



0000116198

NEW

RECEIVED

BEFORE THE ARIZONA CORPORATION COMMISSION

2003 APR -6 P 2:30

AZ CORP COMMISSION
DOCUMENT CONTROL

CARL J. KUNASEK
Chairman
JIM IRVIN
Commissioner
WILLIAM A. MUNDELL
Commissioner

In the matter of

DOCKET NO. S-03280A-00-0000

JOSEPH MICHAEL GUESS, SR.
2911 E. Calavar Road
Phoenix, Arizona 85032

**NOTICE OF OPPORTUNITY FOR
HEARING REGARDING PROPOSED
ORDER FOR RELIEF**

PROGRESSIVE FINANCIAL MANAGEMENT
2911 E. Calavar Road
Phoenix, Arizona 85032

JAMES DOUGLAS SHERRIFFS
5544 East Helena Drive
Scottsdale, Arizona 85254

RICHARD GORDON DAVIS
4330 North 30TH Street
Phoenix, Arizona 85016

RGD
4330 North 30TH Street
Phoenix, Arizona 85016

RGD ENTERPRISES, INC.
4330 North 30TH Street
Phoenix, Arizona 85016

IRA JOE PATTERSON
4330 North 30th Street
Phoenix, Arizona 85016

RANDALL WAYNE SMITH, JR.
1905 Springlake Court
Birmingham, Alabama 35215

BALLY OVERSEAS TRADING INC.
1905 Springlake Court
Birmingham, Alabama 35215,

Respondents.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

1 4. James Douglas Sherriffs ("Sherriffs"), also known as James D. Sherriffs and Jim
2 Sherriffs, is a public accountant and tax preparer whose last known address is 5544 East Helena Drive,
3 Scottsdale, Arizona 85254. At relevant times, Sherriffs formed and controlled Respondent RGD with
4 Guess and Respondent Richard Gordon Davis, and had represented himself as President of RGD.

5 5. Richard Gordon Davis ("Davis"), also known as Richard G. Davis and Dick Davis, was
6 at relevant times the President, Treasurer, a Director and a shareholder of Respondent RGD Enterprises,
7 Inc., and also formed and controlled Respondent RGD with Guess and Sherriffs. His last known
8 address is 4330 North 30th Street, Phoenix, Arizona 85016.

9 6. RGD ("RGD"), also known as R.G.D., was represented as a "Joint Venture" and
10 operated under the auspices of Respondent RGD Enterprises, Inc. The last known RGD business
11 address is 4330 North 30th Street, Phoenix, Arizona 85016. At relevant times, Guess, Sherriffs and
12 Davis formed and controlled RGD for the purpose of operating the Joint Venture Investment
13 Management Program, also known as the Joint Venture Private Placement Asset Management Program,
14 in Arizona in conjunction with Respondents Randall Wayne Smith, Jr. and Bally Overseas Trading Inc.

15 7. RGD Enterprises, Inc. ("RGD Enterprises") is an Arizona corporation whose last known
16 business address is 4330 North 30th Street, Phoenix, Arizona 85016.

17 8. Ira Joe Patterson ("Patterson"), also known as Ira J. Patterson, has acted as a salesman at
18 relevant times for the Joint Venture Investment Management Program, also known as the Joint Venture
19 Private Placement Asset Management Program, operated by Guess, PFM, Sherriffs, Davis, RGD, RGD
20 Enterprises, Randall Wayne Smith, Jr. and Bally Overseas Trading Inc. His last known Arizona address
21 is 4330 North 30th Street, Phoenix, Arizona 85016.

22 9. Randall Wayne Smith, Jr. ("Smith"), also known as Randall W. Smith, has variously
23 represented himself at relevant times as the Administrator, Joint Venture Manager and Managing
24 Partner of the Joint Venture Investment Management Program, also known as the Joint Venture Private
25 Placement Asset Management Program, as well as President, Manager, Managing Partner and
26 Managing Director of Respondent Bally Overseas Trading Inc. His last known address is 1905

1 Springlake Court, Birmingham, Alabama 35215.

2 10. Bally Overseas Trading Inc. ("Bally") is a British Virgin Islands company with a
3 "communications office" at 1905 Springlake Court, Birmingham, Alabama 35215. As Joint Venture
4 Managing Partner, Bally operated a Joint Venture Investment Management Program, also known as the
5 Joint Venture Private Placement Asset Management Program, in Arizona through Guess, PFM,
6 Sherriffs, Davis, RGD, RGD Enterprises, Patterson and Smith.

7 11. Guess, PFM, Sherriffs, Davis, RGD, RGD Enterprises, Patterson, Smith and Bally may
8 be collectively referred to as "all Respondents."

9 **III.**

10 **FACTS**

11 12. Each of the preceding paragraphs is incorporated by reference.

12 13. From at least February 1997, Smith and Bally offered and sold to the general public
13 within Arizona financial interests in Joint Venture Investment Management Programs, also known
14 variously as Joint Venture Private Placement Asset Management Programs and/or Private Placement
15 Investment Trading Programs and/or Asset Enhancement Programs and/or Asset Enhancement Trading
16 Programs and/or Capital Management Programs and/or High Yield Investment Programs. According to
17 their offering documents and related oral representations, offerees could invest money for a period of
18 time as Limited Venture Partners and their funds pooled for safekeeping in an escrow account with
19 those of other investors at Regions Bank in Birmingham, Alabama, until transferred to a trading bank
20 for exclusive use in the trading of discounted debt instruments issued by major world banks. Smith and
21 Bally offered successive programs with total initial investment principals of from one million to ten
22 million dollars with 108% of each program principal guaranteed by a top fifty West European Bank.
23 Programs offered weekly or later monthly returns of trading profits varying respectively from 12%
24 weekly to 12% or even 18% monthly. Smith and/or Bally would retain a 10% share of such investor
25 profits as a fee for administration. Investors would execute a Specific Power of Attorney to Smith to
26 manage their program investment account as a fiduciary. On behalf of Bally, Smith would execute Joint

1 Venture Investment Management Program Agreements or Joint Venture Private Placement Asset
2 Management Agreements with investors, along with Escrow Agreements and Joint Venture Profit
3 Share Agreements.

4 14. From at least March 1997, Guess, Sherriffs and Davis formed RGD as a "Joint Venture"
5 under the auspices of RGD Enterprises to offer and sell within and from Arizona the above investment
6 program operated by Smith and Bally. Guess functioned as RGD manager and lead salesman. Sherriffs
7 steered his tax preparation clients to invest through RGD and handled the transfer of funds to and from
8 the RGD bank accounts. Davis provided use of the RGD Enterprises mantle to RGD for tax reporting
9 and other purposes. On behalf of RGD, Guess executed agreements with investors that tracked the
10 terms of those used by Smith and Bally, except that RGD reduced the monthly profit returnable to most
11 of its investors to 4.5% or 5%, with only one later investor receiving 10%. These RGD investor
12 agreements in turn provided for RGD to retain any profits exceeding these investor returns as its fee for
13 administration. Funds from RGD investors were pooled by Sherriffs in an RGD escrow bank account in
14 Arizona for safekeeping until transfer to the trading company or trading bank. While so aggregating
15 RGD investor funds, Guess or RGD then executed agreements with Smith and Bally to invest these
16 funds at the higher 12% weekly or 18% monthly return on principal offered by the latter. RGD would
17 thereby retain as its profit share the spread between the returns it offered to its investors and the returns
18 it received from Smith and Bally. RGD investors would execute a Specific Power of Attorney to Guess
19 to manage their program investment account as a fiduciary.

20 15. Besides the anticipated profit sharing described above, the RGD principals were also
21 paid directly by Smith to promote their recruitment of investors. In each of the months of April, May,
22 June and July 1997, Smith sent them about \$31,100 to divide among themselves and others. These
23 payments ceased after July 1997. Out of the \$124,400 total that Smith provided, Guess, Sherriffs and
24 Davis each took over \$20,000. Sherriffs did not disclose this compensation he received to those
25 accounting clients who he steered to invest in the RGD program. A portion of these promotional funds
26 were also paid to some investors as purported profits earned from their investments. Some of these

1 funds were also used to pay for expenses incurred in organizing and operating RGD.

2 16. In about July 1997, Patterson acted as a salesman for the RGD program by offering
3 interests to other investors in a claimed \$40,000 Joint Venture Investment Management Program
4 Agreement dated March 19, 1997 between a "Joseph Patterson" and RGD. Respondent Patterson
5 memorialized these interests in a "Certificate of Contract" he drafted, executed and provided to each
6 investor as an "Addendum" to that Joseph Patterson agreement. Respondent Patterson sold these
7 Certificates of Contract to three investors he recruited for a total of \$80,000 including \$25,000 in
8 personal property accepted in lieu of cash from one such investor. That same month, Respondent
9 Patterson also was paid at least \$5,000 by RGD from the last \$31,100 promotional payment provided to
10 its principals by Smith.

11 17. The halt in monthly payments from Smith after July 1997 caused a shortage of funds
12 for RGD to make payments. In the second half of August, Patterson solicited an investor for a \$10,000
13 loan to RGD repayable in one week with \$500 in interest. The loan principal was paid to Patterson, who
14 in turn transferred the funds to RGD. Before the end of August, Guess solicited another investor for a
15 \$25,000 "bridge" loan repayable in thirty days with \$12,500 interest. This loan principal was paid
16 directly to RGD. Both loans constituted the sale of notes. Guess later rolled over the \$25,000 loan
17 principal into a new investment in the RGD program.

18 18. By the end of October 1997, Sherriffs was breaking away from the other RGD
19 principals. Nevertheless, he induced an existing RGD investor couple to transfer another \$150,000 to
20 RGD in early November for investment purposes. Within ten days and without the prior knowledge or
21 consent of the investor couple, Sherriffs removed these and other investors' funds from an RGD bank
22 account to an unrelated bank account under his control named Strategy Business Trust. He then told
23 the couple he was renaming RGD and would put their \$150,000 in the Utah-based World Trading
24 Alliance ("WTA") program instead of the Bally program because the couple would earn six per cent
25 monthly profits instead of five. Like the Bally program, the WTA "High Yield Finance Program"
26 promised at least a five per cent monthly profit return from the Europe-based trading of discounted debt

1 instruments issued by "world class financial institutions." Investment in this program would be
2 guaranteed to 108% of principal by a top ten "World Class Bank." Sherriffs claimed he held the
3 couple's \$150,000 in a special bank account until the WTA program could accept it and promised the
4 couple their investment would earn the five per cent return during this holding period. In early May
5 1998 WTA notified the couple that its program was initiating active trading and that disbursement of
6 principal and profits would begin in about seventy days. Between November 1997 and early March
7 1998, Sherriffs misused more than half of this couple's \$150,000 for his personal and other business
8 expenses as well as payment of \$10,000 to the couple as purported interest earned on their principal. On
9 March 5, 1998 he transferred their remaining \$70,000 to WTA without disclosing to the couple the
10 amount of this transfer or his misuse of the remainder of their principal. In early September 1998 WTA
11 returned the \$70,000 to Sherriffs who then released it back to the investor couple after their repeated
12 demands for the full repayment of their \$150,000.

13 19. From at least November 1997, Guess used PFM instead of RGD to continue to offer and
14 sell a similar Joint Venture Investment Management Program within or from Arizona. Under its
15 agreements with new investors, PFM received their funds for safekeeping until transfer into a trading
16 bank where the initial principal would be guaranteed to 106% by a top fifty West European Bank. New
17 investors were variously promised profits of from five up to fifteen percent each four-to-six week
18 "trading cycle," with ten or twelve cycles per year. PFM was to receive profits earned in excess of the
19 investor share. Instead of safekeeping the investor funds PFM received, Guess misused them for his
20 personal expenses and for purported profit distributions to PFM as well as former RGD investors.
21 Doing business as PFM, Guess also induced an RGD investor to loan \$50,000 to PFM for the exclusive
22 use of a third party for ninety days with a promise of \$25,000 interest. This loan constituted the sale of a
23 note. However, Guess only paid \$25,000 of the loan proceeds to the third party and misused the
24 remainder for personal expenses.

25 20. At least \$565,000 was raised through RDG from seven individuals or couples who have
26 since lost over \$236,500. At least \$150,000 was raised through PFM by Guess from five individuals

1 who have lost about \$138,000.

2 IV.

3 VIOLATION OF A.R.S. § 44-1841

4 (Offer and Sale of Unregistered / Unauthorized Securities)

5 21. Each of the preceding paragraphs is incorporated by reference.

6 22. From about February 1997 or thereafter, Guess, PFM, Sherriffs, RGD, Patterson, Smith
7 and Bally offered and/or sold securities, within and/or from Arizona, in the form of investment
8 contracts and certificates of participation in a profit-sharing agreement. From August 1997 or thereafter,
9 Guess, PFM, RGD and Patterson also offered and/or sold securities in the form of notes, within and/or
10 from Arizona.

11 23. The securities referred to above were not registered under A.R.S. §§ 44-1871 through
12 44-1875, or 44-1891 through 44-1902; were not securities for which a notice filing has been made
13 under A.R.S. § 44-3321; were not exempt under A.R.S. §§ 44-1843 or 44-1843.01; were not offered or
14 sold in exempt transactions under A.R.S. § 44-1844; and were not exempt under any rule or order
15 promulgated by the Commission.

16 24. This conduct violated A.R.S. § 44-1841.

17 V.

18 VIOLATION OF A.R.S. § 44-1842

19 (Transactions by Unregistered Dealers and Salesmen)

20 25. Each of the preceding paragraphs is incorporated by reference.

21 26. In connection with the offers to sell and the sale of securities, Guess, PFM, Sherriffs,
22 RGD, Patterson, Smith and Bally acted as dealers and/or salesmen within and/or from Arizona,
23 although not registered pursuant to the provisions of Article 9 of the Securities Act.

24 27. This conduct violated A.R.S. § 44-1842.

25 ...

26 ...

VI.

VIOLATION OF A.R.S. § 44-1991

(Fraud in Connection with the Offer and Sale of Securities)

28. Each of the preceding paragraphs is incorporated by reference.

29. In connection with their offers and sales of securities within and/or from Arizona, all Respondents directly or indirectly made untrue statements of material fact or omitted to state material facts which were necessary in order to make the statements made not misleading in light of the circumstances under which they were made, within the meaning of A.R.S. § 44-1991, including but not limited to the following:

a) all Respondents made the untrue statement that there was a European trading market for discounted debt instruments from major banks that generated very high profits with no risk to the investor, while in fact no such market exists;

b) all Respondents made the untrue statement that investor funds would be held in escrow for safekeeping until transfer to the trading bank, while in fact funds were misused for other purposes;

c) all Respondents made the untrue statement that the investment principal would be protected by a bank guarantee, while in fact no such guarantee could be obtained for funds invested in the RGD or Bally trading program;

d) Guess made the untrue statement that payments to investors were from trading program profits, while in fact such payments were from misused investment proceeds;

e) Guess made the untrue statement that investment funds received from an investor's qualified Individual Retirement Account ("IRA") would be handled to retain the tax-deferred status, while in fact the funds were not transferred to a qualified IRA custodian;

f) Guess, PFM, Sherriffs, RGD, Patterson and Smith failed to disclose their misuse of investor funds for personal expenditures;

g) Guess, PFM, Sherriffs, RGD, Patterson and Smith failed to disclose their misuse of

1 investor funds for payments to investors;

2 h) all Respondents failed to disclose the business experience and background of Smith,
3 Guess, Sherriffs and Davis;

4 i) all Respondents failed to disclose financial statements reflecting the financial condition
5 of RGD, PFM and Bally.

6 30. In connection with their offers and sales of securities within and/or from Arizona,
7 certain Respondents directly or indirectly engaged in transactions, practices or courses of business
8 which operated or would operate as a fraud or deceit upon offerees and investors within the meaning of
9 A.R.S. § 44-1991, including but not limited to the following:

10 a) Guess, PFM, Sherriffs, RGD, Patterson and Smith misused investor proceeds for
11 personal and other unauthorized uses;

12 b) Guess, PFM, Sherriffs, RGD, Davis, Patterson and Smith misused investor proceeds to
13 make Ponzi-type payments to investors that were falsely represented as trading profits.

14 31. The above conduct violated A.R.S. § 44-1991.

15 32. During the above violations of A.R.S. § 44-1991, Smith directly or indirectly controlled
16 Bally within the meaning of A.R.S. § 44-1999. Therefore, Smith is jointly and severally liable to the
17 same extent as Bally for its violations of A.R.S. § 44-1991.

18 33. During the above violations of A.R.S. § 44-1991, Guess, Sherriffs and Davis directly or
19 indirectly controlled RGD within the meaning of A.R.S. § 44-1999. Therefore, Guess, Sherriffs and
20 Davis are jointly and severally liable to the same extent as RGD for its violations of A.R.S. § 44-1991.

21 34. During the above violations of A.R.S. § 44-1991, Guess and Davis directly or indirectly
22 controlled RGD Enterprises within the meaning of A.R.S. § 44-1999. Therefore, Guess and Davis are
23 jointly and severally liable to the same extent as RGD Enterprises for its violations of A.R.S. § 44-
24 1991.

25 ...

26 ...

VII.

VIOLATION OF A.R.S. § 44-3151

**(Transactions by Unlicensed Investment Advisers
or Investment Adviser Representatives)**

35. Each of the preceding paragraphs is incorporated by reference.

36. From about May 1997, Sherriffs conducted business in Arizona as an investment adviser and/or investment adviser representative, although neither licensed nor in compliance with the notice provisions of Article 4 of the IM Act.

37. This conduct violated A.R.S. § 44-3151.

VIII.

VIOLATION OF A.R.S. § 44-3241

(Fraud in the Provision of Investment Advisory Services)

38. Each of the preceding paragraphs is incorporated by reference.

39. In connection with a transaction or transactions within and/or from Arizona involving the provision of investment advisory services, Sherriffs directly or indirectly made untrue statements of material fact or omitted to state material facts which were necessary in order to make the statements made not misleading in light of the circumstances under which they were made, within the meaning of A.R.S. § 44-3241, including but not limited to the following:

a) made the untrue statement that there was a European trading market for discounted debt instruments from major banks that generated very high profits with no risk to the investor, while in fact no such market exists;

b) made the untrue statement that RGD investor funds would be held in escrow for safekeeping until transfer to a trading bank, while in fact such funds were misused for other purposes;

c) made the untrue statement to an investor couple that he retained custody in his Strategy Business Trust account of \$150,000 they invested with RGD, while in fact his misused more than half of these funds for his personal and other business expenses as well as payments to the couple of

1 purported interest earned on their principal;

2 d) failed to disclose to RGD investors that he was receiving compensation from Smith and
3 RGD for his participation in the formation and operation of RGD;

4 40. In connection with a transaction or transactions within and/or from Arizona involving
5 the provision of investment advisory services, Sherriffs directly or indirectly engaged in transactions,
6 practices or courses of business which operated or would operate as a fraud or deceit within the
7 meaning of A.R.S. § 44-3241, including but not limited to the following:

8 a) steered his tax preparation clients to invest with RGD without disclosing he was an
9 RGD principal who received compensation from Smith and Bally for participating in its formation and
10 operation;

11 b) misused for his personal, business and other uses more than half of the investment funds
12 he claimed to hold in custody for an investor couple pending transfer to the WTA trading program.

13 41. The above conduct violated A.R.S. § 44-3241.

14 **IX.**

15 **REQUESTED RELIEF**

16 The Division requests that the Commission grant the following relief against each Respondent:

17 1. Order all Respondents to permanently cease and desist from violating the Securities Act
18 and Sherriffs from violating the IM Act, pursuant to A.R.S. §§ 44-2032 and 44-3292;

19 2. Order all Respondents to take affirmative action to correct the conditions resulting from
20 their acts, practices or transactions, including without limitation a requirement to make restitution
21 pursuant to, *inter alia*, A.R.S. §§ 44-2032 and 44-3292;

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

24 4. Order Sherriffs to pay the state of Arizona an administrative penalty of up to one
25 thousand dollars (\$1,000) for each violation of the IM Act, pursuant to A.R.S. § 44-3296;

26 5. Order any other relief that the Commission deems appropriate and authorized by law.

X.

HEARING OPPORTUNITY

In accordance with A.R.S. §§ 44-1972 and 44-3212 and A.A.C. R14-4-306, Respondents are notified that each Respondent is afforded an opportunity for a hearing only by filing a written request for a hearing and cover sheet with Docket Control, Arizona Corporation Commission, 1200 West Washington Street, Phoenix, Arizona 85007, within 10 days after service of this Notice. Respondents are further notified that a cover sheet must accompany all filings. Failure to use the cover sheet may result in the delay of processing or the refusal to accept documents. Respondents may obtain a copy of the cover sheet by calling Docket Control at (602) 542-3477.

The date set for the hearing shall be within 15 to 30 days after the request for the hearing has been docketed, unless otherwise provided by law, stipulated by the parties, or ordered by the Commission. Any Respondent who does not request a hearing within the time prescribed is subject to the Commission issuing an order against that Respondent containing such relief as the Commission deems appropriate, including but not limited to the relief requested above.

Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting Cynthia Mercurio-Sandoval, ADA Coordinator, voice phone number 602/542-0838, e-mail csandoval@cc.state.az.us. Requests should be made as early as possible to allow time to arrange the accommodation.

Dated this 6th day of April, 2000.



Mark Sendrow
Director of Securities

Memorandum

RECEIVED

NEW

DATE: April 6, 2000

2000 APR -6 P 2:30

TO: Nancy Cole
Docket Control

AZ CORP COMMISSION
DOCUMENT CONTROL

FROM: Mark Knops
Securities Division

RE: Joseph Michael Guess, Sr., *et al.*
Docket No. S-03280A-00-0000
Internal Routing Distribution

CC: Betty Camargo

This is to notify you that the following individuals should be copied on all docketed items for the above-mentioned case.

- Mark Sendrow
- LeRoy Johnson
- Matthew Neubert
- Amy Leeson

Mark Knops (Staff Attorney)

Wendy Coy (Staff Attorney)

Dave Adams (Staff Investigator)

Note: The Assistant Attorney General assigned to this matter is: Moira McCarthy.

Thank you for your cooperation in this matter.