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BEFORE THE ARIZONA CORPORATION COMMISSION  
Arizona Corporation Commission

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2000 SEP 25 P 2:23

CARL J. KUNASEK

Chairman

JIM IRVIN

Commissioner

WILLIAM A. MUNDSELL

Commissioner

SEP 25 2000

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Jr

AZ CORP COMMISSION  
DOCUMENT CONTROL

In the matter of

DOCKET NO. S-03280A-98-0000

JOSEPH MICHAEL GUESS, SR.

2911 E. Calavar Road

Phoenix, Arizona 85032

MOTION TO ADMIT INTO  
EVIDENCE TWO POST-HEARING  
EXHIBITS

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 30<sup>TH</sup> Street

Phoenix, Arizona 85016

RGD

4330 North 30<sup>TH</sup> Street

Phoenix, Arizona 85016

RGD ENTERPRISES, INC.

4330 North 30<sup>TH</sup> Street

Phoenix, Arizona 85016

IRA JOE PATTERSON

4330 North 30<sup>th</sup> 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.

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1 The Securities Division ("Division") of the Arizona Corporation Commission  
2 ("Commission") hereby moves to admit into evidence in the above-captioned proceeding proposed  
3 exhibits S-139a and S-139b, which are attached hereto and respectively marked as original  
4 exhibits. Pursuant to A.A.C. R14-3-109(Q), the grounds for this motion are as follows:

5  
6 **I.  
BACKGROUND**

7 On September 14, 2000, Special Agent James H. Kight of the Alabama Securities  
8 Commission left with attorney Christopher B. Parkerson ("Parkerson") in Birmingham, Alabama  
9 two copies of the Notice of Opportunity for Hearing Regarding Proposed Order for Relief  
10 ("Notice") that was issued to commence this matter on April 6, 2000. One copy was for Randall  
11 Wayne Smith, Jr. ("Smith") and the other for Bally Overseas Trading Inc. ("Bally"), both  
12 respondents in this matter. Since August 10, 2000, Smith has been the sole defendant of a federal  
13 criminal prosecution in the U.S. District Court for the Northern District of Alabama, in which he is  
14 represented by Parkerson. *Hearing Exhibits ("Exhs.") S-138a, S-138b, S-138c, R-1*. Special Agent  
15 Kight executed an affidavit of service that was docketed in this Commission matter on September  
16 21, 2000, a copy of which is attached hereto as proposed hearing exhibit S-139b. On September  
17 18, 2000, Requests for Hearing on behalf of Smith and of Bally were docketed in this matter, both  
18 executed by Parkerson. The Division docketed a Response to these Requests on September 22,  
19 2000, with attached exhibits which included the Kight affidavit as well as an Affidavit of Service  
20 on Smith that was docketed June 5, 2000 and is attached hereto as proposed hearing exhibit S-  
21 139a. The Division Response discussed both of these proposed hearing exhibits. Parkerson has not  
22 yet docketed with the Commission any notice of appearance on behalf of Smith or Bally.

23 **II.  
ARGUMENT**

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25 This motion is a companion to the Division Response to the Requests docketed on behalf  
26 of Smith and Bally. The Response raised issues of fact and law as to when these respondents were

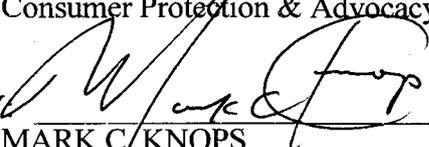
1 actually served in this matter. Insofar as these issues may be contested now or later, the two  
 2 exhibits proposed by the Division contain evidence relevant to facts that are of consequence to the  
 3 determination of this matter before the Commission. Although both proposed exhibits have already  
 4 been docketed, A.A.C. R14-3-109(Z) provides that they shall not be considered unless offered and  
 5 accepted in evidence. Since the Requests were not docketed by these respondents until after the  
 6 close of hearing, it is reasonable and appropriate for these proposed exhibits to be now admitted  
 7 into evidence in order to supplement the hearing record. Furthermore, A.A.C. R14-3-109(G)  
 8 permits the Hearing Officer to consent to the introduction of further evidence even after a party  
 9 "has rested his case."

10 **III.**  
 11 **CONCLUSION**

12 For the foregoing reasons, the Division now moves to admit proposed Exhibits S-139a and  
 13 S-139b. The Division further requests the Hearing Officer to issue a procedural order ruling on this  
 14 motion as soon as may be before the deadline for filing of post-hearing memorandums in this  
 15 matter, in order to permit citation to these proposed exhibits in such memoranda if they be  
 16 admitted.

17  
 18 RESPECTFULLY SUBMITTED this 25<sup>TH</sup> day of September, 2000.

19  
 20 JANET NAPOLITANO  
 Attorney General  
 Consumer Protection & Advocacy Section

21  
 22 BY 

23 MARK C. KNOPS  
 Special Assistant Attorney General  
 24 MOIRA McCARTHY  
 Assistant Attorney General  
 25 Attorneys for the Securities Division  
 Arizona Corporation Commission  
 26

1 ORIGINAL AND TEN (10) COPIES of the foregoing  
filed this 25<sup>th</sup> day of September, 2000, with:

2  
3 Docket Control  
4 Arizona Corporation Commission  
1200 West Washington  
Phoenix, AZ 85007

5 COPY of the foregoing mailed this  
6 25<sup>th</sup> day of September, 2000 to:

7 Joseph Michael Guess, Sr.  
2911 E. Calavar Rd.  
Phoenix, AZ 85032  
8 RESPONDENT PRO SE

9 Peter Strojnik, Esq.  
P. O. Box 34563  
10 Phoenix, AZ 85067  
ATTORNEY FOR JAMES DOUGLAS SHERRIFFS

11 Dale L. States, Esq.  
12 6724 N. 43<sup>rd</sup> Ave.  
Glendale, AZ 85301  
13 ATTORNEY FOR RICHARD G. DAVIS

14 Ira Joe Patterson  
4330 No. 30<sup>th</sup> St.  
15 Phoenix, AZ 85016  
RESPONDENT PRO SE

16 Randall Wayne Smith, Jr.  
17 1905 Springlake Court  
Birmingham, AL 35215  
18 RESPONDENT PRO SE

19 Bally Overseas Trading Inc.  
20 1905 Springlake Court  
Birmingham, AL 35215  
RESPONDENT PRO SE

21 Christopher B. Parkerson, Esq.  
22 Johnson & Mobley  
2101 Fourth Avenue South, Ste. 200  
23 Birmingham, AL 35233

24 By: Karen Houle

25

26

1 STATE OF ARIZONA )

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2 County of Maricopa )

AFFIDAVIT OF SERVICE  
2000 JUN -5 P 2:22

EXHIBIT  
S-139a

AZ CORP COMMISSION  
DOCUMENT CONTROL

3  
4 I, Ron McKelvie, for the Securities Division of the Arizona Corporation Commission, hereby  
5 certify that I am not less than 18 years of age, and that on the 2<sup>nd</sup> day of June, 2000 at  
6 approximately 4:45 P. M., I served a copy of a Notice of Opportunity for Hearing Regarding  
7 Proposed Order for Relief in the matter of the Arizona Corporation Commission Docket No. S-  
8 03280A-00-0000, upon Randall Wayne Smith, Jr., care of Bally Overseas Trading, Inc., AMS  
9 Trustees Limited, Registered Agent, by: mailing a copy of the notice in an envelope to the last  
10 known business address at Sea Meadow House, P.O. Box 116, Road Town, Tortola, British  
11 Virgin Islands, via International Registered Mail #R-066-238-060, return receipt requested.

12  
13  
14 *Ron McKelvie*  
AFFIANT (Signature)

50 JUN 5 2000  
DATE

15  
16  
17 SUBSCRIBED AND SWORN TO BEFORE me this 5th day of June,  
18 2000.

19 *Margaret D. Pollard*  
20 NOTARY PUBLIC (Signature)

21 My Commission Expires:



22 Notary Public State of Arizona  
23 Maricopa County  
Margaret D Pollard  
Expires February 17 2004



ENFORCEMENT DIVISION

JOSEPH P. BORG  
Director

SUSAN B. ANDERSON  
Deputy Director/General Counsel

# ALABAMA SECURITIES COMMISSION

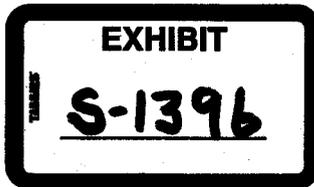
770 WASHINGTON AVE, SUITE 570  
MONTGOMERY, ALABAMA 36130-4700  
TELEPHONE (334) 242-2984  
1-800-222-1253  
FAX (334) 242-0240  
E-MAIL alseccom@dsmd.dsmd.state.al.us

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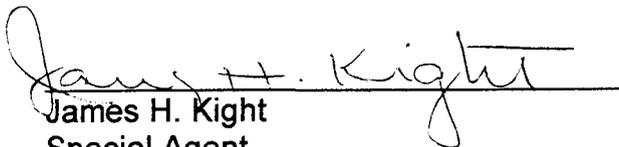
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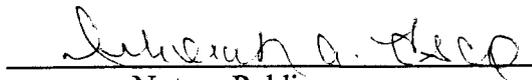
## AFFIDAVIT

I, Special Agent James H. Kight, did, on September 14, 2000, deliver the Notice of Opportunity for Hearing Regarding Proposed Order for Relief, Docket No. S-03280A-00-0000, to Christopher B. Parkerson, attorney for Randall Wayne Smith, Jr., at 2101 4<sup>th</sup> Avenue South, Birmingham, Alabama.

This I witness by my hand on this the 14th day of September, 2000.

  
James H. Kight  
Special Agent

Sworn to and Subscribed Before me  
this the 18th day of September,  
2000.

  
Notary Public