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1	BEFORE THE ARIZONA CORPORATION COMMISSION		
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3	COMMISSIONERS		
4	MIKE GLEASON, Chairman WILLIAM A. MUNDELL		
5	JEFF HATCH-MILLER KRISTIN K. MAYES		
6	GARY PIERCE		
7	In the matter of:	DOCKET NO. S-20635A-08-0523	
8	MARK A. WESTERFIELD (CRD#4234248))	NOTICE OF OPPORTUNITY FOR HEARING REGARDING PROPOSED ORDER TO	
8 9	and VICTORIA H. WESTERFIELD, ) husband and wife, formerly doing business as)	REGARDING PROPOSED ORDER TO CEASE AND DESIST, FOR RESTITUTION, FOR ADMINISTRATIVE PENALTIES, AND	
_	Builder's Secret, an expired Arizona)registered trade name,)	FOR OTHER AFFIRMATIVE ACTION	
10 11	Respondent.		
12	NOTICE: EACH RESPONDENT HAS 10 DAYS TO REQUEST A HEARING		
13	EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER		
14	The Securities Division ("Division") of the Arizona Corporation Commission ("Commission")		
15	alleges that respondent MARK A. WESTERFIELD has engaged in acts, practices, and transactions		
16	that constitute violations of the Securities Act of Arizona, A.R.S. § 44-1801 et seq. ("Securities Act").		
17	I.		
18	JURIS	DICTION	
19	1. The Commission has jurisdiction	on over this matter pursuant to Article XV of the	
20	Arizona Constitution and the Securities Act.		
21		II.	
22	RESPONDENT		
23	2. MARK A. WESTERFIELD ("Respondent") is an individual who, at all times		
24	relevant, resided in Pima County, Arizona.		
25		A Conversion Commission	
26		DOCKETED CRP CEVED	
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VICTORIA H. WESTERFIELD ("Respondent Spouse") was, at all times relevant, 3. 1 the spouse of Respondent. Respondent Spouse is joined in this action under A.R.S. § 44-2031(C) 2 solely for purposes of determining the liability of the marital community. 3 At all times relevant, Respondent was acting for Respondent's own benefit and for 4. 4 the benefit or in furtherance of Respondent and Respondent Spouse's marital community. 5 III. 6 FACTS 7 Builder's Secret is an expired, Arizona registered trade name. At all times relevant, 5. 8 Respondent and Respondent's Spouse were the agents/owners of and doing business as this trade 9 10 name. EXPERT INSTALL, INC. is an Arizona corporation that is doing and, at all times 6. 11 relevant, did business as MV Security (EXPERT INSTALL, INC. shall hereinafter be referred to 12 MV SECURITY is the holder of a dual (i.e., residential and as "MV SECURITY"). 13 commercial), "Shutters and Blinds" license (number ROC238572; classification K-05) issued by 14 the Arizona Registrar of Contractors (the "ROC License"). 15 7. Respondent is and was at all times relevant the vice president and shareholder of 16 MV SECURITY. In these capacities, Respondent obtained and maintained the ROC License and 17 he opened and has signature authority over the bank account of MV SECURITY. 18 Respondent is a previously registered securities salesman (CRD#4234248) who, at 8. 19 all times relevant, was not affiliated with a registered securities dealer. Respondent was affiliated 20 with World Group Securities, Inc. (formerly known as WMA Securities, Inc.) ("WMA"), an 21 Arizona registered securities dealer, from July 17, 2000 until his termination on November 11, 22 2002 for "failure to remain active." 23 On several occasions in 2003 in Tucson, Arizona, Respondent met with an investor 9. 24 (the "Investor") regarding the Investor's investment portfolio. During these meetings, Respondent 25 represented himself to be a financial planner associated with WMA. 26 2

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10. At a meeting on September 23, 2003, Respondent discussed with the Investor and sold him an investment contract that Respondent called the "public offering" of Builder's Secret (the "Investment"). Respondent said that Builder's Secret "specialized in building materials."

11. The Investor told Respondent two or three times that the money he had to invest was his entire life's savings and that, since he was a student with limited income and a child on the way, the money could not be risked in any way.

12. Respondent provided the Investor with a WMA form signed by Respondent entitled "New Account Application" containing a section entitled "Client Investment Objective" with boxes describing various levels of risk tolerance. Respondent marked the box entitled "Preservation of Capital," the lowest level of risk tolerance.

11 13. Respondent assured the Investor that the Investment was guaranteed because
12 Builder's Secret held enough "liquid inventory" to "back their investors" and, if necessary,
13 Builder's Secret could and would liquidate "inventory in stock" to pay the Investment principal and
14 interest/return.

14. Respondent provided the Investor with a document entitled "Investment offering"
16 containing a section entitled "Assurance" that stated, "All funds must be matched with liquid
17 inventory at all times. Investors have assurance of full principle and interest..."

18 15. Respondent did not disclose specifically how the Investor's money would be used,
19 but generally represented that it would be used by Builder's Secret to purchase building materials,
20 the type of which that could/would be used to secure the Investment.

16. Respondent neither filed a UCC financing statement with the Arizona Secretary of
State nor added the Investor to the title of any property (inventory, building materials, or
otherwise) to secure the Investment.

24 17. Respondent represented that, so long as the Investor kept the Investment in for the
25 entire, two-year term and did not withdraw it early, he would receive a 7% annual return.

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1	18.	Respondent did not disclose specifically how Builder's Secret would generate the	
2	guaranteed return on the Investment, but generally represented that it would be the result of the		
3	profitable operations of Builder's Secret.		
4	19.	At the direction of Respondent, the Investor paid \$10,000 for the Investment with a	
5	check payable to MV SECURITY, not Builder's Secret, WMA, or Respondent. The Investor's		
6	money was deposited into the bank account of and spent by MV SECURITY.		
7	20.	Respondent represented that, even though the Investment could be renewed upon	
8	the expiration of the two-year term, the Investor could request and then would receive payment of		
9	the Investment principal and interest/return.		
10	21.	On or about December 2006, after the expiration of the 2-year term of the	
11	Investment, t	the Investor contacted Respondent and requested to receive the Investment principal	
12	and interest/return. Although Respondent promised to send it to the Investor via Federal Express,		
13	the Investor has not received any money.		
14	IV.		
15	VIOLATION OF A.R.S. § 44-1841		
16	(Offer or Sale of Unregistered Securities)		
17	22.	From on or about September 23, 2003, Respondent offered or sold securities in the	
18	form of an investment contract, within or from Arizona.		
19	23.	The securities referred to above were not registered pursuant to Articles 6 or 7 of the	
20	Securities Act.		
21	24.	This conduct violates A.R.S. § 44-1841.	
22		<b>V.</b>	
23		VIOLATION OF A.R.S. § 44-1842	
23 24		VIOLATION OF A.R.S. § 44-1842 (Transactions by Unregistered Dealers or Salesmen)	
	25.		
24		(Transactions by Unregistered Dealers or Salesmen)	

This conduct violates A.R.S. § 44-1842. 26. 1 VI. 2 **VIOLATION OF A.R.S. § 44-1991** 3 (Fraud in Connection with the Offer or Sale of Securities) 4 In connection with the offer or sale of securities within or from Arizona, Respondent 27. 5 directly or indirectly: (i) employed a device, scheme, or artifice to defraud; (ii) made untrue 6 statements of material fact or omitted to state material facts that were necessary in order to make the 7 statements made not misleading in light of the circumstances under which they were made; or (iii) 8 engaged in transactions, practices, or courses of business that operated or would operate as a fraud 9 or deceit upon offerees and investors. Respondent's conduct includes, but is not limited to, the 10 following: 11 Misrepresenting himself to be associated with WMA and using a WMA New a) 12 Account Application in connection with the Investment when, at the time of the Investment, 13 Respondent was terminated from WMA; 14 Misrepresenting to the Investor that Builder's Secret had/would have b) 15 sufficient inventory and/or building materials to pay the Investment principal and interest/return; 16 Misrepresenting to the Investor that, upon the expiration of the two-year term c) 17 of the Investment, he could request and then would receive payment of the Investment principal and 18 interest/return; and, 19 Failing to provide the Investor with specific information about how his d) 20 money would be used or how Builder's Secret would generate the guaranteed return on the 21 Investment. 22 28. This conduct violates A.R.S. § 44-1991. 23 24 25 26 5

1	VII.		
2	REQUESTED RELIEF		
3	The Division requests that the Commission grant the following relief:		
4	1. Order Respondent to permanently cease and desist from violating the Securities Act		
5	pursuant to A.R.S. § 44-2032;		
6	2. Order Respondent to take affirmative action to correct the conditions resulting from		
7	Respondent's acts, practices, or transactions, including a requirement to make restitution pursuant to		
8	A.R.S. § 44-2032;		
9	3. Order Respondent to pay the state of Arizona administrative penalties of up to five		
10	thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;		
11	4. Order that the marital community of Respondent and Respondent Spouse be subject		
12	to any order of restitution, rescission, administrative penalties, or other appropriate affirmative		
13	action pursuant to A.R.S. § 25-215; and,		
14	5. Order any other relief that the Commission deems appropriate.		
15	VIII.		
16	HEARING OPPORTUNITY		
17	Each respondent, including Respondent Spouse, may request a hearing pursuant to A.R.S.		
18	§ 44-1972 and A.A.C. R14-4-306. If Respondent or Respondent Spouse requests a hearing, the		
19	requesting respondent must also answer this Notice. A request for hearing must be in writing		
20	and received by the Commission within 10 business days after service of this Notice of Opportunity		
21	for Hearing. The requesting respondent must deliver or mail the request to Docket Control, Arizona		
22	Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007. Filing instructions may		
23	be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web		
24	site at http://www.azcc.gov/divisions/hearings/docket.asp.		
25	If a request for a hearing is timely made, the Commission shall schedule the hearing to begin		
26	20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the		

parties, or ordered by the Commission. If a request for a hearing is not timely made the Commission may, without a hearing, enter an order granting the relief requested by the Division in this Notice of Opportunity for Hearing.

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Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting Linda Hogan, ADA Coordinator, voice phone number 602/542-3931, e-mail <u>lhogan@azcc.gov</u>. Requests should be made as early as possible to allow time to arrange the accommodation.

## IX.

## **ANSWER REQUIREMENT**

Pursuant to A.A.C. R14-4-305, if Respondent or Respondent Spouse requests a hearing, the requesting respondent must deliver or mail an Answer to this Notice of Opportunity for Hearing to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007, within 30 calendar days after the date of service of this Notice. Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at http://www.azcc.gov/divisions/hearings/docket.asp.

Additionally, the answering respondent must serve the Answer upon the Division. Pursuant to A.A.C. R14-4-303, service upon the Division may be made by mailing or by handdelivering a copy of the Answer to the Division at 1300 West Washington, 3<sup>rd</sup> Floor, Phoenix, Arizona, 85007, addressed to Aaron S. Ludwig.

The Answer shall contain an admission or denial of each allegation in this Notice and the original signature of the answering respondent or respondent's attorney. A statement of a lack of sufficient knowledge or information shall be considered a denial of an allegation. An allegation not denied shall be considered admitted.

When the answering respondent intends in good faith to deny only a part or a qualification of an allegation, the respondent shall specify that part or qualification of the allegation and shall admit the remainder. Respondent waives any affirmative defense not raised in the Answer.

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1	The officer presiding over the hearing may grant relief from the requirement to file an
2	Answer for good cause shown.
3	Dated this 10 <sup>th</sup> day of October 2008.
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6	Mark Dinell Assistant Director of Securities
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