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BEFORE THE ARIZONA CORPORATION COMMISSION

2010 APR 30 P 4:45

AZ CORP COMMISSION
DOCKET CONTROL

COMMISSIONERS

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

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

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

Arizona Corporation Commission
DOCKETED

APR 30 2010

DOCKETED BY *MM*

**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.

II.**RESPONDENTS**

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

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

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

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

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1 Alaska, California, Florida, Nevada, Tennessee, Washington and Wisconsin, and abroad in France
2 and Germany.

3 16. From approximately January 1, 1992, to at least March 20, 2009, BT published the
4 12% Investment display Advertisements in TAP magazine at least 378 separate times. TAP sent
5 the bills for the Advertisements to RESPONDENTS at their Scottsdale, Arizona business address.

6 17. Advertisements displayed in the print edition of TAP magazine are also published
7 on TAP's website www.trade-a-plane.com. From on or about August 1, 2005, to at least March 20,
8 2009, the 12% Investment Advertisements were also published in their entirety in both PDF and
9 digital format on TAP's website. According to TAP, its website averages approximately 48
10 million page views per month. At all times relevant, TAP's website could be viewed by potential
11 Arizona investors from their Arizona residences.

12 18. From January 1, 1992, to at least March 22, 2009, the magazine and website 12%
13 Investment Advertisements contained pictures of three airplanes, RESPONDENTS' telephone and
14 fax numbers, and stated, for instance:

Earn
12%
Interest On Short-Term
Aircraft Mortgages
-Interest Paid Monthly
-\$50,000 Minimum
-Secured at FAA
-12 Month Term
Barron Thomas

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20 (emphasis in originals). The 12% Investment Advertisements contained RESPONDENTS'
21 Scottsdale, Arizona "480" telephone and fax prefixes from approximately June 2004 to March
22 2009. From January 1992 to June 2004: (a) three of the 12% Investment Advertisements
23 contained a "602" Arizona prefix belonging to RESPONDENTS; and (b) the remaining
24 Advertisements contained the Dallas, Texas telephone and fax numbers of BT's mother, Agnes
25 Clarke (a/k/a "Mrs. Clark" and "Aggie Clark") who, because RESPONDENTS did not maintain a
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1 business office in Dallas, Texas, forwarded all such investor inquiries to BT at his Scottsdale,
2 Arizona office.

3 **Summary of 12% Investment Offering**

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

10 20. Many of RESPONDENTS' investors were subscribers to and regular readers of
11 TAP magazine. The majority of RESPONDENTS' investors purchased their 12% Investments via
12 the telephone after having viewed the Advertisements, often over a period of several years. The
13 vast majority of RESPONDENTS' investors purchased 12% Investments without having
14 personally met BT.

15 21. When investors called the telephone number listed in the Advertisements as
16 instructed (the "Initial Contact"), BT described to them the benefits of purchasing the 12%
17 Investments including, without limitation: (a) that the 12% Investments would provide investors
18 with passive profits in the form of twelve percent interest on their principal investments; (b) that
19 each 12% Investment would be "secured" by the airplane purchased with the investor's money; and
20 (c) that BT and the BT COMPANIES were successful airplane brokers who have sold large
21 numbers of aircraft on a national and international basis for many years. During the Initial Contact,
22 BT emphasized that his ability to pay investors twelve percent interest on their investments would
23 depend on his superior knowledge of the aircraft industry, and his expertise in purchasing, restoring
24 and reselling the airplanes purchased with investor money.

25 22. RESPONDENTS profited from the 12% Investments by retaining the difference
26 between: (a) the ultimate resale price of the fixed up or refurbished airplane serving as collateral

1 for a 12% Investment; and (b) the amount owed to the investor under the 12% Investment (*i.e.*,
2 principal and promised interest payments) and related business expenses.

3 23. Unbeknownst to 12% Investment investors, RESPONDENTS would also often pay
4 themselves a sales commission and/or aircraft brokerage fee of approximately eight percent (8%)
5 up to ten percent (10%) of the purchase price of the airplane purchased with an investor's principal
6 investment money as explained, for example, in paragraph 58 below. Because the only money
7 involved in RESPONDENTS' purchase of a 12% Investment related airplane was investor money,
8 RESPONDENTS' sales commission and/or aircraft brokerage fee came from investor money.

9 24. RESPONDENTS' ability to repay 12% Investment investors, and the investors' risk
10 of loss of their investments, is interwoven with and dependent on: (a) RESPONDENTS' ability,
11 effort and success in profitably reselling the airplanes serving as collateral for the 12%
12 Investments; and (b) RESPONDENTS' continued viability as successful and profitable aircraft
13 brokers and dealers.

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

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

23 27. BT negotiated with some investors to accept new 12% Investments with new
24 expiration dates that incorporated the investors' original principal investments and promised and/or
25 paper profits (the "Roll-Over" investments). Some Roll-Over investments resulted from
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1 RESPONDENTS' inability to meet their contractual obligations under original 12% Investments.
2 RESPONDENTS often sold two or more 12% Investments to a single investor.

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

5 29. RESPONDENTS sold at least \$10,191,050 of the 12% Investments to
6 approximately eighty-three widely dispersed investors residing throughout Arizona and twenty-
7 seven other states, including Alabama, California, Colorado, Connecticut, Florida, Georgia,
8 Illinois, Kentucky, Massachusetts, Maine, Michigan, Minnesota, Mississippi, Missouri, Nebraska,
9 Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, Oklahoma, Pennsylvania,
10 Tennessee, Texas, Utah, Washington and Wisconsin. BT and BTA also sold three separate 12%
11 Investments totaling \$200,000 to three Canadian investors.

12 **12% Investment Documents**

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

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

22 32. The Prospectus further states:

23 The way it works is this: You will send in your money into one of the aircraft
24 escrow companies [selected and controlled by RESPONDENTS]... They are to hold
25 your funds until we buy an airplane and then fund the aircraft and place a 1st Lien in
26 your favor against the airplane. **When we sell the airplane, the funds will be sent
to...[the Title Company] and they will payoff your mortgage [*i.e.*, 12%
Investment] and give the Buyer a clear title.** (emphasis added)

1 33. RESPONDENTS' investors and the Title Companies repeatedly referred to the
2 Common Account in writing as the "the Barron Thomas Investor Account" and/or the "Investor
3 Account." The memo field of 12% Investment checks also contained the notation, "Investor
4 account" and "Inv." Wire transfers of 12% Investment investor money made by the Title Company
5 as directed by BT to or from the Common Account stated, for example: (a) that \$50,000 was being
6 returned to a 12% Investment investor because his "investor account with Barron Thomas" was
7 closed; or (b) that \$50,000 of "INVESTOR PRINCIPALFUNDS" (sic) were being returned to
8 another 12% Investment investor. BT's written directives to the Title Company also referred to
9 12% Investment "investor" paperwork. Similarly, the Title Company also often referred to a 12%
10 Investor as an "investor."

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

14 35. The 12% Investment Notes were issued and made by RESPONDENTS, and signed
15 by BT in his individual capacity, and on behalf of one of the BT COMPANIES.

16 36. Although the Prospectus states that a 12% Investment would be documented by a
17 "Note Signed by us, guaranteed by Barron Thomas, personally," neither BT nor the investment
18 solicitation materials discussed herein disclose either the: (a) nature, extent and/or value of either
19 BT's personal assets and liabilities, or the assets and liabilities of the BT COMPANIES; or (b)
20 whether such assets are sufficient to repay the 12% Investment investors their promised interest
21 and principal investments.

22 37. The Prospectus discloses a single "risk" relating to the purchase of the 12%
23 Investments as follows:

24 Risk: The risk in this deal is a cataclysmic world event that completely stops
25 aircraft sales and exhausts our ability to make interest payments (or sell the
26 airplane) until the panic subsides and the market returns to normal. Our feeling is
that, in such a disaster, most all other business situations will experience the same

1 business interruption, so the risk in our deal is probably on par with most other
2 business.

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

5 38. Further, RESPONDENTS failed to disclose to offerees and investors that their
6 ability to obtain the return of the principal investments and promised profits was subject to the fact
7 that, regardless of a Catastrophic World Event: (a) the airplane collateral providing security for the
8 12% Investments is subject to unpredictable market fluctuations and/or declines; and (b) the ability
9 of airplane purchasers to repay RESPONDENTS could be negatively impacted by unpredictable,
10 expensive and time consuming civil and bankruptcy litigation, and/or a decline of BT and the BT
11 COMPANIES’ aircraft brokerage or aviation business operations. RESPONDENTS further failed
12 to disclose to offerees and investors that in light of the foregoing and the sham airplane collateral
13 purportedly “securing” their investments discussed further below, they could lose all or a vast
14 portion of their 12% Investment funds.

15 39. The Document Instructions state that each 12% Investment would be documented
16 by, among other things: (a) a purported “Security Agreement” (*i.e.*, FAA Lien) to create a security
17 interest in the airplane purchased by BT with the investor’s money in favor of the investor; (b) a
18 “Bill of Sale” describing the airplane purchased by RESPONDENTS with the investor’s money
19 (the “Bills of Sale”); (c) an application for registration for the purchased airplane in the name of
20 one of the BT COMPANIES; and (d) a “Release of Lien or Disclaimer” that releases/disclaims
21 “the security interest claimed in the purchased airplane by the previous “Lienholder or Claimant of
22 Record” (the “Lien Release(s)"). The Document Instructions state that these four documents will
23 be filed on behalf of investors with the FAA.

24 40. At all times relevant, BT represented to offerees and investors, both verbally and in
25 writing that each of their 12% Investments would be secured by an FAA Lien attached to the
26 airplane purchased with their investment money, and documented by a Note.

1 41. RESPONDENTS failed and/or refused to provide many of their 12% Investment
2 investors with copies of their Notes and FAA Liens associated with their 12% Investments.

3 42. Among other things, in the event of RESPONDENTS' default on their 12%
4 Investment obligations, having a copy of a Note would enable an investor to more easily document
5 and prove RESPONDENTS' breach of their contractual obligations, and to foreclose on their
6 airplane collateral in an attempt to recoup at least some of their principal investments.

7 43. The majority of the investors who have purchased multiple outstanding 12%
8 Investments are currently secured, if at all, by a single FAA Lien on a single airplane or, as
9 discussed further below, by a single set of airplane parts. For instance, according to records
10 produced to the Division by BT and BTS, one investor who purchased four separate \$100,000 12%
11 Investments totaling \$400,000 is listed as a lien holder on only one FAA Lien relating to an
12 airplane that sold for \$21,500 on or about December 31, 2001.

13 44. No investors contacted by the Division have received aircraft purchase agreements
14 or Bills of Sale demonstrating that, in fact, RESPONDENTS purchased an airplane with the
15 investors' investment money.

16 45. As of April 15, 2010, all but one of the approximately thirty-six known investors
17 contacted by the Division were unable to: (a) describe either the type or condition of any
18 airplane(s) providing security for their 12% Investments; (b) the location of said airplane(s); and
19 (c) the value of said airplane(s). These investors were further unable to determine what if any
20 refurbishing had been done to the airplanes by RESPONDENTS.

21 46. RESPONDENTS' failure to provide investors with copies of all of their Notes, FAA
22 Liens, aircraft purchase agreements, Bills of Sale and/or Lien Release documents effectively
23 prevents investors from determining: (a) what aircraft was purchased, if at all, with their
24 investment money, and consequently how RESPONDENTS spent investor money; (b) the type of
25 airplanes providing security for their 12% Investments including, for instance, their airworthiness
26 certificate status, etc.; (c) how much the aircraft were purchased for and/or the fair market value

1 (“FMV”) of such aircraft; (d) who is the owner of such aircraft (*i.e.*, BT, one of his companies or
2 an unknown third-party); (e) whether there are competing claims to, or clouds on the title to such
3 aircraft; and (f) where the aircraft are stored or located.

4 47. RESPONDENTS repeatedly failed to provide the Division with information
5 identifying where the airplanes serving as collateral for the 12% Investments are located. The 12%
6 Investment records provided by the Title Companies to the Division also fail to contain any
7 information regarding the location or condition of the airplanes serving as collateral for the 12%
8 Investments.

9 48. The ability of a secured party to foreclose on personal property is largely dependent
10 on their ability to actually, physically take possession of the property. RESPONDENTS’ failure to
11 provide investors with documents or information regarding the location, type, condition,
12 airworthiness, etc. of the airplanes providing security for their 12% Investments effectively
13 prevents investors from successfully and/or cost-effectively foreclosing on their airplane collateral
14 in the event of RESPONDENTS’ default without incurring legal liability to third-parties.

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

21 50. Unbeknownst to investors, and contrary to RESPONDENTS’ verbal and written
22 (*i.e.*, Prospectuses) promises, RESPONDENTS sometimes sold investors’ airplane collateral
23 without repaying them their promised principal investment and interest profits. This conduct
24 resulted in investors’ airplane collateral being owned by a previously unknown third party, and not
25 by BT and/or one of BT COMPANIES as was previously represented. RESPONDENTS were
26 often able to sell such airplane collateral free and clear of investors’ FAA Liens by having

1 investors "pre-sign" blank FAA Lien release forms at about the time they purchased their
2 investments.

3 51. For instance and without limitation, a California investor purchased a \$50,000 12%
4 Investment from BT and BTS on or about June 12, 2007. BT and BTS caused an FAA Lien to be
5 filed on behalf of the California investor on an airplane with the tail number N38TB (the "N38TB
6 Airplane") on February 22, 2008, or approximately *eight months* after the date of the investment
7 purchase. BT and BTS then sold the N38TB Airplane to a third-party on May 13, 2008. The
8 California investor is still owed approximately \$40,000 by BT and BTS.

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

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

14 53. Unbeknownst to investors, RESPONDENTS used new 12% Investment investor
15 money to repay other 12% Investment investors. For example, a Texas investor purchased a
16 \$50,000 12% Investment from BT and BTA on or about August 13, 1999. BT and BTA recorded
17 an FAA Lien in favor of the Texas investor on a Piper PA-28-180 airplane with tail number
18 N8194W (the "N8194W Airplane"). An Arizona investor purchased a \$50,000 12% Investment
19 from BT and BTA on or about March 14, 2005. On April 22, 2005, BT and BTA used the Arizona
20 investor's money to repay the prior Texas investor. BT and BTA then caused a new FAA Lien to
21 be perfected in favor of the new Arizona investor on the N8194W Airplane.

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

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1 55. Also unbeknownst to either the Texas or Arizona investor, a National
2 Transportation Safety Board (“NTSB”) “Brief of Accident” report finds that the N8194W Airplane
3 was crashed in Horizon City, Texas on October 3, 1998, resulting in “serious” pilot injury, and
4 damage to the N8194W Airplane consisting of a damaged engine firewall, right wheel separation
5 and a backwards-bent landing gear strut assembly. (*See*, NTSB ID: FTW99LA002, File No. 558).

6 56. Additionally:

7 A. A Texas investor purchased a \$50,000 12% Investment from BT and BTS on or
8 about February 13, 2004 by wiring the investment money into the Common
9 Account. On or about June 15, 2007, an Arizona investor purchased a separate
10 \$50,000 12% Investment from BT and BTS. On August 31, 2007, BT and BTS
11 used the Arizona investor’s money to repay the Texas investor his principal \$50,000
12 12% Investment. In addition, although an airplane with the tail number of N7387M
13 (the “N7387M Airplane”) was associated with the Texas investor’s 12% Investment
14 in the Title Company’s documents, BT and BTS never actually filed an FAA Lien
15 on the N7387M Airplane in favor of the Texas investor.

16 B. On or about May 5, 2001, a Colorado investor purchased \$100,000 of 12%
17 Investments from BT and BTA. From approximately May 5, 2004, to March 12,
18 2007, an Ohio investor purchased a total of \$400,000 of the 12% Investments from
19 BT and BTS. On May 6, 2004, BT and BTA used \$50,000 of the Ohio investor’s
20 investment money to repay the Colorado investor.

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

1 57. Unbeknownst to 12% Investment investors, RESPONDENTS routinely purchased
2 and sold airplanes with the 12% Investment money of a single investor, without refurbishing or
3 fixing them up, often over a period of many years without repaying the investor's principal
4 investment as originally promised and as set forth, in part, in the Prospectuses. RESPONDENTS'
5 pattern and practice of purchasing and reselling multiple aircraft with a single investor's money
6 resulted in multiple FAA Liens and/or airplanes being associated with that investor's investment.

7 58. For instance, on or about November 15, 2005, an Illinois investor purchased a 12%
8 Investment for \$50,000 from BT and BTS by depositing said amount into the Common Account.
9 BT and BTS purchased an airplane with the tail number N2816R with the Illinois investor's money
10 on or about November 22, 2005 (the "N2816R Airplane") for \$43,000. BT paid himself a \$4,300
11 sales commission for his purchase of the N2816R Airplane, and an additional \$6,000 from the
12 Illinois investor's money, for a total of \$10,300. BT and BTS then sold the N2816R Airplane on or
13 about January 1, 2006 to a third-party. To date, the Illinois investor has not been repaid his
14 principal 12% Investment.

15 59. Additionally:

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

22 B. One Ohio investor purchased two 12% Investments totaling approximately
23 \$200,000 on or about April 5, 2000, and March 4, 2002, from BT and the BT
24 COMPANIES. From on or about April 19, 2000, to the present, BT and the BT
25 COMPANIES have purchased and sold approximately eight different airplanes with
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1 the Ohio investor's money that have served as collateral for the Ohio investor's 12%
2 Investments.

3 **"Crashed" 12% Investment Airplane Collateral**

4 60. RESPONDENTS failed to disclose to 12% Investment investors that their 12%
5 Investments would be secured by an FAA Lien attached to: (a) damaged, salvaged and/or
6 neglected airplanes and/or disassembled aircraft parts; and (b) airplanes with a market value well
7 below the investors' principal 12% Investments. Thus, RESPONDENTS further failed to disclose
8 to investors that their investments would actually be under-secured and/or effectively unsecured.

9 61. Analogous to the N8194W Airplane discussed in paragraphs 53 to 55 above,
10 RESPONDENTS sometimes caused 12% Investments to be secured by airplanes that have been
11 damaged in serious accidents (the "Crashed Airplane Collateral"). The Division has located no
12 evidence indicating that BT or the BT COMPANIES spent any money fixing-up or refurbishing
13 any of the Crashed Airplane Collateral.

14 62. For instance, an elderly Illinois investor purchased a \$50,000 12% Investment from
15 BT and BTS on or about November 17, 2005. On paper, this investor's investment was secured by
16 an FAA Lien on a 1965 Piper PA-25-235 crop-dusting airplane with the tail number N7399Z (the
17 "N7399Z Airplane"). Unbeknownst to this investor, and according to a NTSB "Brief of Accident"
18 report, the N7399Z Airplane was crashed in Colquitt, Georgia on August 21, 2005, or less than
19 three months prior to the Illinois investor's 12% Investment purchase. (See, NTSB ID:
20 ATL05LA149, File No. 19114). A search of the FAA's website indicates that the N7399Z
21 Airplane "may not be suitable for operation."

22 63. Also unbeknownst to the Illinois investor, the pilot involved in the crash of the
23 N7399Z Airplane was killed, and the airplane sustained "substantial damage" including, without
24 limitation, separated right and left wings, a "crushed" left wing and spar with "accordion-type
25 deformation," a twisted propeller and other engine and structural damage caused when the N7399Z
26 Airplane collided with trees and the ground.

1 64. Similarly:

2 A. A California investor purchased \$100,000 worth of 12% Investments from BT and
3 BTSW on or about February 17, 2006, and was assigned a security interest in an
4 airplane with the tail number of N338OG (the "N3380G Airplane"). According to
5 an NTSB "Brief of Accident" report, the N3380G Airplane was crashed by a pilot
6 attempting to make an emergency landing on an "old logging" road after having run
7 out of fuel, resulting in "substantial damage" to "[b]oth wings, the rudder, elevator,
8 and both horizontal and vertical stabilizers." (See, NTSB ID: SEA03LA127, File
9 No. 14501). Further, BT used \$50,000 of the California investor's investment
10 monies to "payoff" a previous investor who had purchased a \$50,000 12%
11 Investment from BT and BTS. The Division has been unable to locate the N3380G
12 Airplane, or determine whether BT or BTSW spent any money "fixing-up" or
13 refurbishing the airplane. The California investor is owed approximately \$60,000 of
14 his principal investment.

15 B. An elderly Texas investor purchased approximately \$100,000 worth of 12%
16 Investments on or about July 19, 2005, from BT and BTS, and was assigned a
17 security interest in an airplane with the tail number of N2512T (the "N2512T
18 Airplane"). According to an NTSB "Brief of Accident" report, the N2512T
19 Airplane was involved in a crash on March 12, 2005, or approximately four months
20 prior to the Texas investor's investment. (See, NTSB ID: SEA05FA061, File No.
21 18369). According to the NTSB, the pilot was "critically injured" and his passenger
22 was seriously injured after the N2512T Airplane crashed into a Christmas tree farm
23 after the total loss of engine power, resulting in a bent engine mount, right wing and
24 fuselage, and empennage (*i.e.*, tail and assembly) were bent, wrinkled and twisted.
25 The Division has been unable to locate the N2512T Airplane, or determine whether
26 BT or BTSW spent any money fixing-up the airplane.

1 C. A Washington investor purchased a \$100,000 12% Investment from BT and BTA
2 on or about June 19, 2002, that was secured by a Piper PA-38-112 airplane with the
3 tail number N4326E (the "N4326E Airplane"). Unbeknownst to the Washington
4 investor, and according to a NTSB "Brief of Accident" report, the N4326E Airplane
5 was involved in an accident in Kingman, Arizona on May 27, 2002, or less than a
6 month prior to the Washington investor's investment. (See, NTSB ID:
7 LAX02LA170, File No. 15904). During the accident, the N4326E Airplane
8 "dropped out of the sky, and pancaked onto the ground," resulting in "substantial
9 damage" to the airplane. The Division has been unable to locate the N4326E
10 Airplane, or determine whether BT or BTSW spent any money fixing-up the
11 airplane.

12 65. Additionally, a Minnesota investor purchased a \$130,000 12% Investment from BT
13 and BTA on or about August 30, 2003. BT and BTA assigned the Minnesota investor a lien
14 interest in a 1983 Yakolev YAK 52 airplane with a tail number N69GC (the "N69GC Airplane").
15 Unbeknownst to the Minnesota investor, and according to a NTSB "Brief of Accident" report and
16 photographs, the N69GC Airplane was crashed into a heavily wooded area in Matawan, New
17 Jersey on July 13, 2002. (See, NTSB ID: NYCO2FA138, File No. 13205). The crash of the
18 N69GC Airplane resulted in "serious" injuries to the pilot and passenger, and the airplane sustained
19 ruptured fuel tanks, extensive fuselage damage, a broken right wing, an ejected spark plug and a
20 "torching" spot on the undersigned of the engine cowling resulting in engine failure; the propeller
21 was also almost entirely embedded in a tree branch. To date, this investor has not been repaid the
22 principal of his \$130,000 12% Investment.

23 **"Salvage" and "Un-Flyable" 12% Investment Airplane Collateral**

24 66. As licensed aircraft dealers, BT and BTS are required to pay aircraft registration
25 fees and license taxes on airplanes owned by them and located in Arizona to the Aircraft
26 Registration Unit of the Arizona Department of Transportation ("ADOT").

1 67. Under A.R.S. § 28-8338(D) of the Arizona Transportation Act, a “salvage aircraft”
2 is defined as “an aircraft that is being restored and that is not meant to be flown.” BT and BTS
3 represented to ADOT in writing that the following airplanes serving as collateral for 12%
4 Investments are in “salvage” condition and, therefore, qualify for the lowest license tax and
5 registration fee per plane:

6 A. A 1979 Gulfstream American, Model No. AA-5A, single engine propeller driven
7 airplane with a tail number of N26927 is in “salvage” condition and constitutes the
8 purported collateral for a \$50,000 12% Investment purchased by an investor in
9 January 2006. This airplane is laying in a disassembled state in a South Phoenix
10 storage yard, and has been in such a state for approximately the last three years with
11 no indication that any efforts have been made to fix-up or refurbish the same.

12 B. A 1971 Cessna 150 with the tail number N5472Q is in “salvage” condition and
13 constitutes the purported collateral for a North Carolina investor’s \$100,000 12%
14 Investment purchased on or about November 23, 2005.

15 C. A 1981 Cessna 172 Skyhawk with the tail number N62344 is in “salvage” condition
16 and constitutes the purported collateral for a Connecticut investor’s approximate
17 \$700,000 worth of 12% Investments purchased as long ago as November 24, 1997.

18 68. BT and BTS further represented in writing to ADOT that at least six additional
19 airplanes serving as collateral for 12% Investments, including the Crashed Airplane Collateral
20 N4326E Airplane discussed above in paragraph 64(C) are in “salvage” and/or in an un-flyable
21 condition.

22 69. In addition, BT and BTS were charged the low salvage-based license tax and
23 registration fees by ADOT on the following airplanes associated with investors’ 12% Investments:

24 A. A 1960 Cessna 210 with a tail number of N6632X associated with a Utah investor’s
25 \$50,000 12% Investment purchased on or about November 1, 2006. This airplane is
26 laying in a disassembled state in a South Phoenix storage yard, and has been in such

1 a state for approximately the last three years with no indication that any efforts have
2 been made to fix-up or refurbish the same.

3 B. A 1955 Piper Tri-Pacer PA-22 ("PARTS") with the tail number of N2805P
4 associated with an Alabama investor's \$50,000 12% Investment purchased on or
5 about January 26, 2005.

6 70. BT and BTS similarly paid the low salvage-based license tax and registration fees
7 by ADOT on at least twenty additional airplanes associated with investors' 12% Investments,
8 including many in extremely poor condition located in the South Phoenix storage yard discussed
9 below.

10 **Damaged and Disassembled 12% Investment Airplane Collateral**

11 71. On October 12, 2009, BT moved an airplane with the tail number N6808U (the
12 "N6808U Airplane") serving as collateral for a Phoenix investor's outstanding \$50,000 12%
13 Investment purchased on October 27, 2006 out of storage at Phoenix Sky Harbor Airport at its
14 request due to its dilapidated condition and RESPONDENTS' failure to pay its hanger/tie-down
15 fees, to a storage yard in south Phoenix. Prior to its removal from Phoenix Sky Harbor Airport, the
16 N6808U Airplane was severely damaged and/or deteriorated condition including, without
17 limitation, a crushed tail assembly, fuselage and a detached engine cowling. The N6808U Airplane
18 is laying in pieces: (a) the orange and white, separated fuselage is crumpled, has smashed and
19 broken tail, has no windows, has no engine or engine compartment, has no propeller, has missing
20 hatch panels, has no operable avionics, has mangled seats sitting on top of the fuselage and is
21 severely weather beaten; (b) the wing is completely separated from the plane and is missing
22 landing gear; (c) the engine had been removed and is laying on dirt apart from the fuselage; (d) all
23 parts of such "airplane" were exposed to the elements; and (e) that all parts of the N6808U
24 Airplane are in such a deteriorated state that the cost of refurbishing or fixing up the same would
25 greatly exceed the Arizona investor's principal investment.

26 72. Unbeknownst to 12% Investment investors, and similar to the N8194W and
N6808U Airplane based investments discussed above at paragraphs 53 to 55 and 71 respectively,

1 RESPONDENTS assigned to an investor a lien interest in damaged and/or salvaged aircraft or
2 aircraft parts as security for their 12% Investments.

3 73. For example:

4 A. An investor purchased 12% Investments totaling \$700,000 on or about November
5 24, 1997 and, in return, his investments were secured through an FAA Lien attached
6 to an airplane with the tail number N7350P (the "N7350P Airplane"). As of
7 October 20, 2009, the N7350P Airplane was stored in a south Phoenix storage yard
8 and consists of a rusty fuselage with no paint other than a spray painted tail number,
9 missing parts and other defects. Further, the N7350P Airplane has been in that
10 condition since July 2000 or for over nine years, without having been refurbished or
11 fixed up as promised by RESPONDENTS. To date, this investor has not been
12 repaid his principal 12% Investment.

13 B. A Tennessee investor purchased a 12% Investment for approximately \$74,200 from
14 BT and BTA on or about May 11, 2001, that is secured by an FAA Lien on an
15 airplane with the tail number N18KC (the "N18KC Airplane"). As of October 20,
16 2009, the N18KC Airplane is being stored in an open air, south Phoenix storage
17 yard and: (a) the fuselage is missing the front end engine compartment, and a
18 wheel; and (b) is missing its wings, engine and cockpit components. To date, this
19 investor has not been repaid his principal 12% Investment.

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

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

8 74. In another case, a title report provided to BT by the Title Company regarding an
9 airplane with a tail number N47TA (the "N47TA Airplane") serving as collateral for a \$50,000
10 12% Investment purchased by a Texas investor from BT and BTS on or about April 6, 2004 states
11 that the "[a]ircraft is in an unregistered status, reported destroyed/scrapped 10/25/03." The N47TA
12 Airplane is currently sitting in the open air storage yard in south Phoenix and has no attached
13 wings, landing gear, engine or propeller, etc. To date, this investor has not been repaid his
14 principal 12% Investment.

15 75. 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, a
17 total of twenty-one of the airplanes serving as collateral for 12% Investments are in a similar,
18 deteriorated condition as set forth above.

19 76. RESPONDENTS also stored eight airplanes serving as collateral for 12%
20 Investments at Buckeye Municipal Airport ("BMA") in Buckeye, Arizona that are in a severely
21 dilapidated, rusted, scraped, crushed and/or disassembled state, in part, as follows:

22 A. Various parts associated of a 1971 Cessna 172P, with the tail number N62344
23 providing security for an investor's 12% Investments totaling several hundred
24 thousand dollars;

1 B. A mangled fuselage of a 1977 Maule M-5-235C with the tail number of N9218E
2 providing security for a Tennessee investor's \$100,000 12% Investment purchased
3 on or about May 11, 2000; and

4 C. A fuselage of a 1953 Piper PA-22-135 with the tail number of N3403A of which the
5 skin of the airplane has peeled back, and is exposing the metal frame, providing
6 security for a Canadian investor's \$100,000 12% Investment.

7 77. In addition, BT and BTAH are delinquent in paying thousands of dollars worth of
8 hanger storage fees for these 12% Investment airplanes located at the BMA. Given their
9 dilapidated nature and BT and BTAH's failure to pay storage fees, BMA moved the eight airplanes
10 into two locked storage hangers. Also, in October 2009 BMA in conjunction with the Buckeye
11 Police Department seized at least five of the 12% Investment related airplanes as "abandoned
12 aircraft" under A.R.S. § 28-8243, it changed the locks on the hangers, and it issued to BT and
13 BTAH five related "Notices of Intention to Sell Abandoned Aircraft" in March 2010 in an attempt
14 to recoup the delinquent hanger fees.

15 78. As of April 15, 2010, the Division has been able to locate thirty-nine airplanes
16 providing "security" for the 12% Investments located at: (a) the south Phoenix storage yard; (b)
17 BMA (c) Scottsdale Airport; (d) Phoenix-Goodyear Airport; (e) Kingman Airport in Kingman,
18 Arizona; (f) Dauster Flying Field-Creve Coeur Airport Imp. Corp. in St. Louis, Missouri; (g)
19 Sweetwater County Airport in Rock Springs, Wyoming; (h) Airport Mini Storage, Deer Park,
20 Washington; (i) City of Watonga Municipal Airport in Watonga, Oklahoma; and (j) Monterey
21 Peninsula Airport located in Monterey, California. All but one of these located airplanes are in the
22 same poor, non-airworthy and/or disassembled, etc. state discussed above.

23 79. Additionally, the majority of these located airplanes have been sitting in an
24 undisturbed state (*i.e.*, flat tires, etc.) for *many* years at these various locations. Further,
25 RESPONDENTS are delinquent in paying hanger and tie-down fees to the landlords where many
26 of the 12% Investment related airplanes are located and, as a result, said airplanes are at risk of

1 being seized and sold by the landlords as noted in paragraph 77 above. For instance, the Division
2 located a 1950 Piper PA-20 airplane with the tail number N7703K (the "N7703K Airplane") that
3 constitutes the purported collateral assigned by BT and BTS to secure a Florida investor's \$50,000
4 12% Investment purchased on or about January 5, 2007. The N7703K Airplane is located at the
5 City of Watonga Municipal Airport and: (a) BT and BTS owes several years of delinquent tie-
6 down rent for the N7703K Airplane; and (b) the N7703K Airplane is in extreme state of disrepair
7 and has been moved into a hanger because it is an "eyesore."

8 Low Market Value of 12% Investment Airplane Collateral

9 80. As of April 15, 2010, of the thirty-nine airplanes located by the Division, only four
10 appear to be in an completely assembled state. Of those four, only a 1981 Beech 77 Skipper with
11 the tail number of N3866N (the "N3866N Airplane") appears to be in both a completely assembled
12 and airworthy state. A California investor purchased two 12% Investments totaling \$150,000 from
13 BT and BTS in February 2007 and, in return, BT and BTS assigned the California investor a
14 security interest in the N3866N Airplane. According to an "e-Valu-ator" airplane value calculation
15 service provided by the National Aircraft Appraisers Association ("NAAA"), the N3866N Airplane
16 has a value range of approximately \$14,400 to \$22,500. This California investor is still owed
17 approximately \$139,500 on his principal investments.

18 81. In another case, a Georgia investor purchased a \$100,000 12% Investment from BT
19 and BTS in April 2005. In return, BT and BTS assigned to the Georgia investor a lien interest in a
20 1978 Piper PA-38-112 Tomahawk with the tail number N9878T (the "N9878T Airplane").
21 According to a NAAA e-Valu-ator airplane value calculation, the N9878T Airplane has an
22 approximate value range of only \$9,200 to \$14,400. Also, the N9878T Airplane has been stored at
23 the Kingman Airport in a deteriorated condition and has not been moved in approximately five
24 years.

25 82. Similarly and without limitation, BT and BTS used \$253,750 of an Arizona
26 investor's 12% Investment money to purchase a 1967 Piper PA-28-140 with the tail number

1 N3937K (the "N3937K Airplane"). In return, BT and BTS assigned to the Arizona investor a
2 security interest in the N3937K Airplane. According to a NAAA e-Valuator airplane value
3 calculation, the N3937K Airplane has an approximate value range of only \$16,500 to \$25,800.

4 83. Further, a Nevada investor purchased a 12% Investment totaling approximately
5 \$100,000 from BT and BTAH on or about December 23, 2008. In return, BT and BTAH assigned
6 the Nevada investor a lien interest in a 1955 Piper PA-22-150 with the tail number N3708P (the
7 "N3708P Airplane"). According to counsel for BT and BTAH, BT and BTAH have obtained a
8 buyer as of March 2010 willing to pay them approximately \$18,000 for the N3708P Airplane.
9 Thus, the Nevada investor's 12% Investment was only approximately eighteen percent secured.

10 **Delays in Filing FAA Liens on 12% Investment Airplane Collateral**

11 84. Although RESPONDENTS represented to investors that their 12% Investments
12 would be "secured," RESPONDENTS further failed to disclose to them that RESPONDENTS
13 would often not cause an FAA Lien to be filed on their behalf for substantial periods of time
14 following their investment purchases as noted above, without limitation, at paragraph 51. For
15 instance, a Maine investor purchased a \$100,000 12% Investment from BT and BTA on or about
16 June 10, 2003, and BT and BTA did not file an FAA Lien on an airplane with the tail number
17 N4425A on behalf of the Maine investor until July 23, 2004, or approximately *thirteen* months
18 after the investment purchase.¹

19 85. Further, the Division located evidence indicating that two investors who purchased
20 three and four separate 12% Investments respectively each are secured by a single FAA Lien filed
21 on their behalf approximately seven and five months after they purchased their investments. Thus,
22 contrary to RESPONDENTS' representations, these investors' investments were unsecured for a
23 substantial period of time.

24
25
26

¹ The N4425A airplane is also in a disassembled state in the south Phoenix storage yard discussed above.

Status of the 12% Investments

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

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

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

26

1 foreclose on and/or recover the aircraft collateral on behalf of investors in the event of aircraft
2 purchaser default.

3 89. Also, as discussed above, RESPONDENTS' failure and/or refusal to provide
4 investors with sufficient material information regarding their 12% Investments (*i.e.*, Notes, FAA
5 Liens, Bills of Sale, etc.) and information regarding the location, condition, and fair market value
6 of their airplane collateral associated with the investments, effectively prohibits investors from
7 cost-effectively foreclosing on such airplane collateral without incurring legal liability, even if they
8 had the knowledge, time and money to attempt to do so.

9 90. Because: (a) the successful foreclosure of a security interest in personal property
10 like the airplanes associated with the 12% Investments necessarily contemplates being able to
11 actually locate and physically take possession of such property; (b) RESPONDENTS' investors are
12 widely disbursed across the U.S. and abroad; (c) the airplanes purportedly securing their 12%
13 Investments are in such poor condition as set forth herein; and (d) the time and cost of associated
14 with attempting to locate, physically possess and transport said airplanes would exceed the amount
15 of money that the investors could obtain by selling said airplanes, the 12% Investments are
16 effectively unsecured.

17 91. As of April 15, 2010, and as noted in paragraph 45 above, of the approximately
18 eighty-three known 12% Investors, only a single Michigan investor has been able to locate and take
19 possession of the airplane providing security for her delinquent 12% Investment. This investor was
20 forced to search FAA records to determine which airplane was providing security for her
21 investment, and to research and locate the previous owner of the airplane from whom BT
22 purchased it, to determine its location. This Michigan investor purchased a \$50,000 12%
23 Investment from BT and BTSW in January 2006. In return, BT and BTSW assigned to the
24 Michigan investor a lien interest in a 1962 Cessna 182E with a tail number of N3397Y (the
25 "N3397Y Airplane"). According to the Michigan investor, the N3397Y Airplane is located in at
26 the Monterey Peninsula Airport ("MPA") in Monterey, California, and was purchased by BT and

1 BTSW for \$7,000 on or about June 29, 2006. According to MPA authorities, the N3397Y
2 Airplane: (a) is in a state of disrepair and has not been moved from its present tie-down location
3 for approximately six years; and (b) BT is delinquent in paying his airplane storage rental fees.

4 The Texas BTA & Bankruptcy

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

15 93. BT caused his Texas BTA aircraft sales company to voluntarily file a Chapter 7
16 bankruptcy on August 6, 1993 in the United States Bankruptcy Court, Northern District of Texas,
17 93-bk-35605 (HCA7) (the "Bankruptcy"). The voluntary Bankruptcy Petition filed on behalf of
18 "N32/W96, Inc. F/K/A Barron Thomas Aviation, Inc." by BT as its president states that the Texas
19 BTA's business was "[a]ircraft sales." A July 17, 1999 filing by the appointed Bankruptcy Trustee
20 states that the basis for the Bankruptcy was that the Texas BTA was a "[f]ailed aviation business."

21 94. Bankruptcy Schedules filed by BT on behalf of the Texas BTA as its president on or
22 about September 9, 1993 state that: (a) the Texas BTA had purported assets of only \$520,020.20
23 and liabilities of \$13,187,669.23; and (b) that the Texas BTA owed \$6,006,903 to creditors
24 documented by notes made to them by the Texas BTA. Many of the Texas BTA notes were made
25 in 1991, or the year prior to RESPONDENTS' public offer and sales of the 12% Investments
26 documented in part by the promissory Notes at issue in this case. The Bankruptcy Schedules also

1 state that BT was the sole shareholder of the Texas BTA, and that the Texas BTA was the
2 defendant in approximately 19 lawsuits, the majority of which had resulted in judgments against
3 the Texas BTA. RESPONDENTS failed to disclose the existence of the Bankruptcy to offerees
4 and investors.

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

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

14 97. On July 19, 2001, the Bankruptcy Trustee filed a report noting that liquidation of the
15 entire Texas BTA Bankruptcy Estate had resulted in only \$5,416.49 in cash. Of that amount,
16 \$3,125.19 was paid to a single creditor holding a priority claim, the balance was paid to the Trustee
17 for Bankruptcy fees and costs, and no money was paid to any secured and unsecured creditors to
18 whom the Texas BTA owed approximately \$13,000,000.

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

22 IV.

23 VIOLATIONS OF A.R.S. § 44-1841

24 (Offer or Sale of Unregistered Securities)

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

1 were made; or (iii) engaged in transactions, practices, or courses of business that operated or would
2 operate as a fraud or deceit upon offerees and investors. RESPONDENTS' conduct includes, but is
3 not limited to, the following:

- 4 A. Representing to offerees and investors that RESPONDENTS would use the
5 investors' 12% Investment money to purchase, refurbish and resale airplanes, while
6 further failing to disclose to them that their 12% Investment money would be used
7 to repay other 12% Investment investors their principal investments and/or promised
8 monthly interest payments.
- 9 B. Representing to offerees and investors that each 12% Investment would be secured
10 by an airplane purchased and refurbished by RESPONDENTS with the investors'
11 money, while further failing to disclose to them that their investments would be
12 under secured and/or effectively unsecured by damaged, salvaged, disassembled,
13 un-flyable and or low value airplanes and/or aircraft parts in such a deteriorated
14 state that the cost of refurbishing or fixing up the same would greatly exceed the
15 investors' principal investments.
- 16 C. Representing to offerees and investors that their 12% Investments would be secured,
17 but further failing to disclose to them that RESPONDENTS would not cause an
18 FAA Lien to be filed on their behalf for a substantial period of time following their
19 investment purchase date.
- 20 D. Representing to offerees and investors that their 12% Investments would be secured,
21 but further failing to disclose to them that RESPONDENTS would fail to provide
22 them with sufficient material information and documents including, without
23 limitation, the location, condition and airworthiness of the airplane collateral
24 providing security for their investments, and copies of material 12% Investment
25 documents such as Notes, so that investors could cost-effectively attempt to
26

1 foreclose on and take possession of said collateral in the event of RESPONDENTS'
2 default.

3 E. Representing to offerees and investors that RESPONDENTS would use 12%
4 Investment investor money to purchase, refurbish and resale airplanes, while further
5 failing to disclose to them that RESPONDENTS would purchase and resell often
6 multiple airplanes with the 12% Investment money of a single investor, without
7 refurbishing or fixing them up, often over a period of many years without repaying
8 the investors' principal investment.

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

20 G. Representing to offerees and investors that the success of their 12% Investments
21 would primarily depend on BT's superior knowledge and skill in purchasing,
22 restoring and/or reselling airplanes on behalf of investors, while further failing to
23 disclose to them that BT voluntarily caused his Texas BTA aircraft sales company
24 to file a Chapter 7 Bankruptcy on August 6, 1993 because it was a "[f]ailed aviation
25 business," and that such Bankruptcy continued until July 25, 2001, or approximately
26

1 9 ½ years after RESPONDENTS began selling the 12% Investment on January 1,
2 1992.

3 H. Representing to offerees and investors that a 12% Investment would be documented
4 by Notes “guaranteed” by BT, but further failing to disclose to them either the: (a)
5 nature, extent and/or value of either BT’s personal assets and liabilities, or the assets
6 and liabilities of the BT COMPANIES; or (b) whether such assets were sufficient to
7 repay the 12% Investment investors their principal investments and/or promised
8 profits.

9 I. Representing to offerees and investors that each of their 12% Investments would be
10 secured, but further failing to disclose to them that multiple 12% Investments would
11 often be secured, if at all, by a single FAA Lien on a single airplane.

12 110. This conduct violates A.R.S. § 44-1991.

13 **VII.**

14 **REQUESTED RELIEF**

15 The Division requests that the Commission grant the following relief:

16 1. Order RESPONDENTS to permanently cease and desist from violating the
17 Securities Act pursuant to A.R.S. § 44-2032;

18 2. Order RESPONDENTS to take affirmative action to correct the conditions resulting
19 from RESPONDENTS’ acts, practices, or transactions, including a requirement to make restitution
20 pursuant to A.R.S. § 44-2032;

21 3. Order RESPONDENTS to pay the state of Arizona administrative penalties of up to
22 five thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;

23 and

24 4. Order any other relief that the Commission deems appropriate.
25
26

1 **VIII.**

2 **HEARING OPPORTUNITY**

3 Each RESPONDENT may request a hearing pursuant to A.R.S. § 44-1972 and A.A.C. R14-
4 4-306. **If a RESPONDENT requests a hearing, the requesting respondent must also answer**
5 **this Notice.** A request for hearing must be in writing and received by the Commission within 10
6 business days after service of this Notice of Opportunity for Hearing. The requesting respondent
7 must deliver or mail the request to Docket Control, Arizona Corporation Commission, 1200 W.
8 Washington, Phoenix, Arizona 85007. Filing instructions may be obtained from Docket Control by
9 calling (602) 542-3477 or on the Commission's Internet web site at
10 <http://www.azcc.gov/divisions/hearings/docket.asp>.

11 If a request for a hearing is timely made, the Commission shall schedule the hearing to begin
12 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the
13 parties, or ordered by the Commission. If a request for a hearing is not timely made the Commission
14 may, without a hearing, enter an order granting the relief requested by the Division in this Notice of
15 Opportunity for Hearing.

16 Persons with a disability may request a reasonable accommodation such as a sign language
17 interpreter, as well as request this document in an alternative format, by contacting Shaylin A.
18 Bernal, ADA Coordinator, voice phone number 602/542-3931, e-mail sabernal@azcc.gov.
19 Requests should be made as early as possible to allow time to arrange the accommodation.

20 **IX.**

21 **ANSWER REQUIREMENT**

22 Pursuant to A.A.C. R14-4-305, if a RESPONDENT requests a hearing, the requesting
23 respondent must deliver or mail an Answer to this Notice of Opportunity for Hearing to Docket
24 Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007, within
25 30 calendar days after the date of service of this Notice. Filing instructions may be obtained from
26

1 Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at
2 <http://www.azcc.gov/divisions/hearings/docket.asp>.

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

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

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

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

16 Dated this 30 day of April, 2010.

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19 _____
20 Matthew J. Neuberger
21 Director of Securities
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