



BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

MARC SPITZER, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON
KRISTIN K. MAYES

Arizona Corporation Commission
DOCKETED

MAY 07 2004

DOCKETED BY *CM*

In the matter of:
FOUNTAIN CAPITAL MANAGEMENT, LLC
c/o DAVID A. FAZIO
3616 West Cortez
Phoenix, Arizona 85029
INTEGROWTH FINANCIAL GROUP
C/O ROGER ALVIN SANDE
CDC # V06974
P.O. Box 2210
Susanville, California 96130
RICHARD A. FANDRICH
11424 North 25th Avenue
Phoenix, Arizona 85029
DAVID A. and DEBORAH FAZIO
3616 West Cortez
Phoenix, Arizona 85029
DONALD and HELEN ABERNATHY
2323 North Central Avenue, #803
Phoenix, Arizona, 85004
STEPHEN A. and JANE DOE HILTBRAND
2156 E. Estrella Circle
Mesa, Arizona 85202
ROGER ALVIN SANDE
CDC # V06974
P.O. Box 2210
Susanville, California 96130
Respondents.

DOCKET NO. S-03505A-04-0000

NOTICE OF OPPORTUNITY FOR
HEARING REGARDING PROPOSED
ORDER TO CEASE AND DESIST,
ORDER FOR RESTITUTION, FOR
ADMINISTRATIVE PENALTIES AND
FOR OTHER AFFIRMATIVE RELIEF

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1 **NOTICE: EACH RESPONDENT HAS 10 DAYS TO REQUEST A HEARING**

2 **EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER**

3 The Securities Division ("Division") of the Arizona Corporation Commission
4 ("Commission") alleges that RESPONDENTS have engaged in acts, practices and transactions,
5 which constitute violations of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities
6 Act").

7 **I.**

8 **JURISDICTION**

9 1. The Commission has jurisdiction over this matter pursuant to Article XV of the
10 Arizona Constitution and the Securities Act.

11 **II.**

12 **RESPONDENTS**

13 2. FOUNTAIN CAPITAL MANAGEMENT, LLC ("FCM"), is a Nevada limited
14 liability company, whose statutory agent is David A. Fazio, who is located at 3616 West Cortez,
15 Phoenix, Arizona 85029.

16 3. INTEGROWTH FINANCIAL GROUP ("INTEGROWTH") is an entity controlled
17 by Roger A. Sande, who currently resides at CDC # V06974, P.O. Box 2210, Susanville, California
18 96130.

19 4. RICHARD A. FANDRICH ("FANDRICH"), a single man, resides at 11424 North
20 25th Avenue, Phoenix, Arizona 85029. He is a member of FCM.

21 5. DAVID A. FAZIO ("FAZIO") resides at 3616 West Cortez, Phoenix, Arizona,
22 85029. He is a member of FCM.

23 6. DEBORAH FAZIO was at all relevant times the spouse of RESPONDENT DAVID
24 FAZIO. DEBORAH FAZIO is joined in this action under A.R.S. § 44-2031(C) solely for purposes
25 of determining the liability of the marital community.

26

1 matures, that is when the insured dies, the investor receives the full face value as return of
2 investment plus profit.

3 19. All viatical policies sold by RESPONDENTS were on behalf of Future First
4 Financial Group ("Future First") of Pointe Verda Beach, Florida. RESPONDENTS told investors
5 that the only risk involved with the purchase of viatical policies was the risk that the insured would
6 die at a later date, thereby reducing the expected return. They informed investors that returns could
7 be as high as 100%, with the investment being safe and guaranteed.

8 20. Investors did not receive medical information on the insured whose policy they
9 purchased. Rather, they received a short summary from a medical doctor, simply describing the life
10 expectancy of the insured. RESPONDENTS never checked and thus did not inform investors that
11 the doctor who wrote the medical summary was a Florida cosmetic doctor. Investors were told
12 that Future First viatical policies were 100% correct in their medical assessments with no insured
13 living past their expected date of death.
14

15 21. Investors were also informed that they would never have to pay any fees or other
16 payments after they purchased the viatical policy.
17

18 22. On or about February 4, 2000, Future First and its vice-president were indicted by
19 the state of Florida for 81 counts of grand theft and one count of organized fraud in connection with
20 the marketing of fraudulently obtained policies valued at \$6,900,000. After Future First defaulted
21 on its management responsibilities with respect to the viatical policies, investors were left with the
22 choice of making additional payments to keep the policies in effect or allowing policies to lapse
23 due to nonpayment of premiums. Some Future First viatical policies were found not to have actual
24 underlying insurance policies.
25
26

1 28. ATC was organized by Rubera and operated in conjunction with and as an alter ego
2 of Alpha. The two companies were controlled by Rubera and his associates.

3 29. Alpha and ATC, and their affiliates, sold pay telephones with telephone service
4 agreements pursuant to which the investor would share in the profits of the pay telephone.
5 Investors would enter into two agreements, a purchase agreement, and a service agreement with
6 Alpha to manage the phone. The two agreements were presented and promoted simultaneously.
7 The telephones were presented to potential investors with four options in the way of service
8 contracts, each varying in the amount of service provided. The four options varied from Level 1,
9 which included a minimum of service, to Level 4, which provided full service to the purchaser,
10 including choosing a site and installing the telephone, collecting all revenue from the telephone's
11 operation, repairing the telephone when necessary, and even repurchasing or buying back the
12 telephone at the investor's option. Under Level 4, Alpha would split the net proceeds with the
13 investor on a 70/30 basis, with Alpha retaining 70% and the investor receiving 30%. The price of
14 the pay telephones was the same regardless of the service option chosen, \$5,000.00 per telephone.
15 Although investors were given a choice of using a company other than Alpha to manage the phone,
16 no known Arizona investor picked a company other than Alpha to manage their phones. A "typical
17 return" on each pay telephone was touted as 14% per year. In practice, all purchasers received
18 \$58.34 per month per pay telephone purchased, which amounted to exactly 14% per annum.
19

20 30. ATC's primary role was marketing the contracts. Alpha's main focus was on
21 obtaining phone sites and installing, servicing, and managing the phones.
22

23 31. ATC was presented to the public as the sales organization for Alpha. In early 1999,
24 ATC engaged Strategic Partnership Alliance, L.L.C., a Nevada limited liability company, and/or
25 SPA Marketing, L.L.C., a Nevada limited liability corporation, (collectively "SPA") as its
26

1 independent marketing and sales firm(s). SPA thereafter was responsible for hiring, training, and
2 supervising sales agents who were selling the telephone contracts. After SPA came on board, ATC
3 remained as the processing center for the contracts, while Alpha continued to perform the service
4 and maintenance of the phones.

5 32. The FCM RESPONDENTS, directly or indirectly, entered into agreements with
6 Alpha, ATC, and/or SPA, pursuant to which the FCM RESPONDENTS sold investment contracts
7 involving Alpha pay telephones (the "Alpha investment contracts") within or from the state of
8 Arizona. All Alpha investment contracts the FCM RESPONDENTS sold were Level 4 contracts.
9

10 33. The FCM RESPONDENTS told prospective investors their investments were
11 insured. The insurers' name varied. Mentioned most often was the Northern and Western
12 Insurance Company of Grand Turk, Turks and Caicos Islands, British West Indies ("N&W"). Also
13 mentioned were Lloyd's of London and four other insurance companies listed as re-insurers. N&W
14 was a captive insurance company wholly owned by Paul S. Rubera, the President and control
15 person of Alpha, and Robert S. Harrison of Richmond, Texas. N&W is not authorized to write
16 insurance in Arizona. On information and belief, N&W was not authorized to write insurance in
17 any state in which the Alpha pay telephones were located. In a letter dated August 15, 2001,
18 Harrison stated: "There is not now, nor was there ever any insurance coverage for Alpha Telcom,
19 Inc."
20

21 34. The FCM RESPONDENTS presented Alpha to prospective customers as a stable,
22 profitable, and innovative company that had been in business since 1985. Alpha was said to be
23 selling and providing a "turn-key" operation.

24 35. On information and belief, sales agents were paid commissions from 12% to 19%
25 per telephone sold.
26

1 36. Alpha has a long regulatory history in which state securities regulators have found that
2 these purchases of pay telephones and accompanying service contracts were unregistered securities in
3 the form of investment contracts that were sold by unregistered persons and/or entities, and ordered
4 Alpha and those working with it to cease and desist. The FCM RESPONDENTS did not reveal these
5 orders to the investors with whom they dealt. The orders that the FCM RESPONDENTS could have
6 revealed include:

7
8 a. February 2, 1999, Cease and Desist Order issued by Pennsylvania Securities
9 Commission in *In the Matter of Alpha Telcom, Inc., et al.*, No. 9812-06.

10 b. November 17, 1999, Cease and Desist Order issued by North Carolina
11 Secretary of State in *In the Matter of the North Carolina Securities Division v. ATC, Inc.,
12 Paul Rubera, et al.*, No. 99-038-CC.

13 c. June 30, 1999, Temporary Order of Prohibition issued by Illinois Secretary
14 of State in *In the Matter of Alpha Telcom, Inc.*, No. 9900201.

15 d. January 14, 2000, Consent Order of Prohibition issued by Illinois Secretary
16 of State in *In the Matter of Alpha Telcom, Inc.*, No. 9900201, Alpha agreeing to offer
17 rescission to all Illinois purchasers.

18 e. November 24, 1999, Cease and Desist Order issued by Wisconsin
19 Department of Financial Institutions in *In the Matter of Alpha Telcom, Inc. and Paul S.
20 Rubera, et al.*, No. S-99225(EX).

21 f. March 7, 2000, Temporary Cease and Desist Ordered issued by Rhode Island
22 Department of Business Regulation in *In the Matter of Alpha Telcom, Inc. and ATC, Inc.*

23 g. July 18, 2000, Florida Department of Banking and Finance filed
24 administrative action against Alpha and others, seeking a Cease and Desist Order.

25 h. October 24, 2000, Desist and Refrain Order issued by California Department
26 of Corporations.

27 37. The United States Securities and Exchange Commission sued Alpha and its
28 affiliates in *SEC v. Alpha Telcom, Inc., et al.*, No. CV 01-1283 PA. The court entered a temporary
29 restraining order on August 27, 2001 and a preliminary injunction on September 6, 2001. The SEC
30 alleged that Alpha and its affiliates engaged in a Ponzi-like scheme that never generated enough
31 income to pay expenses, and that the money paid to existing investors always came from sales to
32

1 new investors. A court-appointed receiver subsequently took over the remaining operations of
2 Alpha. Alpha consented on October 19, 2001 to entry of the Final Judgment of Permanent
3 Injunction against it, but did not admit the allegations of the Complaint.

4 38. Alpha's monthly payments to investors ceased prior to August, 2001.

5 39. The FCM RESPONDENTS sold Alpha investment contracts involving telephones to
6 at least 9 individuals or entities within or from the state of Arizona from September 2000 through
7 July, 2001, for a total sales amount of at least \$250,000.

8
9 **Chemical Trust Investment Contract**

10 40. Beginning 1999, RESPONDENTS began offering the Chemical Trust investment.
11 Investors were told that Chemical Trust was a "Members Only Investment Trust" located in West
12 Palm Beach, Florida. Agents, such as RESPONDENTS, were instructed to market the investment
13 to investors at a minimum of \$10,000 per contract for 12 months or more. RESPONDENTS were
14 given authority to offer as much as 25% interest for each investment. Of that 25%,
15 RESPONDENTS were able to choose how much to offer to investors as interest and how much
16 they would keep for their commissions for selling the investment.
17

18 41. Investors were told that the investments are guaranteed two ways. First, the
19 investments are guaranteed by Chemical Trust which allegedly held \$450,000,000 in assets.
20 Second, the investments were guaranteed by a surety payment bond totaling "in excess of \$6
21 billion dollars" that was provided "for 100% of their principal amount invested" at no cost to the
22 investor. The surety payment bond was allegedly provided by U. S. Guarantee Corporation
23 located in Phoenix, Arizona. In fact, U. S. Guarantee Corporation is not licensed in Arizona as a
24 surety insurer. USGC allegedly had assets of \$2,415,142,120, which backed up the bond
25 guaranteeing the investment. Those funds turned out not to exist.
26

1 the ATMs were allegedly placed with retail merchants in order to enable electronic purchase
2 transactions at the customers' points of delivery. The services offered include locating and
3 installing the equipment with retail merchants, handling or processing the transactions, monitoring
4 and maintaining the equipment, insuring the equipment, and issuing monthly profit distribution
5 checks to the investors or "business owners."

6
7 47. Although the offering documents for the ATMs describe options for different levels
8 of managing the equipment, in practice, all investors selected the full-service option, which offered
9 a revenue-sharing feature and a buy-back provision from the recommended service company. Under
10 the full-service option, investors had no responsibilities with respect to the operation of their
11 equipment beyond signing the service contracts, no financial obligations apart from the initial
12 payment to purchase the units, no continuing financial obligation in the operation of their
13 equipment, and no liability for any expenses or costs related to the operation of the equipment. At
14 least one of the services offered to investors, i.e., transaction handling, requires special expertise.
15 That function involves processing transactions, and is the key to generating a profit for investors.
16

17 48. The FCM RESPONDENTS sold the ATMs to investors who had no experience in or
18 knowledge of the cash terminal business, who never intended to take possession of, or to manage, the
19 equipment, and who did not even know where their equipment was located.

20
21 49. According to written materials and oral statements made to investors, investors in
22 the ATM programs are supposed to receive a) minimum monthly revenue equivalent to 12% of
23 their original investment generated from the operation of their equipment; b) a share of the monthly
24 net profit on each machine in excess of the base monthly payment; c) a full return of their
25 investment at the end of the five-year term because they have a right to sell the equipment back to
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1 the service company for the original amount of the investment, or renew the investment; and d) if
2 the monthly revenue from the operation of the machine falls below the base payment, the right to
3 request that the service company repurchase the equipment for the original sales price or relocate
4 the equipment to another location with the potential for a higher profit from sharing in increased
5 revenue.

6
7 50. Despite these representations, ICS defaulted on payments and failed to repurchase
8 the investors' ATM machines as requested. The FCM RESPONDENTS sold at ATM investments
9 to at least four investors who invested at least \$88,000.

10 **The Other Securities Orders**

11 51. In 1996, the Missouri Commissioner of Securities issued an order against
12 ABERNATHY for violation of its securities laws.

13
14 52. On September 28, 1999, the Iowa Securities Bureau issued an order against
15 INTEGROWTH and ABERNATHY for violation of its securities laws for their sale of the
16 Chemical Trust products.

17 53. On August 24, 1999, the North Dakota Commissioner of Securities issued an order
18 against INTEGROWTH and HILTBRAND for violations of its securities laws.

19 54. On October 29, 2001, SANDE was arrested on 38 felony counts of theft and
20 unlicensed sales of viaticals, allegedly defrauding investors of over \$2.7 million. On November 19,
21 2003, SANDE was sentenced to seven years and four months in prison, in addition to paying
22 \$1,453,929.56 in restitution.

23
24 55. On November 11, 2003, the Wisconsin Department issued an order for fraud in the
25 sale of securities against FCM, ABERNATHY, FAZIO and FANDRICH.

1 would operate as a fraud or deceit upon offerees and investors. RESPONDENTS' conduct includes,
2 but is not limited to, the following:

3 a. Failing to disclose the Securities' Orders entered against RESPONDENTS
4 and the various companies whose investments RESPONDENTS offered;

5 b. Failing to disclose commissions RESPONDENTS received as incentives to
6 sell investments to investors; and

7 c. Failing to disclose to investors RESPONDENTS' track record of losing
8 and/or fraudulent investments.

9 d. With respect to the viatical investments, RESPONDENTS:

10 1) Failing to provide full disclosure regarding the investment including
11 risk, disclosure statements, prospectuses, financial statements or RESPONDENTS' own lack of
12 due diligence in investigating the investment;

13 2) Failing to provide full disclosure to investors about Future First,
14 including but not limited to past operations, balance sheets, statements of income, retained
15 earnings, and cash flows that would reflect the financial position of these entities.

16 3) Falsely informing investors that there was no risk and that their
17 investment was fully secured and guaranteed.

18 4) Failing to provide investors with certain material information about
19 the use of investor proceeds, such as the cost to purchase the policy, the fees and commissions
20 payable to them, medical advisors, or any other participants in the program; and

21 5) With at least five of the investors, failing to inform them that at the
22 time of their investment, Future First and its vice-president was under indictment by the state of
23 Florida.

24 e. With respect to the Alpha Pay Telephone Contracts, the FCM
25 RESPONDENTS:

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1 1) Falsely representing to investors that their investment and/or the pay
2 telephones they purchased from Alpha were fully insured, when they were not, in fact, insured by
3 any insurance company authorized to provide insurance in Arizona or in any state in which the pay
4 telephones were located; and

5 2) Falsely representing to investors that monies they would receive as a
6 result of their investment in Alpha were derived from profits on pay telephones, when in fact the
7 returns paid to investors came from purchases by subsequent investors.

8 f. With respect to the Chemical Trust investments, RESPONDENTS:

9 1) Failing to provide full disclosure to investors about Chemical Trust,
10 including but not limited to past operations, balance sheets, statements of income, retained
11 earnings, and cash flows that would reflect the financial position of these entities; and

12 2) Falsely informing investors that their funds would be fully secured
13 by U.S. Guarantee Corporation; and

14 3) Falsely representing to investors that monies they would receive as a
15 result of their investment in Chemical Trust were derived from profits on the purchase and sale of
16 U.S. Treasury notes and distressed properties, when in fact the returns paid to investors came from
17 purchases by subsequent investors.

18 g. With respect to the ATM investment, the FCM RESPONDENTS:

19 1) Falsely representing to investors that their investment and/or the
20 ATMs they purchased were fully insured, when they were not, in fact, insured by any insurance
21 company authorized to provide insurance in Arizona or in any state in which the pay telephones
22 were located; and

23 2) Failing to provide full disclosure to investors about ICS, including
24 but not limited to past operations, balance sheets, statements of income, retained earnings, and
25 cash flows that would reflect the financial position of this entity.
26

1 **XIII.**

2 **HEARING OPPORTUNITY**

3 RESPONDENTS, including RESPONDENT SPOUSES, may request a hearing pursuant to
4 A.R.S. § 44-1972 and A.A.C. R14-4-306. **If any RESPONDENT requests a hearing, the**
5 **RESPONDENT must also answer this Notice.** A request for hearing must be in writing and
6 received by the Commission within 10 business days after service of this Notice of Opportunity for
7 Hearing. Each RESPONDENT must deliver or mail the request to Docket Control, Arizona
8 Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007. A Docket Control cover
9 sheet must accompany the request. A cover sheet form and instructions may be obtained from
10 Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at
11 www.cc.state.az.us/utility/forms/index.htm.

12 If a request for a hearing is timely made, the Commission shall schedule the hearing to begin
13 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the
14 parties, or ordered by the Commission. If a request for a hearing is not timely made, the Commission
15 may, without a hearing, enter an order against each RESPONDENT granting the relief requested by
16 the Division in this Notice of Opportunity for Hearing.

17 Persons with a disability may request a reasonable accommodation such as a sign language
18 interpreter, as well as request this document in an alternative format, by contacting Yvonne L.
19 McFarlin, Executive Assistant to the Executive Secretary, voice phone number 602/542-3931, e-
20 mail ymcfarlin@cc.state.az.us. Requests should be made as early as possible to allow time to
21 arrange the accommodation.

22 **XIV.**

23 **ANSWER REQUIREMENT**

24 Pursuant to A.A.C. R14-4-305, if any RESPONDENT or RESPONDENT SPOUSE
25 requests a hearing, RESPONDENT or RESPONDENT SPOUSE must deliver or mail an Answer
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1 to this Notice of Opportunity for Hearing to Docket Control, Arizona Corporation Commission,
2 1200 W. Washington, Phoenix, Arizona 85007, within 30 calendar days after the date of
3 service of this Notice of Opportunity for Hearing. A Docket Control cover sheet must
4 accompany the Answer. A cover sheet form and instructions may be obtained from
5 Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at
6 www.cc.state.az.us/utility/forms/index.htm.

7 Additionally, RESPONDENT or RESPONDENT SPOUSE must serve the Answer upon
8 the Division. Pursuant to A.A.C. R14-4-303, service upon the Division may be made by mailing
9 or by hand-delivering a copy of the Answer to the Division at 1300 West Washington, 3rd Floor,
10 Phoenix, Arizona, 85007, addressed to Mark Dinell.

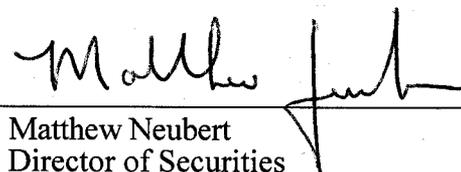
11 The Answer shall contain an admission or denial of each allegation in this Notice and the
12 original signature of each RESPONDENT, RESPONDENT SPOUSE or RESPONDENT's
13 attorney. A statement of a lack of sufficient knowledge or information shall be considered a denial
14 of an allegation. An allegation not denied shall be considered admitted.

15 When RESPONDENT or RESPONDENT SPOUSE intends in good faith to deny only a
16 part or a qualification of an allegation, RESPONDENT or RESPONDENT SPOUSE shall specify
17 that part or qualification of the allegation and shall admit the remainder. RESPONDENT or
18 RESPONDENT SPOUSE waives any affirmative defense not raised in the answer.

19 The officer presiding over the hearing may grant relief from the requirement to file an
20 Answer for good cause shown.

21 Dated this 7 day of May, 2004.

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Matthew Neubert
Director of Securities