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GARY PIERCE
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SANDRA D. KENNEDY
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MICHAEL P. KEARNS
INTERIM EXECUTIVE DIRECTOR

ARIZONA CORPORATION COMMISSION

MEMORANDUM

TO: Kristin K. Mayes, Chairman
Gary Pierce
Paul Newman
Sandra D. Kennedy
Bob Stump

Arizona Corporation Commission

DOCKETED

FEB -2 2009

FROM: Matthew J. Neubert
Director of Securities

DOCKETED BY

AZ CORP COMMISSION
DOCKET CONTROL

2009 FEB -2 P 3:56

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DATE: February 2, 2009

RE: Brett S. Kleese, *et al.* (Docket No. S-20645A-08-0616); Order to Cease and Desist, for Restitution, of Revocation, and for Administrative Penalties

CC: Michael P. Kearns, Interim Executive Director

Attached is a proposed Order to Cease and Desist, for Restitution, of Revocation, and for Administrative Penalties (the "Order") and Consent to Same by: Brett S. Kleese ("KLEESE"), Katherine D. Kleese, and BSK Enterprises, LLC ("BSK"). The Order finds that KLEESE and BSK violated A.R.S. §§ 44-1841, 44-1842, and 44-1991 by offering and selling unregistered securities while being unregistered and by violating the anti-fraud provisions of the Securities Act. The Order requires KLEESE and BSK to cease and desist their activity, pay \$2,439,225 in restitution, and pay an administrative penalty in the amount of \$100,000. The Order also revokes the securities salesman registration and investment adviser representative license of KLEESE.

From October 2007 to May 2008, while KLEESE was both a registered securities salesman and licensed investment adviser representative affiliated with World Group Securities, Inc. ("WGS") (an Arizona registered securities dealer), KLEESE and BSK offered and sold promissory notes to 57 investors. In addition to being unregistered securities, these were not recorded on the records of WGS, they were not authorized investment products of WGS, and KLEESE was not authorized by WGS to sell them.

The Division believes that the Order is appropriate to protect the public welfare.

Originator: Aaron S. Ludwig

I.

FINDINGS OF FACT

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3 1. BRETT S. KLEESE (“KLEESE”) is an individual who, at all times relevant, resided
4 in Maricopa County, Arizona. KLEESE is a member and manager of BSK ENTERPRISES, LLC.

5 2. KATHERINE D. KLEESE has been at all relevant times the spouse of KLEESE and
6 may be referred to as “Respondent Spouse.” Respondent Spouse is joined in this action under A.R.S.
7 §44-2031(C) solely for purposes of determining the liability of the marital community.

8 3. At all relevant times, KLEESE acted for his own benefit and for the benefit or in
9 furtherance of the marital community.

10 4. BSK ENTERPRISES, LLC (“BSK”) is a manager-managed, Arizona limited
11 liability company with a last known principal place of business in Maricopa County, Arizona.

12 5. KLEESE and BSK may be referred to collectively as “Respondents.”

13 6. At all relevant times, KLEESE was a registered securities salesman affiliated with
14 World Group Securities, Inc. (“WGS”), an Arizona registered securities dealer. At all relevant
15 times, KLEESE was a licensed investment adviser representative of Investment Advisors
16 International, Inc., an affiliate of WGS.

17 7. At all relevant times, BSK was not registered as a securities dealer.

18 8. From on or about October 2007 to May 2008 in Maricopa County, Arizona,
19 Respondents offered and sold \$2,980,000 of unregistered securities in the form of promissory
20 notes entitled “BSK Private Loan Agreements” issued by BSK to 57 investors. Respondents have
21 repaid to investors amounts totaling \$540,775.

22 9. The offers and sales of the BSK Private Loan Agreements were not recorded on the
23 records of WGS.

24 10. The BSK Private Loan Agreements contain promises by BSK to repay the investors’
25 principal investments plus interest at a stated rate by a certain date (i.e., the expiration date). The
26 BSK Private Loan Agreements state that BSK shall make monthly interest payments (the “Monthly

1 Payments”) to the investors and that BSK shall have repaid the investors in full by the expiration
2 date.

3 11. Although the Monthly Payments were to continue until July 2009, they stopped in
4 April 2008 and the expiration date of at least one BSK Private Loan Agreement has come to pass
5 without BSK having repaid the investors in full.

6 12. Respondents represented that BSK would lend the investors’ money to Rosand
7 Enterprises, Inc. (“REI”) and that REI would use the investors’ money as collateral in obtaining a
8 line of credit to pay for the construction of pre-fabricated, low-cost housing in Chicago.

9 13. BSK made eight loans to REI, one of which was repaid in full.

10 14. KLEESE represented that REI would make monthly interest payments on the loans
11 it took from BSK and that BSK would, in turn, make the Monthly Payments. However,
12 Respondents did not adequately disclose that they would be unable to make the Monthly Payments
13 if REI stopped making monthly interest payments on the loans it took from BSK.

14 15. REI stopped making monthly interest payments on the loans it took from BSK and
15 BSK stopped making the Monthly Payments.

16 16. Respondents represented that the investors’ money would be deposited by REI into
17 an Illinois law firm’s trust account, that none of the money would be withdrawn from the account
18 because it was to be used by REI only as collateral for the line of credit, and that the account was
19 covered by a bond.

20 17. REI did not deposit the investors’ money into an Illinois law firm’s trust account,
21 but rather an account controlled by REI. REI withdrew from the account some of the investors’
22 money and used it for purposes other than collateral for the line of credit. The account is not
23 covered by a bond.

24 18. Investments associated with BSK and/or REI were not authorized investment
25 products of WGS and KLEESE was not authorized by WGS to sell them. KLEESE did not
26

1 adequately disclose this to the investors, some of whom were clients of WGS and had KLEESE as
2 their WGS representative.

3 **II.**

4 **CONCLUSIONS OF LAW**

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

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

9 3. Respondents violated A.R.S. § 44-1841 by offering or selling securities that were
10 neither registered nor exempt from registration.

11 4. BSK violated A.R.S. § 44-1842 by offering or selling securities while neither
12 registered as a dealer nor exempt from registration.

13 5. Respondents violated A.R.S. § 44-1991 by (a) employing a device, scheme, or
14 artifice to defraud, (b) making untrue statements or misleading omissions of material facts, and (c)
15 engaging in transactions, practices, or courses of business that operate or would operate as a fraud
16 or deceit. Respondents' conduct includes, but is not limited to, the following:

17 a) failing to adequately disclose that Respondents would be unable to make the
18 Monthly Payments if REI stopped making monthly interest payments on the loans it took from
19 BSK;

20 b) misrepresenting that the investors' money was secured by virtue of it being
21 deposited into an Illinois law firm's trust account allegedly covered by a bond;

22 c) failing to disclose that the bank account into which the investors' money
23 was deposited is not an Illinois law firm's trust account, but rather an account controlled by REI,
24 and that the account is not covered by a bond;

25 d) failing to adequately disclose that REI could and would use the investors'
26 money for purposes other than collateral for the line of credit; and,

1 e) failing to adequately disclose to the investors, some of whom were clients of
2 WGS and had KLEESE as their WGS representative, that investments associated with BSK and/or
3 REI were not authorized products of WGS.

4 6. KLEESE directly or indirectly controlled BSK as its member and manager.
5 Therefore, KLEESE is jointly and severally liable under A.R.S. § 44-1999 to the same extent as BSK
6 for its violations of A.R.S. § 44-1991.

7 7. Respondents' conduct subjects KLEESE to an order of revocation of his securities
8 salesman registration pursuant to:

9 a) A.R.S. § 44-1962(A)(2) for violating A.R.S. §§ 44-1841, 44-1842, and 44-
10 1991; and,

11 b) A.R.S. § 44-1962(A)(10) for engaging in dishonest or unethical practices as
12 defined by A.A.C. R14-4-130(A)(17) (effecting securities transactions that were not recorded on
13 the records of the dealer with whom he was registered at the time of the transactions).

14 8. Respondents' conduct subjects KLEESE to an order of revocation of his investment
15 adviser representative license pursuant to A.R.S. § 44-3201(A)(13) for engaging in dishonest or
16 unethical practices as defined by A.A.C. R14-6-203(17) (committing any act that results in
17 revocation of a registration relating to securities, where such revocation arises out of a violation of
18 Article 13 of the Securities Act, A.R.S. § 44-1991 *et seq.*).

19 9. Respondents' conduct is grounds for a cease and desist order pursuant to A.R.S.
20 §§ 44-2032.

21 10. Respondents' conduct is grounds for an order of restitution pursuant to A.R.S.
22 §§ 44-2032.

23 11. Respondents' conduct is grounds for administrative penalties under A.R.S. §§ 44-
24 2036.

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1 IT IS FURTHER ORDERED, pursuant to A.R.S. §§ 44-2036 and 44-3296, that
 2 Respondents and the marital community of KLEESE and Respondent Spouse shall, jointly and
 3 severally, pay an administrative penalty in the amount of \$100,000. Payment shall be made in full
 4 on the date of this Order. Any amount outstanding shall accrue interest at the rate of 10% per
 5 annum from the date of this Order until paid in full. Payment shall be made to the "State of
 6 Arizona." The payment obligations for these administrative penalties shall be subordinate to any
 7 restitution obligations ordered herein and shall become immediately due and payable only after
 8 restitution payments have been paid in full or upon Respondents' default with respect to
 9 Respondents' restitution obligations.

10 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-1962, that the securities salesman
 11 registration of KLEESE is revoked.

12 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-3201, that the investment adviser
 13 representative license of KLEESE is revoked.

14 For purposes of this Order, a bankruptcy filing by any of the Respondents shall be an act of
 15 default. If any Respondent does not comply with this Order, any outstanding balance may be
 16 deemed in default and shall be immediately due and payable.

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1 IT IS FURTHER ORDERED, that if any Respondent fails to comply with this order, the
2 Commission may bring further legal proceedings against that Respondent, including application to
3 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

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8 CHAIRMAN

COMMISSIONER

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10 COMMISSIONER

COMMISSIONER

COMMISSIONER

11
12 IN WITNESS WHEREOF, I, MICHAEL P. KEARNS,
13 Interim Executive Director of the Arizona Corporation
14 Commission, have hereunto set my hand and caused the
15 official seal of the Commission to be affixed at the
16 Capitol, in the City of Phoenix, this _____ day of
17 _____, 2009.

18 MICHAEL P. KEARNS
19 INTERIM EXECUTIVE DIRECTOR

20 DISSENT

21
22 DISSENT

23 This document is available in alternative formats by contacting Shaylin A. Bernal, ADA
24 Coordinator, voice phone number 602-542-3931, e-mail sbernal@azcc.gov.

25
26 (ASL)

CONSENT TO ENTRY OF ORDER

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

9 2. Respondents and Respondent Spouse knowingly and voluntarily waive any right
10 under 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. Respondents and Respondent Spouse acknowledge and agree that this Order is
13 entered into freely and voluntarily and that no promise was made or coercion used to induce such
14 entry.

15 4. Respondents and Respondent Spouse understand and acknowledge that they have a
16 right to seek counsel regarding this Order and that they have had the opportunity to seek counsel
17 prior to signing this Order. Respondents and Respondent Spouse acknowledge and agree that,
18 despite the foregoing, they freely and voluntarily waive any and all right to consult or obtain
19 counsel prior to signing this Order.

20 5. Respondents and Respondent Spouse admit only for purposes of this proceeding
21 and any other administrative proceeding before the Commission the Findings of Fact and
22 Conclusions of Law contained in this Order. Respondents and Respondent Spouse agree that they
23 shall not contest the validity of the Findings of Fact and Conclusions of Law contained in this
24 Order in any present or future administrative proceeding before the Commission or any other state
25 agency concerning the denial or issuance of any license or registration required by the state to
26 engage in the practice of any business or profession.

1 6. By consenting to the entry of this Order, Respondents and Respondent Spouse agree
2 not to take any action or to make, or permit to be made, any public statement denying, directly or
3 indirectly, any Finding of Fact or Conclusion of Law in this Order or creating the impression that
4 this Order is without factual basis. Respondents and Respondent Spouse will undertake steps
5 necessary to assure that all of their agents and employees understand and comply with this
6 agreement.

7 7. While this Order settles this administrative matter between Respondents,
8 Respondent Spouse, and the Commission, Respondents and Respondent Spouse understand that
9 this Order does not preclude the Commission from instituting other administrative or civil
10 proceedings based on violations that are not addressed by this Order.

11 8. Respondents and Respondent Spouse understand that this Order does not preclude
12 the Commission from referring this matter to any governmental agency for administrative, civil, or
13 criminal proceedings that may be related to the matters addressed by this Order.

14 9. Respondents and Respondent Spouse understand that this Order does not preclude
15 any other agency or officer of the state of Arizona or its subdivisions from instituting
16 administrative, civil, or criminal proceedings that may be related to matters addressed by this
17 Order.

18 10. KLEESE and BSK agree that they will not apply to the state of Arizona for
19 registration as a securities dealer or salesman or for licensure as an investment adviser or
20 investment adviser representative at any time in the future.

21 11. KLEESE and BSK agree that they will not exercise any control over any entity that
22 offers or sells securities or provides investment advisory services within or from Arizona at any
23 time in the future.

24 12. KLEESE and BSK agree that they will not sell any securities in or from Arizona
25 without being properly registered in Arizona as a dealer or salesman, or exempt from such
26 registration; KLEESE and BSK will not sell any securities in or from Arizona unless the securities

1 are registered in Arizona or exempt from registration; and, KLEESE and BSK will not transact
2 business in Arizona as an investment adviser or an investment adviser representative unless
3 properly licensed in Arizona or exempt from licensure.

4 13. Respondents and Respondent Spouse agree that they will continue to cooperate with
5 the Securities Division by, including but not limited to, providing complete and accurate testimony
6 at any hearing in this matter and cooperating with the state of Arizona in any related investigation
7 or any other matters arising from the activities described in this Order.

8 14. KLEESE and Respondent Spouse acknowledge that any restitution or penalties
9 imposed by this Order are obligations of KLEESE as well as the marital community.

10 15. Respondents and Respondent Spouse consent to the entry of this Order and agree to
11 be fully bound by its terms and conditions.

12 16. Respondents and Respondent Spouse acknowledge and understand that, if they fail
13 to comply with the provisions of the order and this consent, the Commission may bring further
14 legal proceedings against them, including application to the superior court for an order of
15 contempt.

16 17. Respondents and Respondent Spouse understand that default shall render them
17 liable to the Commission for its costs of collection and interest at the maximum legal rate.

18 18. Respondents and Respondent Spouse agree and understand that, if they fail to make
19 any payment as required in the Order, any outstanding balance shall be in default and shall be
20 immediately due and payable without notice or demand. Respondents agree and understand that
21 acceptance of any partial or late payment by the Commission is not a waiver of default by
22 Commission.

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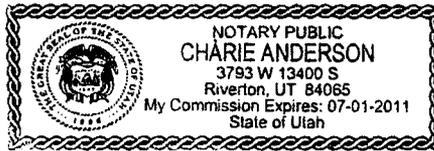
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1 19. KLEESE represents that he is the manager of BSK and has been authorized by BSK
2 to enter into this Order for and on behalf of it.

3 Brett S. Kleese
4 **BRETT S. KLEESE**

5 Katherine D. Kleese
6 **KATHERINE D. KLEESE**

7 STATE OF ARIZONA)
8 County of) SS)



9 SUBSCRIBED AND SWORN TO BEFORE me this 27 day of December, 2008

10
11 Charie Anderson
12 **NOTARY PUBLIC**

13 My commission expires:

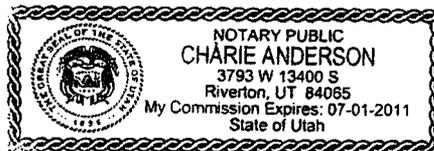
14 7-01-2011

15 Brett S. Kleese
16 **BSK ENTERPRISES, LLC**

17 By: Brett S. Kleese

18 Its: Manager

19 STATE OF ARIZONA)
20 County of) SS)



21 SUBSCRIBED AND SWORN TO BEFORE me this 27 day of December, 2008.

22 Charie Anderson
23 **NOTARY PUBLIC**

24 My commission expires:

25 7-01-2011

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