

ORIGINAL

NEW APPLICATION



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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

KRISTIN K. MAYES, Chairman  
GARY PIERCE  
PAUL NEWMAN  
SANDRA D. KENNEDY  
BOB STUMP

2010 JAN -5 P 12:07

Arizona Corporation Commission

DOCKETED

JAN -5 2010

DOCKETED BY

In the matter of:

BARRON WILSON THOMAS, a single man,

BARRON THOMAS SCOTTSDALE, L.L.C., an Arizona limited liability company,

BARRON THOMAS SCOTTSDALE, L.L.C., a Delaware limited liability company,

BARRON THOMAS AVIATION, INC., a Delaware corporation,

BARRON THOMAS AVIATION HOLDINGS, INC., a Delaware corporation,

BARRON THOMAS SOUTHWEST, INC., a Delaware corporation,

Respondents.

DOCKET NO. S-20720A-10-0001

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

**NOTICE: EACH RESPONDENT HAS 10 DAYS TO REQUEST A HEARING**

**EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER**

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.

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**II.****RESPONDENTS**

2. Respondent BARRON WILSON THOMAS ("BT") is single man who resides in Scottsdale, Arizona. At all times relevant, BT offered and sold unregistered securities within and from Arizona in his individual capacity, and on behalf of respondents: (a) BARRON THOMAS SCOTTSDALE, L.L.C., an Arizona limited liability company ("BTS-AZ") as its owner and managing member; (b) BARRON THOMAS SCOTTSDALE, L.L.C., a Delaware limited liability company ("BTS-DE") as its owner and managing member; (c) BARRON THOMAS AVIATION, INC. as its president and sole shareholder; (d) BARRON THOMAS AVIATION HOLDINGS, INC. as its president and sole shareholder; and (e) BARRON THOMAS SOUTHWEST, INC. as its president and sole shareholder. Since at least January 1, 1992, to the present, BT has maintained a principal place of business in Scottsdale, Arizona. BT has not been registered as a securities salesman or dealer by the Commission.

3. BTS-AZ was organized by BT as an Arizona limited liability company on or about December 19, 1997. From on or about December 19, 1997, to the present, BTS-AZ has maintained a principal place of business in Scottsdale, Arizona. BTS-AZ has not been registered as a securities salesman or dealer by the Commission.

4. BTS-DE was organized by BT as a Delaware limited liability company on or about May 22, 2008. From on or about May 22, 2008, to the present, BTS-DE has maintained a principal place of business in Scottsdale, Arizona. BTS-DE has not been registered as a securities salesman or dealer by the Commission.

5. BARRON THOMAS AVIATION, INC. ("BTA") was formed by BT as a Delaware corporation on or about March 1, 1990. From on or about January 1, 1992, to the present, BTA has maintained a principal place of business in Scottsdale, Arizona. BTA has not been registered as a securities salesman or dealer by the Commission.



1           12.     At all times relevant, BT further represented to offerees and investors that each 12%  
2 Investment would be secured by a lien on the airplane purchased by RESPONDENTS with the  
3 investors' money that would be recorded in the investors' favor with the Federal Aviation  
4 Administration ("FAA") (the "FAA Lien(s)").

5                                   **The 12% Investment Advertisements**

6           13.     From on or about January 1, 1992, to at least March 20 2009, BT publically  
7 advertised the 12% Investments within or from Arizona in an aviation magazine called "Trade-A-  
8 Plane®" ("TAP") (the "Advertisement(s)"). TAP is full color magazine internationally circulated  
9 in the United States and numerous countries worldwide. TAP is published three times each month;  
10 it also prints approximately 1.7 million copies per year and has greater than 130,000 unique  
11 monthly subscribers/recipients. Published continuously since 1937, TAP represents to advertisers  
12 that it is the preeminent "Aviation MarketPlace®" with a larger page-count and more advertisers  
13 than any other aviation magazine, including those that offer editorial content.

14          14.     From January 1, 1992, to the present, TAP has continuously had magazine  
15 subscribers in Arizona, the other forty-nine U.S. states, three U.S. territories including Guam,  
16 Puerto Rico and the Virgin Islands and over one hundred countries worldwide including, for  
17 instance, Canada and Mexico. In August 2008, TAP had approximately 4,139 Arizona magazine  
18 subscribers who each ordered one to three copies of TAP magazine every month. Each year TAP  
19 also distributes tens of thousands of complimentary TAP magazines at trade shows and aviation  
20 events held in, for instance, Alaska, California, Florida, Nevada, Tennessee, Washington and  
21 Wisconsin, and abroad in France and Germany.

22          15.     From approximately January 1, 1992, to at least March 20, 2009, BT published the  
23 display Advertisements in TAP magazine 375 separate times.

24          16.     Advertisements displayed in the print edition of TAP magazine are also published  
25 on TAP's website [www.trade-a-plane.com](http://www.trade-a-plane.com). From on or about August 1, 1997, to at least March 20,  
26 2009, the Advertisements were also published on TAP's website. According to TAP, its website

1 averages approximately 48 million page views per month. At all times relevant, TAP's website  
2 could be viewed by potential Arizona investors from Arizona.

3 17. From January 1, 1992, to at least March 22, 2009, the magazine and website  
4 Advertisements contained pictures of three airplanes, RESPONDENTS' telephone and fax  
5 numbers, and stated, for instance:

6 Earn  
7 **12%**  
8 Interest On Short-Term  
9 Aircraft Mortgages  
10 -Interest Paid Monthly  
11 -\$50,000 Minimum  
12 -Secured at FAA  
13 -12 Month Term  
14 ***Barron Thomas***

15 (emphasis in originals).

#### 16 Summary of 12% Investment Offering

17 18. The majority of the display Advertisements state that the 12% Investments cost a  
19 minimum of \$50,000 apiece. However: (a) from on or about January 1, 1992, to July 20, 1993, the  
20 Advertisements stated that the 12% Investments cost a minimum of \$25,000 apiece; and (b) from  
21 on or about July 20, 1995, to August 10, 1995, three of the Advertisements stated that the 12%  
22 Investments cost a minimum of \$100,000 apiece. In practice, RESPONDENTS most often sold  
23 12% Investments costing approximately \$50,000 apiece.

24 19. Many of RESPONDENTS' investors were subscribers to and regular readers of  
25 TAP magazine. The majority of RESPONDENTS' investors purchased their 12% Investments  
26 after having viewed the Advertisements, often over a period of several years. The majority of  
RESPONDENTS' investors purchased 12% Investments without having personally met BT.

20. When investors called the telephone number listed in the Advertisements as  
instructed, BT described to them the benefits of purchasing the 12% Investments including,  
without limitation: (a) that the 12% Investments would provide investors with passive profits in  
the form of twelve percent interest on their principal investments; and (b) that each 12%

1 Investment would be secured by the airplane purchased with the investor's money (the "Initial  
2 Contact"). During the Initial Contact, BT emphasized that his ability to pay investors twelve  
3 percent interest on their investments would depend on his superior knowledge of the aircraft  
4 industry, and his expertise in purchasing, restoring and reselling the airplanes purchased with  
5 investor money.

6 21. RESPONDENTS profited from the 12% Investments by retaining the difference  
7 between: (a) the ultimate resale price of the fixed up or refurbished airplane serving as collateral  
8 for a 12% Investment; and (b) the amount owed to the investor under the 12% Investment (*i.e.*,  
9 principal and promised interest payments) and related business expenses. BT provided information  
10 to the Division demonstrating that RESPONDENTS' ability to repay 12% Investment investors is  
11 interwoven with and dependant on RESPONDENTS' ability, effort and success in profitably  
12 reselling the airplanes serving as collateral for the 12% Investments. /

13 22. The stated terms of the 12% Investments were for either twelve or twenty-four  
14 months, during which time RESPONDENTS promised to purchase, fix-up and resell the airplanes  
15 purchased with the investors' money.

16 23. As discussed further below, the majority of the 12% Investments are in default.  
17 Investors who own these 12% Investments have requested RESPONDENTS to return their  
18 principal investments to no avail. When investors called BT to ask why RESPONDENTS had not  
19 returned their principal investments, BT often urged them to be patient and stated, for instance,  
20 that: (1) the airplane market was really "slow;" (2) BT was having a "hard time" selling airplanes;  
21 and (3) BT was having "cash-flow" problems.

22 24. BT persuaded some investors to accept new 12% Investments with new expiration  
23 dates that incorporated the investors' original principal investments and promised and/or paper  
24 profits (the "Roll-Over" investments). RESPONDENTS often sold two or more 12% Investments  
25 to a single investor.

26

1           25.     Based on the foregoing, RESPONDENTS sold at least one hundred and fifty 12%  
2 Investments (*i.e.*, original, additional and Roll-Over investments).

3           26.     RESPONDENTS sold at least \$10,191,050 of the 12% Investments to  
4 approximately eighty-one widely dispersed investors residing throughout Arizona and twenty-  
5 seven other states, including Alabama, California, Colorado, Connecticut, Florida, Georgia,  
6 Illinois, Kentucky, Massachusetts, Maine, Michigan, Minnesota, Mississippi, Missouri, Nebraska,  
7 Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, Oklahoma, Pennsylvania,  
8 Tennessee, Texas, Utah, Washington and Wisconsin. BT and BTA also sold at least two 12%  
9 Investments to a Canadian investor.

#### 10   12% Investment Documents

11           27.     Subsequent to the Initial Contact, BT provided offerees and investors with a  
12 standard form, two-page 12% Investment summary titled, "12% interest paid for short-term aircraft  
13 loans" (the "Prospectus"). Alternatively, BT verbally recited the contents of the Prospectus to  
14 offerees and investors via the telephone either during and/or subsequent to the Initial Contact.

15           28.     The Prospectus states that an investor can purchase a 12% Investment by mailing or  
16 wiring the investor's money to an aircraft title company (the "Title Company") or into a common  
17 bank account (the "Common Account") that most recently contained the last four digits "3966."  
18 BT sometimes directed investors to provide their 12% Investment money directly to him.

19           29.     RESPONDENTS' investors and the Title Company referred to the Common  
20 Account in writing as the "the Barron Thomas Investor Account" and/or the "Investor Account."  
21 The memo field of 12% Investment checks also contained the notation, "Investor account" and  
22 "Inv." Wire transfers of 12% Investment investor money made by the Title Company as directed  
23 by BT to or from the Common Account stated, for example: (a) that \$50,000 was being returned to  
24 a 12% Investment investor because his "investor account with Barron Thomas" was closed; or (b)  
25 that \$50,000 of "INVESTOR PRINCIPALFUNDS" (*sic*) were being returned to another 12%  
26 Investment investor. BT's written directives to the Title Company also referred to 12% Investment

1 “investor” paperwork. Similarly, the Title Company also often referred to a 12% Investor as an  
2 “investor.”

3 30. The Prospectus states that each 12% Investment investor would receive: (a) a “12%  
4 Aircraft Note” (the “Note(s)”); and (b) a standard-form, two-page document further explaining  
5 how the 12% Investments were to be documented (the “Document Instructions”).

6 31. The 12% Investment Notes were signed by BT in his individual capacity, and on  
7 behalf of one of the BT COMPANIES.

8 32. Although the Prospectus states that a 12% Investment would be documented by a  
9 “Note Signed by us, guaranteed by Barron Thomas, personally,” neither BT nor the investment  
10 solicitation materials discussed herein disclose either the: (a) nature, extent and/or value of either  
11 BT’s personal assets and liabilities, or the assets and liabilities of the BT COMPANIES; or (b)  
12 whether such assets are sufficient to repay the 12% Investment investors their promised interest  
13 and principal investments.

14 33. The Prospectus discloses a single “risk” relating to the purchase of the 12%  
15 Investments as follows:

16 Risk: The risk in this deal is a cataclysmic world event that completely stops  
17 aircraft sales and exhausts our ability to make interest payments (or sell the  
18 airplane) until the panic subsides and the market returns to normal. Our feeling is  
19 that, in such a disaster, most all other business situations will experience the same  
business interruption, so the risk in our deal is probably on par with most other  
business.

20 BT orally informed one investor that the only risk associated with the 12% Investments was “the  
21 end of the world” (collectively, the “Catastrophic World Event” disclosure).

22 34. RESPONDENTS failed to further disclose to offerees and investors that their  
23 ability to obtain the return of the principal investments and promised profits was subject to the fact  
24 that, regardless of a Catastrophic World Event: (a) the airplane collateral providing security for the  
25 12% Investments is subject to unpredictable market fluctuations and/or declines; and (b) the ability  
26 of airplane purchasers to repay RESPONDENTS could be negatively impacted by unpredictable,



1 expensive and time consuming civil and bankruptcy litigation, and/or a decline of BT and the BT  
2 COMPANIES' aircraft brokerage or aviation business operations. RESPONDENTS further failed  
3 to disclose to offerees and investors that in light of the foregoing, they could lose all or a vast  
4 portion of their 12% Investment funds.

5         35. The Document Instructions state that each 12% Investment would be documented  
6 by, among other things: (a) a purported "Security Agreement" (*i.e.*, FAA Lien) to create a security  
7 interest in the airplane purchased by BT with the investor's money in favor of the investor; (b) a  
8 "Bill of Sale" describing the airplane purchased by RESPONDENTS' with the investor's money  
9 (the "Bills of Sale"); (c) an application for registration for the purchased airplane in the name of  
10 one of the BT COMPANIES; and (d) a "Release of Lien or Disclaimer" that releases/disclaims  
11 "the security interest claimed in the purchased airplane by the previous "Lienholder or Claimant of  
12 Record" (the "Lien Release(s)"). The Document Instructions state that these four documents will  
13 be filed on behalf of investors with the FAA.

14         36. At all times relevant, BT represented to offerees and investors, both verbally and in  
15 writing that each of their 12% Investments would be secured by and/or tied to a single airplane and  
16 documented by a Note.

17         37. RESPONDENTS failed and/or refused to provide many of their 12% Investment  
18 investors with copies of their Notes and FAA Liens associated with their 12% Investments.

19         38. The majority of the investors who have purchased multiple outstanding 12%  
20 Investments are secured, if at all, by a single FAA Lien on a single airplane or, as discussed further  
21 below, by a single set of airplane parts. For instance, the Division located evidence that one  
22 investor who purchased four separate \$100,000 12% Investments totaling \$400,000 is listed as a  
23 lien holder on only one FAA Lien relating to an airplane that sold for \$21,500 on or about  
24 December 31, 2001.

25         39. No investors contacted by the Division have received aircraft purchase agreements  
26 or Bills of Sale demonstrating that, in fact, RESPONDENTS purchased an airplane with the

1 investors' investment money. No investors contacted by the Division have received any Lien  
2 Releases regarding prior security interests that may have already been attached to a particular  
3 airplane that may have been purchased by RESPONDENTS with the investors' 12% Investment  
4 money. Among other things, such a Lien Release would indicate that an investor, in fact, has a  
5 first position lien on an airplane, and/or that there is no cloud on the title.

6 40. RESPONDENTS' failure to provide investors with copies of all of their Notes, FAA  
7 Liens, aircraft purchase agreements, Bills of Sale and/or Lien Release documents effectively  
8 prevents investors from determining: (a) what aircraft were purchased, if at all, with their  
9 investment money, and consequently how RESPONDENTS spent investor money; (b) how much  
10 aircraft were purchased for and/or the fair market value ("FMV") of such aircraft; (c) who is the  
11 owner of such aircraft (*i.e.*, BT, one of his companies or an unknown third-party); (d) whether there  
12 are competing claims to, or clouds on the title to such aircraft; and (e) where the aircraft are stored  
13 or located.

14 41. The majority of known investors contacted by the Division do not know, for  
15 instance, the condition and/or value of the airplane securing their 12% Investments, where the  
16 airplane is located or what if any refurbishing has been done to them by RESPONDENTS. The  
17 12% Investment records provided by the Title Company to the Division also fail to contain any  
18 information regarding the location or condition of the airplanes serving as collateral for the 12%  
19 Investments.

20 42. RESPONDENTS' investors received copies of their Notes, if at all, after they had  
21 delivered their investment money to RESPONDENTS. Unbeknownst to at least one investor, BTA  
22 and not BTS, was the co-maker of the Note, in addition to BT in his individual capacity.  
23 RESPONDENTS' failure to provide investors with key documents, such as copies of FAA Liens,  
24 prevented investors from determining that, for instance, BT caused BTAH and/or BTSW to be the  
25 ultimate recipient of their investment monies.

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1           43.     In at least one case, an airplane purportedly providing security for an investor's 12%  
2 Investment is owned by a previously unknown third-party, and not by BT and/or one of his  
3 companies as was previously represented.

4                                   **RESPONDENTS' Use of 12% Investor Money**

5           44.     At all times relevant, BT has had the absolute discretion, and ability to control the  
6 investor funds deposited into the Common Account and/or held by the Title Company. BT often  
7 directed the Title Company to deposit 12% Investment money it collected for RESPONDENTS  
8 into bank accounts owned and controlled by RESPONDENTS.

9           45.     Unbeknownst to investors, RESPONDENTS used new 12% Investment investor  
10 money to repay other 12% Investment investors. For example, a Texas investor purchased a  
11 \$50,000 12% Investment from BT and BTA on or about August 13, 1999. BT and BTA recorded  
12 an FAA Lien in favor of the Texas investor on an airplane with tail number N8194W (the  
13 "N8194W Airplane"). An Arizona investor purchased a \$50,000 12% Investment from BT and  
14 BTA on or about March 14, 2005. On April 22, 2005, BT and BTA used the Arizona investor's  
15 money to repay the prior Texas investor. BT and BTA then caused a new FAA Lien to be  
16 perfected in favor of the new Arizona investor on the N8194W Airplane.

17           46.     However, unbeknownst to either the Texas or Arizona investor, the blue and white  
18 N8194W Airplane was at all times relevant laying in pieces in an open air storage yard in a  
19 severely deteriorated state. The N8194W Airplane is comprised of a separated, dented fuselage  
20 with faded paint, no wings, no landing gear and includes other defects.

21           47.     Additionally:

22           A.     A Texas investor purchased a \$50,000 12% Investment from BT and BTS on or  
23 about February 13, 2004 by wiring the investment money into the Common  
24 Account. On or about June 15, 2007, an Arizona investor purchased a separate  
25 \$50,000 12% Investment from BT and BTS. On August 31, 2007, BT and BTS  
26 used the Arizona investor's money to repay the Texas investor his principal \$50,000

1 12% Investment. In addition, although an airplane with the tail number of N7387M  
2 (the "N7387M Airplane") was associated with the Texas investor's 12% Investment  
3 in the Title Company's documents, BT and BTS never actually filed an FAA Lien  
4 on the N7387M Airplane in favor of the Texas investor.

5 B. On or about May 5, 2001, a Colorado investor purchased \$100,000 of 12%  
6 Investments from BT and BTA. From approximately May 5, 2004, to March 12,  
7 2007, an Ohio investor purchased a total of \$400,000 of the 12% Investments from  
8 BT and BTS. On May 6, 2004, BT and BTA used \$50,000 of the Ohio investor's  
9 investment money to repay the Colorado investor.

10 C. An Illinois investor purchased \$100,000 worth of 12% Investments from BT and  
11 BTS on or about March 27, 2007 by wiring such money into the Common Account.  
12 From approximately March 3, 2007, to September 18, 2007, an Arizona investor  
13 purchased four 12% Investments totaling \$400,000 from BT and BTS. On or about  
14 September 14, 2007, BT and BTS used \$100,000 of the Arizona investor's  
15 investment money to repay the Illinois investor.

16 48. Unbeknownst to 12% Investment investors, RESPONDENTS routinely purchased  
17 and sold airplanes with the 12% Investment money of a single investor, without refurbishing or  
18 fixing them up, often over a period of many years without repaying the investor's principal  
19 investment as originally promised. RESPONDENTS' pattern and practice of purchasing and  
20 reselling multiple aircraft with a single investor's money resulted in multiple FAA Liens and/or  
21 airplanes being associated with that investor's investment.

22 49. For instance, on or about November 15, 2005, an Illinois investor purchased a 12%  
23 Investment for \$50,000 from BT and BTS by depositing said amount into the Common Account.  
24 BT and BTS purchased an airplane with the tail number N2816R with the Illinois investor's money  
25 on or about November 22, 2005 (the "N2816R Airplane") for \$43,000. BT paid himself a \$4,300  
26 sales commission for his purchase of the N2816R Airplane, and an additional \$6,000 from the

1 Illinois investor's money, for a total of \$10,300. BT and BTS then sold the N2816R Airplane on or  
2 about January 1, 2006 to a third-party. To date, the Illinois investor has not been repaid his  
3 principal 12% Investment.

4 50. Additionally:

5 A. A Texas investor purchased six 12% Investments totaling approximately \$425,000  
6 from on or about February 28, 1998, to June 21, 2002, from BT and the BT  
7 COMPANIES. From on or about March 2, 1998, to the present, BT and the BT  
8 COMPANIES have purchased and sold approximately twenty-five different  
9 airplanes with the Texas investor's money that have served as collateral for the  
10 Texas investor's 12% Investments.

11 B. One Ohio investor purchased two 12% Investments totaling approximately  
12 \$200,000 on or about April 5, 2000, and March 4, 2002, from BT and the BT  
13 COMPANIES. From on or about April 19, 2000, to the present, BT and the BT  
14 COMPANIES have purchased and sold approximately eight different airplanes with  
15 the Ohio investor's money that have served as collateral for the Ohio investor's 12%  
16 Investments.

17 **Physical State of Airplane Collateral Providing Security for 12% Investments**

18 51. RESPONDENTS failed to provide the Division with information identifying where  
19 the airplanes serving as collateral for the 12% Investments are located.

20 52. On October 12, 2009, BT moved an airplane with the tail number N6808U (the  
21 "N6808U Airplane") serving as collateral for a Phoenix investor's outstanding \$50,000 12%  
22 Investment purchased on October 27, 2006 out of storage at Phoenix Sky Harbor Airport at its  
23 request due to its dilapidated condition, to a storage yard in south Phoenix. The N6808U Airplane  
24 is laying in pieces: (a) the orange and white, separated fuselage is crumpled, has smashed and  
25 broken tail, has no windows, has no engine or engine compartment, has no propeller, has missing  
26 hatch panels, has no operable avionics, has mangled seats sitting on top of the fuselage and is

1 severely weather beaten; (b) the wing is completely separated from the plane and is missing  
2 landing gear; (c) the engine had been removed and is laying on dirt apart from the fuselage; (d) all  
3 parts of such "airplane" were exposed to the elements; and (e) that all parts of the N6808U  
4 Airplane are in such a deteriorated state that the cost of refurbishing or fixing up the same would  
5 greatly exceed the Arizona investor's principal investment.

6 53. Unbeknownst to 12% Investment investors, and similar to the N8194W and  
7 N6808U Airplane based investments discussed above, RESPONDENTS assigned to an investor a  
8 lien interest in damaged and/or salvaged aircraft or aircraft parts as security for their 12%  
9 Investments.

10 54. For example:

11 A. An investor purchased 12% Investments totaling \$700,000 on or about November  
12 24, 1997 and, in return, his investments were secured through an FAA Lien attached  
13 to an airplane with the tail number N7350P (the "N7350P Airplane"). As of  
14 October 20, 2009, the N7350P Airplane was stored in a south Phoenix storage yard  
15 and consists of a rusty fuselage with no paint other than a spray painted tail number,  
16 missing parts and other defects. Further, the N7350P Airplane has been in that  
17 condition since July 2000 or for over nine years, without having been refurbished or  
18 fixed up as promised by RESPONDENTS. To date, this investor has not been  
19 repaid his principal 12% Investment.

20 B. A Tennessee investor purchased a 12% Investment for approximately \$74,200 from  
21 BT and BTA on or about May 11, 2001, that is secured by an FAA Lien on an  
22 airplane with the tail number N18KC (the "N18KC Airplane"). As of October 20,  
23 2009, the N18KC Airplane is being stored in an open air, south Phoenix storage  
24 yard and: (a) the fuselage is missing the front end engine compartment, and a  
25 wheel; and (b) is missing its wings, engine and cockpit components. To date, this  
26 investor has not been repaid his principal 12% Investment.

1 C. A Texas investor purchased a 12% Investment for \$150,000 from BT and BTSW on  
2 or about December 6, 2006 secured by an FAA Lien on an airplane with the tail  
3 number N6602X (the "N6602X Airplane"). As of October 20, 2009, the N6602X  
4 Airplane, is being stored in an open air, south Phoenix storage yard and: (a) is  
5 missing an engine cover; (b) has faded paint and no attached doors; (c) has flat tires  
6 and wrecked interior; (d) is missing its tail and wings; and (e) includes other defects.  
7 To date, this investor has not been repaid his principal 12% Investment.

8 D. A California investor purchased a 12% Investment for \$50,000 from BT and BTSW  
9 on or about January 9, 2007, secured by an FAA Lien on an airplane with the tail  
10 number N6026W (the "6026W Airplane"). As of October 20, 2009, the 6026W  
11 Airplane is being stored in an open air, south Phoenix junkyard and consists of only  
12 a fuselage with faded paint, and no wings, no tail, no doors, no engine or engine  
13 compartment, propellers or wheels, and includes several other defects. To date, this  
14 investor has not been repaid his principal 12% Investment.

15 55. Of twenty-four airplanes located by the Division in the open air, south Phoenix  
16 storage yard described above on October 20, 2009 registered to the one of the BT COMPANIES,  
17 seventeen of the airplanes serving as collateral for 12% Investments are in a similar, deteriorated  
18 condition as set forth above.

19 56. An airplane serving as collateral for a 12% Investment purchased by a Minnesota  
20 investor from BT and BTA on or about August 30, 2003 for \$130,000 with a tail number N69GC  
21 had been, on information and belief, crashed into a wooded area in New Jersey in 2002. To date,  
22 this investor has not been repaid his principal 12% Investment.

23 57. In another case, a title report provided to BT by the Title Company regarding an  
24 airplane with a tail number N47TA (the "N47TA Airplane") serving as collateral for a \$50,000  
25 12% Investment purchased by a Texas investor from BT and BTS on or about April 6, 2004 states  
26 that the "[a]ircraft is in an unregistered status, reported destroyed/scrapped 10/25/03." Similar to

1 the airplanes discussed above, the N47TA Airplane is currently sitting in an open air storage yard  
2 in south Phoenix and has no attached wings, landing gear, engine or propeller, etc. To date, this  
3 investor has not been repaid his principal 12% Investment.

#### 4 Status of the 12% Investments

5 58. To date, the majority of RESPONDENTS' investors have failed to receive their  
6 principal 12% Investments back from RESPONDENTS. For example, RESPONDENTS have not  
7 repaid principal 12% Investments purchased: (a) in 1992 for approximately \$185,000; (b) 1993 for  
8 approximately \$50,000; (c) 1994 for approximately \$300,000 (d) 1995 for approximately \$50,000;  
9 (e) 1996 for approximately \$275,000; (f) 1997 for approximately \$750,000; (g) 1998 for  
10 approximately \$450,000; and (h) 1999 for approximately \$1,062,845.

11 59. As discussed above, and because: (a) BT represented that investors would be repaid  
12 in full when he sold the airplane purchased with their 12% Investment money; (b) the majority of  
13 investments have been in default for many years, and some as far back as 1992; and (c)  
14 RESPONDENTS have apparently not sold many of the aircraft providing security for the  
15 outstanding investments for the reasons discussed above, monthly interest payments that have been  
16 made to investors by RESPONDENTS have come from other investor money.

17 60. RESPONDENTS managed the essential aspects of the 12% Investments on behalf of  
18 investors. Without limitation, RESPONDENTS represented to offerees and investors, both verbally  
19 and in writing that they and/or third-parties would: (a) locate, evaluate and purchase aircraft with  
20 investor money; (b) restore or refurbish the aircraft purchased with investor money; (c) advertise the  
21 purchased and/or refurbished aircraft, in part, via BT's aircraft sales and financing website  
22 [www.barronthomas.com](http://www.barronthomas.com) and/or [www.barronthomasaircraftsales.com](http://www.barronthomasaircraftsales.com); (d) solicit or locate potential  
23 aircraft purchasers; (e) negotiate the terms and conditions of the sale of the aircraft to third-parties; (f)  
24 arrange for, and/or assist potential aircraft purchasers with the financing of their aircraft purchase; (g)  
25 select, communicate with and direct a title company to assist with the purchase and sale of aircraft  
26 including, the preparation and filing of 12% Investment documentation including FAA Liens, Bills of



1 Sale and Lien Releases; (h) collect and distribute to investors aircraft purchase proceeds; and (i)  
2 foreclose on and/or recover the aircraft collateral on behalf of investors in the event of aircraft  
3 purchaser default.

4 61. Also, as discussed above, RESPONDENTS' failure and/or refusal to provide  
5 investors with sufficient material information regarding their 12% Investments (i.e., Notes, FAA  
6 Liens, Bills of Sale, etc.) and information regarding the condition, location and fair market value of  
7 their airplane collateral associated with the investments, effectively prohibits investors from cost-  
8 effectively foreclosing on such airplane collateral without incurring legal liability, even if they had  
9 the knowledge, time and money to attempt to do so. To date, not a single investor who owns a  
10 12% Investment in default has foreclosed on their airplane collateral

#### 11 The Texas BTA & Bankruptcy

12 62. On July 15, 1976, BT formed a Texas company called Barron Thomas Aviation,  
13 Incorporated (the "Texas BTA"). According to the certified Articles of Organization provided to the  
14 Division by the Texas Secretary of State, the purpose of the Texas BTA was to engage in aircraft sales  
15 and, "[t]o buy, sell, trade, broker, lease, rent, service, repair, store, manufacture and in every respect  
16 deal in and with aircraft of every nature and aircraft equipment." BT is listed on the Articles of  
17 Organization of the Texas BTA as its sole director. On February 21, 1992, BT filed Articles of  
18 Amendment with the Texas Secretary of State that changed the name of the Texas BTA to "N32/W96  
19 Inc." BT signed the Articles of Amendment in his capacity as the president and sole shareholder of  
20 the Texas BTA. BT filed Articles of Dissolution on behalf of the Texas BTA on November 24, 1997  
21 in his capacity as its president, vice president and secretary.

22 63. BT caused his Texas BTA aircraft sales company to voluntarily file a Chapter 7  
23 bankruptcy on August 6, 1993 in the United States Bankruptcy Court, Northern District of Texas,  
24 93-bk-35605 (HCA7) (the "Bankruptcy"). The voluntary Bankruptcy Petition filed on behalf of  
25 "N32/W96, Inc. F/K/A Barron Thomas Aviation, Inc." by BT as its president states that the Texas  
26

1 BTA's business was "[a]ircraft sales." A July 17, 1999 filing by the appointed Bankruptcy Trustee  
2 states that the basis for the Bankruptcy was that the Texas BTA was a "[f]ailed aviation business."

3 64. Bankruptcy Schedules filed by BT on behalf of the Texas BTA as its president on or  
4 about September 9, 1993 state that: (a) the Texas BTA had purported assets of only \$520,020.20  
5 and liabilities of \$13,187,669.23; and (b) that the Texas BTA owed \$6,006,903 to creditors  
6 documented by notes made to them by the Texas BTA. Many of the Texas BTA notes were made  
7 in 1991, or the year prior to RESPONDENTS' public offer and sales of the 12% Investments  
8 documented in part by the promissory Notes at issue in this case. The Bankruptcy Schedules also  
9 state that BT was the sole shareholder of the Texas BTA, and that the Texas BTA was the  
10 defendant in approximately 19 lawsuits, the majority of which had resulted in judgments against  
11 the Texas BTA. RESPONDENTS failed to disclose the existence of the Bankruptcy to offerees  
12 and investors.

13 65. Certified copies of the Texas BTA Bankruptcy records, including the Bankruptcy  
14 Petition and "Statement of Financial Affairs" filed by BT on behalf of the Texas BTA demonstrate  
15 that the Texas BTA maintained the same business address: (a) as a business address identified in  
16 many of the 12% Investment Notes at issue in this case; and (b) a mailing address used by all  
17 RESPONDENTS (*i.e.*, BTS, BTA, BTBW and BTAH) throughout their 12% Investment offering.

18 66. On or about July 18, 1995, the Bankruptcy was initially terminated, and the Trustee  
19 discharged because the Texas BTA Estate had no assets to distribute to creditors. The Bankruptcy  
20 case was reopened by order dated August 21, 1998 because of the possibility that the Texas BTA  
21 may have had assets that could be distributed to creditors.

22 67. On July 19, 2001, the Bankruptcy Trustee filed a report noting that liquidation of the  
23 entire Texas BTA Bankruptcy Estate had resulted in only \$5,416.49 in cash. Of that amount,  
24 \$3,125.19 was paid to a single creditor holding a priority claim, the balance was paid to the Trustee  
25 for Bankruptcy fees and costs, and no money was paid to any secured and unsecured creditors to  
26 whom the Texas BTA owed approximately \$13,000,000.

1 68. The Bankruptcy was finally terminated at the request of the Bankruptcy Trustee on  
2 July 25, 2001, or approximately 9 ½ years after RESPONDENTS began their public offer and sale  
3 of the 12% Investments.

4 **IV.**

5 **VIOLATIONS OF A.R.S. § 44-1841**

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

7 69. From on or about January 1, 1992, to at least March 20, 2009, BT offered or sold  
8 securities in the form of investment contracts and notes within or from Arizona.

9 70. From on or about December 19, 1997, to at least March 20, 2009, BTS-AZ offered  
10 or sold securities in the form of investment contracts and notes within or from Arizona.

11 71. From on or about May 22, 2008, to at least March 20, 2009, BTS-DE offered or sold  
12 securities in the form of investment contracts and/or notes, within or from Arizona.

13 72. From on or about January 1, 1992, to at least March 20, 2009, BTA offered or sold  
14 securities in the form of investment contracts and notes within or from Arizona.

15 73. From on or about November 1, 1999, to at least March 20, 2009, BTAH offered or  
16 sold securities in the form of investment contracts and notes within or from Arizona.

17 74. From on or about November 1, 1999, to at least March 20, 2009, BTSW offered or  
18 sold securities in the form of investment contracts and notes within or from Arizona.

19 75. The securities referred to above were not registered pursuant to Articles 6 or 7 of the  
20 Securities Act.

21 76. This conduct violates A.R.S. § 44-1841.

22 **V.**

23 **VIOLATION OF A.R.S. § 44-1842**

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

25 77. RESPONDENTS offered or sold securities within or from Arizona while not  
26 registered as dealers or salesmen pursuant to Article 9 of the Securities Act.

1 78. This conduct violates A.R.S. § 44-1842.

2 VI.

3 VIOLATION OF A.R.S. § 44-1991

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

5 79. In connection with the offer or sale of securities within or from Arizona,  
6 RESPONDENTS directly or indirectly: (i) employed a device, scheme, or artifice to defraud; (ii)  
7 made untrue statements of material fact or omitted to state material facts that were necessary in  
8 order to make the statements made not misleading in light of the circumstances under which they  
9 were made; or (iii) engaged in transactions, practices, or courses of business that operated or would  
10 operate as a fraud or deceit upon offerees and investors. RESPONDENTS' conduct includes, but is  
11 not limited to, the following:

- 12 A. Representing to offerees and investors that RESPONDENTS would use the  
13 investors' 12% Investment money to purchase, refurbish and resale airplanes, while  
14 further failing to disclose to them that their 12% Investment money would be used  
15 to repay other 12% Investment investors their principal investments and/or promised  
16 monthly interest payments.
- 17 B. Representing to offerees and investors that each 12% Investment would be secured  
18 by an airplane purchased and refurbished by RESPONDENTS with the investors'  
19 money, while further failing to disclose to them that their investments would be  
20 secured by damaged and/or salvaged aircraft or aircraft parts in such a deteriorated  
21 state that the cost of refurbishing or fixing up the same would greatly exceed the  
22 investors' principal investments.
- 23 C. Representing to offerees and investors that RESPONDENTS would use 12%  
24 Investment investor money to purchase, refurbish and resale airplanes, while further  
25 failing to disclose to them that RESPONDENTS would purchase and resell often  
26 multiple airplanes with the 12% Investment money of a single investor, without

1 refurbishing or fixing them up, often over a period of many years without repaying  
2 the investors' principal investment.

3 D. Representing to offerees and investors that the 12% Investments were subject to the  
4 risk of the so-called "Catastrophic World Event," but further failing to disclose to  
5 them that, regardless of a Catastrophic World Event, an investor's ability to obtain  
6 the return of his or her principal investment and promised profit was subject to the  
7 fact that: (a) the airplane collateral providing security for the 12% Investments are  
8 subject to unpredictable market fluctuations and/or declines; and (b) the ability of  
9 airplane purchasers to repay RESPONDENTS could be negatively impacted by  
10 unpredictable, expensive and time consuming civil and bankruptcy litigation, and/or  
11 a decline of BT and the BT COMPANIES' aircraft brokerage or aviation business  
12 operations. RESPONDENTS further failed to disclose to offerees and investors that  
13 they could lose all or a vast portion of their 12% Investment funds.

14 E. Representing to offerees and investors that the success of their 12% Investments  
15 would primarily depend on BT's superior knowledge and skill in purchasing,  
16 restoring and/or reselling airplanes on behalf of investors, while further failing to  
17 disclose to them that BT voluntarily caused his Texas BTA aircraft sales company  
18 to file a Chapter 7 Bankruptcy on August 6, 1993 because it was a "[f]ailed aviation  
19 business," and that such Bankruptcy continued until July 25, 2001, or approximately  
20 9 ½ years after RESPONDENTS began selling the 12% Investment on January 1,  
21 1992.

22 F. Representing to offerees and investors that a 12% Investment would be documented  
23 by Notes "guaranteed" by BT, but further failing to disclose to them either the: (a)  
24 nature, extent and/or value of either BT's personal assets and liabilities, or the assets  
25 and liabilities of the BT COMPANIES; or (b) whether such assets were sufficient to  
26



1 Washington, Phoenix, Arizona 85007. Filing instructions may be obtained from Docket Control by  
2 calling (602) 542-3477 or on the Commission's Internet web site at  
3 <http://www.azcc.gov/divisions/hearings/docket.asp>.

4 If a request for a hearing is timely made, the Commission shall schedule the hearing to begin  
5 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the  
6 parties, or ordered by the Commission. If a request for a hearing is not timely made the Commission  
7 may, without a hearing, enter an order granting the relief requested by the Division in this Notice of  
8 Opportunity for Hearing.

9 Persons with a disability may request a reasonable accommodation such as a sign language  
10 interpreter, as well as request this document in an alternative format, by contacting Shaylin A.  
11 Bernal, ADA Coordinator, voice phone number 602/542-3931, e-mail [sabernal@azcc.gov](mailto:sabernal@azcc.gov).  
12 Requests should be made as early as possible to allow time to arrange the accommodation.

13 **IX.**

14 **ANSWER REQUIREMENT**

15 Pursuant to A.A.C. R14-4-305, if a RESPONDENT requests a hearing, the requesting  
16 respondent must deliver or mail an Answer to this Notice of Opportunity for Hearing to Docket  
17 Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007, within  
18 30 calendar days after the date of service of this Notice. Filing instructions may be obtained from  
19 Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at  
20 <http://www.azcc.gov/divisions/hearings/docket.asp>.

21 Additionally, the answering respondent must serve the Answer upon the Division.  
22 Pursuant to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-  
23 delivering a copy of the Answer to the Division at 1300 West Washington, 3<sup>rd</sup> Floor, Phoenix,  
24 Arizona, 85007, addressed to Mike Dailey.

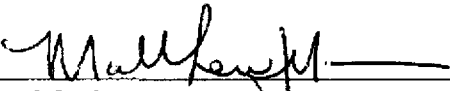
25 The Answer shall contain an admission or denial of each allegation in this Notice and the  
26 original signature of the answering respondent or respondent's attorney. A statement of a lack of

1 sufficient knowledge or information shall be considered a denial of an allegation. An allegation  
2 not denied shall be considered admitted.

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

6       The officer presiding over the hearing may grant relief from the requirement to file an  
7 Answer for good cause shown.

8       Dated this 5 day of January, 2010.

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12 Matthew J. Neubert  
13 Director of Securities  
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