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COMMISSIONER

OPEN MEETING ITEM



22 ORIGINAL

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EXECUTIVE SECRETARY

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ARIZONA CORPORATION COMMISSION

AZ CORP COMMISSION  
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DATE: June 13, 2001  
DOCKET NO: S-03280A-00-0000

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Marc E. Stern. The recommendation has been filed in the form of an Opinion and Order on:

PROGRESSIVE FINANCIAL MANAGEMENT, ET AL.  
(NOTICE OF OPPORTUNITY)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

JUNE 23, 2001

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

JUNE 26 AND JUNE 27, 2001

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250.

Arizona Corporation Commission

DOCKETED

JUN 13 2001

DOCKETED BY	
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BRIAN C. McNEIL  
EXECUTIVE SECRETARY

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**BEFORE THE ARIZONA CORPORATION COMMISSION**

WILLIAM A. MUNDELL  
CHAIRMAN  
JIM IRVIN  
COMMISSIONER  
MARC SPITZER  
COMMISSIONER

IN THE MATTER OF:

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

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.

DATES OF PRE-HEARING CONFERENCES:

DATES OF HEARING

PLACE OF HEARING:

DOCKET NO. S-03280A-00-0000

DECISION NO. \_\_\_\_\_

**OPINION AND ORDER**

May 11 and June 7, 2000

July 25, 26, 27 and August 31, 2000

Phoenix, Arizona

1 PRESIDING ADMINISTRATIVE  
2 LAW JUDGE:

Marc E. Stern

3 APPEARANCES:

Mr. Dale L. States, on behalf of  
Mr. Richard Gordon Davis;  
Mr. Joseph Michael Guess Sr.,  
inpropria persona;  
Mr. Ira Joe Patterson, in propria  
persona; and;  
Mr. Mark C. Knops, Senior Counsel,  
on behalf of the Securities Division  
of the Arizona Corporation  
Commission.

9  
10 **BY THE COMMISSION:**

11 On April 6, 2000, the Securities Division ("Division") of the Arizona Corporation  
12 Commission ("Commission") filed a Notice of Opportunity for Hearing regarding proposed  
13 Order for Relief ("Notice") against Mr. Joseph Michael Guess, Sr., Progressive Financial  
14 Management, ("PFM"), Mr. James Douglas Sherriffs, Mr. Richard Gordon Davis, RGD, RGD  
15 Enterprises, Inc. ("RGD Inc."), Mr. Ira Joe Patterson, Mr. Randall Wayne Smith, Jr., and Bally  
16 Overseas Trading, Inc. ("Bally") (collectively the "Respondents") in which the Division alleged  
17 multiple registration and fraud violations of the Arizona Securities Act ("Act") in connection  
18 with the offer and sale of securities in the form of investment contracts within or from Arizona.  
19 With respect to Respondent Davis, the Division alleged only violations of the anti-fraud  
20 provisions of the Act. Additionally, the Division also alleged that Mr. Sherriffs committed  
21 violations of the Investment Management Act of Arizona ("IMA").  
22

23 All Respondents were duly served with copies of the Notice.  
24

25 Timely requests for hearing were filed by Mr. Davis, Mr. Guess, Mr. Patterson and Mr.  
26 Sherriffs.

27 PFM, RGD and RGD, Inc. did not file requests for hearing.

28 On May 11, 2000, a pre-hearing conference was held. Respondent Davis and the

1 Division were present with counsel. Respondents Guess, Patterson and Sherriffs were not  
2 present. Respondents Guess and Patterson had also requested continuances. After a discussion  
3 of certain procedural matters, it was agreed that an additional pre-hearing conference would be  
4 scheduled.

5 On May 25, 2000, by Procedural Order, an additional pre-hearing conference was  
6 scheduled.

7 On June 7, 2000, a pre-hearing conference was held with the Division and Respondents  
8 Guess and Patterson in attendance. A discussion was conducted on scheduling the hearing when  
9 witnesses and parties could be available.

10 On June 8, 2000, by Procedural Order, the hearing on this proceeding was scheduled to  
11 commence on July 25, 2000.

12 On July 25, 2000, a full public hearing was commenced before a duly authorized  
13 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. Respondents  
14 Guess and Patterson appeared in propria persona. Mr. Sherriffs failed to appear. Mr. Davis and  
15 the Division appeared with counsel. Hearings were also conducted on July 26, July 27 and  
16 August 31, 2000. Testimony was taken from investor and expert witnesses and more than 130  
17 exhibits were admitted into evidence during the course of the proceeding. Those Respondents  
18 present during the proceeding did not testify. Following the conclusion of the hearing, the  
19 parties agreed that closing memoranda were to be filed within 30 days.

20 On September 14, 2000, the Division filed a "Motion to Admit Three Post-Hearing  
21 Exhibits" which dealt with Respondent Smith who had pled guilty to conducting a wire  
22 fraud/securities/Ponzi scheme utilizing Bally and another Smith controlled entity, Oasis Cellular  
23 ("Oasis"). The exhibits consisted of documents relating to criminal charges and a plea  
24 agreement by Mr. Smith.

25 On September 18, 2000, Respondents Smith and Bally filed a request for a hearing.

1 On September 19, 2000, the documents related to Respondent Smith's guilty plea were  
2 admitted into evidence.

3 On September 22, 2000, the Division filed a response to the request for hearing by  
4 Respondents Smith and Bally arguing that they had been filed in an untimely fashion. The  
5 Division also requested a stay of the deadline for the filing of post-hearing memoranda due to the  
6 resulting delays brought about by the preparation of its response to Mr. Smith's and Bally's  
7 untimely requests for hearing.  
8

9 On September 25, 2000, the Division filed a "Motion to Admit into Evidence Two Post-  
10 Hearing Exhibits" which established the verification of timely service of the Notice upon  
11 Respondents Smith and Bally.

12 On September 26, 2000, by Procedural Order, the request for hearing filed by  
13 Respondents Smith and Bally was denied. The parties were also granted an additional two  
14 weeks in which to file their closing memoranda, until October 16, 2000.  
15

16 On October 11, 2000, Respondent Davis filed a "Motion to Admit into Evidence Two  
17 Post-Hearing Exhibits". The exhibits consisted of two Bank One wire transfers that had been  
18 referenced in an Examination Under Oath "(EUO)" by Mr. Davis. The two transfers totaled  
19 \$30,000 that he had testified that he had wired to Client Management Services ("CMS"), an  
20 accounting service for Bally, in early 1997.

21 On October 12, 2000, the Division filed a "Motion for Extension of Time to File its Post-  
22 Hearing Memorandum" by November 6, 2000.  
23

24 On October 17, 2000, by Procedural Order, the last of the Division's and Respondent  
25 Davis' exhibits were admitted into evidence and the parties were given until November 6, 2000,  
26 in which to file their post-hearing memoranda. The matter was then taken under advisement  
27 pending submission or a recommended Opinion and Order to the Commission.  
28

\* \* \* \* \*

1 Having considered the entire record herein and being fully advised in the premises, the  
 2 Commission finds, concludes and orders that:

3 **FINDINGS OF FACT**

4 1. Mr. Guess, whose last known address is 2911 East Calavar Road, Phoenix,  
 5 Arizona 85032, was at all relevant times, the manager/sole proprietor of PFM and involved in the  
 6 Joint Venture Investment Management Program ("Program")<sup>1</sup> offered and sold through PFM,  
 7 RGD and/or RGD, Inc.<sup>2</sup>

8 2. Mr. Sherriffs, whose last known address is 5544 East Helena Drive, Scottsdale,  
 9 Arizona 85254, was at all relevant times a public accountant and tax preparer who was involved  
 10 in the offer and sale of various RGD Programs. He was also involved with the offer of Programs  
 11 of the World Trading Alliance ("WTA").  
 12

13 3. Mr. Davis, whose last known address is 4330 North 30<sup>th</sup> Street, Phoenix, Arizona  
 14 85016, was at all relevant times the president and sole shareholder of RGD Inc., which was  
 15 utilized in the promotions of the RGD Programs.  
 16

17 4. Mr. Patterson, whose last known address is 4330 North 30<sup>th</sup> Street, Phoenix,  
 18 Arizona 85016, was at all relevant times, acting as a sales representative for the various  
 19 Programs which were primarily operated by Mr. Guess and Mr. Sherriffs. Mr. Patterson would  
 20 primarily utilize an Addendum when he sold the Programs to investors.  
 21

22 5. On April 6, 2000, the Division issued a Notice alleging violations of A.R.S. §§  
 23 44-1841, 44-1842 and 44-1991 against Respondents Guess, Sherriffs and Patterson. With  
 24

25 <sup>1</sup> The purported investment Program(s) referenced hereinafter were offered and sold under a variety of names such  
 26 as the Joint Venture Private Placement Asset Management Program or the Vantage Point Strategies Program or the  
 27 Private Placement Investment Trading Program or the Asset Enhancement Program or the Addendum to Contract  
 28 Program ("Addendum") or the High Yield Finance Program. Mr. Guess, Mr. Sherriffs and Mr. Patterson were each  
 involved in one or more of these Programs as "aggregators" who recruited small investors so they could participate  
 in the Programs. The Programs were designed to pool investor funds in an escrow account for "safe-keeping" before  
 they were purportedly transferred by a managing partner to a Europe trading bank where investments were to be  
 made in negotiable discounted bank instruments, earn fantastic rates of return with a guaranteed (in excess of 100  
 percent) return of principal in one year.

<sup>2</sup> RGD and RGD, Inc. will be used interchangeably hereinafter.

1 respect to Respondent Davis, the Division alleged violations A.R.S. § 44-1991. Additionally, the  
2 Notice also alleged that Respondent Sherriffs engaged in activity violating A.R.S. §§ 44-3151  
3 and 44-3241.

4         6.         Beginning sometime in February 1997, Respondents Guess, Sherriffs and  
5 Patterson began the offer and sale of investment contracts and/or certificates of participation in  
6 profit-sharing agreements which are classified as securities under the Act. The record also  
7 established that some of the investments were in the form of interest-bearing loans or notes from  
8 some investors, which are also securities under the Act.  
9

10         7.         Based on the record, at the outset of the scheme, investors were offered an  
11 opportunity to invest their funds by means of a form of Joint Venture Investment Management  
12 Agreement (“Agreement”) for a period of time (one year or less). As a so-called “limited  
13 venture partner”, an investor would have his funds pooled for “safekeeping” in an escrow  
14 account first by RGD, controlled by Mr. Sherriffs and /or Mr. Guess, and then wired to Bally,  
15 controlled by Mr. Smith, where the funds were commingled with those of other investors at a  
16 bank in Birmingham, Alabama known as Regions Bank.  
17

18         8.         The pooled funds were then to be transferred to a so-called trading bank for  
19 exclusive use in transactions involving discounted debt instruments purportedly issued by major  
20 world banks.

21         9.         The respective investment Programs offered and sold by the Respondents required  
22 a pooling of investor funds to reach an aggregate investment level of from \$1,000,000 to  
23 \$10,000,000 with generally a 108 percent guarantee on the amount invested by a “top 50 west  
24 European bank.”  
25

26         10.        On February 16, 2001, the Commission issued in Decision No. 63390, which  
27 found the respective investment Programs, which were offered and sold under the guise of the  
28 various business entities known as either Bally, RGD and PFM, were all transactions in violation

1 of the Act involving fraud.

2 11. At various times, the different Programs had different joint venture managing  
3 partners such as PFM, RGD or Bally. In some of the offering materials, Mr. Guess was named  
4 as the "Administrator".

5 12. Besides a bank guarantee for in excess of the invested amount (106 percent to 108  
6 percent of the invested amount), investors were generally promised distributions of the earnings  
7 on their investments every four to six weeks for one year at varying rates of return from  
8 approximately 5 percent per month or higher, depending on the amount invested.  
9

10 13. Depending on the form of investment contract that was used by the Program,  
11 various fees were purported to be collected when so-called profit payouts were made with  
12 amounts varying from as low as 1.8 percent to 10 percent.

13 14. According to the investment contracts utilized in the various Programs, the  
14 respective managing partners purportedly had "certain knowledge, association, ability and  
15 relationships to facilitate introduction to certain organizations that can coordinate the investment  
16 of the aforementioned funds in trading programs . . .".  
17

18 15. Another common feature of the various investment Programs was that the  
19 managing partners were granted authority over the investors' funds by powers of attorney. An  
20 example of this feature was the RGD Program where Mr. Sherriffs, as "President", after  
21 receiving \$150,000 from his investor clients, the Smiths, was to direct the funds be "entered into  
22 an established trading program provided by" RGD.  
23

24 16. Respondents presented no evidence during the proceeding that established that  
25 any of the securities at issue were either exempt from registration or registered under the Act.

26 17. The Division also provided evidence that Respondents Guess and Patterson had  
27 been involved in the sale of promissory notes to several of their clients in violation of the Act.

28 18. The overwhelming weight of the evidence in this proceeding establishes that Mr.

1 Guess and Mr. Sherriffs were the key players in the investment scheme which they orchestrated  
2 through the RGD offering, but that Mr. Guess alone orchestrated the PFM offering. Mr. Guess  
3 acknowledged that he acted as an organizer and principal of RGD when he admitted during his  
4 EUO that he was the "Administrator" of "RGD Enterprises".

5 19. The record also established that Mr. Guess permitted Respondent Patterson to sell  
6 interests in an RGD investment contract by means of Mr. Patterson's Addendum which  
7 referenced Mr. Patterson and an "Asset Enhancement Program" which purportedly would pay  
8 investors 5 percent per month for one year.

9  
10 20. It is also noted that, when investing monies initially in the Bally Programs with  
11 Respondent Smith, Mr. Guess interchanged both RGD and his own name in the agreements with  
12 Bally.

13 21. The record established that of the \$492,755 RGD received from investors between  
14 April and November 1997, \$39,488 was paid out to Mr. Guess and \$233,299 to Mr. Sherriffs.  
15 Additionally, Respondent Smith through Oasis, paid Mr. Guess \$38,000 in miscellaneous  
16 income.

17  
18 22. Investor witnesses in the proceeding testified that Mr. Guess personally offered  
19 and sold them their investments. Respondent Davis also invested with Mr. Guess. According to  
20 Mr. Davis' EUO, based on Mr. Guess' representations in early 1997, Mr. Davis wired \$30,000 to  
21 Respondents Smith and Bally.

22 23. In late-filed Exhibits, Mr. Davis presented evidence that he had invested \$20,000  
23 on February 27, 1997 and \$10,000 on March 10, 1997 by means of wire transfers to an Alabama  
24 accountant for Bally. During his EUO, Mr. Davis stated the investment was for what he termed  
25 was a "money management program" that Mr. Guess told him about.

26  
27 24. Apparently, it was during this timeframe that Mr. Davis became involved with  
28 Mr. Guess, who had been a customer of his answering service, Communication Enterprises, Inc.

1 (“CEI”)<sup>3</sup>, and permitted Mr. Guess to utilize RGD as an entity that provided a corporate history,  
2 a mailing address at CEI’s offices and a form of legitimacy to the RGD Program sold by Mr.  
3 Guess, Mr. Sherriffs and Mr. Patterson.

4 25. The record also established the following: that Mr. Davis and his ex-wife were  
5 the majority shareholders, officers and directors of RGD; that RGD had been an inactive  
6 corporation since 1979; and that RGD was the owner of a wholly-owned subsidiary, CEI, the  
7 telephone answering service.

8 26. During Mr. Davis’ EUO, he recalled receiving five distributions, three for \$6,000,  
9 one for \$5,000, and one for \$3,000 for a total of \$26,000. When these distributions were  
10 discussed, Mr. Davis acknowledged that he had permitted RGD to be utilized by Mr. Sherriffs  
11 and Mr. Guess to receive funds and to send distributions to investors.

12 27. According to the record, Mr. Davis, Mr. Sherriffs, Mr. Guess and Mr. Glenn  
13 King, who was termed an investor by the Division’s witnesses, were signatories involved in  
14 establishing the first RGD bank account for the RGD Program.

15 28. Mr. Sherriffs was intimately involved in the offer and sale of the RGD Program  
16 and had numerous personal contacts with the RGD investors because of his relationship with  
17 them as a tax preparer who had gained the investors’ trust when preparing their tax returns.

18 29. RGD investor contracts provided for investors to send their funds to Mr. Sherriffs  
19 at what had been Mr. Davis’ 1<sup>st</sup> Street business address in Phoenix for “safekeeping” until Mr.  
20 Sheriffs was instructed to transfer their funds to a trading bank.

21 30. Both Mr. Guess and Mr. Davis, during their EUOs, identified Mr. Sherriffs as the  
22 individual in charge of RGD’s accounting and banking functions who signed most of the checks  
23 disbursing funds from the RGD account.

24 31. Mr. Davis also acknowledged in his EUO that, because Mr. Sherriffs did a poor  
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<sup>3</sup> Mr. Davis had operated CEI from an office located at 1015 N. 1<sup>st</sup> Street, Phoenix, Arizona.

1 job of maintaining RGD's books and accounting records, he became involved in assisting Mr.  
2 Guess in the preparation of Federal 1099 forms which reflected purported payments of interest  
3 income that were sent to investors for the 1997 tax year from RGD and PFM. The 1099 forms,  
4 whether from RGD or PFM, bore the Federal Tax Identification Number assigned to RGD Inc.

5         32. Based on the record, there is evidence that between April and July 1997,  
6 Respondent Smith transferred \$124,400 which had not originated from trading profits to the  
7 RGD account in four monthly payments of \$31,000.

8         33. In support of its case, the Division called one offeree, Ms. Tammy D'Angelo, six  
9 investor witnesses including: Mrs. Yvone Aitken, Ms. Jill Arnold, Ms. Susan Herrmann, Mr.  
10 Lyle Mader, Mrs. Jean Smith, Mr. Brian Weber; and Mr. David Adams, a Division investigator,  
11 Mr. Mark Klamrzynski, a Division Certified Public Accountant ("CPA"), and Dr. Boris  
12 Kozolchyk, a Professor of Law at the University of Arizona.

13         34. There were seven investors in RGD, five in PFM and one investor who invested  
14 in both RGD and PFM.

15         35. Mrs. Yvone Aitken, Mr. Guess' mother-in-law, testified that she and her husband,  
16 who reside in Mesa, were encouraged by Mr. Guess early in 1997 to take a second mortgage on  
17 their house to utilize the proceeds (\$23,500) for an investment with him that would ostensibly  
18 provide them with a \$2,500 a month return on their investment.

19         36. Although Mrs. Aitken did not remember all of the details of the arrangement, she  
20 recalled that the investment involved a European trading market and bank debt instruments.

21         37. The Aitkens were promised that there was no risk on the investment and that they  
22 would earn a high rate of return on their investment.

23         38. On or about March 28, 1997, Mrs. Aitken wrote a personal check for \$23,500 to  
24 Mr. Guess using the proceeds of the second mortgage on her home for the purported investment.  
25 At the time, Mr. Guess failed to provide her with an investment contract or any documentation  
26  
27  
28

1 on her investment whatsoever.

2 39. Subsequently, Mr. Aitken and her husband received several "distribution" checks  
3 from Mr. Guess in the amount of \$2,000 each. She testified that this made them feel more secure  
4 about their investment and they decided to invest more money with Mr. Guess.

5 40. On or about August 3, 1997, Mrs. Aitken wrote Mr. Guess a second check for  
6 \$5,000 with money from her husband's 401K account for what she thought was a similar  
7 investment. Approximately one week later, on August 14, 1997, Mrs. Aitken also gave Mr.  
8 Guess a \$5,000 cashier's check to add to her investment because she now believed that she had a  
9 safe investment.  
10

11 41. Although the Aitkens received back approximately \$23,000 in "distributions", the  
12 remaining balance of \$10,000 was lost along with their home when they could no longer afford  
13 the monthly payments brought about by the second mortgage. Mr. Guess' mother-in-law  
14 testified further that she had been forced into retirement by a medical disability at about the time  
15 of the initial investment and after the loss of their home, she and her husband had to move in  
16 with another daughter and are now renting a home.  
17

18 42. Investor Jill Arnold testified that in approximately April 1997, she and her  
19 husband spoke with Mr. Sherriffs who had been their tax preparer for four years, with respect to  
20 seeking investment advice for a safe investment for \$75,000 that her husband was to inherit. Mr.  
21 Sherriffs represented himself to the Arnolds as an investment advisor, and recommended the  
22 RGD Program.  
23

24 43. In May 1997, Mr. Sherriffs introduced the Arnolds to Mr. Guess whom he termed  
25 was "squeaky-clean" and an honest person to present the RGD Program.

26 44. Mrs. Arnold made it clear to Mr. Sherriffs that she and her husband did not  
27 understand investments and were relying on his advice when they began investing with RGD.

28 45. On May 15, 1997, the Arnolds signed an RGD Agreement to begin investing Mr.

1 Arnold's \$75,000 inheritance. They authorized RGD to be the "Joint Venture Managing  
2 Partner" ("JV Manager") of their funds which were to be forwarded to Mr. Sherriffs for  
3 "safekeeping" in a pooled account before they were transferred to a trading program with a  
4 108% bank guarantee from a "top fifty west European bank."

5 46. Mrs. Arnold remembered Mr. Guess mentioning "Lee Iococca from the Chrysler  
6 Company, that when he invested, that was how Lee Iococca turned the Chrysler Corporation  
7 around." She also went on to state that Mr. Guess represented himself as having seven years  
8 experience in various trading programs involving major bank debt instruments which  
9 purportedly generated high profits with no risk for investors.

10 47. The Arnolds invested a total of \$75,000 expecting to earn a 60% annual return.  
11 According to the evidence, the Arnolds received distributions of \$37,500 and appear to have lost  
12 the balance of their investment.

13 48. Mrs. Arnold also testified that Mr. Sherriffs convinced her to have her stroke  
14 impaired father and blind mother invest \$25,000 in another Program known as "Better Days  
15 Ahead" involving an investment offered by a woman, Ms. Lora Kidd, from Salt Lake City, Utah.  
16 Mrs. Arnold's parents did receive initial payments of \$1,250 for several months directly from  
17 Mr. Sherriffs, but about that time, the Arnolds learned that the Programs with Mr. Sherriffs were  
18 "unstable". In approximately April 1998, her parents received a \$15,000 check from Mr.  
19 Sherriffs for the remaining balance of their investment.

20 49. There is no evidence that the Arnolds had any contact or even knew of Mr. Davis.

21 50. Mrs. Jean Smith, a retired government worker, testified that she and her retiree  
22 husband first met Mr. Sherriffs through her husband's brother who introduced them to him as an  
23 accountant who could handle their tax work.

24 51. Mr. Sherriffs gained their confidence and developed a personal relationship with  
25 the Smiths.  
26  
27  
28

1           52.     The Smiths met Mr. Guess after Mr. Sherriffs suggested putting some extra  
2 money they had into an "adventure with the bank."

3           53.     Mr. Sherriffs described everybody that was involved in the so-called "adventure"  
4 as "squeaky clean."

5           54.     To get Mr. and Mrs. Smith interested in the RGD Program, Mr. Sherriffs told  
6 them about a purported investment in which he had invested \$65,000 and "that he had made  
7 \$78,000 in a matter of a few months."

8           55.     In April 1997, Mr. and Mrs. Smith met at their home with Mr. Sherriffs and Mr.  
9 Guess who both told them about the RGD Program that would generate a "high percent a month  
10 on our monies and that it was bank guaranteed."

11           56.     On or about May 15, 1997, the Smiths, using funds from their business trust,  
12 signed an Agreement for one year with RGD as the JV Manager and gave a \$50,000 cashier's  
13 check to Mr. Sherriffs for "safekeeping" until he received "instructions" to transfer the monies to  
14 a trading bank. As investors, the Smiths were promised a 108 percent bank guarantee and an  
15 interest rate of 4.5 percent per month or 54 percent annually.  
16  
17

18           57.     At no time were the Smiths advised that invested funds would be spent by Mr.  
19 Guess or Mr. Sherriffs on personal expenses or for payments to other investors.

20           58.     In October 1997, Mr. Sherriffs contacted the Smiths about an additional  
21 investment with RGD. Mr. Sherriffs told the Smiths that, instead of their earning only 10  
22 percent per year on a land contract from the sale of a four-plex in Oregon, if they liquidated the  
23 contract, he could utilize their funds to make them as much to 6 to 8 percent per month on a new  
24 investment.  
25

26           59.     The Smiths made it clear that they desired a secure investment to replace the  
27 income which they were receiving from the land contract.

28           60.     Mrs. Smith testified that they believed Mr. Sherriffs because, up until that time,

1 they had been receiving payments of \$2,500 a month on their first investment so Mr. and Mrs.  
2 Smith believed "it was a sure thing," and liquidated their land contract for more investment  
3 money.

4 61. Although the investment was to be invested in the RGD Program, Mr. Sherriffs  
5 recommended that they invest the funds from the land contract sale in a High Yield Finance  
6 Program ("High Yield Program").

7 62. On or about October 31, 1997, the Smiths as "releasers" signed two investment  
8 Agreements with RGD, an unincorporated company in Scottsdale, Arizona,<sup>4</sup> with Mr. Sherriffs  
9 signing as "President" even though the documents on their face reflected that RGD was  
10 unincorporated. On November 3, 1997, the Smiths funded the investment with a \$150,000  
11 cashier's check made out to RGD-James Sherriffs.  
12

13 63. Shortly thereafter, the Smiths became suspicious when they contacted Mr. Guess  
14 who denied all knowledge of this arrangement. They then contacted Mr. Sherriffs who  
15 represented that he had utilized the \$150,000 given to him for RGD in another Program, Better  
16 Days Ahead, which purportedly paid 6 percent interest per month. He also promised the Smiths  
17 that he personally would send them a check for \$5,000 a month while the funds were in escrow.  
18

19 64. At that time, Mr. Sherriffs represented that he had concerns about Mr. Guess and  
20 the original RGD program and advised the Smiths that he had chosen to direct their funds into  
21 the High Yield Program for more security. Mr. Sherriffs had them re-sign Agreements with an  
22 entity known as Vantage Point Strategies ("VPS"), a business trust under his control. The VPS  
23 Agreements were very similar to those used by RGD and Bally. However, Mr. Sherriffs signed  
24 these Agreements as "Executive President."  
25  
26  
27  
28

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<sup>4</sup> In this instance, Mr. Sherriffs acting alone had begun a new investment scheme which utilized RGD again as the investment entity.

1           65.     It was the Smiths' understanding that their monies would now be invested in the  
2 WTA Program operated by Ms. Lora L. Kidd in Salt Lake City, Utah.

3           66.     Based on the record, Mr. and Mrs. Smith invested \$200,000 with Mr. Sherriffs  
4 and Mr. Guess, received distributions of \$160,125 and have lost \$39,875.

5           67.     There was no evidence that Mr. and Mrs. Smith knew or had any contract with  
6 Mr. Davis.

7           68.     During the proceeding, evidence was also presented that Respondent Patterson  
8 was permitted by Mr. Guess to sell fractionalized investment contracts in the RGD Program by  
9 means of the Addendums. Mr. Patterson made his sales by means of personal contacts with three  
10 investors, Mrs. Susan Herrmann, Mr. Sal Calta and Ms. Elaine Hayes.

11           69.     Ms. Susan Herrmann, a licensed securities saleswoman, met Mr. Patterson  
12 socially, became "good friends", and at one point had him as a "housemate" for a period of time.  
13 During this timeframe, Mr. Patterson kept telling her about investments by describing highly  
14 profitable overseas trading Programs with bank guarantees which ostensibly would protect an  
15 investor's principal.  
16

17           70.     Prior to making any investments, Ms. Herrmann acknowledged that she did not  
18 discuss the investments offered by Mr. Patterson with anyone else.  
19

20           71.     Ms. Herrmann recalled that the Program which Mr. Patterson presented her with  
21 involved a European trading market for major bank debt instruments which purportedly would  
22 pay high returns with no risks for an investor.

23           72.     On July 21, 1997, Ms. Herrmann invested \$20,000 with Mr. Patterson who gave  
24 her an Addendum giving her an interest in an RGD/Patterson Agreement.  
25

26           73.     On July 23, 1997, Ms. Herrmann entered into an RGD Agreement with Mr. Guess  
27 in which RGD was named JV Manager when she invested \$50,000 from her profit sharing plan.  
28 RGD promised a 60 percent return for a one year investment with a 108 percent bank guarantee

1 "from a top fifty West European Bank."

2 74. Subsequently, Respondent Patterson contacted Ms. Herrmann to lend RGD  
3 \$10,000 for a one week investment and earn \$500 interest.

4 75. On August 22, 1997, Ms. Herrmann wrote a check to RGD for \$10,000.  
5 Subsequently, on or about September 8, 1997, the first check which she received from RGD for  
6 \$10,500 bounced and was replaced by Mr. Guess with a \$10,500 bank check.

7 76. Ms. Herrmann became concerned with late payments on her investments and after  
8 making several written requests, her \$50,000 was returned to her on or about October 30, 1997.  
9 Ms. Herrmann subsequently received several more payments including a personal check from  
10 Mr. Patterson for \$2,000. In total, \$69,000 was returned to her, but she testified that she has lost  
11 \$11,000.  
12

13 77. According to Ms. Herrmann, based on her knowledge and former relationship  
14 with Mr. Patterson, Mr. Sherriffs, Mr. Guess and Mr. Davis were all involved in some way in the  
15 RGD Program. She also recalled speaking with Mr. Davis by phone on November 4, 1997 about  
16 late payments and was told "I'll get right on it."  
17

18 78. An investigator for the Division, Mr. David Adams, related that during his  
19 investigation involving the Respondents, he learned that a Mr. Sal Calta also invested \$10,000  
20 with Mr. Patterson through an Addendum purportedly selling him an interest in a RGD/Patterson  
21 Agreement.  
22

23 79. There was also evidence that Mr. Guess offered Mr. Calta an opportunity to invest  
24 in a promissory note involving a California company by the name of Pacific Beach Mortgage  
25 Company that promised him a 50 percent rate of return on the loaned amount.

26 80. Based on the record, Mr. Calta invested \$85,000 with RGD and \$50,000 with  
27 PFM and after receiving back approximately \$38,000 has suffered a loss of \$97,000.

28 81. A friend of Mr. Calta's, Ms. Elaine Hayes, who had originally introduced him to

1 Mr. Patterson, invested \$50,000<sup>5</sup> in an Addendum for an interest in a RGD/Patterson Agreement  
2 which had already been fractionalized and sold previously to Ms. Herrmann and Mr. Calta.

3 82. The record also established that Mr. Patterson was paid \$7,600 from an RGD  
4 bank account and \$12,500 from the PFM bank account during the time the offerings were being  
5 made.

6 83. There was supporting evidence of involvement by Mr. Davis because Ms.  
7 Herrmann had been told by Mr. Patterson that correspondence involving RGD was mailed to Mr.  
8 Davis' 1<sup>st</sup> Street business office and that RGD's telephone messages were also taken there.

9 84. Investor Lyle Mader is a disabled individual who, prior to his disability, had been  
10 involved in the design and manufacturing of private motor vehicles.

11 85. Mr. Mader met Mr. Guess during 1997 through a mutual acquaintance. He was  
12 told to contact Mr. Guess to make an investment that would enable him to build up funds to pay  
13 for this children's college educations.  
14

15 86. Although Mr. Mader was interested in a high rate of return in a short period of  
16 time, he was very concerned with the safety of his principal.  
17

18 87. Between August 25, 1997 and September 10, 1997, Mr. Mader invested \$75,000  
19 with Mr. Guess through PFM.

20 88. Mr. Mader's first investment with Mr. Guess was made by means of a \$25,000  
21 wire transfer for a short-term "bridge loan" that purportedly would generate 100 percent profit in  
22 30 to 60 days. The loan involved a Pacific Beach Mortgage Company, Inc. and, according to its  
23 terms, provided for a \$50,000 payment to the lender.  
24

25 89. Mr. Mader indicated that he had no dealings with Mr. Sherriffs or RGD.  
26  
27  
28

<sup>5</sup> Apparently, this investment was made with \$25,000 in cash and with \$25,000 worth of personal property including such items as furniture, a boat and a barbecue grill.

1           90.     Mr. Mader recalled that Mr. Guess had discussed another investment Program  
2 involving some form of bank trading in "Barclays' Bank in London" involving "elite traders that  
3 had some specific opportunities that they shared with certain people."

4           91.     Subsequently, Mr. Mader signed an Agreement and invested with PFM and Mr.  
5 Guess. Mr. Mader had acted on behalf of himself and nine of his friends who each invested  
6 \$5,000 for a total of \$50,000. They were promised a 25 percent per month return on their  
7 investment which contained a 108 percent bank guarantee from a "top 50 west European bank."  
8

9           92.     Mr. Mader received back only \$12,500 in disbursements of the \$75,000 which he  
10 invested with Mr. Guess, leaving him and his associates with a loss of \$53,750 and placing  
11 himself and his family in dire financial straights.

12           93.     Investor Brian Weber's attorney introduced him to Mr. Guess after they had  
13 discussed the fact that Mr. Weber was looking for an investment opportunity. At one point, Mr.  
14 Weber's attorney had been retained by Mr. Guess to prepare a Private Offering Memorandum for  
15 RGD Capital Management Fund, L.L.C. which was to be managed by RGD with Mr. Davis as  
16 President.  
17

18           94.     The investment was described to Mr. Weber as having very little known about it,  
19 was very exclusive and that Mr. Guess' knowledge and experience in the industry was the result  
20 of connections, contacts and other invaluable things. Mr. Weber described his impression of Mr.  
21 Guess as a "deal maker".  
22

23           95.     Mr. Weber described his own lack of understanding of the investment Program,  
24 but he understood that Mr. Guess would have exclusive control over any invested monies.

25           96.     On October 29, 1997, Mr. Weber signed a letter of intent addressed to PFM/J.  
26 Michael Guess indicating his desire to invest \$50,000 into a "capital management program."

27           97.     On or about November 10, 1997, Mr. Weber entered into a one-year Agreement  
28 with PFM which provided that the funds would be forwarded to PFM for "safekeeping" until

1 transferred to a trading bank. The Agreement contained a 106 percent bank guarantee from a  
2 "top 50 west European bank" and purportedly was to pay out interest on the invested amount 10  
3 times during a year, for an annual rate of return of 150 percent.

4 98. Mr. Weber was told that there was no risk involved with respect to his principal  
5 and he invested because of the 106 percent bank guarantee described in the Agreement.

6 99. Based on Mr. Guess' representations, Mr. Weber believed that there was a market  
7 for trading in bank debt instruments in Europe that generated high profits with no risk.  
8

9 100. Mr. Weber was not informed that Mr. Guess would use his funds for personal  
10 expenses or payments to other investors nor was he told that distribution payments would be  
11 returned from his principal and not trading profits.

12 101. After not receiving a return on his investment, on July 29, 1998, Mr. Weber faxed  
13 a demand letter to Mr. Guess threatening legal action if he did not receive the return of his  
14 principal and accrued interest by July 31, 1998. Subsequently, he received a prompt response  
15 from Mr. Guess who tried to convince him that instituting legal action and going to the  
16 authorities "would only delay things even further."  
17

18 102. As a result of Mr. Weber's \$50,000 investment in PFM, he received only \$12,500  
19 back from Mr. Guess and has experienced a loss of \$37,500.

20 103. On October 8, 1997, Dale and Tammy D'Angelo met with Mr. Sherriffs upon the  
21 recommendation of a friend, to discuss their needs for tax planning. At this meeting, Mr.  
22 Sherriffs also offered investment advisory services.  
23

24 104. Subsequently, Mr. Sherriffs suggested that they consider investing in an  
25 international trading Program that was purportedly risk free and contained a bank guarantee for  
26 up to 106 percent of a minimum investment of \$10,000 to \$25,000 and promised a 5 percent per  
27 month return on their investment.

28 105. Mr. Sherriffs told the D'Angelos that he would be acting as a middleman and that

1 a third party would be making the actual investment overseas.

2 106. Mrs. D'Angelo recalled that Mr. Sherriffs told her that "it was international banks  
3 that were taking the money and were using American money to purchase European money of  
4 some sort to get interest off of it."

5 107. To facilitate this purported investment opportunity, Mr. Sherriffs sent copies of an  
6 Agreement and contract and also a letter from the third party, Ms. Lora L. Kidd of the WTA  
7 describing a trading Program and stating that participation was by invitation only.  
8

9 108. After reviewing these documents, the D'Angelos decided that an investment in an  
10 international trading Program would not be suitable and did not invest with Mr. Sherriffs.

11 109. The Division called Dr. Boris Kozolchyk, a Professor of Law at the University of  
12 Arizona, who teaches courses in Commercial and International Trade Law, as an expert witness.  
13 Dr. Kozolchyk testified in support of the Division's allegations involving the fraud that was  
14 committed by the Respondents herein with respect to the various investments offered to  
15 investors.  
16

17 110. The record established that Dr. Kozolchyk is eminently qualified as an expert in  
18 the field of the purported investments which were offered and sold by Mr. Guess, Mr. Sherriffs  
19 and Mr. Patterson.

20 111. Dr. Kozolchyk testified that he has reviewed in excess of 30 sets of offering  
21 documents related to high yield investments involving discounted bank debt instruments which  
22 include prime bank guarantees or prime notes.  
23

24 112. Dr. Kozolchyk testified that the purported investment documents admitted into  
25 evidence in this proceeding were fraudulent and similar in nature to those of the previous  
26 investment schemes which have been presented to him for an expert opinion.

27 113. Dr. Kozolchyk found certain factors in the various offerings, which were similar  
28 to the other fraudulent investment programs that he was aware of, in that, "they promise higher

1 interest rates which are extraordinarily higher than what's available in the market. They tend to  
2 use terms totally out of context with respect to what the real meaning of those terms actually  
3 are."

4 114. Dr. Kozolchyk stated further than the purported investment documents in this  
5 proceeding referenced the following: financial documents that do not exist; banking practices  
6 which are not generally acceptable; and that the top ten world banks engage in business practices  
7 which they have not engaged in.

8 115. Dr. Kozolchyk stated that the bank guarantee referenced within the purported  
9 investment documents utilized by the Respondents would not be issued by "the top fifty west  
10 European banks" for the type of transaction described in the documents.

11 116. Dr. Kozolchyk stated further that with respect to the purported investments in this  
12 proceeding, "this is not a hidden market". To the contrary, Dr. Kozolchyk pointed out that the  
13 nature of the market encourages contact between parties trying to place debt in banks that act as  
14 intermediaries and that they rely on "open communications".  
15

16 117. Dr. Kozolchyk described as "total fabrication" a market in Europe trading in  
17 world class financial institution debt obligations in an electronic market place involving the  
18 largest and strongest European banks which conduct transactions available to participants by  
19 invitation only. Put more simply, he stated "to begin with, those high yield finance programs do  
20 not exist."  
21

22 118. Dr. Kozolchyk, who formerly was a representative of the United States Council  
23 on International Banking to the International Chamber of Commerce ("ICC") working group,  
24 testified concerning published ICC reports that specifically addressed prime bank instrument  
25 fraud referring to it as "the fraud of the century".  
26

27 119. The Division called as an additional expert witness, Mr. Mark Klamrzynski, a  
28 CPA employed by the Division, who reviewed investor and bank records relating to the offer and

1 sale of the investments involved in this proceeding.

2 120. Mr. Klamrzynski's investigation of bank records found that Norwest Bank had an  
3 account in the name of RGD Inc. numbered 5581203887 with Mr. Guess, Mr. Sherriffs, Mr.  
4 Davis and Mr. King (an investor) as signatories. The majority of the transactions related to this  
5 account were engaged in by Mr. Sherriffs from its opening on March 10, 1997 until it was closed  
6 on or about March 19, 1998.

7 121. According to Mr. Klamrzynski, on September 19, 1997, another bank account  
8 was opened in the name of RGD Inc. with only Mr. Guess and Mr. Sherriffs as signatories, but  
9 with the same federal tax identification number as the first RGD Inc. account.  
10

11 122. Based on his review of account records, Mr. Klamrzynski believes that Mr. Davis  
12 received preferential treatment when he was paid with funds from the RGD/James D. Sherriffs  
13 and PFM accounts.

14 123. Mr. Klamrzynski testified that he learned from late received subpoenaed bank  
15 documents that Mr. Davis had received another \$21,500 from the PFM account in late 1998.  
16 These funds were in addition to the funds shown on the Division's amended Exhibits S-127 and  
17 S-130, which reflect payments of \$31,500 being disbursed to Mr. Davis.  
18

19 124. According to the Division's amended Exhibits, the total amount invested in RGD  
20 and PFM reached \$823,500, with returns to investors of \$409,175 resulting in losses to investors  
21 of \$414,325.

22 125. Based on the Division's amended financial Exhibits, Mr. Sherriffs received the  
23 lion's share of disbursements amounting to \$233,299, Mr. Guess received \$67,138 and Mr.  
24 Patterson received \$20,100.  
25

26 126. Mr. Klamrzynski testified that, based on his review of the RGD and PFM bank  
27 records, he found no evidence of any funds "directly disbursed" from the so-called escrow or  
28 "safekeeping" accounts as defined in the Agreements to any identifiable trading banks.

1           127. Initially, Mr. Klamrzynski found that funds were disbursed either by wire transfer  
2 or check from the RGD account to either Respondent Smith or First Alabama Bank to an account  
3 entitled Client Management Services (“CMS”) which was a dummy clearing account from which  
4 money was transferred directly to Respondent Smith or to the Oasis account which he controlled.

5           128. The Oasis account was not operated as a trust account for investor funds. Mr.  
6 Klamrzynski noted some “highly suspect transactions” involved with the account which had  
7 deposits of approximately \$21 million. One check for \$10 million was written to Mr. Smith’s  
8 wife and others were written for personal expenses such as sporting events at the University of  
9 Alabama.  
10

11           129. Mr. Klamrzynski found payments from the Oasis account totaling \$31,000  
12 deposited into the “RGD/James D. Sherriffs” account during the months of April, May, June and  
13 July, 1997 with no evidence that these funds resulted from any trading profits.

14           130. Mr. Klamrzynski found further that, when the RGD account controlled by Mr.  
15 Sherriffs received the \$150,000 investment from Mr. and Mrs. William Smith, Mr. Sherriffs  
16 diverted their funds to his own trust account on or about November 12, 1997. Mr. Sherriffs then  
17 utilized these funds for his personal expenses.  
18

19           131. Mr. Klamrzynski testified that, based on his review of the records, investors’  
20 funds were utilized by the Respondents to repay the investors’ “profits”, resulting in the  
21 Respondents perpetrating a “Ponzi” scheme in both RGD and PFM.  
22

23           132. The financial records of PFM and Mr. Guess revealed that investor Lyle Mader’s  
24 \$50,000 that was to be escrowed for “safekeeping”, was instead diverted into Mr. Guess’  
25 personal checking account at BankOne in Arizona.

26           133. The record also established that approximately \$6,100 was diverted from Mr.  
27 Brian Weber’s investment of \$50,000 with PFM to pay Mr. Guess’ attorney who had worked on  
28 the Private Offering Memorandum.

1           134. Mr. Klamrzynski also traced disbursements from Mr. Sal Calta's \$50,000  
2 investment with PFM on or about February 21, 1998 to the following payments: \$25,000 on  
3 February 23, 1998 to a Mr. Carl Nicholson; other payments to investors Aitken and Hammond;  
4 and an additional payment back to Mr. Calta from his own money as an "interest" payment.

5           135. The PFM account was controlled either by Mr. Guess or his wife because they  
6 were the only signatories on the account. Mr. Klamrzynski further testified that the PFM  
7 account "was not for the purposes intended as portrayed in the investor documents that have  
8 already been admitted. There was no trading account or any evidence of any trading account nor  
9 were there any trading profits."  
10

11           136. Based on Mr. Klamrzynski's overall review of the subject accounts starting in  
12 February, 1997 through August, 2000, he determined that in some instances, monies from the  
13 RGD account were transferred to Respondent Smith in Alabama, but with respect to the PFM  
14 account, there was no evidence of any trading bank activity or direct transfers to Mr. Smith, but  
15 there was a \$15,000 disbursement to a Smith controlled entity, Alazon Management Holdings.  
16

17           137. Mr. Klamrzynski pointed out that when the second RGD account, account number  
18 0872804882, was opened on September 18, 1997, with Norwest Bank, its signatories were only  
19 Mr. Sherriffs and Mr. Guess. When this account was opened, Respondents Sherriffs and Guess  
20 utilized the same Federal Tax Identification Number assigned to the first RGD account opened  
21 by Mr. Guess, Mr. Sherriffs, Mr. Davis and Mr. King.  
22

23           138. Mr. Klamrzynski also traced monies which were given to Mr. Patterson by  
24 investors Herrmann and Hayes in the amounts of \$20,000 and \$25,000, respectively, which were  
25 deposited into his personal checking account in July 1997 after which Mr. Patterson wrote  
26 corresponding checks for those amounts to RGD and Mr. Guess.

27           139. Mr. Klamrzynski could not find the existence of any valid connection between  
28 Mr. Davis and PFM to reveal why PFM paid Mr. Davis \$5,500 from investor funds

1           140. Although Mr. King, a co-signer with Mr. Davis on the first RGD account, was not  
2 named as a Respondent, Mr. Davis was. Based on the Division's financial analysis, it  
3 determined that Mr. Davis was a participant in the offerings primarily because of the preferential  
4 payments made to him in excess of his \$30,000 investment.

5           141. Besides the \$31,500 disbursed to Mr. Davis, according to the Division's amended  
6 financial Exhibits, Mr. Klamrzynski stated that the Division had recently received subpoenaed  
7 copies of cancelled checks which reflected Mr. Davis receiving \$20,000 in November 1998 and  
8 \$1,500 in December 1998 from PFM. The first check for \$20,000 was written on the PFM  
9 account by Mr. Guess and a second check for \$1,500 was signed by Mr. Guess' wife, Cynthia.

10           142. There was no evidence that Mr. Davis had invested any funds with PFM and Mr.  
11 Klamrzynski acknowledged that he had no idea whether Mr. Davis had given Mr. Guess any  
12 monies in excess of the \$30,000 reflected in the February and March 1997 wire transfers to  
13 CMS.  
14

15           143. At the conclusion of the proceeding, neither Mr. Guess, Mr. Sherriffs, Mr.  
16 Patterson nor Mr. Davis took the stand in their own defense. Additionally, the disproportionate  
17 return of invested monies to Mr. Davis together with other monies paid to him, remained  
18 unexplained.  
19

20           144. Based upon the record, it is clearly established that the investment Programs  
21 offered and sold by Mr. Guess, Mr. Sherriffs and Mr. Patterson and participated in, albeit less  
22 directly, by Mr. Davis, were not lawful investments in conformity with the Act.  
23

24           145. While a review of the evidence in the proceeding does not establish that any  
25 investor was influenced in any way by Mr. Davis (except possibly Ms. Herrmann) or the use of  
26 his initials as a JV Manager in an Agreement, there is sufficient evidence to conclude that he  
27 participated in the fraud conducted by Mr. Guess, Mr. Sherriffs and Mr. Patterson since he  
28 acquiesced to the use of his corporate entity by Mr. Guess and Mr. Sherriffs, assisted in the

1 preparation of income tax forms and did nothing to distance himself from the other Respondents.

2 146. With respect to the offer and sale of the various discounted bank debt instruments:

3 A. Mr. Guess, Mr. Sherriffs and Mr. Patterson misrepresented that there was a  
4 trading market for European discounted debt instruments from major banks  
5 that generated extremely high profits with little or no risk because the  
6 investments were guaranteed by the banks;

7 B. Mr. Guess, Mr. Sherriffs and Mr. Patterson misrepresented that investor  
8 funds would be invested in a market for discounted bank instruments in  
9 Europe;

10 C. Mr. Guess, Mr. Sherriffs and Mr. Patterson misrepresented that investor  
11 funds would be held in escrow for "safekeeping" until they could be  
12 transferred to a trading bank to earn a return on the investors' investments;

13 D. Mr. Guess, Mr. Sherriffs and Mr. Patterson misrepresented that monies  
14 invested would be protected by a bank guarantee in excess of the face value  
15 of the investment when, in fact, no such guarantee exists;

16 E. Mr. Guess, Mr. Sherriffs and Mr. Patterson misrepresented that payments to  
17 investors were interest or returns on investments while they were in fact  
18 either their own invested funds or other investors';

19 F. Mr. Guess, Mr. Sherriffs and Mr. Patterson failed to disclose that investor  
20 funds would be utilized for personal expenses;

21 G. Mr. Guess, Mr. Sherriffs and Mr. Patterson failed to disclose their experience  
22 and business background;

23 H. Mr. Guess, Mr. Sherriffs and Mr. Patterson failed to disclose the financial  
24 condition of either RDG or PFM or their own financial conditions; and,

25 I. Mr. Guess, Mr. Sherriffs and Mr. Patterson misrepresented that investors  
26 were making a "safe" investment.

27 147. The misrepresentations and omissions of fact by Mr. Guess, Mr. Sherriffs and Mr.  
28 Patterson established that they directly and Mr. Davis indirectly were engaging in transactions,  
practices or courses of business which operated or would operate as a fraud or deceit.

148. There is no evidence that there were any profits earned from any of the invested  
monies discussed in this proceeding.

149. In conducting his tax preparation services, Mr. Sherriffs violated the IMA by  
representing himself as an investment advisor and he also violated the anti-fraud provisions of

1 the IMA.

2 150. With respect to the offerings described hereinabove, we believe that Respondents  
3 Guess, Sherriffs, Patterson and Davis should be ordered to permanently cease and desist from  
4 violations of the Act and that Mr. Sherriffs should also be ordered to permanently cease and  
5 desist from violating the provisions of the IMA.

6 151. We also believe that the Division's recommendations with respect to restitution  
7 are also reasonable for Mr. Guess, Mr. Sherriffs and Mr. Patterson with respect to the RGD  
8 investments in that Mr. Guess and Mr. Sherriffs should be liable for the outstanding balance  
9 owed to investors of \$232,075 and Mr. Patterson should also be jointly and severely liable in this  
10 instance with Mr. Guess and Mr. Sherriffs for up to \$57,730 of that total as it relates to investors  
11 Calta, Hayes and Herrmann. However, we do not believe that it is necessary to alternatively  
12 order restitution by Mr. Sherriffs with respect to his violations of the IMA in the RGD offering  
13 since the restitution issue with respect to him is addressed under his violations of the Act.  
14 Lastly, although we have found that Mr. Davis indirectly violated the anti-fraud provisions of the  
15 Act, since his involvement was passive in the offer and sale of RGD in this instance we do not  
16 believe that he should be required to make restitution hereinafter.

17 152. With respect to the PFM offering, Mr. Guess should be solely responsibly for the  
18 outstanding balance owed to those investors of \$182,250 since there is no evidence that either  
19 Mr. Sherriffs, Mr. Patterson or Mr. Davis were involved in these investments.

20 153. With respect to administrative penalties being apportioned between Mr. Guess,  
21 Mr. Sherriffs and Mr. Patterson, we believe that the Division's recommendations with respect to  
22 Mr. Guess and Sherriffs are reasonable and they should each be assessed penalties of \$100,000  
23 for their respective violations of the Act. In the case of Mr. Sherriffs, an additional  
24 administrative penalty in the amount of \$29,000 is also reasonable and should be assessed for his  
25 violations of the IMA.



1           8.       Respondents, Mr. Guess, Mr. Sherriffs, Mr. Patterson and Mr. Davis violated the  
2 anti-fraud provisions of A.R.S. § 44-1991 in the manner set forth hereinabove.

3           9.       Respondents, Mr. Guess, Mr. Sherriffs, Mr. Patterson and Mr. Davis are found  
4 herein to have violated the Act, should cease and desist pursuant to A.R.S. § 44-2032 from any  
5 future violations of A.R.S. §§ 44-1841, 44-1842 and 44-1991 and all other provisions of the Act.

6           10.      With respect to the RGD offering, Mr. Guess and Mr. Sherriffs should be jointly  
7 and severely liable to make restitution pursuant to A.R.S. § 44-2032 and A.A.C R14-4-308  
8 totaling \$232,075 subject to any legal set-offs. Mr. Patterson should also be jointly and severely  
9 liable with Mr. Guess and Mr. Sherriffs for up to \$57,730 subject to any legal set-offs.

11          11.      With respect to the PFM offering, Mr. Guess should be solely liable to make  
12 restitution pursuant to A.R.S. § 44-2032 and A.A.C. R14-4-308 totaling \$182,250 subject to any  
13 legal set-offs.

14          12.      Respondent, Mr. Davis, should not be held liable for restitution in any offering.

15          13.      With respect to the RGD and PFM offerings, Mr. Guess, Mr. Sherriffs, Mr.  
16 Patterson and Mr. Davis should be assessed administrative penalties pursuant to A.R.S. § 44-  
17 2036 as follows: Mr. Guess, for the violation of A.R.S. § 44-1841 the sum of \$25,000, for the  
18 violation of A.R.S. § 44-1842, the sum of \$25,000, and for the violation of A.R.S. § 44-1991, the  
19 sum of \$50,000; Mr. Sherriffs, for the violation of A.R.S. § 44-1841, the sum of \$25,000, for the  
20 violation of A.R.S. § 44-1842, the sum of \$25,000 and for the violation of A.R.S. § 44-1991, the  
21 sum of \$50,000; Mr. Patterson, for the violation of A.R.S. § 44-1841, the sum of \$6,500, for the  
22 violation of A.R.S. § 44-1842 the sum of \$6,500, and for the violation of A.R.S. § 44-1991, the  
23 sum of \$13,000; and Mr. Davis, for the violation of A.R.S. § 44-1991, the sum of \$10,000.

24          14.      The actions and conduct of Mr. Sherriffs constitute the actions of an investment  
25 advisor or an investment advisor representative within the meaning of A.R.S. §§ 44-3101(2) and  
26 44-3101(3).  
27  
28



1 Sr., the sum of \$25,000, Mr. James Douglas Sherriffs, the sum of \$25,000, and Mr. Ira Joe  
2 Patterson the sum of \$6,500; and for the violation of A.R.S. § 44-1991, Mr. Joseph Michael  
3 Guess, Sr., the sum of \$50,000, Mr. James Douglas Sherriffs, the sum of \$50,000, and Mr. Ira  
4 Joe Patterson, the sum of \$12,000 and Mr. Richard G. Davis, the sum of \$10,000.

5 IT IS FURTHER ORDERED that pursuant to the authority granted to the Commission  
6 under A.R.S. § 44-3296, Respondent Mr. James Douglas Sherriffs shall pay as and for  
7 administrative penalty for the violation of A.R.S. § 44-3151, the sum of \$29,000.

8 IT IS FURTHER ORDERED that the administrative penalties ordered hereinabove shall  
9 be made payable to the State Treasurer for deposit in the General Fund for the State of Arizona.

10 IT IS FURTHER ORDERED that the administrative penalties ordered hereinabove shall  
11 bear interest at the rate of 10 percent per year for any outstanding balance after 60 days from the  
12 effective date of this Decision.

13 IT IS FURTHER ORDERED that the administrative penalties assessed hereinabove  
14 against Respondents Mr. Joseph Michael Guess, Sr., and Mr. James Douglas Sherriffs shall be  
15 reduced to \$10,000 per statutory violation if restitution is made in accordance with the terms of  
16 this Decision hereinafter.

17 IT IS FURTHER ORDERED that the administrative penalties assessed hereinabove  
18 against Mr. Ira Joe Patterson shall be reduced to \$3,000 per statutory violation if restitution is  
19 made in accordance with the terms of this Decision hereinafter.

20 IT IS FURTHER ORDERED that pursuant to the authority granted to the Commission  
21 under A.R.S. § 44-2032, Respondents, Mr. Joseph Michael Guess, Sr. and Mr. James Douglas  
22 Sherriffs, jointly and severally, with respect to RGD, shall make restitution in an amount not to  
23 exceed \$232,075 together with Respondent Mr. Ira Joe Patterson who shall jointly and severally  
24 make restitution in an amount not to exceed \$57,730 of the \$232,075 which restitution shall be  
25 made pursuant to A.A.C. R14-4-308, subject to any set-offs by any other Respondents and  
26  
27  
28

1 confirmed by the Director of Securities, said restitution to be made within 60 days of the  
2 effective date of this Decision.

3 IT IS FURTHER ORDERED that pursuant to the authority granted to the Commission  
4 under A.R.S. § 44-2032, Respondent, Mr. Joseph Michael Guess, Sr., shall make restitution with  
5 respect to PFM, not to exceed \$182,250 which restitution shall be made pursuant to A.A.C. R14-  
6 4-308, subject to any legal set-offs by any other Respondents and confirmed by the Director of  
7 Securities, said restitution to be made within 60 days of the effective date of this Decision.  
8

9 IT IS FURTHER ORDERED that the restitution ordered hereinabove shall bear interest  
10 at the rate of 10 percent per year for the period from the dates of investment to the date of  
11 payment of restitution by Respondents.

12 IT IS FURTHER ORDERED that all restitution payments ordered hereinabove shall be  
13 deposited into an interest-bearing account(s) if appropriate, until distributions are made.

14 IT IS FURTHER ORDERED that this Decision shall become effective immediately.  
15

16 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.  
17  
18

19 \_\_\_\_\_  
CHAIRMAN COMMISSIONER COMMISSIONER

20  
21 IN WITNESS WHEREOF, I, BRIAN C. McNEIL,  
22 Executive Secretary of the Arizona Corporation  
23 Commission, have hereunto set my hand and caused the  
24 official seal of the Commission to be affixed at the Capitol,  
25 in the City of Phoenix, this \_\_\_\_ day of \_\_\_\_\_, 2001.

26 \_\_\_\_\_  
BRIAN C. McNEIL  
EXECUTIVE SECRETARY

27 DISSENT \_\_\_\_\_  
28 MES:mlj

1 SERVICE LIST FOR:

PROGRESSIVE FINANCIAL  
MANAGEMENT

2 DOCKET NO.

S-03280A-00-0000

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