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BEFORE THE ARIZONA CORPORATION C

Arizona Corporation Commission

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COMMISSIONERS

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

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

DECISION NO. 67538

ORDER TO CEASE AND DESIST, ORDER
OF RESTITUTION, ORDER FOR
ADMINISTRATIVE PENALTIES AND
CONSENT TO SAME BY: FOUNTAIN
CAPITAL MANAGEMENT, LLC, DAVID A.
FAZIO AND DEBORAH FAZIO

1 Respondents Fountain Capital Management, LLC, David A. Fazio and Deborah Fazio
2 ("FCM, Fazio and Deborah Fazio") elect to permanently waive any right to a hearing and appeal
3 under Articles 11 and 12 of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities
4 Act") with respect to this Order To Cease And Desist, Order Of Restitution, Order For
5 Administrative Penalties and Consent to Same By: Fountain Capital Management, LLC, David A.
6 Fazio and Deborah Fazio ("Order"). FCM, Fazio and Deborah Fazio admit the jurisdiction of the
7 Arizona Corporation Commission ("Commission"); neither admit nor deny the Findings of Fact
8 and Conclusions of Law contained in this Order; and consent to the entry of this Order by the
9 Commission.
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12 **I.**

13 **FINDINGS OF FACT**

14 1. Fountain Capital Management, LLC ("FCM"), is a Nevada limited liability company,
15 whose statutory agent is David A. Fazio, who is located at 3616 West Cortez, Phoenix, Arizona
16 85029.

17 2. David A. Fazio ("D. Fazio") resides at 3616 West Cortez, Phoenix, Arizona, 85029.
18 He is a member of FCM.

19 3. Deborah Fazio was at all relevant times the spouse of Respondent David Fazio.
20 Deborah Fazio is joined in this action under A.R.S. § 44-2031(C) solely for purposes of determining
21 the liability of the marital community.

22 4. At all times relevant, Hiltbrand was acting for his own benefit, and for the benefit or in
23 furtherance of the marital community.

24 5. In 1999, Respondents Integrowth Financial Group ("Integrowth") and Roger Alvin
25 Sande ("Sande") recruited Respondents Fazio, Richard A. Fandrich ("Fandrich"), Donald Abernathy
26 ("Abernathy") and Stephen A. Hiltbrand ("Hiltbrand") (collectively "the Individual Respondents") to

1 start a branch office of Integrowth in Phoenix. Sande told the Individual Respondents that
2 Integrowth was his company. The purpose of the company was to sell viatical and other
3 investment opportunities to members of the public in Arizona. Sande told the Individual
4 Respondents that Integrowth marketed viatical policies and other investment opportunities. Sande
5 agreed with the Individual Respondents that Integrowth would pay all expenses incurred in the sale
6 of the viaticals and would pay the Individual Respondents a 7% commission on each viatical policy
7 they sold.

8 6. In June 1999, the Individual Respondents formed FCM, and continued their
9 operations under its name. The Individual Respondents and FCM (collectively the "FCM
10 Respondents") continued to sell viatical policies, just as they had with Integrowth. Integrowth and
11 Sande continued to receive an override commission on all products sold by the FCM Respondents.

12 7. The FCM Respondents agreed that they would share all commissions among
13 themselves, without regard to which of them made the actual sale.

14 8. Both Integrowth and FCM ran advertisements in Phoenix newspapers, offering
15 investments with returns as high as 40%. Once investors called, Integrowth, Sande and the FCM
16 Respondents (collectively "Respondents") attempted to sell them the investments.

17 The Viatical Policies

18 9. From at least January 1999 through at least June 2000, the Respondents offered and
19 sold securities in the form of viatical settlement contracts and investment contracts to Arizona
20 investors. A viatical settlement contract involves the purchase of an interest in the proceeds from a
21 life insurance policy of a terminally ill individual. Various viatical companies purchase the
22 policies at a discount and re-sell the benefits to investors at less than the full face value. When the
23 policy matures, that is when the insured dies, the investor receives the full face value as return of
24 investment plus profit.
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1 10. All viatical policies sold by Respondents were on behalf of Future First Financial
2 Group ("Future First") of Pointe Verda Beach, Florida. The Respondents told investors that the
3 only risk involved with the purchase of viatical policies was the risk that the insured would die at a
4 later date, thereby reducing the expected return. They informed investors that returns could be as
5 high as 100%, with the investment being safe and guaranteed.

6 11. Investors did not receive medical information on the insured whose policy they
7 purchased. Rather, they received a short summary from a medical doctor, simply describing the
8 life expectancy of the insured. Investors were told that Future First viatical policies were 100%
9 correct in their medical assessments with no insured living past their expected date of death.

10 12. Investors were also informed that they would never have to pay any fees or other
11 payments after they purchased the viatical policy.

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

20 14. The Respondents failed to provide full disclosure regarding the investment
21 including risk, disclosure statements, prospectuses, financial statements or their own lack of due
22 diligence in investigating the investment. They failed to provide certain material information to
23 investors about Future First, including but not limited to past operations, balance sheets, statements
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1 of income, retained earnings, and cash flows that would reflect the financial position of these
2 entities. They distributed literature that misrepresented the investment as a "no risk" opportunity.
3 They failed to provide investors with certain material information about the use of investor
4 proceeds, such as the cost to purchase the policy, the fees and commissions payable to them,
5 medical advisors, or any other participants in the program. The information the FCM Respondents
6 provided to investors was obtained from Integrowth, Sande and others in their upline, including
7 Future First. At the time the FCM Respondents sold the Future First investments, Future First was
8 a licensed Florida viatical settlement provider.

9 15. From January 1999 through at least June 2000, the Respondents offered and sold
10 securities in the form of viatical settlement contracts and investment contracts to at least 34
11 Arizona investors, who invested a total of at least \$1,110,482.

12 The Alpha Pay Telephone Contracts

13 16. Alpha Telcom, Inc. ("Alpha") was an Oregon corporation located at 2751 Highland
14 Avenue, Grants Pass, Oregon 97526.

15 17. American Telecommunications Company, Inc. ("ATC") was a Nevada corporation
16 formed as a wholly owned subsidiary of Alpha on or about September 17, 1998. Originally named
17 ATC, Inc., the name was changed to American Telecommunications Company, Inc., sometime in
18 the first half of 2000. Its address was the same as Alpha's, but was later changed to 620 S.W. 4th
19 Street, Grants Pass, Oregon 97526, then to 2900 Vine Street, Suite J, Grants Pass, Oregon 97526,
20 and then to 942 S.W. 6th Street, Suite G, Grants Pass, Oregon 97526.

21 18. Paul S. Rubera ("Rubera") was the president and control person of Alpha, and the
22 control person of ATC.

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

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

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

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

1 supervising sales agents who were selling the telephone contracts. After SPA came on board, ATC
2 remained as the processing center for the contracts, while Alpha continued to perform the service
3 and maintenance of the phones.

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

8 24. The FCM Respondents told prospective investors their investments were insured.
9 The insurers' name varied. Mentioned most often was the Northern and Western Insurance
10 Company of Grand Turk, Turks and Caicos Islands, British West Indies ("N&W"). Also
11 mentioned were Lloyd's of London and four other insurance companies listed as re-insurers.
12 N&W was a captive insurance company wholly owned by Paul S. Rubera, the President and
13 control person of Alpha, and Robert S. Harrison of Richmond, Texas. N&W is not authorized to
14 write insurance in Arizona. On information and belief, N&W was not authorized to write
15 insurance in any state in which the Alpha pay telephones were located.
16

17 25. The FCM Respondents presented Alpha to prospective customers as a stable,
18 profitable, and innovative company that had been in business since 1985. Alpha was said to be
19 selling and providing a "turn-key" operation. FCM obtained this and other information it provided
20 to its investors from Alpha, SPA and their agents.
21

22 26. The FCM Respondents were paid commissions from 12% per telephone sold.

23 27. Alpha has a long regulatory history in which state securities regulators have found that
24 these purchases of pay telephones and accompanying service contracts were unregistered securities in
25 the form of investment contracts that were sold by unregistered persons and/or entities, and ordered
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1 Alpha and those working with it to cease and desist. Between September 1998 and August 2000,
2 eight states issued orders against Alpha finding that the payphone investments involved the offer
3 and sale of unregistered securities. The FCM Respondents did not reveal these orders to the
4 investors with whom they dealt.

5 28. The United States Securities and Exchange Commission sued Alpha and its
6 affiliates in *SEC v. Alpha Telcom, Inc., et al.*, No. CV 01-1283 PA. The court entered a temporary
7 restraining order on August 27, 2001 and a preliminary injunction on September 6, 2001. The SEC
8 alleged that Alpha and its affiliates engaged in a Ponzi-like scheme that never generated enough
9 income to pay expenses, and that the money paid to existing investors always came from sales to
10 new investors. A court-appointed receiver subsequently took over the remaining operations of
11 Alpha. Alpha consented on October 19, 2001 to entry of the Final Judgment of Permanent
12 Injunction against it, but did not admit the allegations of the Complaint.
13

14 29. Alpha's monthly payments to investors ceased approximately August, 2001.

15 30. The FCM Respondents sold Alpha investment contracts involving telephones to at
16 least 9 individuals or entities within or from the state of Arizona from September 2000 through July,
17 2001, for a total sales amount of at least \$120,000.

18 **Chemical Trust Investment Contract**

19 31. Beginning 1999, the Respondents began offering the Chemical Trust investment.
20 Investors were told that Chemical Trust was a "Members Only Investment Trust" located in West
21 Palm Beach, Florida. Agents, such as Respondents, were instructed to market the investment to
22 investors at a minimum of \$10,000 per contract for 12 months or more. The Respondents were given
23 authority to offer as much as 25% interest for each investment. Of that 25%, the Respondents were
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1 able to choose how much to offer to investors as interest and how much they would keep for their
2 commissions for selling the investment.

3 32. Investors were told that the investments are guaranteed two ways. First, the
4 investments are guaranteed by Chemical Trust which allegedly held \$450,000,000 in assets.
5 Second, the investments were guaranteed by a surety payment bond totaling "in excess of \$6
6 billion dollars" that was provided "for 100% of their principal amount invested" at no cost to the
7 investor. The surety payment bond was allegedly provided by U. S. Guarantee Corporation
8 located in Phoenix, Arizona. In fact, U. S. Guarantee Corporation is not licensed in Arizona as a
9 surety insurer. USGC allegedly had assets of \$2,415,142,120, which backed up the bond
10 guaranteeing the investment. Those funds turned out not to exist.
11

12 33. The Respondents informed investors that Chemical Trust had been in business for
13 14 years. Chemical Trust allegedly made profits by purchasing U.S. Treasury notes and distressed
14 property at discount, selling for an immediate profit. The FCM Respondents obtained this and
15 other information they provided to its investors from Integrowth, Sande and others in their upline,
16 including Chemical Trust, U.S. Guarantee and their agents.

17 34. On January 7, 2000, the SEC filed a complaint against Chemical Trust, USGC, and
18 others alleging that the money invested with them was misappropriated and sent to offshore bank
19 accounts. It also alleged that Chemical Trust represented to investors that their funds would be
20 used to purchase U.S. Treasury notes and distressed properties, and the investment was 100 percent
21 guaranteed through the security bond with U.S. Guarantee. According to the SEC's complaint,
22 Chemical had not purchased any U.S. Treasury notes or distressed properties, and investor funds
23 were not secured. The complaint alleges that, in a classic Ponzi scheme fashion, Chemical Trust
24 used new investor funds to pay interest to existing investors, in a Ponzi scheme. Subsequently, a
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1 preliminary injunction and final judgment was issued against the defendants and a receiver
2 appointed to attempt to collect assets.

3 35. On June 30, 2000, the ACC entered an Order against Chemical Trust and others,
4 finding that they violated the Arizona Securities Act. *See In re Alliance Trust, at al.*, DOCKET
5 NO. S-03363A-99-0000.

6 36. The Respondents sold at least \$856,042 of investments in Chemical Trust to at least
7 20 investors.

8 The ATM Program

9 36. The FCM Respondents sold investments in automatic teller machines ("ATMs") to
10 the public through Integrated Cash Systems ("ICS"). Pursuant to the service contracts promoted
11 with the ATMs, the service companies would manage the equipment for the purpose of generating
12 a profit for investors. The offering documents for the investments stated that the ATMs were
13 allegedly placed with retail merchants in order to enable electronic purchase transactions at the
14 customers' points of delivery. The services offered include locating and installing the equipment
15 with retail merchants, handling or processing the transactions, monitoring and maintaining the
16 equipment, insuring the equipment, and issuing monthly profit distribution checks to the investors
17 or "business owners."
18

19 37. Although the offering documents for the ATMs describe options for different levels
20 of managing the equipment, in practice, all investors selected the full-service option, which offered
21 a revenue-sharing feature and a buy-back provision from the recommended service company. Under
22 the full-service option, investors had no responsibilities with respect to the operation of their
23 equipment beyond signing the service contracts, no financial obligations apart from the initial
24 payment to purchase the units, no continuing financial obligation in the operation of their
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1 equipment, and no liability for any expenses or costs related to the operation of the equipment. At
2 least one of the services offered to investors, i.e., transaction handling, requires special expertise.
3 That function involves processing transactions, and is the key to generating a profit for investors.

4 38. The FCM Respondents sold the ATMs to investors who had no experience in or
5 knowledge of the cash terminal business, who never intended to take possession of, or to manage,
6 the equipment, and who did not even know where their equipment was located. The FCM
7 Respondents obtained this and other information they provided to its investors from ICS and its
8 agents.
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10 39. According to written materials and oral statements made to investors, investors in
11 the ATM programs are supposed to receive a) minimum monthly revenue equivalent to 12% of
12 their original investment generated from the operation of their equipment; b) a share of the monthly
13 net profit on each machine in excess of the base monthly payment; c) a full return of their
14 investment at the end of the five-year term because they have a right to sell the equipment back to
15 the service company for the original amount of the investment, or renew the investment; and d) if
16 the monthly revenue from the operation of the machine falls below the base payment, the right to
17 request that the service company repurchase the equipment for the original sales price or relocate
18 the equipment to another location with the potential for a higher profit from sharing in increased
19 revenue.
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21 40. Despite these representations, ICS defaulted on payments and failed to repurchase
22 the investors' ATM machines as requested. The FCM Respondents sold at ATM investments to at
23 least four investors who invested at least \$88,000.
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The Other Securities Orders

41. On September 28, 1999, the Iowa Securities Bureau issued an order against Integrowth and Abernathy for violation of its securities laws for their sale of the Chemical Trust products.

42. On August 24, 1999, the North Dakota Commissioner of Securities issued an order against Integrowth and Hiltbrand for violations of its securities laws.

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

44. On November 11, 2003, the Wisconsin Department issued an order for fraud in the sale of securities against FCM, Abernathy, Fazio and Fandrich.

45. Respondents did not inform any investors of any of the Orders against them, nor of any of the Orders against the companies whose investments they sold.

II.

CONCLUSIONS OF LAW

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

2. FCM and Fazio offered or sold securities within or from Arizona, within the meaning of A.R.S. §§ 44-1801(15), 44-1801(21), and 44-1801(26).

3. FCM and Fazio violated A.R.S. § 44-1841 by offering or selling securities that were neither registered nor exempt from registration.

5. FCM and Fazio violated A.R.S. § 44-1991 by (a) employing a device, scheme or artifice to defraud, (b) making untrue statements or misleading omissions of material facts, and (c) engaging in transactions, practices or courses of business which operate or would operate as a fraud or deceit.

6. Fazio directly or indirectly controlled FCM within the meaning of A.R.S. § 44-1999. Therefore, he is liable to the same extent as FCM for its violations of A.R.S. § 44-1991.

7. FCM and Fazio's conduct is grounds for a cease and desist order pursuant to A.R.S.

§ 44-2032

8. FCM and Fazio's conduct is grounds for an order of restitution.

9. FCM and Fazio's conduct is grounds for administrative penalties under A.R.S. § 44-2036.

9. FCM and Fazio's conduct is grounds for administrative penalties under A.R.S. § 44-2036.

III.

ORDER

THEREFORE, on the basis of the Findings of Fact, Conclusions of Law, and FCM, Fazio and Deborah Fazio's consent to the entry of this Order, attached and incorporated by reference, the Commission finds that the following relief is appropriate, in the public interest, and necessary for the protection of investors:

IT IS ORDERED, pursuant to A.R.S. § 44-2032, that FCM and Fazio, and any of their agents, employees, successors and assigns, permanently cease and desist from violating the Securities Act. FCM and Fazio shall not sell any securities in or from Arizona without being registered in Arizona as dealers or salesmen, or exempt from such registration. FCM and Fazio shall not sell securities in or from Arizona unless the securities are registered in Arizona or exempt from registration.

1 IT IS FURTHER ORDERED that FCM, Fazio and Deborah Fazio comply with the attached
2 Consent to Entry of Order.

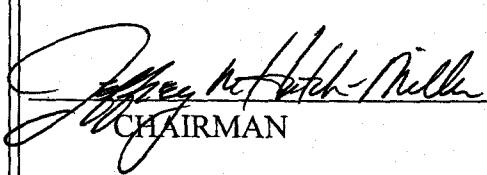
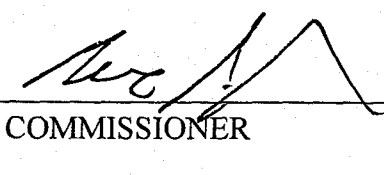
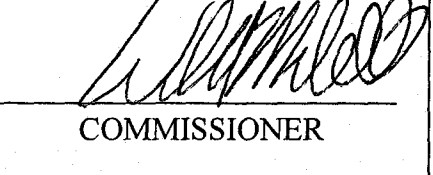
3 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032, that FCM, Fazio and Deborah
4 Fazio shall, jointly and severally, pay restitution to investors shown on the records of the
5 Commission in the amount of \$32,833.85, plus interest at the rate of 10% per annum from the date
6 of this Order. Payment shall be made in installments as follows: \$1000.00 on the date of this
7 Order; \$1000.00 per month on or before the 1st day of each month beginning on March 1, 2005.
8 Payment shall be made by cashier's check or money order payable to the "State of Arizona" to be
9 placed in an interest-bearing account maintained and controlled by the Arizona Attorney General.
10 The Arizona Attorney General shall disburse the funds on a pro rata basis to investors. Any funds
11 that the Attorney General is unable to disburse shall be transferred to the general fund of the state
12 of Arizona. If FCM, Fazio and Deborah Fazio do not comply with this order of restitution, any
13 outstanding balance shall be in default and shall be immediately due and payable.



14 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that FCM, Fazio and Deborah
15 Fazio shall, jointly and severally, pay an administrative penalty in the amount of \$15,000.
16 Payment shall be made by cashier's checks or money orders payable to the "State of Arizona" in
17 installments as follows: \$1000.00 per month on or before the 1st day of each month beginning on
18 the 1st day of the month following the date when all restitution owed under this Order has been
19 paid. Any amount outstanding shall accrue interest at the rate of 10% per annum from the date of
20 this Order until paid in full. The payment obligations for these administrative penalties shall be
21 subordinate to any restitution obligations ordered herein and shall become immediately due and
22 payable only after restitution payments have been paid in full, or if FCM, Fazio and Deborah Fazio
23 have defaulted prior to fulfilling their restitution obligations. If FCM, Fazio and Deborah Fazio do
24 not comply with this order for administrative penalties, any outstanding balance may be deemed in
25 default and shall be immediately due and payable.


1 IT IS FURTHER ORDERED, that if FCM, Fazio or Deborah Fazio fail to comply with this
2 order, the Commission may bring further legal proceedings against that Respondent, including
3 application to the superior court for an order of contempt.

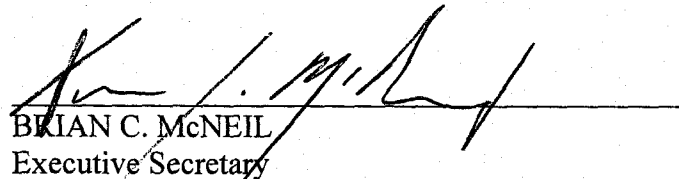
4 IT IS FURTHER ORDERED that this Order shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION

6  CHAIRMAN  COMMISSIONER  COMMISSIONER

8
9  COMMISSIONER  COMMISSIONER

11 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
12 Secretary of the Arizona Corporation Commission, have
13 hereunto set my hand and caused the official seal of the
14 Commission to be affixed at the Capitol, in the City of
15 Phoenix, this 31st day of Jan, 2005. 

16 
BRIAN C. McNEIL
Executive Secretary

18 _____
DISSENT

20 _____
DISSENT

21 This document is available in alternative formats by contacting Linda Hogan, Executive Assistant
22 to the Executive Secretary, voice phone number 602-542-3931, E-mail lhogan@cc.state.az.us.
23 (md)

CONSENT TO ENTRY OF ORDER

1
2 1. Respondents Fazio, Deborah Fazio and FCM admit the jurisdiction of the
3 Commission over the subject matter of this proceeding. Fazio, Deborah Fazio and FCM
4 acknowledge that they have been fully advised of their right to a hearing to present evidence and
5 call witnesses and Fazio, Deborah Fazio and FCM knowingly and voluntarily waive any and all
6 rights to a hearing before the Commission and all other rights otherwise available under Article 11
7 of the Securities Act and Title 14 of the Arizona Administrative Code. Fazio, Deborah Fazio and
8 FCM acknowledge that this Order constitutes a valid final order of the Commission.

9 2. Fazio, Deborah Fazio and FCM knowingly and voluntarily waive any right under
10 Article 12 of the Securities Act to judicial review by any court by way of suit, appeal, or
11 extraordinary relief resulting from the entry of this Order.

12 3. Fazio, Deborah Fazio and FCM acknowledge and agree that this Order is entered
13 into freely and voluntarily and that no promise was made or coercion used to induce such entry.

14 4. Fazio, Deborah Fazio and FCM acknowledge that they have been represented by an
15 attorney in this matter, they have reviewed this Order with their attorney and understand all terms it
16 contains.

17 5. Fazio, Deborah Fazio and FCM neither admit nor deny the Findings of Fact and
18 Conclusions of Law contained in this Order.

19 6. By consenting to the entry of this Order, Fazio, Deborah Fazio and FCM agree to
20 take any action or to make, or permit to be made, any public statement denying, directly or
21 indirectly, any Finding of Fact or Conclusion of Law in this Order or creating the impression that
22 this Order is without factual basis. Fazio, Deborah Fazio and FCM will undertake steps necessary
23 to assure that all of their agents and employees understand and comply with this agreement.
24 Nothing in this Order affects Fazio, Deborah Fazio and FCM's right to assert any legal or factual
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1 position in any litigation in which the state of Arizona, its agencies or its political subdivisions are
2 not parties.

3 7. While this Order settles this administrative matter between Fazio, Deborah Fazio
4 and FCM and the Commission, Fazio, Deborah Fazio and FCM understand that this Order does not
5 preclude the Commission from instituting other administrative proceedings based on violations that
6 are not addressed by this Order.

7 8. Fazio, Deborah Fazio and FCM understand that this Order does not preclude the
8 Commission from referring this matter to any governmental agency for administrative, civil, or
9 criminal proceedings that may be related to the matters addressed by this Order.

10 9. Fazio, Deborah Fazio and FCM understand that this Order does not preclude any
11 other agency or officer of the state of Arizona or its subdivisions from instituting administrative,
12 civil or criminal proceedings that may be related to matters addressed by this Order.

13 10. Fazio agrees that he will not apply to the state of Arizona for registration as a
14 securities dealer or salesman or for licensure as an investment adviser or investment adviser
15 representative until such time as all restitution and penalties under this Order are paid in full.

16 11. Fazio agrees that he will not exercise any control over any entity that offers or sells
17 securities or provides investment advisory services within or from Arizona until such time as all
18 restitution and penalties under this Order are paid in full.

19 14. Fazio agrees that he will not sell any securities in or from Arizona without being
20 properly registered in Arizona as a dealer or salesman, or exempt from such registration; he will
21 not sell any securities in or from Arizona unless the securities are registered in Arizona or exempt
22 from registration; and he will not transact business in Arizona as an investment adviser or an
23 investment adviser representative unless properly licensed in Arizona or exempt from licensure.

1 15. Fazio, Deborah Fazio and FCM acknowledge and understand that if they fail to
2 comply with the provisions of the order and this consent, the Commission may bring further legal
3 proceedings against them, including application to the superior court for an order of contempt.

4 16. Fazio, Deborah Fazio and FCM agree that until restitution and penalties are paid in
5 full, Fazio, Deborah Fazio and FCM shall notify the Director of the Securities Division within 30
6 days of any change in home address and any change in Fazio, Deborah Fazio and FCM's ability to
7 pay amounts due under this Order. Fazio, Deborah Fazio and FCM agree that they shall provide
8 the Commission with an updated financial statement every six months from entry of this Order or
9 when any change in their ability to pay restitution occurs. Fazio, Deborah Fazio and FCM agree
10 that failure to perform any action in this paragraph shall result in their being in default with any
11 outstanding balance being immediately due and payable without notice or demand.

12 17. Fazio, Deborah Fazio and FCM understands that default shall render them liable to
13 the Commission for its costs of collection and interest at the maximum legal rate.

14 18. Fazio, Deborah Fazio and FCM agree and understand that if they fail to make any
15 payment as required in the Order, any outstanding balance shall be in default and shall be
16 immediately due and payable without notice or demand. Fazio, Deborah Fazio and FCM agree and
17 understand that acceptance of any partial or late payment by the Commission is not a waiver of
18 default by the Commission.

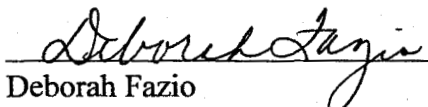
19 19. Fazio agrees that he will continue to cooperate with the Securities Division
20 including, but not limited to, providing complete and accurate testimony at any hearing in this
21 matter and cooperating with the state of Arizona in any related investigation or any other matters
22 arising from the activities described in this Order.

23 20. Fazio and Deborah Fazio acknowledge that any restitution, rescission or penalties
24 imposed by this Order are obligations of Fazio as well as the marital community of Fazio and
25 Deborah Fazio.

21. Fazio, Deborah Fazio and FCM consent to the entry of this Order and agree to be fully bound by its terms and conditions.

22. Fazio represents that he is a manager of FCM and that he is authorized by law to enter into this Order for and on behalf of FCM.


David A. Fazio


Deborah Fazio

SUBSCRIBED AND SWORN TO BEFORE me this 12th day of November, 2004.

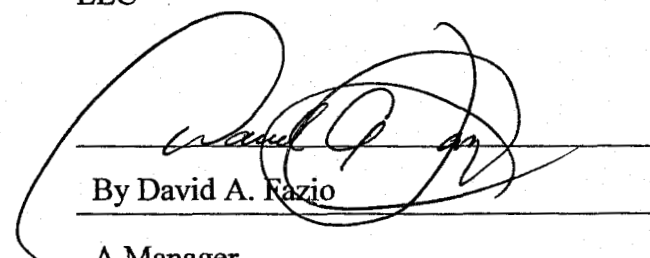

NOTARY PUBLIC

My Commission Expires:

9th August 2008

FOUNTAIN CAPITAL MANAGEMENT,
LLC




By David A. Fazio

A Manager

SUBSCRIBED AND SWORN TO BEFORE me this 12th day of November, 2004.


NOTARY PUBLIC

My Commission Expires:

9th August 2008

