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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

AZ CORP COMMISSION  
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MARC SPITZER, Chairman  
JIM IRVIN  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
MIKE GLEASON

In the matter of:	)
GLOBAL TRUSTS, L.L.C.	)
8584 South Masthead	)
Tucson, Arizona 85706	)
CLYDE F. WAGNON and MARTHA E.	)
WAGNON, husband and wife,	)
8584 South Masthead	)
Tucson, Arizona 85706,	)
JERI WOODS and JOHN DOE WOODS, wife	)
and husband,	)
8584 South Masthead	)
Tucson, Arizona 85706	)
Respondents.	)

DOCKET NO. S-0350<sup>8</sup>A-02-0000

**MOTION FOR ENTRY OF  
DEFAULT RE: RESPONDENTS  
GLOBAL TRUSTS, L.L.C., CLYDE  
F. WAGNON, AND MARTHA E.  
WAGNON**

Arizona Corporation Commission

DOCKETED

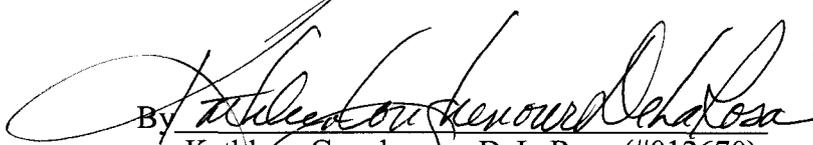
JUN 11 2003

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On or about May 27, 2003, the Securities Division (the "Division") of the Arizona Corporation Commission (the "Commission") filed an Application for Entry of Default and Affidavit on Default Re: Respondents Global Trusts, L.L.C., Clyde F. Wagon, and Martha E. Wagon (the "Application"). In response to the Application, those Respondents' attorney filed a Notice of Filing for Bankruptcy Protection, apparently in the belief that the automatic stay in bankruptcy should apply to stay the administrative proceeding against Respondents. The Division now moves for entry of an order of default against Respondents Global Trusts, L.L.C., Clyde F. Wagon, and Martha E. Wagon, because the automatic stay does not apply to this proceeding. This motion is supported by the record in this matter, and by the following Memorandum of Points and Authorities.

1 RESPECTFULLY SUBMITTED this 11<sup>th</sup> day of June, 2003.

2 ARIZONA CORPORATION COMMISSION  
3 SECURITIES DIVISION

4 By   
5 Kathleen Coughenour DeLaRosa (#012670)  
6 1300 West Washington, Third Floor  
7 Phoenix, Arizona 85007  
8 Attorney for Arizona Corporation Commission

9 **MEMORANDUM OF POINTS AND AUTHORITIES**

10 The Division's Application stated the relevant facts: Respondents were served with the  
11 Notice of Opportunity for Hearing Regarding Proposed Order to Cease and Desist, for Restitution,  
12 for Administrative Penalties, and for Other Affirmative Action ("Notice") on or about February 24,  
13 2003. They did not request a hearing or otherwise respond prior to the date the Application was  
14 filed. Their only response since the Application is a Notice of Bankruptcy from their attorney,  
15 advising that they are in Chapter 13 bankruptcy. That Notice apparently was filed under the  
16 assumption that the automatic stay provision of the Bankruptcy Code precludes the Commission  
17 from proceeding with this action. *See* 11 U.S.C. § 362(a)(1). That assumption is incorrect. As a  
18 result of Respondents' failure to appear to request a hearing or answer the Notice, default should be  
19 entered against them.

20 A bankruptcy filing normally acts as a stay of "the commencement or continuation . . . of a  
21 judicial, administrative, or other action or proceeding against the debtor. . . ." 11 U.S.C.  
22 § 362(a)(1). The general policy behind this "automatic stay" is to grant complete and immediate,  
23 albeit temporary, relief to the debtor from creditors, and to prevent dissipation of the debtor's  
24 assets before orderly distribution to all creditors can be effected. *S.E.C. v. Brennan*, 230 F.3d 65,  
25 71 (2d Cir. 2000). A main purpose of the stay is to protect the priority of payment to creditors. 3  
26 Collier on Bankruptcy § 362.02[5][b] at 362-61 (15<sup>th</sup> ed. 2000).

The Bankruptcy Code provides certain exceptions to the automatic stay, including an

1 exception for certain governmental police and regulatory actions. The filing of a petition in  
2 bankruptcy does *not* stay

3 the commencement or continuation of an action or proceeding by a  
4 governmental unit . . . to enforce such governmental unit's . . . police  
5 and regulatory power, including the enforcement of a judgment other  
6 than a money judgment, obtained in an action or proceeding by the  
7 governmental unit to enforce such governmental unit's or  
8 organization's police or regulatory power[.]

9 11 U.S.C. § 362(b)(4) (1998). This provision permits a government agency, such as the ACC, to  
10 “commence or continue any police or regulatory action, including one seeking a money judgment,  
11 but it may enforce only those judgments and orders that do not require payment or authorize the  
12 government to exercise control over property of the estate.” Collier, *supra*, at 362-60.

13 The legislative history of this exception verifies Congressional intent:

14 Paragraph (4) excepts commencement or continuation of actions and  
15 proceedings by governmental units to enforce police or regulatory  
16 powers. Thus, where a governmental unit is suing a debtor to  
17 prevent or stop violation of *fraud*, environmental protection,  
18 *consumer protection*, safety, *or similar* police or *regulatory laws*, or  
19 *attempting to fix damages for violation of such a law*, the action or  
20 proceeding *is not stayed* under the automatic stay.

21 H.R. Rep. No. 95-595, 95<sup>th</sup> Cong., 1<sup>st</sup> Sess. (1977), *reprinted in* 1978 U.S. Code Cong. & Admin.  
22 News 5963, 6299 (emphasis added); *see also* S. Rep. No. 95-989, 95<sup>th</sup> Cong., 2d Sess. (1978),  
23 *reprinted in* 1978 U.S. Code Cong. & Admin. News 5787, 5838. By allowing such actions to  
24 proceed, this exception prevents the Bankruptcy Court from becoming a “haven for wrongdoers.”  
25 *In re Berg*, 230 F.3d 1165, 1167 (9<sup>th</sup> Cir. 2000).

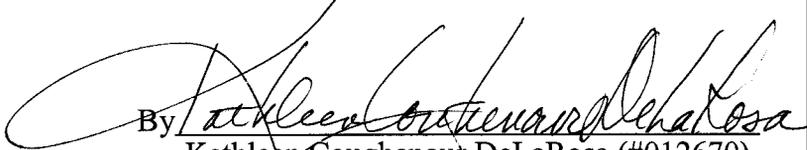
26 This exception to the automatic stay applies to regulatory actions seeking relief for  
securities fraud. *E.g.*, *S.E.C. v. Thrasher*, 2002 WL 523279 at \*1 (S.D.N.Y. Apr. 8, 2002); *see*  
also *In re Int'l Heritage, Inc.*, 239 Bankr. Rep. 306, 311 (E.D.N.C. 1999) (interpreting former  
§ 362(b)(5), which was combined with former § 362(b)(4) by a 1998 Bankruptcy Code  
amendment, *see* 1998 P.L. 105-277 (H.R. 4328), Sec. 603, Bankruptcy Actions).

Respondents' failure to make a timely request for hearing or to file a timely answer to the

1 Notice therefore does not stay the Commission action against them. As a result, the Commission  
2 should grant the Division's Application, and should enter default against the Respondents,  
3 permitting the Division to submit a recommended default order with respect to Respondents, and to  
4 proceed further as may be appropriate.

5 RESPECTFULLY SUBMITTED this 11 day of June, 2003.

6 ARIZONA CORPORATION COMMISSION  
7 SECURITIES DIVISION

8  
9 By   
10 Kathleen Coughenour DeLaRosa (#012670)  
11 1300 West Washington, Third Floor  
12 Phoenix, Arizona 85007  
13 Attorney for Arizona Corporation Commission

12 ORIGINAL and 15 copies of  
13 the foregoing filed this 11<sup>TH</sup>  
14 day of JUNE, 2003, with:

15 Docket Control  
16 Arizona Corporation Commission  
17 1200 West Washington Street  
18 Phoenix, Arizona 85007

19 And COPY of the foregoing  
20 mailed/delivered this 11<sup>TH</sup>  
21 day of JUNE, 2003, to:

22 Walter F. Wood, Esq.  
23 Walter F. Wood, Ltd.  
24 110 South Church Avenue, Suite 4398  
25 Tucson, Arizona 85701  
26 Attorney for Respondents

Hearing Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007