



0000116244

OPEN MEETING ITEM

GINAL



JIM IRVIN
COMMISSIONER

MARC SPITZER
COMMISSIONER

ARIZONA CORPORATION COMMISSION

RECEIVED
BRIAN C. McNEIL
EXECUTIVE SECRETARY
MARK SENDROW
DIRECTOR

45 ✓
415
S-2

2001 JAN 31 10:30 AM
SECURITIES DIVISION
1300 West Washington, Third Floor
Phoenix, AZ 85007-2996
TELEPHONE: (602) 542-4242
FAX: (602) 594-7470
AZCORP@cc.state.az.us

AZ CORPORATION
DOCUMENT CONTROL

MEMORANDUM

TO: Chairman William A. Mundell
Commissioner Jim Irvin
Commissioner Marc Spitzer

Arizona Corporation Commission

DOCKETED

JAN 31 2001

FROM: Mark Sendrow *MS*
Director of Securities

DOCKETED BY *MS*

DATE: January 31, 2001

RE: Respondents Progressive Financial Management, RGD, RGD Enterprises, Inc.
and Bally Overseas Trading, Inc. (Joseph Michael Guess, Sr. *et al.*, S-03280A-00-0000)

CC: Brian C. McNeil, Executive Secretary

Attached is a proposed default Order to Cease and Desist, Order of Restitution and Order for Administrative Penalties against respondents Progressive Financial Management ("PFM"), RGD, RGD Enterprises, Inc. ("RGD Enterprises") and Bally Overseas Trading, Inc. ("Bally") in the above-referenced administrative proceedings. These entity respondents were originally named together with five individuals in a Notice of Opportunity for Hearing Regarding Proposed Order for Relief ("Notice") issued on April 6, 2000 and thereafter duly served. Despite the advisory in that Notice of their right to a hearing, none of these entity respondents timely requested a hearing or entered an appearance at the hearing held for four of the individual respondents in this matter on July 25-27 and August 31, 2000. On July 24, 2000 the Securities Division ("Division") docketed and thereafter served by mail on all respondents its Notice of Intent to Apply for Default Order Against Respondents Progressive Financial Management, RGD, RGD Enterprises, Inc. and Bally Overseas Trading, Inc. No response or opposition to such default was thereafter docketed in this matter or raised during the hearing sessions.

Two weeks after the close of hearing, a Request for Hearing by an Alabama attorney on behalf of Bally was docketed on September 14, 2000 and thereafter opposed for untimeliness by the Division in its response docketed on September 22, 2000. The Hearing Division issued a Sixth Procedural Order on September 26, 2000 denying the Bally request for untimeliness. No final orders have previously been proposed to the Commission or issued against any respondent in this matter.

The four entity respondents addressed by this proposed order failed to contest the Notice allegations of securities law violations summarized as follows. From at least February 1997, RGD and Bally conducted business within and from Arizona by offering and selling unregistered and nonexempt securities in the form of investment contracts and certificates of participation in a profit-sharing agreement, all purporting to earn investor profits from a bank debenture trading program. RGD also offered and sold unregistered and nonexempt securities in the form of notes. From at least November 1997, PFM conducted business within and from Arizona by offering and selling the same types of unregistered and nonexempt securities. None of these entity respondents were registered as a securities salesman or dealer. In connection with the offer and sale of such securities, PFM, RGD, RGD Enterprises and Bally made untrue statements and misleading omissions of material facts, while PFM and RGD engaged in transactions, practices or courses of business which operated or would operate as a fraud or deceit on offerees and investors.

The Commission may now enter a default order against these four respondents. The proposed order requires these respondents to permanently cease and desist from any violation of the Securities Act of Arizona and to pay restitution and administrative penalties. The restitution and penalty amounts are based on uncontested evidence of investor losses admitted at the administrative hearing in this matter. The proposed penalty amounts are substantially less than the maximum amount assessable against each entity respondent, but are sufficient for deterrence purposes.

WMS: mck

Originator: Mark C. Knops
Assistant Attorney General Assigned: Moira McCarthy

1 On April 6, 2000, the Securities Division ("Division") of the Arizona Corporation Commission
2 ("Commission") issued a Notice of Opportunity for Hearing Regarding Proposed Order for Relief
3 ("Notice") in this matter against the above-captioned respondents. On April 13, 2000, Progressive
4 Financial Management ("PFM") was duly served with the Notice through its agent Joseph Michael
5 Guess, Sr. ("Guess") and RGD Enterprises, Inc. ("RGD Enterprises") was served through its agents
6 Guess and Richard Gordon Davis ("Davis"). RGD was also served that day through its agents Guess
7 and Davis and again on June 21, 2000 through its agent James Douglas Sherriffs ("Sherriffs"). Bally
8 Overseas Trading, Inc. ("Bally") was thereafter served with the Notice on June 28, 2000 through its
9 agent AMS Trustees Limited. The Notice included an advisory that any respondent would be afforded a
10 hearing who filed a written request with the Commission within ten days after service. Respondents
11 PFM, RGD Enterprises, RGD and Bally failed to timely request a hearing following the above service.

12 An administrative hearing was conducted in this matter on July 25-27 and August 31, 2000.
13 Respondents PFM, RGD, RGD Enterprises and Bally entered no appearance during this hearing. On
14 September 14, 2000, a Birmingham, Alabama attorney representing respondent Randall Wayne Smith,
15 Jr. ("Smith"), acting on behalf of Smith, also accepted service of the Notice on Bally. The attorney
16 thereafter executed and caused to be docketed with the Commission on September 18, 2000 a Request
17 for Hearing on behalf of Bally. The Division docketed a response on September 22, 2000 opposing the
18 latter request on grounds of untimeliness. On September 26, 2000, the Hearing Division issued a
19 Procedural Order denying the Bally request for untimeliness.

20 I.

21 FINDINGS OF FACT

22 1. PFM, also known as PFM/ J. Michael Guess, is a D. B. A. (doing business as) name for
23 a sole proprietorship that conducted business within or from Arizona. At relevant times, PFM was
24 represented as Manager and Managing Partner of a Joint Venture Investment Management Program.
25 The last known PFM address is 2911 E. Calavar Road, Phoenix, Arizona 85032.

26 2. RGD, also known as R.G.D., was represented as a "Joint Venture" and operated under

1 the auspices of respondent RGD Enterprises. The last known RGD business address is 4330 North 30th
2 Street, Phoenix, Arizona 85016. At relevant times, RGD was used to operate the Joint Venture
3 Investment Management Program, also known as the Joint Venture Private Placement Asset
4 Management Program, in Arizona in conjunction with Bally and other respondents.

5 3. RGD Enterprises is an Arizona corporation whose last known business address is 4330
6 North 30th Street, Phoenix, Arizona 85016.

7 4. Bally is a British Virgin Islands company with a "communications office" at 1905
8 Springlake Court, Birmingham, Alabama 35215. As Joint Venture Managing Partner, Bally operated a
9 Joint Venture Investment Management Program, also known as the Joint Venture Private Placement
10 Asset Management Program, in Arizona in conjunction with PFM, RGD, RGD Enterprises and other
11 respondents.

12 5. From at least February 1997, Bally and other respondents offered and sold to the general
13 public within Arizona financial interests in Joint Venture Investment Management Programs, also
14 known variously as Joint Venture Private Placement Asset Management Programs and/or Private
15 Placement Investment Trading Programs and/or Asset Enhancement Programs and/or Asset
16 Enhancement Trading Programs and/or Capital Management Programs and/or High Yield Investment
17 Programs.

18 6. According to program offering documents and related oral representations, offerees
19 could invest money for a period of time as Limited Venture Partners and their funds pooled for
20 safekeeping in an escrow account with those of other investors at Regions Bank in Birmingham,
21 Alabama, until transferred to a trading bank for exclusive use in the trading of discounted debt
22 instruments issued by major world banks.

23 7. Bally and its control person offered successive programs with total initial investment
24 principals of from one million to ten million dollars with 108% of each program principal guaranteed
25 by a top fifty West European Bank.

26 8. Programs offered weekly or later monthly returns of trading profits varying respectively

1 from 12% weekly to 12% or even 18% monthly. Bally would retain a 10% share of such investor
2 profits as a fee for administration.

3 9. Investors would execute a Specific Power of Attorney to a Bally control person to
4 manage their program investment account as a fiduciary.

5 10. On behalf of Bally, that control person would execute Joint Venture Investment
6 Management Program Agreements or Joint Venture Private Placement Asset Management Agreements
7 with investors, along with Escrow Agreements and Joint Venture Profit Share Agreements.

8 11. From at least March 1997, various respondents formed RGD as a "Joint Venture" under
9 the auspices of RGD Enterprises to offer and sell within and from Arizona the above investment
10 program operated by Bally and its control person. The RGD manager was lead salesman. RGD used the
11 RGD Enterprises corporate mantle for tax reporting and other purposes.

12 12. RGD entered into agreements with investors that tracked the terms of those used by
13 Bally, except that RGD reduced the monthly profit returnable to most of its investors to 4.5% or 5%,
14 with only one later investor receiving 10%.

15 13. These RGD investor agreements in turn provided for RGD to retain any profits
16 exceeding these investor returns as its fee for administration.

17 14. Funds from RGD investors were pooled in an RGD escrow bank account in Arizona for
18 safekeeping until transfer to the trading company or trading bank. While so aggregating RGD investor
19 funds, RGD then entered into agreements with Bally to invest these funds at the higher 12% weekly or
20 18% monthly return on principal offered by the latter.

21 15. RGD would thereby retain as its profit share the spread between the returns it offered to
22 its investors and the returns it received from Bally. RGD investors would execute a Specific Power of
23 Attorney to the RGD manager to manage their program investment account as a fiduciary.

24 16. Besides the anticipated profit sharing described above, the RGD principals were also
25 paid directly by a Bally control person to promote their recruitment of investors. In each of the months
26 of April, May, June and July 1997, this Bally control person sent them about \$31,100 to divide among

1 themselves and others. These payments ceased after July 1997. Out of the \$124,400 total thus provided,
2 three RGD principals each took over \$20,000. A portion of these promotional funds were also paid to
3 some investors as purported profits earned from their investments. Some of these funds were also used
4 to pay for expenses incurred in organizing and operating RGD.

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

12 18. From at least November 1997, PFM was operated instead of RGD to continue the offer
13 and sale of similar Joint Venture Investment Management Program within or from Arizona.

14 19. Under its agreements with new investors, PFM received their funds for safekeeping until
15 transfer into a trading bank where the initial principal would be guaranteed to 106% by a top fifty West
16 European Bank.

17 20. New investors were variously promised profits of from five up to fifteen percent each
18 four-to-six week "trading cycle," with ten or twelve cycles per year. PFM was to receive profits earned
19 in excess of the investor share.

20 21. Instead of safekeeping the investor funds, PFM and another respondent misused them
21 for his personal expenses and for purported profit distributions to PFM as well as former RGD
22 investors.

23 22. PFM was also used to induce an RGD investor to loan \$50,000 to PFM for the exclusive
24 use of a third party for ninety days with a promise of \$25,000 interest. This loan constituted the sale of a
25 note. However, only \$25,000 of the loan proceeds were paid to the third party and the remainder
26 misused for personal expenses.

1 23. During the administrative hearing in the matter, a schedule of investors, investments and
2 investor losses pertaining to PFM and RGD was admitted into evidence on August 31, 2000 as Exhibit
3 S-133. According to this uncontested hearing exhibit, at least \$598,500 was invested through RGD in at
4 least 15 transactions by eight individuals or couples who have since lost over \$232,075 of that total. At
5 least \$225,000 was invested through PFM in seven transactions by six individuals who have since lost
6 \$182,250 of that amount.

7 24. From about February 1997 or thereafter, PFM, RGD and Bally offered and sold
8 securities within or from Arizona in the form of investment contracts and certificates of participation in
9 a profit-sharing agreement.

10 25. From August 1997 or thereafter, PFM and RGD offered and sold securities within or
11 from Arizona in the form of notes.

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

17 27. In connection with their offers to sell and their sale of securities, PFM, RGD, and Bally
18 acted as dealers or salesmen within or from Arizona, although not registered pursuant to the provisions
19 of Article 9 of the Securities Act of Arizona ("Securities Act"), A.R.S. § 44-1801 *et seq.*

20 28. In connection with the offers and sales of securities within or from Arizona, PFM, RGD,
21 RGD Enterprises and Bally directly or indirectly made untrue statements of material fact or omitted to
22 state material facts which were necessary in order to make the statements made not misleading in light
23 of the circumstances under which they were made, as follows:

24 A. Stated there was a European trading market for discounted debt instruments from major
25 banks that generated very high profits with no risk to the investor, while in fact no such market exists.

26 B. Stated that investor funds would be held in escrow for safekeeping until transfer to the

1 trading bank, while in fact funds were misused for other purposes.

2 C. Stated the investment principal would be protected by a bank guarantee, while in fact no
3 such guarantee could be obtained for funds invested in the RGD or Bally trading program.

4 D. Failed to disclose the business experience and background of respondents Smith, Guess,
5 Sherriffs and Davis.

6 E. Failed to disclose financial statements reflecting the financial condition of RGD, PFM
7 and Bally.

8 F. PFM and RGD failed to disclose their misuse of investor funds for personal
9 expenditures.

10 G. PFM and RGD failed to disclose their misuse of investor funds for payments to
11 investors.

12 29. In connection with the offers and sales of securities within or from Arizona, PFM and
13 RGD directly or indirectly engaged in transactions, practices or courses of business which operated or
14 would operate as a fraud or deceit upon offerees and investors, as follows:

15 A. PFM and RGD misused investor proceeds for personal and other unauthorized uses.

16 B. PFM and RGD misused investor proceeds to make Ponzi-type payments to investors
17 that were falsely represented as trading profits.

18 **II.**

19 **CONCLUSIONS OF LAW**

20 1. The Commission has jurisdiction over these matters pursuant to Article XV of the
21 Arizona Constitution and the Securities Act.

22 2. PFM, RGD and Bally offered or sold securities within or from Arizona, within the
23 meaning of A.R.S. §§ 44-1801(15), 44-1801(21), and 44-1801(26).

24 3. PFM, RGD and Bally violated A.R.S. § 44-1841 by offering or selling securities that
25 were neither registered nor exempt from registration.

26 4. PFM, RGD and Bally violated A.R.S. § 44-1842 by offering or selling securities while

1 neither registered as a dealer or salesman nor exempt from registration.

2 5. PFM, RGD, RGD Enterprises and Bally violated A.R.S. § 44-1991 by making untrue
3 statements or misleading omissions of material facts.

4 6. PFM and RGD violated A.R.S. § 44-1991 by engaging in transactions, practices or
5 courses of business which operate or would operate as a fraud or deceit.

6 **III.**

7 **ORDER**

8 THEREFORE, on the basis of the Findings of Fact and Conclusions of Law, the Commission
9 finds that the following relief is appropriate, in the public interest, and necessary for the protection of
10 investors:

11 IT IS ORDERED, pursuant to A.R.S. § 44-2032, that PFM, RGD, RGD Enterprises and Bally,
12 and any agents, employees, successors and assigns of each of these respondents, permanently cease and
13 desist from violating the Securities Act.

14 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032, that PFM shall pay restitution to its
15 investors as shown on the records of the Commission in the amount of \$182,250, plus interest at the rate
16 of 10% per annum from the date of each investment until paid in full. PFM shall pay restitution jointly
17 and severally with any other respondent in this matter who may be separately ordered by the Commission
18 to pay restitution to PFM investors.

19 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032, that RGD, RGD Enterprises and
20 Bally shall, jointly and severally, pay restitution to RGD investors shown on the records of the
21 Commission in the amount of \$232,075, plus interest at the rate of 10% per annum from the date of each
22 investment until paid in full. RGD, RGD Enterprises and Bally shall pay restitution jointly and severally
23 with any other respondent in this matter who may be separately ordered by the Commission to pay
24 restitution to RGD investors.

25 IT IS FURTHER ORDERED that payment of restitution shall be made by cashier's check or
26 money order payable to the "State of Arizona" to be placed in an interest-bearing account maintained and

1 controlled by the Arizona Attorney General. The Arizona Attorney General shall disburse the funds on a
2 pro rata basis to investors. Any funds that the Attorney General is unable to disburse shall revert to the
3 state of Arizona.

4 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that PFM, RGD, RGD Enterprises
5 and Bally shall each pay an administrative penalty in the following amounts: PFM shall pay \$100,000;
6 RGD shall pay \$100,000; RGD Enterprises shall pay \$50,000; Bally shall pay \$100,000. Payment shall
7 be made in full by cashier's check or money order payable to the "State of Arizona."

8 IT IS FURTHER ORDERED that this Order shall become effective immediately.

9 **BY ORDER OF THE ARIZONA CORPORATION COMMISSION**

10
11
12 CHAIRMAN

COMMISSIONER

COMMISSIONER

13
14 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
15 Secretary of the Arizona Corporation Commission, have
16 hereunto set my hand and caused the official seal of the
17 Commission to be affixed at the Capitol, in the City of
18 Phoenix, this _____ day of _____, 2001.

19 _____
20 BRIAN C. McNEIL
21 Executive Secretary

22 _____
23 DISSENT

24 This document is available in alternative formats by contacting Shelly M. Hood, ADA Coordinator,
25 voice phone number 602-542-3931, E-mail shood@cc.state.az.us.

26 mck

DECISION NO. _____