Mr. Sherriffs. Mr. Patterson would primarily utilize an Addendum when he sold the Programs to investors.

5. On April 6, 2000, the Division issued a Notice alleging violations of A.R.S. §§ 44-1841, 44-1842 and 44-1991 against Respondents Guess, Sherriffs and Patterson. With respect to Respondent Davis, the Division alleged violations of A.R.S. § 44-1991. Additionally, the Notice also alleged that Respondent Sherriffs engaged in activity violating A.R.S. §§ 44-3151 and 44-3241.

6. Beginning sometime in February 1997, Respondents Guess, Sherriffs and Patterson began the offer and sale of investment contracts and/or certificates of participation in profit-sharing agreements which are classified as securities under the Act. The record also established that some of the investments were in the form of interest-bearing loans or notes from some investors, which are also securities under the Act.

7. Based on the record, at the outset of the scheme, investors were offered an opportunity to invest their funds by means of a form of Joint Venture Investment Management Agreement ("Agreement") for a period of time (one year or less). As a so-called "limited venture partner", an investor would have his funds pooled for "safekeeping" in an escrow account first by RGD, controlled by Mr. Sherriffs and /or Mr. Guess, and then wired to Bally, controlled by Mr. Smith, where the funds were commingled with those of other investors at a bank in Birmingham, Alabama known as Regions Bank.

8. The pooled funds were then to be transferred to a so-called trading bank for

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made in negotiable discounted bank instruments, earn fantastic rates of return with a guaranteed (in excess of 100 percent) return of principal in one year.

[2] RGD and RGD, Inc. will be used interchangeably hereinafter.

exclusive use in transactions involving discounted debt instruments purportedly issued by major world banks.

9. The respective investment Programs offered and sold by the Respondents required a pooling of investor funds to reach an aggregate investment level of from $1,000,000 to $10,000,000 with generally a 108 percent guarantee on the amount invested by a "top 50 west European bank."

10. On February 16, 2001, the Commission issued Decision No. 63390, which found the respective investment Programs, which were offered and sold under the guise of the various business entities known as either Bally, RGD and PFM, were all transactions in violation of the Act involving fraud.

11. At various times, the different Programs had different joint venture managing partners such as PFM, RGD or Bally. In some of the offering materials, Mr. Guess was named as the "Administrator".

12. Besides a bank guarantee for in excess of the invested amount (106 percent to 108 percent of the invested amount), investors were generally promised distributions of the earnings on their investments every four to six weeks for one year at varying rates of return from approximately 5 percent per month or higher, depending on the amount invested.

13. Depending on the form of investment contract that was used by the Program, various fees were purported to be collected when so-called profit payouts were made with amounts varying from as low as 1.8 percent to 10 percent.

14. According to the investment contracts utilized in the various Programs, the respective managing partners purportedly had "certain knowledge, association, ability and relationships to facilitate introduction to certain organizations that can coordinate the investment of the aforementioned funds in trading programs . . .".

15. Another common feature of the various investment Programs was that the

managing partners were granted authority over the investors' funds by powers of attorney. An example of this feature was the RGD Program where Mr. Sherriffs, as "President", after receiving $150,000 from his investor clients, the Smiths, was to direct the funds be "entered into an established trading program provided by" RGD.

16. Respondents presented no evidence during the proceeding that established that any of the securities at issue were either exempt from registration or registered under the Act.

17. The Division also provided evidence that Respondents Guess and Patterson had been involved in the sale of promissory notes to several of their clients in violation of the Act.

18. The overwhelming weight of the evidence in this proceeding establishes that Mr. Guess and Mr. Sherriffs were the key players in the investment scheme which they orchestrated through the RGD offering, but that Mr. Guess alone orchestrated the PFM offering. Mr. Guess acknowledged that he acted as an organizer and principal of RGD when he admitted during his EUO that he was the "Administrator" of "RGD Enterprises".

19. The record also established that Mr. Guess permitted Respondent Patterson to sell interests in an RGD investment contract by means of Mr. Patterson's Addendum which referenced Mr. Patterson and an "Asset Enhancement Program" which purportedly would pay investors 5 percent per month for one year.

20. It is also noted that, when investing monies initially in the Bally Programs with Respondent Smith, Mr. Guess interchanged both RGD and his own name in the agreements with Bally.

21. The record established that of the $492,755 RGD received from investors between April and November 1997, $39,488 was paid out to Mr. Guess and $233,299 to Mr. Sherriffs. Additionally, Respondent Smith through Oasis, paid Mr. Guess $38,000 in miscellaneous income.

22. Investor witnesses in the proceeding testified that Mr. Guess personally offered

and sold them their investments. Respondent Davis also invested with Mr. Guess. According to Mr. Davis' EUO, based on Mr. Guess' representations in early 1997, Mr. Davis wired $30,000 to Respondents Smith and Bally.

23. In late-filed Exhibits, Mr. Davis presented evidence that he had invested $20,000 on February 27, 1997 and $10,000 on March 10, 1997 by means of wire transfers to an Alabama accountant for Bally. During his EUO, Mr. Davis stated the investment was for what he termed was a "money management program" that Mr. Guess told him about.

24. Apparently, it was during this timeframe that Mr. Davis became involved with Mr. Guess, who had been a customer of his answering service, Communication Enterprises, Inc. ("CEI")[3], and permitted Mr. Guess to utilize RGD as an entity that provided a corporate history, a mailing address at CEI's offices and a form of legitimacy to the RGD Program sold by Mr. Guess, Mr. Sherriffs and Mr. Patterson.

25. The record also established the following: that Mr. Davis and his ex-wife were the only shareholders, officers and directors of RGD; that RGD had been an inactive corporation since 1979; and that RGD was the owner of a wholly-owned subsidiary, CEI, the telephone answering service.

26. During Mr. Davis' EUO, he recalled receiving five distributions, three for $6,000, one for $5,000, and one for $3,000 for a total of $26,000. When these distributions were discussed, Mr. Davis acknowledged that he had permitted RGD to be utilized by Mr. Sherriffs and Mr. Guess to receive funds and to send distributions to investors.

27. According to the record, Mr. Davis, Mr. Sherriffs, Mr. Guess and Mr. Glenn King, who was termed an investor by the Division's witnesses, were signatories involved in establishing the first RGD bank account for the RGD Program.

28. Mr. Sherriffs was intimately involved in the offer and sale of the RGD Program

[3] Mr. Davis had operated CEI from an office located at 1015 N. 1st Street, Phoenix, Arizona.

and had numerous personal contacts with the RGD investors because of his relationship with them as a tax preparer who had gained the investors' trust when preparing their tax returns.

29. RGD investor contracts provided for investors to send their funds to Mr. Sherriffs at what had been Mr. Davis' 1st Street business address in Phoenix for "safekeeping" until Mr. Sheriffs was instructed to transfer their funds to a trading bank.

30. Both Mr. Guess and Mr. Davis, during their EUOs, identified Mr. Sherriffs as the individual in charge of RGD's accounting and banking functions who signed most of the checks disbursing funds from the RGD account.

31. Mr. Davis also acknowledged in his EUO that, because Mr. Sherriffs did a poor job of maintaining RGD's books and accounting records, he became involved in assisting Mr. Guess in the preparation of Federal 1099 forms which reflected purported payments of interest income that were sent to investors for the 1997 tax year from RGD and PFM. The 1099 forms, whether from RGD or PFM, bore the Federal Tax Identification Number assigned to RGD Inc.

32. Based on the record, there is evidence that between April and July 1997, Respondent Smith transferred $124,400 which had not originated from trading profits to the RGD account in four monthly payments of $31,000.

33. In support of its case, the Division called one offeree, Ms. Tammy D'Angelo, six investor witnesses including: Mrs. Yvonne Aitken, Mrs. Jill Arnold, Ms. Susan Herrmann, Mr. Lyle Mader, Mrs. Jean Smith, Mr. Brian Weber; and Mr. David Adams, a Division investigator, Mr. Mark Klamrzynski, a Division Certified Public Accountant ("CPA"), and Dr. Boris Kozolchyk, a Professor of Law at the University of Arizona.

34. There were seven investors in RGD, five in PFM and one investor who invested in both RGD and PFM.

35. Mrs. Yvonne Aitken, Mr. Guess' mother-in-law, testified that she and her husband, who reside in Mesa, were encouraged by Mr. Guess early in 1997 to take a second

mortgage on their house to utilize the proceeds ($23,500) for an investment with him that would ostensibly provide them with a $2,500 a month return on their investment.

36. Although Mrs. Aitken did not remember all of the details of the arrangement, she recalled that the investment involved a European trading market and bank debt instruments.

37. The Aitkens were promised that there was no risk on the investment and that they would earn a high rate of return on their investment.

38. On or about March 28, 1997, Mrs. Aitken wrote a personal check for $23,500 to Mr. Guess using the proceeds of the second mortgage on her home for the purported investment. At the time, Mr. Guess failed to provide her with an investment contract or any documentation on her investment whatsoever.

39. Subsequently, Mr. Aitken and her husband received several "distribution" checks from Mr. Guess in the amount of $2,000 each. She testified that this made them feel more secure about their investment and they decided to invest more money with Mr. Guess.

40. On or about August 3, 1997, Mrs. Aitken wrote Mr. Guess a second check for $5,000 with money from her husband's 401K account for what she thought was a similar investment. Approximately one week later, on August 14, 1997, Mrs. Aitken also gave Mr. Guess a $5,000 cashier's check to add to her investment because she now believed that she had a safe investment.

41. Although the Aitkens received back approximately $23,000 in "distributions", the remaining balance of $10,000 was lost along with their home when they could no longer afford the monthly payments brought about by the second mortgage. Mr. Guess' mother-in-law testified further that she had been forced into retirement by a medical disability at about the time of the initial investment and after the loss of their home, she and her husband had to move in with another daughter and are now renting a home.

42. Investor Jill Arnold testified that in approximately April 1997, she and her

husband spoke with Mr. Sherriffs who had been their tax preparer for four years, with respect to seeking investment advice for a safe investment for $75,000 that her husband was to inherit. Mr. Sherriffs represented himself to the Arnolds as an investment advisor, and recommended the RGD Program.

43. In May 1997, Mr. Sherriffs introduced the Arnolds to Mr. Guess whom he termed was "squeaky-clean" and an honest person to present the RGD Program.

44. Mrs. Arnold made it clear to Mr. Sherriffs that she and her husband did not understand investments and were relying on his advice when they began investing with RGD.

45. On May 15, 1997, the Arnolds signed an RGD Agreement to begin investing Mr. Arnold's $75,000 inheritance. They authorized RGD to be the "Joint Venture Managing Partner" ("JV Manager") of their funds which were to be forwarded to Mr. Sherriffs for "safekeeping" in a pooled account before they were transferred to a trading program with a 108% bank guarantee from a "top fifty west European bank."

46. Mrs. Arnold remembered Mr. Guess mentioning "Lee Iococca from the Chrysler Company, that when he invested, that was how Lee Iococca turned the Chrysler Corporation around." She also went on to state that Mr. Guess represented himself as having seven years experience in various trading programs involving major bank debt instruments which purportedly generated high profits with no risk for investors.

47. The Arnolds invested a total of $75,000 expecting to earn a 60% annual return. According to the evidence, the Arnolds received distributions of $37,500 and appear to have lost the balance of their investment.

48. Mrs. Arnold also testified that Mr. Sherriffs convinced her to have her stroke impaired father and blind mother invest $25,000 in another Program known as "Better Days Ahead" involving an investment offered by a woman, Ms. Lora Kidd, from Salt Lake City, Utah. Mrs. Arnold's parents did receive initial payments of $1,250 for several months directly from

Mr. Sherriffs, but about that time, the Arnolds learned that the Programs with Mr. Sherriffs were "unstable". In approximately April 1998, her parents received a $15,000 check from Mr. Sherriffs for the remaining balance of their investment.

49. There is no evidence that the Arnolds had any contact or even knew of Mr. Davis.

50. Mrs. Jean Smith, a retired government worker, testified that she and her retiree husband first met Mr. Sherriffs through her husband's brother who introduced them to him as an accountant who could handle their tax work.

51. Mr. Sherriffs gained their confidence and developed a personal relationship with the Smiths.

52. The Smiths met Mr. Guess after Mr. Sherriffs suggested putting some extra money they had into an "adventure with the bank."

53. Mr. Sherriffs described everybody that was involved in the so-called "adventure" as "squeaky clean."

54. To get Mr. and Mrs. Smith interested in the RGD Program, Mr. Sherriffs told them about a purported investment in which he had invested $65,000 and "that he had made $78,000 in a matter of a few months."

55. In April 1997, Mr. and Mrs. Smith met at their home with Mr. Sherriffs and Mr. Guess who both told them about the RGD Program that would generate a "high percent a month on our monies and that it was bank guaranteed."

56. On or about May 15, 1997, the Smiths, using funds from their business trust, signed an Agreement for one year with RGD as the JV Manager and gave a $50,000 cashier's check to Mr. Sherriffs for "safekeeping" until he received "instructions" to transfer the monies to a trading bank. As investors, the Smiths were promised a 108 percent bank guarantee and an interest rate of 4.5 percent per month or 54 percent annually.

57. At no time were the Smiths advised that invested funds would be spent by Mr.

Guess or Mr. Sherriffs on personal expenses or for payments to other investors.

58. In October 1997, Mr. Sherriffs contacted the Smiths about an additional investment with RGD. Mr. Sherriffs told the Smiths that, instead of their earning only 10 percent per year on a land contract from the sale of a four-plex in Oregon, if they liquidated the contract, he could utilize their funds to make them as much to 6 to 8 percent per month on a new investment.

59. The Smiths made it clear that they desired a secure investment to replace the income which they were receiving from the land contract.

60. Mrs. Smith testified that they believed Mr. Sherriffs because, up until that time, they had been receiving payments of $2,500 a month on their first investment so Mr. and Mrs. Smith believed "it was a sure thing," and liquidated their land contract for more investment money.

61. Although the investment was to be invested in the RGD Program, Mr. Sherriffs recommended that they invest the funds from the land contract sale in a High Yield Finance Program ("High Yield Program").

62. On or about October 31, 1997, the Smiths as "releasors" signed two investment Agreements with RGD, an unincorporated company in Scottsdale, Arizona,[4] with Mr. Sherriffs signing as "President" even though the documents on their face reflected that RGD was unincorporated. On November 3, 1997, the Smiths funded the investment with a $150,000 cashier's check made out to RGD-James Sherriffs.

63. Shortly thereafter, the Smiths became suspicious when they contacted Mr. Guess who denied all knowledge of this arrangement. They then contacted Mr. Sherriffs who represented that he had utilized the $150,000 given to him for RGD in another Program, Better Days Ahead, which purportedly paid 6 percent interest per month. He also promised the Smiths

that he personally would send them a check for $5,000 a month while the funds were in escrow.

64. At that time, Mr. Sherriffs represented that he had concerns about Mr. Guess and the original RGD program and advised the Smiths that he had chosen to direct their funds into the High Yield Program for more security. Mr. Sherriffs had them re-sign Agreements with an entity known as Vantage Point Strategies ("VPS"), a business trust under his control. The VPS Agreements were very similar to those used by RGD and Bally. However, Mr. Sherriffs signed these Agreements as "Executive President."

65. It was the Smiths' understanding that their monies would now be invested in the WTA Program operated by Ms. Lora L. Kidd in Salt Lake City, Utah.

66. Based on the record, Mr. and Mrs. Smith invested $200,000 with Mr. Sherriffs and Mr. Guess, received distributions of $160,125 and have lost $39,875.

67. There was no evidence that Mr. and Mrs. Smith knew or had any contract with Mr. Davis.

68. During the proceeding, evidence was also presented that Respondent Patterson was permitted by Mr. Guess to sell fractionalized investment contracts in the RGD Program by means of the Addendums. Mr. Patterson made his sales by means of personal contacts with three investors, Mrs. Susan Herrmann, Mr. Sal Calta and Ms. Elaine Hayes.

69. Ms. Susan Herrmann, a licensed securities saleswoman, met Mr. Patterson socially, became "good friends", and at one point had him as a "housemate" for a period of time. During this timeframe, Mr. Patterson kept telling her about investments by describing highly profitable overseas trading Programs with bank guarantees which ostensibly would protect an investor's principal.

70. Prior to making any investments, Ms. Herrmann acknowledged that she did not discuss the investments offered by Mr. Patterson with anyone else.

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[4] In this instance, Mr. Sherriffs acting alone had begun a new investment scheme which utilized RGD again as the

71. Ms. Herrmann recalled that the Program which Mr. Patterson presented her with involved a European trading market for major bank debt instruments which purportedly would pay high returns with no risks for an investor.

72. On July 21, 1997, Ms. Herrmann invested $20,000 with Mr. Patterson who gave her an Addendum giving her an interest in an RGD/Patterson Agreement.

73. On July 23, 1997, Ms. Herrmann entered into an RGD Agreement with Mr. Guess in which RGD was named JV Manager when she invested $50,000 from her profit sharing plan. RGD promised a 60 percent return for a one year investment with a 108 percent bank guarantee "from a top fifty West European Bank."

74. Subsequently, Respondent Patterson contacted Ms. Herrmann to lend RGD $10,000 for a one week investment and earn $500 interest.

75. On August 22, 1997, Ms. Herrmann wrote a check to RGD for $10,000. Subsequently, on or about September 8, 1997, the first check which she received from RGD for $10,500 bounced and was replaced by Mr. Guess with a $10,500 bank check.

76. Ms. Herrmann became concerned with late payments on her investments and after making several written requests, her $50,000 was returned to her on or about October 30, 1997. Ms. Herrmann subsequently received several more payments including a personal check from Mr. Patterson for $2,000. In total, $69,000 was returned to her, but she testified that she has lost $11,000.

77. According to Ms. Herrmann, based on her knowledge and former relationship with Mr. Patterson, Mr. Sherriffs, Mr. Guess and Mr. Davis were all involved in some way in the RGD Program. She also recalled speaking with Mr. Davis by phone on November 4, 1997 about late payments and was told "I'll get right on it."

78. An investigator for the Division, Mr. David Adams, related that during his

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investment entity.

investigation involving the Respondents, he learned that a Mr. Sal Calta also invested $10,000 with Mr. Patterson through an Addendum purportedly selling him an interest in a RGD/Patterson Agreement.

79. There was also evidence that Mr. Guess offered Mr. Calta an opportunity to invest in a promissory note involving a California company by the name of Pacific Beach Mortgage Company that promised him a 50 percent rate of return on the loaned amount.

80. Based on the record, Mr. Calta invested $85,000 with RGD and $50,000 with PFM and after receiving back approximately $38,000 has suffered a loss of $97,000.

81. A friend of Mr. Calta's, Ms. Elaine Hayes, who had originally introduced him to Mr. Patterson, invested $50,000[5] in an Addendum for an interest in a RGD/Patterson Agreement which had already been fractionalized and sold previously to Ms. Herrmann and Mr. Calta.

82. The record also established that Mr. Patterson was paid $7,600 from an RGD bank account and $12,500 from the PFM bank account during the time the offerings were being made.

83. There was supporting evidence of involvement by Mr. Davis because Ms. Herrmann had been told by Mr. Patterson that correspondence involving RGD was mailed to Mr. Davis' 1st Street business office and that RGD's telephone messages were also taken there.

84. Investor Lyle Mader is a disabled individual who, prior to his disability, had been involved in the design and manufacturing of private motor vehicles.

85. Mr. Mader met Mr. Guess during 1997 through a mutual acquaintance. He was told to contact Mr. Guess to make an investment that would enable him to build up funds to pay for this children's college educations.

86. Although Mr. Mader was interested in a high rate of return in a short period of time, he was very concerned with the safety of his principal.

87. Between August 25, 1997 and September 10, 1997, Mr. Mader invested $75,000 with Mr. Guess through PFM.

88. Mr. Mader's first investment with Mr. Guess was made by means of a $25,000 wire transfer for a short-term "bridge loan" that purportedly would generate 100 percent profit in 30 to 60 days. The loan involved a Pacific Beach Mortgage Company, Inc. and, according to its terms, provided for a $50,000 payment to the lender.

89. Mr. Mader indicated that he had no dealings with Mr. Sherriffs or RGD.

90. Mr. Mader recalled that Mr. Guess had discussed another investment Program involving some form of bank trading in "Barclays' Bank in London" involving "elite traders that had some specific opportunities that they shared with certain people."

91. Subsequently, Mr. Mader signed an Agreement and invested with PFM and Mr. Guess. Mr. Mader had acted on behalf of himself and nine of his friends who each invested $5,000 for a total of $50,000. They were promised a 25 percent per month return on their investment which contained a 108 percent bank guarantee from a "top 50 west European bank."

92. Mr. Mader received back only $12,500 in disbursements of the $75,000 which he invested with Mr. Guess, leaving him and his associates with a loss of $53,750 and placing himself and his family in dire financial straights.

93. Investor Brian Weber's attorney introduced him to Mr. Guess after they had discussed the fact that Mr. Weber was looking for an investment opportunity. At one point, Mr. Weber's attorney had been retained by Mr. Guess to prepare a Private Offering Memorandum for RGD Capital Management Fund, L.L.C. which was to be managed by RGD with Mr. Davis as President.

94. The investment was described to Mr. Weber as having very little known about it, was very exclusive and that Mr. Guess' knowledge and experience in the industry was the result

[5] Apparently, this investment was made with $25,000 in cash and with $25,000 worth of personal property including

of connections, contacts and other invaluable things. Mr. Weber described his impression of Mr. Guess as a "deal maker".

95. Mr. Weber described his own lack of understanding of the investment Program, but he understood that Mr. Guess would have exclusive control over any invested monies.

96. On October 29, 1997, Mr. Weber signed a letter of intent addressed to PFM/J. Michael Guess indicating his desire to invest $50,000 into a "capital management program."

97. On or about November 10, 1997, Mr. Weber entered into a one-year Agreement with PFM which provided that the funds would be forwarded to PFM for "safekeeping" until transferred to a trading bank. The Agreement contained a 106 percent bank guarantee from a "top 50 west European bank" and purportedly was to pay out interest on the invested amount 10 times during a year, for an annual rate of return of 150 percent.

98. Mr. Weber was told that there was no risk involved with respect to his principal and he invested because of the 106 percent bank guarantee described in the Agreement.

99. Based on Mr. Guess' representations, Mr. Weber believed that there was a market for trading in bank debt instruments in Europe that generated high profits with no risk.

100. Mr. Weber was not informed that Mr. Guess would use his funds for personal expenses or payments to other investors nor was he told that distribution payments would be returned from his principal and not trading profits.

101. After not receiving a return on his investment, on July 29, 1998, Mr. Weber faxed a demand letter to Mr. Guess threatening legal action if he did not receive the return of his principal and accrued interest by July 31, 1998. Subsequently, he received a prompt response from Mr. Guess who tried to convince him that instituting legal action and going to the authorities "would only delay things even further."

102. As a result of Mr. Weber's $50,000 investment in PFM, he received only $12,500

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such items as furniture, a boat and a barbecue grill.

back from Mr. Guess and has experienced a loss of $37,500.

103. On October 8, 1997, Dale and Tammy D'Angelo met with Mr.Sherriffs upon the recommendation of a friend, to discuss their needs for tax planning. At this meeting, Mr. Sherriffs also offered and provided investment advisory services, for which he charged $350 that they paid to him.

104. Mr. Sherriffs recommended that they consider investing in an international trading Program that was purportedly risk free and contained a bank guarantee for up to 106 percent of a minimum investment of $10,000 to $25,000 and promised a 5 percent per month return on their investment. –

105. Mr. Sherriffs told the D'Angelos that he would be acting as a middleman and that a third party would be making the actual investment overseas.

106. Mrs. D'Angelo recalled that Mr. Sherriffs told her that "it was international banks that were taking the money and were using American money to purchase European money of some sort to get interest off of it."

107. To facilitate this purported investment opportunity, Mr. Sherriffs sent copies of an Agreement and contract and also a letter from the third party, Ms. Lora L. Kidd of the WTA describing a trading Program and stating that participation was by invitation only.

108. After reviewing these documents, the D'Angelos decided that an investment in an international trading Program would not be suitable and did not invest with Mr. Sherriffs.

109. The Division called Dr. Boris Kozolchyk, a Professor of Law at the University of Arizona, who teaches courses in Commercial and International Trade Law, as an expert witness. Dr. Kozolchyk testified in support of the Division's allegations involving the fraud that was committed by the Respondents herein with respect to the various investments offered to investors.

110. The record established that Dr. Kozolchyk is eminently qualified as an expert in

the field of the purported investments which were offered and sold by Mr. Guess, Mr. Sherriffs and Mr. Patterson.

111. Dr. Kozolchyk testified that he has reviewed in excess of 30 sets of offering documents related to high yield investments involving discounted bank debt instruments which include prime bank guarantees or prime notes.

112. Dr. Kozolchyk testified that the purported investment documents admitted into evidence in this proceeding were fraudulent and similar in nature to those of the previous investment schemes which have been presented to him for an expert opinion.

113. Dr. Kozolchyk found certain factors in the various offerings, which were similar to the other fraudulent investment programs that he was aware of, in that, "they promise higher interest rates which are extraordinarily higher than what's available in the market. They tend to use terms totally out of context with respect to what the real meaning of those terms actually are."

114. Dr. Kozolchyk stated further than the purported investment documents in this proceeding referenced the following: financial documents that do not exist; banking practices which are not generally acceptable; and that the top ten world banks engage in business practices which they have not engaged in.

115. Dr. Kozolchyk stated that the bank guarantee referenced within the purported investment documents utilized by the Respondents would not be issued by "the top fifty west European banks" for the type of transaction described in the documents.

116. Dr. Kozolchyk stated further that with respect to the purported investments in this proceeding, "this is not a hidden market". To the contrary, Dr. Kozolchyk pointed out that the nature of the market encourages contact between parties trying to place debt in banks that act as intermediaries and that they rely on "open communications".

117. Dr. Kozolchyk described as "total fabrication" a market in Europe trading in

world class financial institution debt obligations in an electronic market place involving the largest and strongest European banks which conduct transactions available to participants by invitation only. Put more simply, he stated "to begin with, those high yield finance programs do not exist."

118. Dr. Kozolchyk, who formerly was a representative of the United States Council on International Banking to the International Chamber of Commerce ("ICC") working group, testified concerning published ICC reports that specifically addressed prime bank instrument fraud referring to it as "the fraud of the century".

119. The Division called as an additional expert witness, Mr. Mark Klamrzynski, a CPA employed by the Division, who reviewed investor and bank records relating to the offer and sale of the investments involved in this proceeding.

120. Mr. Klamrzynski's investigation of bank records found that Norwest Bank had an account in the name of RGD Inc. numbered 5581203887 with Mr. Guess, Mr. Sherriffs, Mr. Davis and Mr. King (an investor) as signatories. The majority of the transactions related to this account were engaged in by Mr. Sherriffs from its opening on March 10, 1997 until it was closed on or about March 19, 1998.

121. According to Mr. Klamrzynski, on September 19, 1997, another bank account was opened in the name of RGD Inc. with only Mr. Guess and Mr. Sherriffs as signatories, but with the same federal tax identification number as the first RGD Inc. account.

122. Based on his review of account records, Mr. Klamrzynski believes that Mr. Davis received preferential treatment when he was paid with funds from the RGD/James D. Sherriffs and PFM accounts.

123. Mr. Klamrzynski testified that he learned from late received subpoenaed bank documents that Mr. Davis had received another $21,500 from the PFM account in late 1998. These funds were in addition to the funds shown on the Division's amended Exhibits S-127 and

S-130, which reflect payments of $31,500 being disbursed to Mr. Davis.

124. According to the Division's amended Exhibits, the total amount invested in RGD and PFM reached $823,500, with returns to investors of $409,175 resulting in losses to investors of $414,325.

125. Based on the Division's amended financial Exhibits, Mr. Sherriffs received the lion's share of disbursements amounting to $233,299, Mr. Guess received $67,138 and Mr. Patterson received $20,100.

126. Mr. Klamrzynski testified that, based on his review of the RGD and PFM bank records, he found no evidence of any funds "directly disbursed" from the so-called escrow or "safekeeping" accounts as defined in the Agreements to any identifiable trading banks.

127. Initially, Mr. Klamrzynski found that funds were disbursed either by wire transfer or check from the RGD account to either Respondent Smith or First Alabama Bank to an account entitled Client Management Services ("CMS") which was a dummy clearing account from which money was transferred directly to Respondent Smith or to the Oasis account which he controlled.

128. The Oasis account was not operated as a trust account for investor funds. Mr. Klamrzynski noted some "highly suspect transactions" involved with the account which had deposits of approximately $21 million. One check for $10 million was written to Mr. Smith's wife and others were written for personal expenses such as sporting events at the University of Alabama.

129. Mr. Klamrzynski found payments from the Oasis account totaling $31,000 deposited into the "RGD/James D. Sherriffs" account during the months of April, May, June and July, 1997 with no evidence that these funds resulted from any trading profits.

130. Mr. Klamrzynski found further that, when the RGD account controlled by Mr. Sherriffs received the $150,000 investment from Mr. and Mrs. William Smith, Mr. Sherriffs diverted their funds to his own trust account on or about November 12, 1997. Mr. Sherriffs then

utilized these funds for his personal expenses.

131. Mr. Klamrzynski testified that, based on his review of the records, investors' funds were utilized by the Respondents to repay the investors' "profits", resulting in the Respondents perpetrating a "Ponzi" scheme in both RGD and PFM.

132. The financial records of PFM and Mr. Guess revealed that investor Lyle Mader's $50,000 that was to be escrowed for "safekeeping", was instead diverted into Mr. Guess' personal checking account at BankOne in Arizona.

133. The record also established that approximately $6,100 was diverted from Mr. Brian Weber's investment of $50,000 with PFM to pay Mr. Guess' attorney who had worked on the Private Offering Memorandum.

134. Mr. Klamrzynski also traced disbursements from Mr. Sal Calta's $50,000 investment with PFM on or about February 21, 1998 to the following payments: $25,000 on February 23, 1998 to a Mr. Carl Nicholson: other payments to investors Aitken and Hammond; and an additional payment back to Mr. Calta from his own money as an "interest" payment.

135. The PFM account was controlled either by Mr. Guess or his wife because they were the only signatories on the account. Mr. Klamrzynski further testified that the PFM account "was not for the purposes intended as portrayed in the investor documents that have already been admitted. There was no trading account or any evidence of any trading account nor were there any trading profits."

136. Based on Mr. Klamrzynski's overall review of the subject accounts starting in February, 1997 through August, 2000, he determined that in some instances, monies from the RGD account were transferred to Respondent Smith in Alabama, but with respect to the PFM account, there was no evidence of any trading bank activity or direct transfers to Mr. Smith, but there was a $15,000 disbursement to a Smith controlled entity, Alazon Management Holdings.

137. Mr. Klamrzynski pointed out that when the second RGD account, account number

0872804882, was opened on September 18, 1997, with Norwest Bank, its signatories were only Mr. Sherriffs and Mr. Guess. When this account was opened, Respondents Sherriffs and Guess utilized the same Federal Tax Identification Number assigned to the first RGD account opened by Mr. Guess, Mr. Sherriffs, Mr. Davis and Mr. King.

138. Mr. Klamrzynski also traced monies which were given to Mr. Patterson by investors Herrmann and Hayes in the amounts of $20,000 and $25,000, respectively, which were deposited into his personal checking account in July 1997 after which Mr. Patterson wrote corresponding checks for those amounts to RGD and Mr. Guess.

139. Mr. Klamrzynski could not find the existence of any valid connection between Mr. Davis and PFM to reveal why PFM paid Mr. Davis $5,500 from investor funds

140. Although Mr. King, a co-signer with Mr. Davis on the first RGD account, was not named as a Respondent, Mr. Davis was. Based on the Division's financial analysis, it determined that Mr. Davis was a participant in the offerings primarily because of the preferential payments made to him in excess of his $30,000 investment.

141. Besides the $31,500 disbursed to Mr. Davis, according to the Division's amended financial Exhibits, Mr. Klamrzynski stated that the Division had recently received subpoenaed copies of cancelled checks which reflected Mr. Davis receiving $20,000 in November 1998 and $1,500 in December 1998 from PFM. The first check for $20,000 was written on the PFM account by Mr. Guess and a second check for $1,500 was signed by Mr. Guess' wife, Cynthia.

142. There was no evidence that Mr. Davis had invested any funds with PFM and Mr. Klamrzynski acknowledged that he had no idea whether Mr. Davis had given Mr. Guess any monies in excess of the $30,000 reflected in the February and March 1997 wire transfers to CMS.

143. At the conclusion of the proceeding, neither Mr. Guess, Mr. Sherriffs, Mr. Patterson nor Mr. Davis took the stand in their own defense. Additionally, the disproportionate

return of invested monies to Mr. Davis together with other monies paid to him, remained unexplained.

144. Based upon the record, it is clearly established that the investment Programs offered and sold by Mr. Guess, Mr. Sherriffs and Mr. Patterson and participated in, albeit less directly, by Mr. Davis, were not lawful investments in conformity with the Act.

145. While a review of the evidence in the proceeding does not establish that any investor was influenced in any way by Mr. Davis (except possibly Ms. Herrmann) or the use of his initials as a JV Manager in an Agreement, there is sufficient evidence to conclude that he participated in the fraud conducted by Mr. Guess, Mr. Sherriffs and Mr. Patterson since he acquiesced to the use of his corporate entity by Mr. Guess and Mr. Sherriffs, assisted in the preparation of income tax forms and did nothing to distance himself from the other Respondents.

146. With respect to the offer and sale of the various discounted bank debt instrument programs:

A. Mr. Guess, Mr. Sherriffs and Mr. Patterson misrepresented that there was a trading market for European discounted debt instruments from major banks that generated extremely high profits with little or no risk because the investments were guaranteed by the banks; no market-based investment opportunity exists with these features, and investment programs offering such an opportunity are inherently fraudulent;

B. Mr. Guess, Mr. Sherriffs and Mr. Patterson misrepresented that investor funds would be invested in a market for discounted bank instruments in Europe;

C. Mr. Guess, Mr. Sherriffs and Mr. Patterson misrepresented that investor funds would be held in escrow for "safekeeping" until they could be transferred to a trading bank to earn a return on the investors' investments;

D. Mr. Guess, Mr. Sherriffs and Mr. Patterson misrepresented that monies invested would be protected by a bank guarantee in excess of the face value of the investment when, in fact, no such guarantee exists;

E. Mr. Guess, Mr. Sherriffs and Mr. Patterson misrepresented that payments to investors were interest or returns on investments while they were in fact either their own invested funds or other investors';

F. Mr. Guess, Mr. Sherriffs and Mr. Patterson failed to disclose that investor funds would be utilized for personal expenses;

G. Mr. Guess, Mr. Sherriffs and Mr. Patterson failed to disclose their experience and business background;

H. Mr. Guess, Mr. Sherriffs and Mr. Patterson failed to disclose the financial condition of either RDG or PFM or their own financial conditions;

I. Mr. Guess, Mr. Sherriffs and Mr. Patterson misrepresented that investors were making a "safe" investment; and

J. Mr. Guess misrepresented that investment funds received from investor Sal Calta's qualified IRA would be handled to retain the tax-deferred status, while in fact the funds were not transferred to a qualified IRA custodian.

147. The misrepresentations and omissions of fact by Mr. Guess, Mr. Sherriffs and Mr. Patterson established that they directly and Mr. Davis indirectly were engaging in transactions, practices or courses of business which operated or would operate as a fraud or deceit.

148. There is no evidence that there were any profits earned from any of the invested monies discussed in this proceeding.

149. In conducting his tax preparation services, Mr. Sherriffs violated the IMA by representing himself as an investment advisor and he also violated the anti-fraud provisions of the IMA.

150. With respect to the offerings described hereinabove, we believe that Respondents Guess, Sherriffs, Patterson and Davis should be ordered to permanently cease and desist from violations of the Act and that Mr. Sherriffs should also be ordered to permanently cease and desist from violating the provisions of the IMA.

151. We also believe that the Division's recommendations with respect to restitution are also reasonable for Mr. Guess, Mr. Sherriffs and Mr. Patterson with respect to the RGD investments in that Mr. Guess and Mr. Sherriffs should be liable for the outstanding balance owed to investors of $232,075 and Mr. Patterson should also be jointly and severely liable in this instance with Mr. Guess and Mr. Sherriffs for up to $57,730 of that total as it relates to investors

Calta, Hayes and Herrmann. However, we do not believe that it is necessary to alternatively order restitution by Mr. Sherriffs with respect to his violations of the IMA in the RGD offering since the restitution issue with respect to him is addressed under his violations of the Act. Lastly, although we have found that Mr. Davis indirectly violated the anti-fraud provisions of the Act, he should he required to disgorge as restitution only the $23,000 he was paid in excess of the $30,000 he invested in Bally and later recovered.

152. With respect to the PFM offering, Mr. Guess should be solely responsibly for the outstanding balance owed to those investors of $182,250 since there is no evidence that either Mr. Sherriffs, Mr. Patterson or Mr. Davis were involved in these investments.

153. With respect to administrative penalties being apportioned between Mr. Guess, Mr. Sherriffs and Mr. Patterson, we believe that the Division's recommendation with respect to Mr. Guess is reasonable and he should be assessed penalties of $100,000 for his violations of the Act. In the case of Mr. Sherriffs, an administrative penalty in the amount of $25,000 is also reasonable and should be assessed for his violations of the Act and the IMA.

154. With respect to Respondent Patterson, the Division recommended what we believe to be a reasonable administrative penalty under the circumstances and will order the imposition of a $25,000 administrative penalty.

155. Lastly, after thoroughly reviewing the allegations and the evidence presented during the hearing, we believe that the Division's penalty recommendation of $25,000 with respect to Mr. Davis is somewhat excessive in comparison to that recommended for Mr. Patterson due to his marginal involvement in the offerings and we believe that he should be assessed a lower administrative penalty of $10,000.

## CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and A.R.S. §§ 40-1801 and 44-3101, et. seq.

2. The investments in the variously named Joint Venture Investment Programs offered and sold by Mr. Guess, Mr. Sherriffs and Mr. Patterson were securities within the meaning of A.R.S. § 44-1801 (23).

3. The securities were neither registered nor exempt from registration, in violation of A.R.S. § 44-1841.

4. The actions and conduct of the Respondents, Mr. Guess, Mr. Sherriffs and Mr. Patterson constitute the offer and/or sale of securities within the meaning of A.R.S. §§ 44-1801(15) and 44-1801(21).

5. Respondents, Mr. Guess, Mr. Sherriffs and Mr. Patterson offered and/or sold unregistered securities within or from Arizona in violation A.R.S. § 44-1841.

6. Respondents, Mr. Guess, Mr. Sherriffs and Mr. Patterson are salesmen within the meaning of A.R.S.§ 44-1801(22).

7. Respondents, Mr. Guess, Mr. Sherriffs and Mr. Patterson offered and/or sold securities within Arizona without being registered as salesmen in violation of A.R.S. § 44-1842.

8. Respondents, Mr. Guess, Mr. Sherriffs, Mr. Patterson and Mr. Davis violated the anti-fraud provisions of A.R.S. § 44-1991 in the manner set forth hereinabove.

9. Respondents, Mr. Guess, Mr. Sherriffs, Mr. Patterson and Mr. Davis are found herein to have violated the Act, should cease and desist pursuant to A.R.S. § 44-2032 from any future violations of A.R.S. §§ 44-1841, 44-1842 and 44-1991 and all other provisions of the Act.

10. With respect to the RGD offering, Mr. Guess and Mr. Sherriffs should be jointly and severally liable to make restitution pursuant to A.R.S. § 44-2032 and A.A.C R14-4-308 totaling $232,075 subject to any legal set-offs. Mr. Patterson should also be jointly and severally liable with Mr. Guess and Mr. Sherriffs for up to $57,730 of this total subject to any legal set-offs. Mr. Davis should be jointly and severally liable with Mr. Guess, Mr. Sheriffs and Mr. Patterson for up to $23,000 of the total, subject to any legal set-offs.

11. With respect to the PFM offering, Mr. Guess should be solely liable to make restitution pursuant to A.R.S. § 44-2032 and A.A.C. R14-4-308 totaling $182,250 subject to any legal set-offs.

12. With respect to the RGD and PFM offerings, Mr. Guess, Mr. Sherriffs, Mr. Patterson and Mr. Davis should be assessed administrative penalties pursuant to A.R.S. § 44-2036 as follows: Mr. Guess, for the violation of A.R.S. § 44-1841 the sum of $25,000, for the violation of A.R.S. § 44-1842, the sum of $6,500, and for the violation of A.R.S. § 44-1991, the sum of $50,000; Mr. Sherriffs, for the violation of A.R.S. § 44-1841, the sum of $6,500, for the violation of A.R.S. § 44-1842, the sum of $6,500 and for the violation of A.R.S. § 44-1991, the sum of $12,000; Mr. Patterson, for the violation of A.R.S. § 44-1841, the sum of $6,500, for the violation of A.R.S. § 44-1842 the sum of $6,500, and for the violation of A.R.S. § 44-1991, the sum of $12,000; and Mr. Davis, for the violation of A.R.S. § 44-1991, the sum of $10,000.

13. The actions and conduct of Mr. Sherriffs constitute the actions of an investment advisor or an investment advisor representative within the meaning of A.R.S. §§ 44-3101(2) and 44-3101(3).

14. With respect to the offerings described above, Mr. Sherriffs transacted business as either an investment advisor or an investment advisor representative in violation of A.R.S. § 44-3151.

15. With respect to the offerings described above, Mr. Sherriffs violated the anti-fraud provision of A.R.S. § 44-3241.

16. With respect to Mr. Sherriffs' conduct during which time he acted as an investment advisor or an investment advisor representative in violation of the IMA, he should cease and desist pursuant to A.R.S. § 44-3292 from any further violations of A.R.S. § 44-3101, et seq. and all other provisions of the IMA.

## ORDER

IT IS THEREFORE ORDERED that pursuant to the authority granted to the Commission under A.R.S. § 44-2032, Respondents Mr. Joseph Michael Guess, Sr., Mr. James Douglas Sherriffs and Mr. Ira Joe Patterson shall cease and desist from their actions described hereinabove in violation of A.R.S. §§ 44-1841, 44-1842 and 44-1991 and Mr. Richard Gordon Davis shall cease and desist from his actions described hereinabove in violation of A.R.S. § 44-1991.

IT IS FURTHER ORDERED that pursuant to the authority granted to the Commission under A.R.S. § 44-3292, Mr. James Douglas Sherriffs shall cease and desist from his actions described hereinabove in violation of A.R.S. § 44-3151.

IT IS FURTHER ORDERED that pursuant to the authority granted to the Commission under A.R.S. § 44-2036, Respondents, Mr. Joseph Michael Guess, Sr., Mr. James Douglas Sherriffs, Mr. Ira Joe Patterson and Mr. Richard G. Davis shall each pay as and for administrative penalties: for the violation of A.R.S. § 44-1841, Mr. Joseph Michael Guess, Sr., the sum of $25,000, for Mr. James Douglas Sherriffs, the sum of $6,500 and Mr. Ira Joe Patterson, the sum of $6,500; for the violation of A.R.S. § 44-1842, Mr. Joseph Michael Guess, Sr., the sum of $25,000, Mr. James Douglas Sherriffs, the sum of $6,500, and Mr. Ira Joe Patterson the sum of $6,500; and for the violation of A.R.S. § 44-1991, Mr. Joseph Michael Guess, Sr., the sum of $50,000, Mr. James Douglas Sherriffs, the sum of $12,000, and Mr. Ira Joe Patterson, the sum of $12,000 and Mr. Richard G. Davis, the sum of $10,000.

IT IS FURTHER ORDERED that the administrative penalties ordered hereinabove shall be made payable to the State Treasurer for deposit in the General Fund for the State of Arizona.

IT IS FURTHER ORDERED that the administrative penalties ordered hereinabove shall bear interest at the rate of 10 percent per year for any outstanding balance after 60 days from the effective date of this Decision.

IT IS FURTHER ORDERED that the administrative penalties assessed hereinabove against Respondent Mr. Joseph Michael Guess, Sr. shall be reduced to $10,000 per statutory violation if restitution is made in accordance with the terms of this Decision hereinafter.

IT IS FURTHER ORDERED that the administrative penalties assessed hereinabove against Mr. Ira Joe Patterson shall be reduced to $3,000 per statutory violation if restitution is made in accordance with the terms of this Decision hereinafter.

IT IS FURTHER ORDERED that pursuant to the authority granted to the Commission under A.R.S. § 44-2032, Respondents, Mr. Joseph Michael Guess, Sr. and Mr. James Douglas Sherriffs, jointly and severally, with respect to RGD, shall make restitution in an amount not to exceed $232,075 together with Respondent Mr. Ira Joe Patterson who shall jointly and severally make restitution in an amount not to exceed $57,730 of the $232,075, and together with Respondent Mr. Richard Gordon Davis who shall jointly and severally make restitution in an amount not to exceed $23,000 of the $232,075, which restitution shall be made pursuant to A.A.C. R14-4-308, subject to any set-offs by any other Respondents and confirmed by the Director of Securities, said restitution to be made within 60 days of the effective date of this Decision.

IT IS FURTHER ORDERED that pursuant to the authority granted to the Commission under A.R.S. § 44-2032, Respondent, Mr. Joseph Michael Guess, Sr., shall make restitution with respect to PFM, not to exceed $182,250 which restitution shall be made pursuant to A.A.C. R14-4-308, subject to any legal set-offs by any other Respondents and confirmed by the Director of Securities, said restitution to be made within 60 days of the effective date of this Decision.

IT IS FURTHER ORDERED that the restitution ordered hereinabove shall bear interest at the rate of 10 percent per year for the period from the dates of investment to the date of payment of restitution by Respondents.

IT IS FURTHER ORDERED that all restitution payments ordered hereinabove shall be deposited into an interest-bearing account(s) if appropriate, until distributions are made.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN COMMISSIONER 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 30th day of August, 2001.

BRIAN C. McNEIL
EXECUTIVE SECRETARY

DISSENT _____
MES:mlj