

1 On August 6, 2008, C. White filed a letter with the Hearing Division Docket Control Center
2 indicating she was divorced from Bradford. C. White did not request a hearing, and she did not
3 answer or deny any remaining allegation of the Notice. (Ex. R-2).

4 On August 11, 2008, by Procedural Order, a status conference was scheduled for September
5 4, 2008 to determine C. White's intention in the matter and her docket filing. Bradford did not
6 request a hearing and did not file an answer to the Notice.

7 On September 4, 2008, a status conference was held to determine the status of the
8 proceeding. The Division appeared by counsel and C. White appeared on her own behalf. The
9 proceeding was recessed for further discussions between the Division and C. White.

10 On October 7, 2008, at the Securities Division Open Meeting, the Commission approved
11 Decision No. 70545 that set forth the following: that Bradford did not request a hearing pursuant to
12 A.R.S. §§ 44-1972, 44-3212 and A.A.C. R14-4-307; that Bradford did not answer the Notice
13 pursuant to A.A.C. R14-4-305; that Bradford sold a total of \$1,298,416.36 in unregistered
14 securities within or from Arizona, within the meaning of A.R.S. §§ 44-1801(15), 44-1801(21) and
15 44-1801(26) and in violation of A.R.S. §§ 44-1841, 44-1842 and 44-1991; and that Bradford
16 transacted business within or from Arizona in violation of the Investment Management Act and
17 violated A.R.S. §§ 44-3151 and 3241. Bradford was ordered to pay restitution in the amount of
18 \$1,298,416.36, plus interest at the rate of 10% per annum from the date of the investment. In
19 addition, Bradford was ordered to pay an administrative penalty in the amount of \$100,000.00
20 which accrues interest at the rate of 10% per annum from the date of the Order until paid in full.
21 (Ex. S-1). The Commission also approved C. White's consent order in Decision No. 70544 and C.
22 White appeared at the Open Meeting. Decision No. 70544 set forth the following: that Bradford
23 violated provisions of the Securities Act and Investment Management Act; that Bradford's conduct
24 binds the marital community pursuant of A.R.S. §§ 25-214 and 25-215; that the marital community
25 of C. White shall, jointly and severally with Bradford, pay restitution in the amount of
26 \$1,298,416.36 and any amount outstanding shall accrue interest at the rate of 10% per annum from

1 the date of the Order; and the marital community of C. White shall, jointly and severally with
2 Bradford, pay an administrative penalty in the amount of \$100,000.00 which accrues interest at the
3 rate of 10% per annum from the date of the Order. (Ex. R-5, pp. 1-8).

4 On October 8, 2008, the Commission filed Decision Nos. 70544 and 70545, a Consent
5 Order against C. White and a Default Order against Bradford, respectively. Pursuant to the terms
6 of the Consent Order, C. White consented to the entry of the order and knowingly and voluntarily
7 waived any right under Article 12 of the Securities Act and Article 8 of the Investment
8 Management Act to judicial review by any court by way of suit, appeal, or extraordinary relief
9 resulting from the entry of the Consent Order.

10 On March 4, 2009, C. White filed a letter requesting that the Commission reconsider
11 Decision No. 70544 with respect to her Consent Order. She further indicated she wished to request
12 a hearing. However, C. White did not file a request for rehearing of the Consent Order, Decision
13 No. 70544, in accordance with Corporation Commission Rules of Practice and Procedure R14-3-
14 112, A.R.S. §§ 44-1974, and 44-3214.

15 On March 19, 2009, the Division filed a Motion for Issuance of a Procedural Order setting a
16 procedural conference between the Division and C. White to discuss the potential reconsideration
17 of Decision No. 70544.

18 On March 20, 2009, by Procedural Order, a procedural conference was scheduled to
19 determine the status of the proceeding.

20 On April 7, 2009, a procedural conference was convened with the Division represented by
21 counsel and C. White appearing on her own behalf. The Division and C. White discussed the
22 nature of the reconsideration of Decision No. 70544. C. White further requested that a hearing be
23 scheduled if the matter was not resolved in the interim. The Division did not oppose reopening to
24 determine whether C. White's consent order, Decision No. 70544, should be vacated.

25 On April 8, 2009, by Procedural Order, a hearing was scheduled for July 7 and 8, 2009, to
26 determine the liability of the marital community and Respondent Spouse.

1 On July 7, 2009, a hearing was conducted before Administrative Law Judge Marc E. Stern
2 (“ALJ Stern”). The Division was represented by counsel and C. White appeared on her own
3 behalf. By stipulation of the parties, ALJ Stern admitted the following exhibits into evidence: S-1
4 through S-10 and R-1, R-2, R-5, R-6, R-9, R-10, R-11, and R-14.

5
6 **B. JURISDICTION.**

7 The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona
8 Constitution, the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* and the Arizona Investment
9 Management Act, A.R.S. § 44-3101 *et seq.*

10
11 **C. FACTS.**

12 On February 14, 2003, Bradford and C. White were married in Las Vegas, Nevada. (Ex. S-
13 2, p.2¶2-¶3). During the period of March 2006 to November 2007 (the “relevant time frame”),
14 Bradford and C. White were still married and residents of Arizona. (Hr’g Tr., p. 117¶2-¶16).

15 During the relevant time frame, Bradford, within and from Arizona, violated the Securities
16 Act and the Investment Management Act, as detailed and established in Decision No. 70545.
17 Bradford raised approximately \$1,298,416 from six (6) investors. (Ex. S-1, pp.1-12). On March 8,
18 2006, Bradford executed a brokerage account application, options application, check writing
19 application and related account documents to open a Scottrade online brokerage account ending in
20 #2871 (“Scottrade Account”) in the name of Fishing Partners-Salmon, LLC (“FPS, LLC”) with
21 Bradford as the authorized party. (Ex. S-4, ACC000077-85). The Division’s expert witness, John
22 Fink¹, Chief Accountant of Enforcement (“Mr. Fink”) testified that between the periods of March
23 2006 through November 2007, a total of \$1,298,416 of investor monies were deposited into the
24 Scottrade Account. The investor deposits comprised 100% of all deposits into the Scottrade
25 Account and there were no other sources of funds. The investor monies were placed into the

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¹ ALJ Stern recognized Mr. Fink as an expert witness during the hearing. (Hr’g Tr., p.79¶12-¶19).

1 Scottrade Account to conduct securities trading and facilitate the investment opportunity. (Hr'g Tr.,
2 p.25¶16-¶24). During the relevant time frame, all disbursements from the Scottrade Account were
3 made by Bradford, who was the only party with authority to access the online brokerage account
4 and had check writing authority. (Hr'g Tr., pp.79¶21-82¶25; Ex. S-4).

5 On or about May 1, 2006, an Operating Agreement was executed for FPS, LLC, which
6 memorialized that a limited liability company had been organized in Arizona, investors were made
7 members of the FPS, LLC and Bradford was the manager of FPS, LLC. (Ex. S-8, ACC000812-
8 851). The FPS, LLC Operating Agreement detailed Bradford's compensation for managing the
9 investment opportunity. As members of the FPS, LLC, investors would be paid pro-rata profits
10 generated from Bradford's investments and stock trades, in proportion to their respective
11 membership interests. Pursuant to Section VII of the FPS, LLC Operating Agreement, Bradford
12 would be paid a two percent (2%) entry fee from each investor and receive twenty percent (20%) of
13 any profits earned, which would be paid quarterly. (Ex. S-8, ACC000817).

14 Between the periods of March 2006 through November 2007, Bradford executed numerous
15 checks from the Scottrade Account that were payable to Bradford, C. White, Vivian Harper and
16 other third parties. The amount of checks disbursed by Bradford totaled over \$297,000. (Ex. S-5,
17 ACC000216-253). C. White received four (4) checks payable to her from the Scottrade Account
18 for a total of \$21,200. (Ex. S-5, ACC000216, 225, 228 and 235). Mr. Fink testified that he
19 reviewed and analyzed financial records pertaining to the Scottrade Account, the personal accounts
20 of Bradford and C. White at Wells Fargo bank, and that he summarized his analysis as Exhibit S-9.
21 (Hr'g Tr., pp.80¶1-82¶3). Mr. Fink's analysis and report revealed that the Scottrade Account
22 monies were disbursed as follows: \$174,525 to Bradford; \$70,000 to an investor; \$21,200 to C.
23 White; \$20,000 to Vivian Harper; \$9,384 to house rental; \$2,000 to Bella More Interior Design for
24 a home office; and \$1,001,243 from investment trading losses, leaving a balance of \$64 as of
25 November 30, 2007. (Ex. S-9; Hr'g Tr., pp.83¶12-84¶16). Some of the Scottrade Account checks
26 had a memo notation of "commission" or "fees" that Bradford misrepresented as earned. (Ex. S-1,

1 p.9¶6-¶9; Ex. S-5, ACC000217, 220, 222, 223, 226, 253). Bradford maintained an individual
2 Wells Fargo Bank Account ending in #3986 (“WFC #3986”) and C. White maintained two
3 individual Wells Fargo Accounts ending in #5998 (“WFC #5998”) and #7303, respectively. (Ex. S-
4 7a, S-7b, and S-7c). Mr. Fink’s testimony and analysis revealed that Bradford’s account WFC
5 #3986, for the period of February 21, 2006 through November 21, 2007, received as receipts a sum
6 of \$174,525 from the FPS Scottrade Account and another \$15,000 in entry fees from investors.
7 The \$174,525 and \$15,000 originating from investors accounted for greater than 80% of the total
8 deposits into Bradford’s account WFC #3986. (Hr’g Tr., pp.84¶25-86¶5; Ex. S-9).

9 Mr. Fink’s testimony and analysis also revealed that C. White’s account WFC #5998, for
10 the period of February 21, 2006 through November 21, 2007, received receipts of \$34,820 from
11 Bradford’s account WFC #3986 by check or online transfers, and an additional \$21,200 in checks
12 written by Bradford to C. White from the FPS, LLC Scottrade Account. The receipts of \$34,820
13 and \$21,200 accounted for over 70% of the total deposits into C. White’s account WFC #5998.
14 (Hr’g Tr., pp.87¶7-88¶10; Ex. S-9). Mr. Fink testified that funds were transferred and commingled
15 among all three Wells Fargo bank accounts of Bradford and C. White. (Hr’g Tr., pp.89¶2-¶12).
16 Once the investor monies were received into the Wells Fargo bank accounts, the monies was used
17 for various personal expenses and community benefits. Certain transfers or checks from
18 Bradford’s account WFC #3986 to C. White’s account WFC #5998 contained notations or memos
19 such as groceries, bills, allowance, or to pay credit cards. (Hr’g Tr., pp. 90¶16-91¶14; Ex. S-9).
20 During an examination under oath (“EUO”) conducted by the Division, Bradford also admitted to
21 online money transfers to C. White for her benefit. (Ex. S-6, p.86¶7-¶20). C. White acknowledged
22 the online transfers were for her usage too. (Hr’g Tr., pp. 132¶14-¶25). In addition, Mr. Fink
23 testified that, during the relevant time frame, the WFC #3986 and WFC #5998 were accounts that
24 contained disbursements for personal uses and expenses, such as payments for house rental,
25 groceries, PokerStars, auto insurance, retail establishments, and auto fuel. (Hr’g Tr., pp. 91¶24-
26 94¶5).

1 Bradford and C. White used investor monies to rent and purchase a home. On or about
2 September 26, 2007, Bradford and C. White executed a residential purchase contract in the amount
3 of \$1,306,000 for a home located at 3963 N. Pinnacle Hills Mesa, Arizona 85207 (“Pinnacle Hills
4 home”). Bradford and C. White agreed to pay a \$10,000 earnest money deposit and to pay pre-
5 possession rent prior to close of escrow. (Ex. R-11). C. White acknowledged the \$11,000 FPS
6 Scottrade Account check #1013 payable to her and deposited into her WFC #5998 account was
7 used by her to make a check out to Magnus Title in an amount of \$10,000 as the earnest money
8 deposit for the Pinnacle Hills home. (Hr’g Tr. p.107¶2-¶14; Ex. R-11). C. White resided in the
9 Pinnacle Hills home for a duration of time. (Hr’g Tr. p. 130¶12-¶22).

10 Pursuant to public records of the Superior Court of Maricopa County, Arizona, on
11 December 18, 2007 a petition for dissolution of marriage was filed by Bradford. On March 3, 2008
12 by Consent Decree of Dissolution of Marriage (“divorce decree”), Case No. FN2007-092470,
13 Bradford and C. White were divorced. As part of the divorce decree, certain marital community
14 assets and liabilities were allocated between Bradford and C. White. (Ex. S-2, pp.1-7). The state of
15 Arizona was not a party to the divorce proceeding.

16 During the July 7, 2009 hearing, C. White presented no evidence of separate property of
17 Bradford or C. White. The Division’s witness, Special Investigator Ronald Baran (“Mr. Baran”)
18 testified that no prenuptial agreement exists between Bradford and C. White. (Hr’g Tr. p.118¶5-
19 ¶7). Mr. Baran also testified that investor monies were not provided to Bradford or C. White as a
20 gift, devise or descent. (Hr’g Tr., 53¶10-¶17).

21
22 **D. LEGAL ARGUMENTS.**

23 **I. Richard Bradford and Cindy White were still married between the periods**
24 **of March 2006 through November 2007 and thus maintained a marital community for all**
25 **relevant time.**

26 During the relevant time frame, Bradford and C. White were married, residents of Arizona,
and maintained a marital community. Bradford and C. White maintained a marital community

1 from at least February 14, 2003, their date of marriage, through December 18, 2007, the petition
2 for dissolution date. At hearing, C. White testified that she has been an Arizona resident for 45
3 years and that Bradford was an Arizona resident during the relevant time frame. (Hr'g Tr.,
4 p.117¶2-¶16). Pursuant to A.R.S. § 25-211, all property acquired by either husband or wife during
5 the marriage is the community property of the husband and wife except for property that is
6 acquired by gift, devise, descent or is acquired after service of a petition for dissolution of
7 marriage, legal separation or annulment if the petition results in a decree of dissolution of marriage,
8 legal separation or annulment. During marriage, "the spouses have equal management, control and
9 disposition rights over their community property and have equal power to bind the community."
10 A.R.S. § 25-214(B). In addition, "[...], either spouse may contract debts and otherwise act for the
11 benefit of the community. [...]" A.R.S. § 25-215(D). Here, there is no debate or doubt that
12 Bradford and C. White were still married during the period of March 2006 through November
13 2007. The petition, which resulted in a divorce, occurred after the relevant time frame. No
14 prenuptial agreement exists between Bradford and C. White. (Hr'g Tr., p.118¶5-¶7). The
15 community property laws of the state of Arizona apply to Bradford and C. White for all property or
16 debt acquired during marriage. Since the actions of one spouse can create a binding community
17 obligation, the debt acquired by Bradford or C. White during March 2006 through November 2007
18 is a debt of the community.

19 The marital community continues to exist even if the married spouses maintain individual
20 bank accounts or live separate and apart. During the hearing, C. White alleged that she and
21 Bradford were separated because Bradford was traveling on a consistent basis and was instead
22 discovered to have been spending time in Gilbert, Arizona with his girlfriend (Hr'g Tr., pp. 143¶5-
23 ¶25). Even assuming arguendo that Bradford and C. White were living apart, the community
24 continued to exist because there was no petition for divorce, annulment or legal separation until
25 December 18, 2007. (See Rodieck v. Rodieck, 9 Ariz.App. 213, 221, 450 P.2d 725, 733 (1969); See
26

1 also Jurek v. Jurek, 124 Ariz. 596, 606 P.2d 812 (1980). (The community continues to exist,
2 together with its rights and obligations, even when the parties may be living separate and apart.).
3 Each spouse “retains control of the community personalty and [their] earnings continue to be
4 community property.” Rodieck, 9 Ariz. App. at 221, 450 P.2d at 733. The money and earnings
5 deposited into each respective bank account during marriage was still a community asset because
6 the money and earnings were acquired during marriage and were still controlled by a member of
7 the community. In general, the marital community is not extinguished merely because one spouse
8 is later discovered to have been adulterous. Rather, it is a legal establishment that is created and
9 extinguished only through the legal process. C. White’s evidence did not establish that she and
10 Bradford were legally separated or divorced until December 18, 2007. Therefore, the marital
11 community existed for all times relevant, the monies received were community property and the
12 debts incurred are community debts.

13
14 **II. The July 7, 2009, hearing provided Cindy White an opportunity to contest**
15 **and prove by clear and convincing evidence that Bradford was not acting in furtherance of**
16 **the community, that the debt was not incurred during marriage and that the community did**
17 **not benefit.**

18 The July 7, 2009, hearing was conducted to allow C. White an opportunity to refute all
19 applicable community property presumptions and provide clear and convincing evidence that
20 Bradford was not acting in furtherance of the community, that the debt was not incurred during
21 marriage and that the martial community did not benefit. The burden is on C. White to overcome
22 the community property presumptions, which she failed to do because she did not present any
23 reliable evidence, let alone clear and convincing evidence to overcome each applicable community
24 property presumption. The clear and convincing standard is the standard of proof that a spouse
25 must meet to rebut each community property presumption. The Arizona Supreme Court has stated
26 that, “the clear and convincing standard is an intermediate standard, between proof beyond a
reasonable doubt and proof by a preponderance of the evidence, and that clear and convincing

1 evidence is evidence that makes the existence of the issue propounded ‘highly probable.’” State v.
2 King, 158 Ariz. 419, 426, 763 P.2d 239, 246 (1988).

3 First, C. White failed to provide clear and convincing evidence that Bradford was not acting
4 in furtherance of the community. “(T)he presumption of law is, in the absence of the contrary
5 showing, that all property acquired and **all business done and transacted during coverture, by**
6 **either spouse, is for the community.**” Johnson v. Johnson, 131 Ariz. 38, 45, 638 P.2d 705, 712
7 (1981) (*Emphasis added*). Therefore, the presumption is Bradford was acting in furtherance of the
8 community and intended to benefit the community since he transacted business during marriage.
9 C. White did not present evidence or even contest the fact that Bradford was acting in furtherance
10 of the community during the relevant time frame of March 2006 through November 2007. In
11 addition to the presumption, the Division’s evidence detailed that in March 2006, Bradford opened
12 a Scottrade Account in the name of FPS, LLC, as its manager, which provided Bradford with
13 account access, check writing, and trading authorization. (Ex. S-4, ACC000077-85). In May 2006,
14 Bradford and the investors memorialized their agreement with the FPS, LLC operating agreement
15 that named Bradford as Manager of the LLC and detailed his compensation as Manager. (Ex. S-8).
16 Pursuant to Section VII of the FPS, LLC Operating Agreement, Bradford would be paid a two
17 percent (2%) entry fee from each investor and receive twenty percent (20%) of any profits earned,
18 paid quarterly. (Ex. S-8, ACC000817). The Scottrade Account was the mechanism for which
19 Bradford conducted the investment opportunities. All these actions occurred during the marriage.
20 Therefore, based on the presumption in law and the evidence presented, the Division established
21 that Bradford was conducting business, acting in furtherance of the community and intended to
22 benefit the community² and C. White failed to overcome this with clear and convincing evidence.

23 ² The “intent to benefit” regarding community liability as analyzed in an administrative proceeding should not be
24 equated to the analysis applied in a civil or criminal action. In Cadwell, the Arizona Court of Appeals discussed
25 “intent” as it relates to community liability for an intentional tort or criminal proceeding. The Cadwell court cited
26 Hofmann Co. v. Meisner’s dicta that an intent to benefit is sufficient to establish community liability. Cadwell v.
Cadwell, 126 Ariz. 460, 616 P.2d 920 (Ariz. Ct. App. 1980). But Cadwell dealt with a criminal proceeding, which
alleged that the husband used embezzled funds to pay for rent or mortgage for the residence of husband and wife.
Intentional torts and certain criminal actions appear to impute a higher threshold and require a showing that the actor
intended to benefit the community in order to hold the community liable. The Cadwell court stated, “The law is settled

1 Second, C. White failed to rebut the presumption that a debt incurred during marriage is a
2 community obligation. Decision Nos. 70545 and 70544 established a debt against the marital
3 community³. (Ex. S-1). The Arizona Court of Appeals has stated, “[a] debt incurred by a spouse
4 during marriage is presumed to be a community obligation; a party contesting the community
5 nature of a debt bears the burden of overcoming that presumption by clear and convincing
6 evidence.” Hrudka v. Hrudka, 186 Ariz. 84, 91, 919 P.2d 179, 186 (Ariz. Ct. App. 1995).
7 Furthermore, “[...] a debt is incurred at the time of the actions that give rise to the debt. [*Citations*
8 *omitted*].” Arab Monetary Fund v. Hashim, 219 Ariz. 108, 111, 193 P.3d 802, 806 (Ariz. Ct. App.
9 2008). Here, the actions giving rise to the debt occurred March 2006 through November 2007,
10 while Bradford and C. White were married. C. White acknowledged Bradford’s actions and
11 characterized it as “fraudulent” but did not present evidence to rebut the presumption that the debt
12 was a community obligation. (Hr’g Tr. pp. 127¶7-¶8, 139¶4-¶12). Therefore, the debt was incurred
13 during marriage and is presumed to be a community debt. Since C. White failed to overcome this
14 presumption, the debt remains a liability of the community.

15 Third, C. White failed to produce any reliable evidence that the community did not benefit
16 or that Bradford’s actions were not intended to benefit the community. As part of C. White’s
17 burden, she was required to provide evidence refuting the community property presumptions of
18 benefit to the community and if applicable, refute the Division’s evidence of community benefit.
19 The hearing transcript and records are void of any material evidence refuting the presumptions or

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21 in Arizona that the community property of both spouses may be liable for an intentional tort committed by one of the
22 spouses where the intent and purpose of the activity leading to the commission of the tort was to benefit the community
interests. Rodgers v. Bryan, 82 Ariz. 143, 309 P.2d 773 (1957); and McFadden v. Watson, 51 Ariz. 110, 74 P.2d 1181
(1938).” Cadwell v. Cadwell, 126 Ariz. at 463, 616 P.2d at 923.

23 ³ Decision No. 70545 held that between March 2006 through November 2007, Bradford sold a total of \$1,298,416.36
24 in unregistered securities within or from Arizona, within the meaning of A.R.S. §§ 44-1801(15), 44-1801(21) and 44-
25 1801(26) and in violation of A.R.S. §§ 44-1841, 44-1842 and 44-1991; that Bradford transacted business within or
26 from Arizona in violation of the Investment Management Act and violated A.R.S. §§ 44-3151 and 3241; that for all
times relevant, Bradford was acting for his own benefit and for the benefit and in furtherance of the marital
community. Decision No. 70545 also ordered Bradford to pay restitution in the amount of \$1,298,416.36, plus interest
at the rate of 10% per annum from the date of the investment. In addition, Bradford was ordered to pay an
administrative penalty in the amount of \$100,000.00 which accrues interest at the rate of 10% per annum from the date
of the Order until paid in full.

1 the Division's evidence. The failure by C. White to overcome the community property
2 presumptions and the Division's evidence means that the liability of the community is for the full
3 amount of the debts incurred.

4 Based on the foregoing, the restitution and administrative penalty ordered in Decision No.
5 70545 is a community debt. The Commission and the Administrative Law Judge ("ALJ") need not
6 determine whether the non-participating spouse had knowledge, participation, or intent, in order to
7 bind the community for the debt incurred. The presumption of intent is enough to bind the
8 community, even if C. White was unaware or did not approve of Bradford's actions. The
9 Ellsworth court stated, "[i]f the husband acts with the object of benefiting the community, a fact
10 not questioned here, the obligations so incurred by him are community in nature, whether or not the
11 wife approved thereof." Ellsworth v. Ellsworth, 5 Ariz. App. 89, 92, 423 P.2d 364, 367 (Ariz. Ct.
12 App. 1967) citing Donato v. Fishburn, 90 Ariz. 210, 367 P.2d 245 (1961). Since C. White failed to
13 meet her burden and present "highly probable" evidence to rebut the presumptions or the
14 Division's evidence, the debt is a liability of the community.

15
16 **III. Even though Arizona law clearly affirms that no actual benefit need be**
17 **proven by the Division to bind the marital community, the Division's evidence went that**
18 **extra step and proved there was actual benefit to the community.**

19 Arizona case law affirms that actual benefit is not a standard or requirement that the
20 Division must meet. As noted earlier, Arizona community property law presumes that all debts
21 incurred, whether by Bradford or C. White, during marriage are community debts, unless rebutted
22 by clear and convincing evidence. C. White has not overcome this presumption. Though not
23 required, the Division provided examples of actual benefit to refute any anticipated evidence or
24 defense. Some examples of actual benefit presented by the Division were as follows: First, the
25 Division's expert witness, Mr. Fink reviewed financial documents, conducted an analysis and
26 summarized his analysis in a report entered as Exhibit S-9. (Hr'g Tr., pp. 80¶3 – 82¶10; Ex. S-9).
Mr. Fink testified that there were a total of six (6) investors, that the investors' monies were

1 deposited initially into the Scottrade Account, and that the total amount received in the Scottrade
2 Account from investors was \$1,298,416, which represents 100% of the amount deposited into the
3 Scottrade Account. (Hr'g Tr., p.82¶11-¶25). FPS Scottrade account checks were made out to
4 Bradford or C. White, and Bradford was the check writer. From the period of March 8, 2006
5 through November 30, 2007, Bradford made disbursements from the Scottrade Account that was
6 deposited into his WFC #3986 for a total of \$174,525. Some of the Scottrade Account checks were
7 received by the community as earnings, which had a memo notation of "commission" or "fees" that
8 Bradford misrepresented as earned. (Ex. S-5, ACC000217, 220, 222, 223, 226, 253). Bradford is
9 the authorized signer on the WFC #3986. Additional receipts of \$15,000 in account WFC #3986
10 was a result of entry fees paid from three investors. The \$174,525 and \$15,000 deposits equated to
11 over 80% of the total deposits into the WFC #3986 account. (Hr'g Tr., pp. 85¶7-86¶5). Once
12 deposited into Bradford's account WFC #3986, numerous disbursements occurred that were
13 personal in nature. The funds in WFC #3986 are presumed to be community funds. In addition, Mr.
14 Fink testified that WFC #3986 funds were used to benefit the community in the form of payments
15 for house rental, groceries, and other various expenses. (Hr'g Tr., pp. 92¶4-93¶6). Thus, actual
16 benefit to Bradford and the community was proven.

17 Second, the marital community again received actual benefit in the form of online money
18 transfers from Bradford's WFC#3986 to C. White's WFC #5998 that were used by C. White for
19 community benefit. C. White is the authorized signer of WFC #5998. Between the periods of
20 February 2006 through November 2007, \$34,820 was disbursed from WFC #3986 to WFC #5998.
21 Once deposited into C. White's WFC #5998 account, numerous disbursements occurred that were
22 personal in nature. The Division's evidence proved C. White's WFC #5998 funds were used to
23 benefit the community in the form of payments for auto insurance, groceries, restaurants, retail
24 establishments, and auto fuel. (Hr'g Tr., pp. 93¶7-94¶5).

1 Third, the marital community again received actual benefit when investor monies were used
2 to pay for rent and an earnest money deposit for a \$1,306,000 home located at 3963 N. Pinnacle
3 Hills Mesa, Arizona 85207 ("Pinnacle Hills home") for Bradford and C. White. (Ex. R-11). Mr.
4 Fink testified that \$9,384 of investor money went to pay for rent for the Pinnacle Hills home. (Hr'g
5 Tr., pp.84¶3-¶5). In addition, C. White's exhibit R-11 includes a copy of Scottrade Account check
6 #1013 in the amount of \$11,000 payable to Cindy Bradford (a.k.a. C. White), which is followed by
7 a copy of Wells Fargo Bank Check #173 in the amount of \$10,000 written from WFC #5998 to
8 Magnus Title and signed by C. White. (Ex. R-11). C. White testified that the \$11,000 was
9 deposited into her bank account and that allowed her to write the \$10,000 check to Magnus Title
10 for the earnest money deposit on the Pinnacle Hills home. (Hr'g Tr. p. 107¶2-¶14). C. White
11 resided in the Pinnacle Hills home for some duration of time in 2007. (Hr'g Tr., pp. 130¶7-¶22).
12 Because C. White testified to using investor money to purchase and reside in the Pinnacle Hills
13 home, this is yet another example of actual benefit to the community.

14 The ALJ should not be persuaded by C. White's claim that the community did not benefit
15 because her sole and separate property was used to pay for all community expenses. At the hearing,
16 C. White testified that in 2005, she sold a home that was her sole and separate property in a
17 foreclosure sale and made a profit of \$76,000. C. White then testified that she gave \$42,000 to
18 Bradford to begin a fund at Scottrade, called Barracuda Group, to invest for their retirement. The
19 remaining amounts were expended by C. White to purchase a car, pay back taxes and put away to
20 pay for bills. (Hr'g Tr. pp. 118¶8-121¶24). C. White testified that she believed Bradford used the
21 money originating from the sale of her sole and separate property to pay community expenses,
22 transferred that sole and separate property back to her, and thus she was not benefited from
23 investor monies. (Hr'g Tr. 123¶2-124¶8). Though no documentation was provided at hearing to
24 verify C. White sold a residential property from her sole and separate property, for the sake of
25 argument, even assuming this transaction did occur as detailed by C. White, the evidence and
26 testimony provided by the Division still proves that a joint liability arose.

1 The Martin court stated that “[t]he law in Arizona is clear that where separate and
2 community funds are so commingled that they become indistinguishable, they are presumed to be
3 community property. [Citations Omitted].” Martin v. Martin, 156 Ariz. 440, 752 P.2d 1026 (Ariz.
4 Ct. App. 1986). The burden is upon the party claiming a separate property interest in the funds to
5 prove it, together with the amount, by clear and satisfactory evidence. Cooper v. Cooper, 130 Ariz.
6 257, 635 P.2d 850 (1981). Here, C. White failed to meet that burden and standard because she did
7 not present any tangible evidence that any funds or assets received in the WFC bank accounts were
8 separate property or that the funds in the WFC accounts were kept segregated. As noted earlier,
9 Mr. Fink testified that 100% of the Scottrade Account deposits originated from investors. Mr. Fink
10 then testified that investor monies that were deposited into Bradford’s WFC #3986 account equated
11 to over 80% of the total deposits into that account. (Hr’g Tr., pp. 85¶7-86¶5). Mr. Fink further
12 testified that deposits originating from investor monies accounted for over 71% of all receipts into
13 C. White’s WFC #5998 account. (Hr’g Tr., pp. 89¶15-91¶23). “When, as here, separate and
14 community income and funds are commingled in one account and treated as community property
15 without segregation, the entire amount ordinarily becomes community property. This rule is based
16 upon the theory that the community interest is paramount and is especially applicable where, as in
17 this case, the community funds constitute the major portion of the deposits. [Citations omitted].”
18 Blaine v. Blaine, 63 Ariz. 100, 110, 159 P.2d 786, 790 (1945). Even assuming Bradford
19 transferred back monies originating from sole and separate property of C.White back to her, C.
20 White never provided any testimony or evidence to delineate what amounts, if any, in the WFC
21 accounts were sole and separate property. Because there was no evidence of sole and separate
22 property, no delineation of sole and separate property, and since the investor monies constituted a
23 major portion of the total account deposits, the funds are still presumed to be community funds.
24 These funds resulted from the business operated by Bradford and that business resulted into a debt
25 of the community.

26

1 Whether C. White's profits earned from the sale of her home and her salary and income
 2 was sufficient to pay for all of the community's expenses, as she alleged with only oral testimony,
 3 is neither sufficient to overcome the Division's overwhelming evidence nor sufficient to rebut the
 4 community property presumptions. What is sufficient and reliable is that the Division's evidence
 5 detailed that investors' monies were received by the community, spent by the community and C.
 6 White acknowledged and admitted this. (Hr'g Tr., pp.128¶3-¶20).

7
 8 **IV. The Commission was required to join Cindy White and provide her the**
 9 **opportunity to be heard at the administrative level; otherwise the Commission cannot impose**
 10 **liability on the marital community, either administratively or in a later judicial action.**

11 To obtain personal jurisdiction, an enforceable judgment⁴, and comport with due process,
 12 C. White must be provided an opportunity to be heard in the administrative proceeding. ALJ Stern
 13 has posed the question of whether the court of domestic relations is the better forum in which to
 14 pursue the matter of marital liability. (Hr'g Tr. pp.13¶15 – 14¶6). The Division asserts that res
 15 judicata and judicial efficiency favors that the Commission and/or the ALJ, as applicable,
 16 determine the liability of the marital community here at the administrative level.

17 First, if C. White is not included in the administrative action, the Commission would be
 18 barred from obtaining a binding judgment against the community by res judicata. The "doctrines of
 19 res judicata and collateral estoppel may apply to decisions of administrative agencies acting in a
 20 quasi-judicial capacity. [*Citations omitted*]." Hawkins v. State, Dept. of Economic Sec., 183 Ariz.
 21 100, 104, 900 P.2d 1236, 1240 (Ariz. Ct. App. 1995). In Hawkins, the court defined res judicata as:

22 Under the doctrine of *res judicata*, a judgment on the merits in a prior suit involving the
 23 same parties or their privies bars a second suit based on the same cause of action. **This**
 24 **doctrine binds the same party standing in the same capacity in subsequent litigation**
 25 **on the same cause of action, not only upon facts actually litigated but also upon those**
 26 **points which might have been litigated....**

⁴ Pursuant to A.R.S. § 25-215(D), "[e]xcept as prohibited in section 25-214, either spouse may contract debts and otherwise act for the benefit of the community. In an action on such a debt or obligation the spouses **shall** be sued jointly [...]" (*emphasis added*).

1 Id. (*emphasis added*). The Arizona Corporation Commission is one of the few administrative
2 agencies to which the legislature has given specific statutory authority to join a spouse in an
3 administrative action. Prior to August 22, 2002, the Commission entered orders against only the
4 respondent who had violated the Securities Act or Investment Management Act. If the respondent
5 was married, then the Attorney General's Office of Bankruptcy, Collections and Enforcement
6 ("BCE") initiated a subsequent proceeding in the superior court of Arizona to join the respondent
7 spouse to obtain a binding judgment on the community.

8 The enactment of A.R.S. §§ 44-2031(C) and 44-3291(C), required a change in the practice
9 of joining the respondent spouse. A.R.S. §§ 44-2031(C) and 44-3291(C) state, "[t]he commission
10 may join the spouse in any action authorized by this chapter to determine the liability of the marital
11 community." Since A.R.S. §§ 44-2031(C) and 44-3291(C) now provides the Commission with
12 authority to join the spouse to determine the liability of the marital community, this determination
13 of liability is a point that could be litigated at the administrative level and thus, should be addressed
14 at the administrative level to secure a binding judgment against the community.

15 Furthermore, requiring multiple suits would unnecessarily duplicate every aspect of the
16 proceedings, waste judicial resources, and cause unneeded expenses for the parties. Judicial
17 economy is best served by deciding in one suit the liability of the community. The Arizona Court
18 of Appeals has stated:

19 The wife contends that Flexmaster must first obtain a judgment against her husband
20 individually. Then, she argues, Flexmaster must either file a second action against both
21 spouses to obtain a judgment against the community or execute on the debtor-spouse's
22 contribution to community property without obtaining a judgment against the community.
23 We reject both arguments.

24 We must construe statutes so as to give them reasonable meaning. [*Citations omitted*]. We
25 held above that the wife's community interest gives her a due process right to litigate the
26 premarital debt in this lawsuit. It is unreasonable to construe A.R.S. section 25-215(B) to
require a second suit to establish the limited liability of the community for such premarital
debt. Requiring multiple suits would necessarily duplicate every aspect of the proceedings,
waste judicial resources, and cause unneeded expense for the parties. Judicial economy is
best served by deciding in one suit in which both spouses are parties, both the debtor-
spouse's liability for the separate premarital debt and the value of "that spouse's

1 contribution to the community property which would have been such spouse's separate
2 property if single.

3 Flexmaster Aluminum Awning Co., Inc. v. Hirschberg, 173 Ariz. 83, 88, 839 P.2d 1128, 1133
4 (Ariz. Ct. App. 1992). The Commission has proper authority and jurisdiction to establish the
5 liability of the community and thus requiring the Division or a collection agent to initiate a
6 subsequent suit to execute on the judgment would be inappropriate, a waste of administrative
7 resources and cause unneeded expenses.

8 The inclusion of a respondent spouse pursuant to A.R.S. §§ 44-2031(C) and 44-3291(C)
9 and providing a respondent spouse the opportunity to request a hearing, present evidence and
10 litigate the liability of the community property before the Commission also satisfies due process.
11 Since each spouse has equal interest in the community property, they may not be denied that
12 interest without due process of law. National Union Fire Ins. Co. of Pittsburgh, Pa. v. Greene, 195
13 Ariz. 105,110, 985 P.2d 590, 595 (Ariz. Ct. App. 1999); *See also* U.S. Const., Amends. V, XIV;
14 Ariz. Const., art. 2, § 4). C. White “must be given ‘the opportunity to be heard at a meaningful time
15 and in a meaningful manner’ before she can be deprived of her interest in the community
16 property.” National Union Fire Ins., 195 Ariz. at 110, 985 P.2d at 595. C. White was provided a
17 meaningful opportunity to be heard at the pre-hearing conference held on September 4, 2008.
18 Bradford and C. White were jointly named in the Notice, properly served and each was provided
19 with an opportunity to answer. (*See Spudnuts, Inc. v. Lane*, 139 Ariz. 35, 36, 676 P.2d 669, 670
20 (Ariz. Ct. App. 1984)). The Division’s inclusion of C. White as a respondent spouse in the Notice,
21 the proper service of C. White, and C. White’s opportunity to answer and litigate the liability of the
22 marital community obligation all prove that that the Division complied with C. White’s procedural
23 due process rights. Therefore the administrative action was proper and in the proper forum.

24
25
26

1 **V. Public policy favors that the burden should be placed on the community**
2 **since the public's interest outweighs the respondent's interest.**

3 Public policy favors that the respondents and their marital community should bear the
4 burden for the full extent of the harm caused. "It is the capacity for harm and danger to the public
5 as well as accomplished fraudulent transactions to which the Securities Act is directed. The Act is
6 designed to be prophylactic if possible, remedial only if necessary." State v. Baumann, 125 Ariz.
7 404, 411, 610 P.2d 38, 45 (1980). Securities laws reflect the public policy that respondents who
8 engage in violations of the Securities Act or Investment Management Act should be held liable for
9 the full extent of the harm caused. Public policy supports the view that respondents and those
10 around them who benefit or participate in the harm caused are in a better position to prevent or
11 limit the harm caused. Investors who trusted and gave money to the respondents are usually
12 unaware of the violations, frauds and misrepresentations that are perpetrated. Unless there is clear
13 community property authority to the contrary, the interest of a spouse, who benefits innocently and
14 unaware from the violations of the bad actor spouse, does not outweigh the interests of the
15 investors or the state of Arizona in addressing and preventing the harm. The legislature enacted the
16 Securities Act and Investment Management Act with the intent that public interest and protection
17 be greater than the interest of those that do harm. The Securities Act, Intent and Construction,
18 states "[t]he intent and purpose of this Act is for the protection of the public, the preservation of
19 fair and equitable business practices, the suppression of fraudulent or deceptive practices in the sale
20 or purchase of securities, and the prosecution of persons engaged in fraudulent or deceptive
21 practices in the sale or purchase of securities. This Act shall not be given a narrow or restricted
22 interpretation or construction, but shall be liberally construed as a remedial measure in order not to
23 defeat the purpose thereof." (1951 Ariz. Sess. Laws ch. 18, § 20 or the "1951 Statement of Intent").
24 The Arizona courts have acknowledged this policy in Bullard, where the court stated, "[g]enerally,
25 26

1 statutes of this nature providing a remedy for those who may have been taken advantage of have
2 been liberally construed in favor of the persons whom they are designed to protect.” Bullard v.
3 Garvin, 1 Ariz. App. 249, 251, 401 P.2d 417, 419 (Ariz. Ct. App. 1965).

4 Similarly, community property laws were developed by the legislature and enacted with
5 certain presumptions. The community property presumptions were also a result of weighing the
6 interest of the community against those of the public. Either spouse may contract debts that bind
7 the community. In the case of a debt incurred during marriage, the interest of the public is weighed
8 against the interest of the community and thus the community is saddled with the burden of
9 providing clear and convincing evidence to rebut the presumption that the debt is not a community
10 debt.

11
12 In light of the legislative intent and liberal construction in favor of the public, it is proper
13 and consistent with public policy to join the spouse at the administrative level pursuant to A.R.S.
14 §§ 44-2031(C) and 44-3291(C) and place the burden on C. White to provide to this Commission
15 supporting evidence in statute or case law to shift the protection of interest from the public to the
16 bad actor and that actor’s spouse. The interpretive guidance of the 1951 Statement of Intent is best
17 achieved by favoring the interest of the public, whom the act is designed to protect. Thus, entering
18 a binding judgment against the marital community of Bradford and C. White advances the
19 legislature’s prophylactic and remedial intent and goal of deterring fraud and protecting the public.
20

21
22 **VI. The Superior Court is an available forum for Cindy White to litigate her**
23 **rights and obtain relief, contribution or indemnity from Bradford if she satisfies more than**
24 **her appropriate share of the obligation.**

25 The state of Arizona, as a third party creditor who was not part of the divorce, dissolution
26 or annulment proceeding, is not bound by any allocation that may have occurred as part of that
divorce, dissolution or annulment decree. The allocation that Bradford shall pay and assume sole

1 responsibility for, indemnify and hold C. White harmless from the debts and obligations for FPS,
2 LLC is only binding between Bradford and C. White and does not affect a third party creditor's
3 right to pursue collection from both spouses jointly. (Ex.S-2, pp. 3¶23-4¶2). In Community
4 Guardian Bank, the court stated that:

5
6 [...] the [divorce] court's allocation of community obligations does not affect the rights of
7 third party creditors. [*Citations omitted*]. The allocation does fix responsibility between the
8 parties for the debt and can be used by one spouse to sue the other for contribution, if
9 necessary. Cadwell, 126 Ariz. at 462, 616 P.2d at 922. Because third party creditors,
10 including judgment creditors, cannot be bound by the divorce allocation, we are not
concerned in this case with how the community obligations were allocated by the judgment
of dissolution, we are concerned only with whether the Unjust Enrichment Judgment
created a valid debt against the community for which Janice is jointly liable.

11 Community Guardian Bank v. Hamilin, 182 Ariz. 627, 631, 898 P.2d 1005, 1009 (Ariz. Ct. App.
12 1995). Though the state of Arizona is not bound by the debt allocations of the divorce court, C.
13 White and Bradford are bound by such allocation. C. White may have recourse to seek indemnity
14 or contribution from Bradford if she satisfies more than her share of the community obligation.
15 A.R.S. § 25-318(P). As stated above, the legislative intent underlying the Securities Act and
16 Investment Management Act is to protect the interest of the public over the interest of the
17 wrongdoer. Yet, C. White continues to ask this Commission to further her interest above the
18 public's as she continues to ignore other avenues of relief. C. White continues to overlook her
19 opportunities to obtain relief, such as: obtaining legal advice, presenting reliable and convincing
20 evidence at hearing, and seeking damages for breach of the divorce decree against Bradford.
21 Whereas, the Division's opportunity to enforce the Securities Act and Investment Management
22 Act and further the legislature's intent, is before this Commission. It should be noted that a
23 decision binding the marital community for the debt does not foreclose all of C. White's avenues
24 for relief, such as contribution or indemnity from Bradford.

25 It is neither the Division's request nor the jurisdiction of the Commission to allocate
26 liability and/or determine whether a respondent spouse has satisfied more than their appropriate

1 share of the community obligation. Allocation, indemnity or contribution matters should still be
2 left to the court of competent jurisdiction, such as the superior court. The Commission's
3 jurisdiction to determine the liability of the marital community does not necessitate an allocation
4 of liability or fault amongst the spouses. Therefore binding the martial community for the debt
5 incurred is proper and requiring C. White to avail herself to other avenues of relief is just.

6
7 **E. CONCLUSION.**

8 Based on the foregoing, the Division respectfully requests the ALJ to recommend to the
9 Commission to uphold Decision No. 70544.

10
11 Respectfully submitted this 23rd day of September, 2009

12
13 By: 

14 Phong (Paul) Huynh
15 Attorney for the Securities Division of the
16 Arizona Corporation Commission

17 ORIGINAL AND THIRTEEN (13) COPIES of the foregoing
18 filed this 23rd day of September, 2009 with:

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23 COPY of the foregoing hand-delivered this
24 23 day of September, 2009 to:

25 Mr. Marc E. Stern
26 Administrative Law Judge
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