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July 21, 1998

Barbara M. Behun, Hearing Officer  
Hearing Division  
Arizona Corporation Commission  
1200 W. Washington  
Phoenix, AZ 85007

Arizona Corporation Commission

DOCKETED

JUL 22 1998

A.C.C. - DOCKET CONTROL  
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JUL 22 1998

RE: In the matter of *Forex Investment Services Corporation et al.*  
S-03177A-98-0000

DOCKETED BY *fmh*

DOCUMENTS ARE SUBJECT TO  
REVIEW BEFORE ACCEPTANCE  
AS A DOCKETED ITEM.

Dear Ms. Behun:

I have today received two written waivers of conflict of interest, one a partial waiver, executed by Respondent James Charles Simmons, Jr. ("Simmons") in the above-referenced matter. I have also been advised that these documents are to be docketed today. After reviewing these waivers, I remain concerned that the record to be developed at the pre-hearing conference scheduled for next July 27<sup>th</sup> reflect grounds for a disposition of the related conflict of interest issues that will be sufficient to protect the Respondents in this case from material breaches of procedural due process and/or state supreme court professional conduct rules. In view of these concerns, I request your consideration of the following proposals advanced on behalf of the Securities Division.

Beside the Arizona Rules of Professional Conduct, Rule 42, 17 A.R.S. Rules of the Supreme Court ("ER"), the decisional caselaw that appears to control disposition of the conflict issues in this matter is *Sellers v. Superior Court*, 154 Ariz. 281, 742 P.2d 292 (Ct. App. 1987). In that opinion, Division One of the Court of Appeals vacated an order of disqualification of trial counsel and remanded the matter back to the trial judge for further proceedings to develop a record and findings to justify such an order. *See Sellers*, 154 Ariz. at 289, 290, 742 P. 2d at 300, 301. To conform with the guidelines provided by the Court of Appeals in *Sellers*, the Division now urges that the July 27<sup>th</sup> pre-hearing conference address the issues raised by the waivers with a *Sellers*-type inquiry from which you make express findings in at least three areas:

-- whether the waivers are the result of a fully informed and voluntary decision by Simmons; *see id.*, Ariz. at 286, 288, 289, P.2d at 297, 299, 300; ER 1.9;

-- whether any conflicts remain between Simmons and his former counsel in this matter that are unwaivable and/or may prejudice Simmons at a later stage of these proceedings; *see id.* at 288, at 299; and

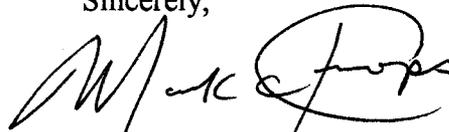
Barbara M. Behun  
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-- whether there are adverse conflicts of interest between any other Respondents represented by the same counsel that may hereafter prejudice any such Respondent during these proceedings; *see id.* at 286-287, at 297-298; ER 1.7.

The purpose of my request for the third finding is to create a record for this proceeding of compliance with ER 1.7 and the *Sellers* guidelines by Respondents' counsel in order to foreclose other conflict issues from tainting the conduct or outcome of the hearing in this matter.

Insofar as Sirianni & Youtz are to remain as counsel in any capacity for Respondents other than Simmons, the Division further requests that an order issue from the July 27<sup>th</sup> pre-hearing conference delineating the scope of that representation.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark C. Knops", written in a cursive style.

Mark C. Knops  
Senior Counsel

:mck

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ORIGINAL of the foregoing hand-delivered this  
22<sup>nd</sup> of July, 1998 to:

Barbara M. Behun, Hearing Officer  
Hearing Division  
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COPY of the foregoing mailed and/or faxed this  
22<sup>nd</sup> day of July, 1998 to:

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By: 