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Memorandum

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DATE: January 25, 2001
TO: Nancy Cole
Docket Control
FROM: Pam Johnson *PJ*
Securities Division
RE: William E. Bergh, et al.
Docket No. S-03441A-01-0000
Internal Routing Distribution
CC: Darya Danesh

This is to notify you that the following individuals should be copied on all docketed items for the above-mentioned case.

- X Victor Rodarte
- LeRoy Johnson
- X Matthew Neubert/ Amy Leeson

<u>Pam Johnson</u>	(Staff Attorney)
<u>Jerry Lowe</u>	(Staff Investigator)
<u>Jennifer Boucek</u>	Assistant AG

Note: The Assistant Attorney General assigned to this matter is: Jennifer Boucek.

Thank you for your cooperation in this matter.

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BEFORE THE ARIZONA CORPORATION COMMISSION

2001 JAN 29 A 8:47

WILLIAM A. MUNDELL

Chairman

JIM IRVIN

Commissioner

MARC SPITZER

Commissioner

AZ CORP COMMISSION
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NEW

In the matter of

WILLIAM E. BERGH individually and d/b/a

NATIONAL FINANCIAL GROUP

9501 W. Camino De Oro

Peoria, AZ 85382

WORLD WIDE BUSINESS OPPORTUNITIES,

LLC

11024 N. 28th Drive, Suite 200

Phoenix, AZ 85029,

Respondents.

DOCKET NO. S-03441A-01-0000

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

NOTICE: RESPONDENTS HAVE 10 DAYS TO REQUEST A HEARING

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

I.

JURISDICTION

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

II.

RESPONDENT

2. WILLIAM E. BERGH ("BERGH"), doing business as NATIONAL FINANCIAL GROUP ("NFG"), is an individual, whose last known address is 9501 W. Camino De Oro, Peoria,

1 Arizona, 85382. BERGH is, and was at all times pertinent hereto, owner and President of WORLD
2 WIDE BUSINESS OPPORTUNITIES, LLC.

3 3. WORLD WIDE BUSINESS OPPORTUNITIES, LLC (“WWB”) is, or was at all
4 pertinent times, located at 11024 N. 28th Drive, Suite 200, Phoenix, Arizona, 85029.

5 4. On April 14, 2000, the Commission entered a Final Order for Relief and Consent to Same
6 in Decision No. 62465 (“Order”), finding that BERGH, NFG, and WWB had sold unregistered
7 securities, including “business opportunities,” in violation of Arizona’s Securities Act, revoking
8 BERGH’s securities salesman registration, and ordering BERGH, NFG and WWB to pay penalties.

9 5. BERGH, NFG, and WWB may be collectively referred to as “BERGH.”

10 **III.**

11 **FACTS**

12 **A. BERGH Sold Unregistered Securities After the Commission Ordered**
13 **BERGH to Cease and Desist.**

14 6. From in or around January 1999, BERGH, acting as a sales representative for World
15 Cash Providers, LLC, operating out of California, offered or sold, within and from Arizona, World
16 Cash “business opportunities” involving cash ticket machines (“CTMs”) together with service
17 contracts with World Cash Providers, Inc.

18 7. In February 2000, the State of California Department of Corporations (“DOC”) found
19 that the business opportunities sold by World Cash Providers, LLC and World Cash Providers, Inc.
20 (collectively “World Cash”) were securities and ordered World Cash to stop selling them in California.

21 8. On March 24, 2000, after the Securities Division informed BERGH of the alleged
22 violations, BERGH signed a proposed Final Order for Relief and Consent to Same (“Order and
23 Consent”), individually and dba NFG, and as President of WWB, agreeing to cease and desist from the
24 sale of unregistered securities including the World Cash CTM business opportunities, and to the
25 permanent revocation of BERGH’s securities salesman registration.

1 9. On April 14, 2000, the Commission entered the proposed Order, finding, *inter alia*, that
2 the CTM business opportunities were unregistered securities and that BERGH had sold them in
3 violation of the Securities Act, and revoking BERGH's securities salesman registration.

4 10. Beginning in or around January 2000, unknown to the Division or the Commission,
5 BERGH, acting as a sales representative for Mobile Cash Systems, LLC ("Mobile Cash") based in Las
6 Vegas, Nevada, had started selling another business opportunity program. Like the World Cash CTM
7 business opportunity program, the Mobile Cash program involved the sale of equipment together with
8 service contracts, for the purpose of generating a profit for investors. The equipment sold by Mobile
9 Cash was wireless terminal machines ("WTMs"), marketed by the same promoters who had marketed
10 the CTMs.

11 11. On April 17, 2000, three weeks after BERGH signed his proposed Order and Consent
12 and three days after the Commission entered its Order, BERGH sold an \$80,000 investment in WTM
13 business opportunities to an elderly, blind investor, who relied completely on BERGH for information
14 concerning her investment.

15 12. On April 19, 2000, the Commission served BERGH by certified mail a copy of the final
16 Order against him.

17 13. On April 27, 2000, BERGH testified in an examination under oath before the Securities
18 Division that he believed that the Mobile Cash WTM business opportunity investment program was a
19 continuation of the World Cash CTM business opportunity investment program, which the
20 Commission, in its Order against BERGH entered on April 14, 2000, had found to involve the sale of
21 unregistered securities.

22 14. On or around April 5, 2000, an agent of NFG, Ray Nelson, sold a WTM business
23 opportunity to an Arizona investor. BERGH submitted the sale to Mobile Cash as new business
24 transacted by WWB. Mobile Cash paid the commission for the sale to BERGH on or around April 26,
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1 2000, after the Order was entered by the Commission on April 14, 2000. BERGH paid a share of his
2 commission to Nelson.

3 15. On or around May 3, 2000, Ray Nelson, acting as an agent for NFG, sold another WTM
4 business opportunity to another Arizona investor. BERGH submitted the sale to Mobile Cash as new
5 business transacted by WWB. Mobile Cash paid the commission for the sale to BERGH on or around
6 June 28, 2000. BERGH paid a share of his commission to Nelson.

7 **B. Description of the Business Opportunity Investment Programs Sold**
8 **by BERGH: World Cash CTMs and Mobile Cash WTMs.**

9 16. The equipment sold by World Cash was cash ticket machines ("CTMs"). Pursuant to the
10 service contracts promoted with the CTMs, the service companies would manage the equipment for the
11 purpose of generating a profit for investors. The offering documents for the CTM investment program
12 and WTM investment program describe the equipment as serving a similar function of allowing
13 customers of retail food outlets to use credit or debit cards to transact purchases. The primary difference
14 is that the WTMs are wireless handheld machines, whereas the CTMs are stationary terminals similar to
15 ATMs. CTMs are located at the site of retail merchants and issue tickets to customers that can be used to
16 purchase food. WTMs are placed with retail merchants in order to enable electronic purchase
17 transactions at the customers' points of delivery. The services offered include locating and installing the
18 equipment with retail merchants, handling or processing the transactions, monitoring and maintaining the
19 equipment, insuring the equipment, and issuing monthly profit distribution checks to the investors or
20 "business owners."

21 17. The investor agreements for the CTM and WTM business opportunity programs are
22 almost identical, and include a Sales Agreement and a Services (sic) Agreement, offered as a package to
23 all investors. Although the Sales Agreements present options for selecting services from several
24 companies, World Cash Providers, Inc. was the recommended service company for the CTMs, and
25 World Wireless Solutions, Inc. dba Wireless Express USA, Inc. ("Wireless") and World Electronic
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1 Payments Solutions, Inc. ("WEPS") were the recommended service companies for the WTM. Services
2 Agreements for only World Cash Providers, Inc. were included in the information packet BERGH
3 provided to prospective CTM investors. Services Agreements for only Wireless were included in the
4 information packet BERGH provided to prospective WTM investors. WEPS was the designated service
5 company for transaction handling for all Wireless clients. All Arizona investors selected World Cash
6 Providers, Inc. to service the CTMs, and Wireless and WEPS to service the WTMs.

7 18. Although the offering documents for the CTM and WTM Programs describe options
8 for different levels of managing the equipment, in practice, all investors selected the full-service
9 option, which offers a revenue-sharing feature and a buy-back provision from the recommended service
10 company. Under the full-service option, investors have no responsibilities with respect to the
11 operation of their equipment beyond signing the service contracts, no financial obligations apart from
12 the initial 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. That
15 function, purportedly handled by WEPS, involves processing transactions, and is the key to generating a
16 profit for investors.

17 19. BERGH sold the CTM and WTM business opportunities to unsophisticated investors,
18 including elderly and retired people, who had no experience in or knowledge of the cash terminal or
19 wireless terminal businesses, who never intended to take possession of, or to manage, the equipment, and
20 who did not even know where their equipment was located. Through written and oral statements,
21 BERGH represented that these were passive investments.

22 20. According to written materials and oral statements made to investors, investors in the
23 CTM and WTM Programs are supposed to receive a) minimum monthly revenue equivalent to 13% of
24 their original investment generated from the operation of their equipment; b) a share of the monthly
25 net profit on each machine in excess of the base monthly payment; c) a full return of their investment
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1 at the end of the five-year term because they have a right to sell the equipment back to the service
2 company for the original amount of the investment, or renew the investment; and d) if the monthly
3 revenue from the operation of the machine falls below the base payment, the right to request that the
4 service company repurchase the equipment for the original sales price or relocate the equipment to
5 another location with the potential for a higher profit from sharing in increased revenue.

6 21. Under the CTM Equipment Sales Agreement, World Cash Providers, LLC represented to
7 investors that the "Closing" of the transactions contemplated by the Equipment Sales Agreement, which
8 included delivery of the CTMs and "Leased Site" assignments to the Purchaser or the Purchaser's Agent,
9 would occur within 30 days of the receipt of the completed contracts and collected funds. If for any
10 reason such Closing did not occur, then the Purchaser's payment was to be promptly returned to the
11 Purchaser. World Cash Providers, Inc., who was agent for the investor pursuant to the Services
12 Agreement, represented to investors that their monthly distribution payments would be based upon the
13 equipment revenues collected by the service company. Many investors received monthly "revenue"
14 distribution payments, although their equipment was never delivered or placed in service and generated
15 no revenue. Those investors were never informed that their equipment was not delivered or placed in
16 service, and their funds were not returned to them.

17 22. World Cash Providers, Inc. paid CTM investors monthly "revenue" distribution checks
18 until around June 2000, when the payments stopped. Many CTM investors had received monthly
19 revenue payments even though they were never notified of the location of their machines, and never
20 received any accounting reflecting the actual revenue generated from the operation of their CTMs.

21 23. As of January 11, 2000, not a single WTM had been placed in service. Since April 2000,
22 Wireless has paid and is continuing to pay WTM investors the promised base monthly payments
23 although no revenue has been generated. The payments have been made from funds wire transferred to
24 Wireless from Mobile Cash Systems, LLC ("Mobile Cash"), the company that sold the equipment to the
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1 investors. Investors were not informed that their monthly "profit" distributions were not generated
2 from the operation of their machines, or that their machines were not yet in operation.

3 **C. Sales and Marketing Network for the "Business Opportunities."**

4 24. BERGH recruited sales agents from Arizona to promote and to sell the CTM and WTM
5 business opportunity investment programs as agents of NFG ("NFG Agents").

6 25. BERGH was paid commissions for the sales made by at least four NFG Agents, including
7 Nelson. BERGH negotiated commission splits individually with his NFG Agents and paid them from
8 his own account. BERGH's commissions for the sale of the CTM business opportunities was 13-15% of
9 the investors' funds, and his commissions for the sale of the WTM business opportunities was 17% of
10 investors' funds. BERGH decided what commissions to pay to each of his NFG Agents individually.

11 26. BERGH scheduled sales meetings and training seminars for NFG Agents, to coach them
12 on how to sell the investment programs, and provided NFG Agents offering materials and contracts.

13 27. BERGH and his NFG Agents represented that these investments were more profitable
14 than other investments, and encouraged investors to transfer funds from CDs, mutual funds, and/or
15 annuities, for their financial betterment. BERGH recommended these investments to clients whose
16 source of investment funds was from reverse mortgages on their homes, obtained through his wife, Robin
17 Bergh or her associate, Stacy Beehler.

18 28. From in or around January 1999 through March 2000, BERGH and his NFG Agents
19 offered and sold the World Cash CTM business opportunities within and from Arizona to approximately
20 20 investors who invested approximately \$1,067,000. The minimum investment, which was \$7,000 for
21 two CTMs at \$3,500 each, increased in or around October 1999 to \$9,000 for two CTMs at \$4,500 each,
22 for a five-year term.

23 29. From in or around March 2000 through May 2000, BERGH and his NFG Agents
24 offered and sold the Mobile Cash WTM business opportunities within and from Arizona to
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1 approximately seven investors who invested approximately \$195,000. The minimum investment was
2 \$10,000 for two WTMs at \$5,000 each, for a five-year term.

3 **IV.**

4 **VIOLATION OF A.R.S. § 44-1841**

5 **(Offer or Sale of Unregistered Securities)**

6 30. From in or around March 2000, BERGH offered and sold securities in the form of
7 investment contracts within or from Arizona.

8 31. The securities referred to above were not registered pursuant to Articles 6 or 7 of the
9 Securities Act.

10 32. This conduct violates A.R.S. § 44-1841.

11 **V.**

12 **VIOLATION OF A.R.S. § 44-1842**

13 **(Transactions by Unregistered Dealers or Salesmen)**

14 33. From on or about April 14, 2000, BERGH offered or sold securities within or from
15 Arizona while not registered as a dealer or salesman pursuant to Article 9 of the Securities Act.

16 34. This conduct violates A.R.S. § 44-1842.

17 **VI.**

18 **VIOLATION OF A.R.S. § 44-1991**

19 **(Fraud in Connection with the Offer or Sale of Securities)**

20 35. From around January 1999 through around May 2000, in connection with the offer or sale
21 of securities within or from Arizona, BERGH directly or indirectly: (i) employed a device, scheme or
22 artifice to defraud; (ii) made untrue statements of material fact or omitted to state material facts which
23 were necessary in order to make the statements made not misleading in light of the circumstances under
24 which they were made; or (iii) engaged in transactions, practices or courses of business which operated or
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1 would operate as a fraud or deceit upon offerees and investors. BERGH's conduct includes, but is not
2 limited to, the following:

3 a) BERGH misrepresented the safety of the CTM and WTM investments and failed to
4 disclose risks, including the potential loss of investment funds.

5 b) BERGH misrepresented to CTM investors that their equipment would be delivered
6 within 30 days of their completed contract. BERGH failed to disclose that many of the CTMs that
7 were purchased were never delivered or placed in service.

8 c) BERGH represented that CTM investors were to receive monthly distributions from
9 the revenue generated from the operation of their CTMs. In fact, however, monthly distributions
10 were being paid to many investors for CTMs that were never placed in service for them.

11 d) BERGH represented that investors were to receive monthly distributions from the
12 revenue generated from the operation of their WTMs. In fact, however, from April through
13 December 2000, WIRELESS distributed monthly payments to investors although no equipment
14 was placed in service for any investors.

15 e) BERGH failed to disclose to WTM investors that no WTMs had been placed in
16 service, and that no revenue had been generated from the operation of these units.

17 f) BERGH failed to disclose to WTM investors that Wireless and WEPS, the service
18 companies that were supposed to manage the equipment to generate revenue for the distributions,
19 had not even begun service operations.

20 g) BERGH failed to disclose to investors that he was receiving sales commissions in the
21 amount of 13-15% of investors' funds for the sale of the CTMs, and 17% for the sale of the WTMs.

22 h) BERGH failed to disclose any financial or background information about World
23 Cash, Mobile Cash, Wireless, or WEPS, or their principals.

24 i) In particular, BERGH failed to disclose to investors who invested subsequent to the
25 following events:

1 (1) That on February 8, 2000, the California DOC issued orders against World Cash
2 to desist and refrain from the unlawful sale of securities involving the World Cash
3 CTM business opportunities.

4 (2) That on March 24, 2000, BERGH signed a proposed Order and Consent,
5 negotiated by BERGH with the Division, in which BERGH agreed to cease and
6 desist from the offer or sale of unregistered securities and to pay penalties for the
7 sale of securities, including investment contracts involving World Cash CTMs,
8 membership interests in Hotel Connect LLCs, and pay telephones.

9 (3) That on April 14, 2000, the Commission entered the Order finding the business
10 opportunities involving CMTs were unregistered securities, and ordering BERGH
11 to Cease and Desist from the sale of unregistered securities, to pay penalties, and
12 revoking BERGH's securities salesman's registration.

13 36. This conduct violates A.R.S. § 44-1991.

14 37. As a separate and additional basis for liability under A.R.S. § 44-1991, during the above
15 violations of A.R.S. § 44-1991, BERGH directly or indirectly controlled NFG Agents, including Ray
16 Nelson, within the meaning of A.R.S. § 44-1999. Therefore, BERGH is liable to the same extent as NFG
17 Agents, including Nelson, for any of the above-stated violations of A.R.S. § 44-1991.

18 38. As a separate and additional basis for liability under A.R.S. § 44-1991, BERGH
19 participated in or induced the sale or purchase of a security within the meaning of A.R.S. § 44-2003(A).
20 Therefore, BERGH is liable for the above violations of A.R.S. § 44-1991.

21 **VII.**

22 **REQUESTED RELIEF**

23 The Division requests that the Commission grant the following relief against BERGH:

24 1. Order BERGH to permanently cease and desist from violating the Securities Act,
25 pursuant to A.R.S. § 44-2032;

