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Memorandum

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AZ CORP COMMISSION
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DATE: 3/29/02

TO: Nancy Cole
Docket Control

FROM: Pam Johnson *PJ*
Securities Division

RE: Scottsdale Financial Funding Group, LLC
Docket No. S-03472A-02-0000
Assigned Staff

CC: Mabel Aldridge

This is to notify you that the following individuals have been assigned to the above-mentioned case.

- Mark Sendrow
- LeRoy Johnson
- Matthew Neubert

<u>Pam Johnson</u>	(Staff Attorney)
<u>Robert Jordan</u>	(Staff Investigator)
<u>Marcia Taplin</u>	Staff Accountant

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

BEFORE THE ARIZONA CORPORATION COMMISSION

1 WILLIAM A. MUNDELL
2 Chairman
3 JIM IRVIN
4 Commissioner
5 MARC SPITZER
6 Commissioner

7 In the matter of:

8 SCOTTSDALE FINANCIAL FUNDING
9 GROUP, LLC
10 4000 North Scottsdale Road
11 Scottsdale, AZ 85251

12 MARTIN & GRIFFIN, LLC
13 4000 North Scottsdale Road
14 Scottsdale, AZ 85251

15 GREGORY B. GILL aka GREGORY P. GILL
16 4015 N. 78th St. #141
17 Scottsdale, AZ 85251

18 HAYDEN KEITH HOLLAND
19 5618 E. Montecito
20 Phoenix, AZ 85018-3223

21 TAD L. ULRICH & ASSOCIATES, LLC
22 13386 North 88th Place
23 Scottsdale, AZ 85260

24 TAD LYN ULRICH
25 13386 North 88th Place
26 Scottsdale, AZ 85260

SENIOR ADVISORY SERVICES, LLC
1401 Kimdale Street
Lehigh Acres, Florida 33936

WALLACE BUTTERWORTH
1411 East Orangewood Avenue #239
Phoenix, AZ 85020

Respondents.

) DOCKET NO. S-03472A-02-0000

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

AZ CORP COMMISSION
REGULATORY CONTROL

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NOTICE: RESPONDENTS HAVE 10 DAYS TO REQUEST A HEARING

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that respondents have engaged in acts, practices and transactions, which constitute violations of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.*, ("Securities Act").

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I.

JURISDICTION

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Securities Act.

II.

RESPONDENTS

2. SCOTTSDALE FINANCIAL FUNDING GROUP, LLC ("SFF") is an Arizona limited liability company organized on December 14, 1998, and was doing business in Arizona at all pertinent times. Its last known address is 4000 North Scottsdale Road, Scottsdale, Arizona. It was formerly located at 7336 E. Shoeman Lane, Suite 111, Scottsdale, Arizona 85251.

3. MARTIN & GRIFFIN, LLC ("M&G") is an Arizona limited liability company organized on August 4, 1998, and was doing business in Arizona at all pertinent times. Its last known address is 4000 North Scottsdale Road, Scottsdale, Arizona. It was formerly located at 7336 E. Shoeman Lane, Suite 111, Scottsdale, Arizona 85251.

4. GREGORY B. GILL aka GREGORY P. GILL ("GILL") is an individual whose last known address is 4015 N. 78th St. #141, Scottsdale, Arizona 85251. GILL was a principal, owner, officer, director, or shareholder of SFF and M&G at all pertinent times, and a purported principal, owner, officer, director, or shareholder of Credit Investors, LLCs. On July 20, 1988, a federal grand jury indicted GILL and another co-founder of a company in Newport Beach, California called First Capital Corporation, alleging various instances of mail and wire fraud. A jury convicted GILL on one count of conspiracy and two counts of wire fraud relating to charges of preparing a phony financial statement and guaranty used to defraud investors. GILL was sentenced to five years imprisonment, five years probation, and an order to pay \$89,300 in restitution. GILL appealed the conviction, and the judgment was affirmed by the United States Court of Appeals for the Seventh Circuit in Opinion No. 89-1372, *United States of America v. Gregory B. Gill*, decided on August 3, 1990.

1 5. HAYDEN KEITH HOLLAND (“HOLLAND”) is an individual whose last known
2 address is 5618 E. Montecito, Phoenix, Arizona 85018-3223. At all pertinent times, HOLLAND
3 was a principal, owner, officer, director, or shareholder of SFF and M&G, and a purported
4 principal, owner, officer, director, or shareholder of Credit Investors, LLCs.

5 6. TAD L. ULRICH & ASSOCIATES, LLC is an Arizona limited liability company
6 organized on March 3, 1999. It is and was at all pertinent times located at 13386 N. 88th Place,
7 Scottsdale, Arizona, 85260.

8 7. TAD LYN ULRICH (“TAD ULRICH”) is an individual whose last known address
9 is 13386 N. 88th Place, Scottsdale, Arizona, 85260. TAD ULRICH was at all pertinent times
10 managing member of TAD L. ULRICH & ASSOCIATES, LLC. TAD ULRICH and TAD L.
11 ULRICH & ASSOCIATES, LLC may be collectively referred to as “ULRICH”. At all pertinent
12 times, ULRICH was a sales agent for M&G and/or SFF. ULRICH is a licensed insurance salesman
13 in Arizona.

14 8. SENIOR ADVISORY SERVICES, LLC (“SAS”) is a limited liability company
15 organized in the State of Florida on May 10, 1999. Its principal office was identified in corporate
16 filings as 1401 Kimdale Street, Lehigh Acres, Florida 33936. WALLACE BUTTERWORTH
17 (“BUTTERWORTH”) was identified as a managing member. BUTTERWORTH and Roger
18 Lancette applied as “owners” to use SAS as a trade name in Arizona on or about July 24, 1998.
19 SAS’s last known location in Arizona was 1411 E. Orangewood Ave. #239, Phoenix, Arizona
20 85020.

21 9. BUTTERWORTH is an individual whose last known address is 1411 E.
22 Orangewood Ave. #239, Phoenix, Arizona 85020. During the pertinent time period,
23 BUTTERWORTH was registered as a securities salesman in Arizona. On October 30, 2001,
24 BUTTERWORTH consented to Decision No. 64184, ordering, *inter alia*, revocation of his
25 securities salesman registration for alleged violations of the Securities Act involving the offer and
26 sale of investments that are not the subject of this proceeding. According to the consent order,

1 one of the grounds for BUTTERWORTH's revocation was that he allegedly engaged in dishonest
2 or unethical practices within the meaning of A.R.S. § 44-1962(A)(10) as defined by A.A.C. R14-4-
3 130(A)(17), by effecting securities transactions that were not recorded on the records of the dealer
4 with whom he was registered at the time of the transactions from August to December 1999. SAS
5 and BUTTERWORTH may be collectively referred to as "BUTTERWORTH". At all pertinent
6 times, BUTTERWORTH was a sales agent for M&G and/or SFF. BUTTERWORTH is a licensed
7 insurance salesman in Arizona.

8 10. The respondents may be collectively referred to as "RESPONDENTS".

9 III.

10 FACTS

11 11. Beginning in or around 1997, RESPONDENTS solicited investors in two or more
12 investment programs, in which investors were told that they would receive profits from the
13 management efforts of others.

14 12. RESPONDENTS solicited private investors through public media advertisements
15 and publicly advertised investment seminars primarily targeted to retired persons and senior
16 citizens, within or from Arizona.

17 13. RESPONDENTS distributed written materials to investors representing that "SFF is
18 a finance company that specializes in analyzing and acquiring select investment alternatives for the
19 discriminating investor demanding better than average returns without taking undue risk." SFF
20 promises to provide investors with alternatives to the traditional market place, with returns that are
21 competitive with stocks and bonds, and that will allow them to diversify their portfolio so that they
22 are not dependent on the volatility that usually accompanies the traditional market place. Investors
23 are assured that only quality investments will be made available for their benefit, and that SFF is
24 committed to provide them profitable investment alternatives, minimize risk, and provide high
25 growth yield.
26

1 14. Beginning around December 1997 through at least November 2001,
2 RESPONDENTS solicited passive investments in a program involving the sale of membership
3 interests in a series of companies called "Credit Investors, LLCs," RESPONDENTS distributed
4 marketing materials to investors describing this investment program as a "Purchase of Non-
5 Performing and Consumer Debt," with management services to be provided by SFF.

6 15. Beginning around June 1998 through at least December 2001, RESPONDENTS
7 solicited passive investments in another program involving factored receivables allegedly purchased
8 from a Phoenix-based company, American Business Funding Group, Inc. ("ABF").
9 RESPONDENTS distributed marketing materials that represented that ABF's professional credit
10 management team with over 20 years of experience would "perform all credit, accounting and other
11 technical and servicing functions," and that ABF proposed to expand its business "by selling
12 commercial accounts receivable to various independent third-party buyers. For this servicing and
13 marketing function, ABF will receive a fee comprised of a portion of the gross fees earned by the
14 buyer." Marketing materials referred to this program as "Factoring and Accounts Receivable
15 Management" (the "M&G factoring program"). M&G was to purchase the accounts receivable, and
16 the investors were to share in the profits of those investments.

17 16. Since around 1998, ULRICH placed monthly ads in the Senior World monthly
18 newspaper promising "CD Alternatives" earning up to 8.5%. When prospective investors called
19 ULRICH about CD investments in response to his ad, ULRICH placed them in SFF's and/or
20 M&G's investment programs.

21 17. Since around 1998, BUTTERWORTH placed ads in the Arizona Republic
22 newspaper offering "free information workshops" for seniors; BUTTERWORTH held an average
23 of one to two workshops per month in churches, clubs and various retirement communities in
24 Arizona, including Sun City, Sun Lakes, Coyote Lakes, and Mesa. After obtaining leads from these
25 publicly advertised workshops, BUTTERWORTH scheduled meetings with individual investors in
26 the investors' homes, and solicited them to invest in the SFF and/or M&G investment programs.

1 18. Some offerees and investors in the SFF investment programs are unsophisticated
2 and inexperienced in investments. As a result of the solicitations, some investors believed that they
3 were investing in certificates of deposit (CDs).

4 19. Some investors were instructed to sign blank signature pages at the time of their
5 investments; they were given only promotional materials and receipts or IRA custodial applications.

6 **“Purchase of Non-Performing and Consumer Debt Program”**

7 20. Investor contracts for the “Purchase of Non-Performing and Consumer Debt”
8 program include an “Operating Agreement” whereby the investor is to become a member of a
9 limited liability company called “Credit Investors, LLCs,” and a “Member Representation
10 Agreement.” The Operating Agreement represents that the nature of the business and of the
11 purposes to be conducted and promoted by the Company shall be to engage the acquisition,
12 collection and disposition of non-performing receivables. Salesmen describe the investment as
13 involving “non-collected consumer credit card-type paper.”

14 21. RESPONDENTS represented to investors in written promotional materials that their
15 investments in the “Purchase of Non-Performing and Consumer Debt” program involve certain
16 risks but that SFF has taken steps to reduce the risks to investors. SFF represents that those steps
17 include a strategic partnership between SFF and Intervention & Recovery Specialist Corp. (IRSC), a
18 collections company that purportedly engages in the management and collection of consumer and
19 commercial paper for profit. SFF represents that IRSC has been successfully collecting on non-
20 performing commercial and consumer debt for over 38 years. SFF further represents that “because
21 IRSC scrutinizes the debt first hand, we know exactly what we are purchasing, thereby minimizing
22 the risk to our investors.” RESPONDENTS do not disclose the address or telephone number for
23 IRSC or the identity of any of its principals, or its financial condition. IRSC has made no filing
24 with the Arizona Corporation Commission for authorization to operate in Arizona as a domestic or
25 foreign corporation.
26

1 22. Credit Investors, LLCs have made no filings with the Arizona Corporation
2 Commission for authorization to operate in Arizona as limited liability companies.

3 23. Approximately 30 investors, most of them Arizona residents, have invested
4 approximately \$ 4,090,397 in SFF's Non-Performing and Consumer Debt "Credit Investors, LLC"
5 program.

6 24. At the time of the filing of this Notice, investors have not received any distributions
7 since October 2001.

8 **"Factoring and Accounts Receivable Management Program"**

9 25. SFF promoted its "Commercial Factoring" investment program as a "business
10 opportunity" in which a "participant" "can project returns of 10%+ per annum – in a fully secured
11 AND INSURED environment" and "Returns with safety – a promise from Scottsdale Financial
12 Funding Group, LLC."

13 26. Respondents told investors that ABF and third parties manage and monitor the
14 investment and do everything to service the investors; that SFF and M&G and their principals have
15 a procuring agreement with ABF and perhaps other suppliers of factored paper, under which SFF
16 and/or M&G own the receivables and that investors will share the profits from administration of the
17 factored paper; that investors can get a distribution quarterly or reinvest the dividends, accrued
18 quarterly, for a one-year, two-year, or three-year term; that at the end of the investment term,
19 investors will get a return of their investment capital plus interest if any has accrued, or they have an
20 opportunity to reinvest if they choose.

21 27. The amount of the interest or profit varies in accordance with the amount invested
22 and the term of the investment. Although marketing materials represent the minimum investment
23 as \$100,000, investments of \$25,000 have been accepted in the program.

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1 28. RESPONDENTS gave investors promotional materials that described the
2 commercial factoring program as a "Factoring and Accounts Receivable Management" program.
3 Investor contracts included an "Accounts Receivable Purchase Agreement" and a "Purchaser
4 Representation Agreement."

5 29. The Purchaser Representation Agreement represents that M&G is in the business of
6 acquiring the receivables from "Clients," and describes a sharing of interests in the receivables as
7 follows: M&G "agrees to sell and assign to Purchaser all of its rights, title, and interest in and to
8 each Receivable or pro rata portion thereof that Purchaser agrees to purchase. M&G shall not be
9 obligated to sell any specific Receivables to Purchaser and nothing provided herein shall be
10 construed to obligate M&G to provide any minimum or maximum amount of Receivables for sale
11 to Purchaser."

12 30. The Purchaser Representation Agreement represents that the profits to be obtained
13 by the investor are dependent on the efforts and expertise of third parties: "Since one of the most
14 critical aspects of the Factoring business is proper due diligence with respect to the Clients, the
15 Account Debtors, and monitoring of payments, the role of the servicers of these activities will be
16 important in determining whether Purchasers receive a return of, or any return on, their investment.
17 . . . [T]hird parties will provide these services."

18 31. The Purchaser Representation Agreement provides that profits to investors
19 ("Purchasers") will be paid from fees paid to M&G and other third parties: "Clients will receive a
20 discounted purchase price for Receivables they sell directly or indirectly to M&G. Upon payment
21 of the Receivables by the Account Debtor, the Client will receive its remaining funds. Until such
22 repayment, these Clients will pay monthly fees to M&G and the servicers of the Receivables,
23 Purchasers will receive a portion of those fees. . . . This compensation may vary depending upon the
24 amount invested by Purchasers and the terms of their investment."

1 32. Investors were given no disclosure documents relating to the financial condition of
2 SFF or M&G, or their principals.

3 33. Investors were provided no background or financial information concerning any of
4 the third parties or principals of these third parties who will purportedly provide the services that
5 would produce a profit for investors.

6 34. Investors were provided no background or financial information concerning any
7 companies whose receivables SFF and/or M&G were allegedly buying or selling.

8 35. The contracts include statements that the investors are all "accredited," as that term
9 is defined under securities laws. RESPONDENTS directed unaccredited investors to sign the
10 documents.

11 36. SFF represented in written promotional materials provided to investors prior to their
12 investments that SFF receivables, in most cases, are insured to their full-face amount by insurance
13 provided by nationally-known insurance companies and that debtors are financially sound.
14 However, contrary to the representations contained in the promotional materials, the Purchaser
15 Representation Agreements state: "Certain of the Receivables purchased from M&G are or will be
16 insured to a limited extent by certain insurance policies. However, not all of the Receivables will be
17 covered by insurance, and thus no Purchaser should acquire Receivables in reliance on insurance."

18 37. Investors were given no specific information concerning the alleged insurance.

19 38. Investors were given no background or financial information concerning the debtors
20 who were allegedly obligated to pay the receivables.

21 39. SFF promotional materials provided to investors through sales agents prior to their
22 investments represent that "You are secured by an assignment of our security to you plus we pass
23 title to the purchased invoices to your entity. SFF manages the entire process on your behalf"
24 However, contrary to these representations, there is no provision in the investor contracts for
25
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1 assigning security or passing title to purchased invoices to the investor, or for providing any security
2 for the investments.

3 40. Investors' funds were paid to M&G. Although the records of ABF reflect some
4 investment by M&G, there is no record on the books of ABF reflecting any investment by or on
5 behalf of any of M&G's investors.

6 41. On February 24, 2000, ABF filed a petition in the United States Bankruptcy Court
7 for the District of Arizona, for protection under Chapter 11 of the United States Bankruptcy Code.

8 42. Sometime prior to December 1999, according to ABF's bankruptcy filings, ABF
9 allegedly discovered that its controlling principal, Angelo Tullo, had been engaging in fraudulent
10 activities including forging signatures to create phony receivables and companies; destroying
11 documents and altering bank statements, client statements, buyer accounts, and other records; and
12 misappropriating ABF investor funds "to support his lavish lifestyle and to further his ponzi
13 scheme." As a result of the alleged fraudulent activities of former management, ABF estimated
14 that investors lost about \$8 million.

15 43. After ABF filed for bankruptcy protection, RESPONDENTS continued to offer and
16 sell the M&G factoring program to investors without disclosing any of the background or financial
17 information about ABF, or its bankruptcy.

18 44. Individual private investors solicited by RESPONDENTS, whose funds were used
19 to invest in ABF, were not identified as creditors in the ABF bankruptcy.

20 45. After February 2000, ABF was reorganized under new management and continued
21 operations as New Horizon Capital, Inc. ("New Horizon"). New Horizon solicited no new private
22 investors.

23 46. Although RESPONDENTS continued to solicit new investors and new funds after
24 ABF's bankruptcy, SFF and M&G invested no new funds in New Horizon and purchased no
25 receivable paper from New Horizon or ABF since February 2000.

26

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

- 4 a) Misrepresenting and/or failing to disclose the nature of the investment;
- 5 b) Misrepresenting the safety of the investment and/or minimizing the risks;
- 6 c) Failing to provide investors with disclosure statements, prospectuses or
7 financial statements including but not limited to past operations, balance sheets,
8 statements of income, retained earnings, cash flows and uses of proceeds that
9 would reflect the financial position of these entities;
- 10 d) Failing to disclose financial and background information about third
11 parties that are supposed to provide management services and technical expertise
12 necessary to produce profits for the investors;
- 13 e) Failing to disclose the identities, the principals, or the financial condition
14 of the "clients" from whom the receivables were purchased or the debtors that are
15 obligated to pay the receivables;
- 16 f) Misrepresenting or failing to fully disclose the use of investors' funds;
- 17 g) Misrepresenting that Credit Investors, LLCs were limited liability
18 companies or failing to disclose that Credit Investors, LLCs were not authorized to
19 do business as limited liability companies in Arizona;
- 20 h) Failing to disclose that IRSC, the company responsible for providing
21 management services and producing a profit for investors in the Credit Investors,
22 LLCs, is not authorized to conduct business as a domestic or foreign corporation in
23 Arizona.
- 24 i) Failing to disclose, after February 24, 2000, that ABF filed a petition for
25 bankruptcy protection under Chapter 11 of the United States Bankruptcy Code;
- 26

1 j) Failing to disclose, after February 2000, the alleged fraudulent conduct of the
2 former controlling principal of ABF that resulted in the alleged loss of
3 approximately \$8 million of investor funds;

4 k) Misrepresenting after February 2000 that M&G was using investor funds to
5 purchase factoring paper from ABF;

6 l) Misrepresenting that all the investors are "accredited," as that term is defined
7 under the securities laws; and

8 m) Failing to disclose GILL's prior felony conviction for fraud involving
9 misrepresentations in soliciting an investment and misuse of investor funds.

10 55. This conduct violates A.R.S. § 44-1991.

11 56. RESPONDENT GILL directly or indirectly controlled M&G within the meaning of
12 A.R.S. § 44-1999. Therefore, RESPONDENT GILL is liable to the same extent as M&G for their
13 violations of A.R.S. § 44-1991.

14 57. RESPONDENT GILL directly or indirectly controlled SFF within the meaning of
15 A.R.S. § 44-1999. Therefore, RESPONDENT GILL is liable to the same extent as SFF for their
16 violations of A.R.S. § 44-1991.

17 58. RESPONDENT HOLLAND directly or indirectly controlled M&G within the
18 meaning of A.R.S. § 44-1999. Therefore, RESPONDENT HOLLAND is liable to the same extent
19 as M&G for their violations of A.R.S. § 44-1991.

20 59. RESPONDENT HOLLAND directly or indirectly controlled SFF within the
21 meaning of A.R.S. § 44-1999. Therefore, RESPONDENT HOLLAND is liable to the same extent
22 as SFF for their violations of A.R.S. § 44-1991.

23 60. RESPONDENT TAD ULRICH directly or indirectly controlled TAD L. ULRICH &
24 ASSOCIATES, LLC within the meaning of A.R.S. § 44-1999. Therefore, TAD ULRICH is liable
25
26

1 to the same extent as TAD L. ULRICH & ASSOCIATES, LLC for its violations of A.R.S. § 44-
2 1991.

3 61. RESPONDENT BUTTERWORTH directly or indirectly controlled SAS within the
4 meaning of A.R.S. § 44-1999. Therefore, BUTTERWORTH is liable to the same extent as SAS for
5 its violations of A.R.S. § 44-1991.

6 62. RESPONDENTS made, participated in or induced the sale of a security within the
7 meaning of A.R.S. § 44-2003(A). Therefore, RESPONDENTS are liable for the above violations
8 of A.R.S. § 44-1991.

9 **XIII.**

10 **REQUESTED RELIEF**

11 The Division requests that the Commission grant the following relief against
12 RESPONDENTS:

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

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

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

21 8. Order any other relief that the Commission deems appropriate.

22 **XIV.**

23 **HEARING OPPORTUNITY**

24 RESPONDENTS may request a hearing pursuant to A.R.S. § 44-1972 and A.A.C. R14-4-
25 306. A request must be in writing and received by the Commission within 10 business days after
26

1 service of this Notice of Opportunity for Hearing. Each RESPONDENT must deliver or mail the
2 request to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix,
3 Arizona 85007. A Docket Control cover sheet must accompany the request. A cover sheet form and
4 instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's
5 Internet web site at www.cc.state.az.us/utility/forms/index.htm.

6 If a request for a hearing is timely made, the Commission shall schedule the hearing to begin
7 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the
8 parties, or ordered by the Commission. If a request for a hearing is not timely made, the Commission
9 may, without a hearing, enter an order against each RESPONDENT granting the relief requested by
10 the Division in this Notice of Opportunity for Hearing.

11 Persons with a disability may request a reasonable accommodation such as a sign language
12 interpreter, as well as request this document in an alternative format, by contacting Shelly M.
13 Hood, Executive Assistant to the Executive Secretary, voice phone number 602/542-3931, e-mail
14 shood@cc.state.az.us. Requests should be made as early as possible to allow time to arrange the
15 accommodation.

16
17 Dated this 29th day of March, 2002.

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21 Mark Sendrow
22 Director of Securities
23
24