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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

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ARIZONA CORPORATION COMMISSION  
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COMMISSIONERS

GARY PIERCE, Chairman  
BOB STUMP  
SANDRA D. KENNEDY  
PAUL NEWMAN  
BRENDA BURNS

In the matter of:

ULF OLOF HOLGERSSON and LAVERNE J. ABE, formerly husband and wife, doing business as Viking Asset Management, an Arizona registered trade name,

Respondents.

DOCKET NO. S-20762A-10-0416

**SECURITIES DIVISION'S POST-HEARING MEMORANDUM**

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") hereby submits its post-hearing memorandum with regard to the administrative hearing held regarding Respondent Laverne J. Abe. This post-hearing memorandum is supported by the following Memorandum of Points and Authorities.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. PROCEDURAL BACKGROUND**

On October 14, 2010, the Division filed a Notice of Opportunity for Hearing ("Notice") against Respondents Ulf Olof Holgersson ("Holgersson") and Laverne J. Abe ("Respondent Abe"), formerly husband and wife, dba Viking Asset Management ("Viking"), in which the Division alleged multiple violations of the Arizona Securities Act ("Act") by Holgersson in connection with the offer and sale of securities in the form of investment contracts and/or promissory notes. The Division joined Respondent Abe in the Notice pursuant to A.R.S. § 44-2031(C), solely to determine the liability of the marital community.

Holgersson and Respondent Abe were duly served with a copy of the Notice.

1 On November 1, 2010, Holgersson and Respondent Abe, pro se, each filed a request for  
2 hearing in this matter.

3 On November 18, 2010, Holgersson and Respondent Abe, pro se, each filed an answer.  
4 In her answer, Respondent Abe claims that neither she nor the marital community benefitted in  
5 any way from the actions of Holgersson.

6 On May 16, 2011, an attorney representing Holgersson entered his appearance with the  
7 Commission. On May 18, 2011, an attorney representing Respondent Abe entered his  
8 appearance with the Commission.

9 On September 6, 2011, the Commission approved a Consent Order with respect to  
10 Holgersson. The Consent Order was signed and docketed on September 15, 2011 as Decision  
11 No. 72588.

12 On September 20, 2011, the Division and Respondent Abe, through counsel, filed with  
13 the Commission a Joint Stipulation of Facts (the "Stipulation"). Pursuant to the Stipulation, the  
14 Division and Respondent Abe agreed as to the following facts:

15 1. Respondent Abe is an individual who has resided in Maricopa County, Arizona at  
16 all times relevant. Respondent Abe has resided at 15236 N. 6<sup>th</sup> Circle, Phoenix, Arizona 85023  
17 since at least September 2002. During this time, the residence has been the sole and separate  
18 property of Respondent Abe.

19 2. From November 25, 2001 through June 19, 2007, the date a petition for  
20 dissolution of marriage was filed in Arizona (FN2007-002720), Respondent Abe was the spouse  
21 of Holgersson.

22 3. Holgersson's actions, as set forth in the Notice of Opportunity for Hearing and  
23 the Consent Order, Decision No. 72588, did violate A.R.S. §§ 44-1841, 44-1842 & 44-1991 of  
24 the Act.

25 ...

26 ...

1           4.       The amount of restitution currently outstanding to investors on record with the  
2 Division who invested with Holgersson prior to June 19, 2007, the date a petition for dissolution  
3 of marriage was filed in Arizona (FN2007-002720), is \$800,198.<sup>1</sup>

4           Respondent Abe sought a hearing regarding the liability of the marital community and her  
5 liability, if any, resulting from a finding of marital community liability. Respondent Abe denied  
6 that the marital community was liable or that she had any liability even assuming there was a  
7 finding of marital community liability.

8           A hearing in this matter related to Respondent Abe was held on September 21, 2011. The  
9 Division was represented by counsel and Respondent Abe appeared with her attorney.  
10 Administrative Law Judge Stern admitted the following exhibits into evidence: S-8<sup>2</sup>, S-15<sup>3</sup>, S-  
11 16<sup>4</sup>, and R-1<sup>5</sup>. The Division called forensic accounting expert, Sean Callahan, C.P.A. and  
12 Respondent Abe testified on her own behalf.

## 13   **II. JURISDICTION**

14           The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona  
15 Constitution and the Securities Act. *See* Notice ¶1 and Respondent Abe's Answer ¶1.

## 16   **III. LEGAL ARGUMENT**

### 17   **A.    The marital community of Holgersson and Respondent Abe is subject to** 18           **liability for the debt arising from violations, committed by Holgersson, of the**               **Securities Act.**

19           Pursuant to A.R.S. § 25-211, all property acquired by either husband or wife during the  
20 marriage is the community property of the husband and wife except for property that is acquired  
21 by gift, devise, descent or is acquired after service of a petition for dissolution of marriage, legal  
22 separation or annulment if the petition results in a decree of dissolution of marriage, legal  
23 separation or annulment. During marriage, "the spouses have equal management, control and

24           <sup>1</sup> The numbered paragraphs 1-4 correspond to the numbered paragraphs in the Stipulation and will be referred to herein  
as "Stipulation ¶1, ¶2", etc.

25           <sup>2</sup> *Hr'g Tr. p. 99, ln. 9.*

<sup>3</sup> *Hr'g Tr. p. 28, lns.19-20.*

26           <sup>4</sup> *Hr'g Tr. p. 51, ln.17.*

<sup>5</sup> *Hr'g Tr. p. 102, lns.19-20.*

1 disposition rights over their community property and have equal power to bind the community.”  
2 A.R.S. § 25-214(B). In addition, “either spouse may contract debts and otherwise act for the  
3 benefit of the community . . . .” A.R.S. § 25-215(D). “[T]he presumption of law is, in the  
4 absence of the contrary showing, that all property acquired and all business done and transacted  
5 during coverture, by either spouse, is for the community.” *Johnson v. Johnson*, 131 Ariz. 38, 45,  
6 638 P.2d 705, 712 (1981).

7 Here, the Division and Respondent Abe have stipulated that Holgersson’s actions giving  
8 rise to the debt occurred while Holgersson and Respondent Abe were married and that  
9 Holgersson’s actions did, in fact, violate the applicable registration and antifraud provisions of  
10 the Act. *See Stipulation* ¶2 and ¶3. The parties have further stipulated that to the extent there is a  
11 finding that the debt is a liability of the marital community, the amount of the debt is equal to the  
12 amount outstanding to investors who invested with Holgersson prior to June 19, 2007, the date a  
13 petition for dissolution of marriage was filed in Arizona (FN2007-002720), or \$800,198. *See*  
14 *Stipulation* ¶4.

15 The Arizona Court of Appeals has stated, “[a] debt incurred by a spouse during marriage  
16 is presumed to be a community obligation; a party contesting the community nature of a debt  
17 bears the burden of overcoming that presumption by clear and convincing evidence.” *Hrudka v.*  
18 *Hrudka*, 186 Ariz. 84, 91-92, 919 P.2d 179, 186-187 (Ct. App. 1995). Furthermore, “a debt is  
19 incurred at the time of the actions that give rise to the debt.” *Arab Monetary Fund v. Hashim*,  
20 219 Ariz. 108, 111, 193 P.3d 802, 806 (Ct. App. 2008). Respondent Abe did not even attempt to  
21 rebut the presumption that the debt incurred by Holgersson during the marriage is a community  
22 obligation. Based on her failure alone, a recommendation finding that the debt is a liability of  
23 the marital community is appropriate.

24 It need not be determined whether Respondent Abe had knowledge, participation, or  
25 intent in order to bind the community for the debt incurred. The presumption of Holgersson’s  
26 intent is enough to bind the community, even if Respondent Abe had been unaware or did not

1 approve of Holgersson's actions. The *Ellsworth* court stated, "[I]f the husband acts with the  
2 object of benefiting the community, a fact not questioned here, the obligations so incurred by him  
3 are community in nature, whether or not the wife approved thereof." *Ellsworth v. Ellsworth*, 5  
4 Ariz. App. 89, 92, 423 P.2d 364, 367 (Ct. App. 1967) citing *Donato v. Fishburn*, 90 Ariz. 210,  
5 367 P.2d 245 (1961). Whether Respondent Abe was aware of Holgersson's investment activities  
6 is not in question. Respondent Abe testified that she was well aware of Holgersson's investment  
7 activity and the benefit provided to the marital community by Holgersson's trading business.  
8 *Hr'g Tr. at p. 82, ln. 24 to p. 83, ln. 2, p. 84, ln. 18 to p. 88, ln. 3, and p. 90 ln. 23 to p. 93 ln. 22.*  
9 Respondent Abe further testified that she sought details on several occasions from Holgersson  
10 related to his activities and even provided funds to him that allowed him to continue his trading  
11 business. *Hr'g Tr. at p. 87, ln. 18 to p. 88, ln. 3 and p. 73, lns. 17-21.* Respondent Abe offered  
12 no evidence that Holgersson was not acting in furtherance of the marital community with the  
13 intent to benefit the community through the business he transacted during the marriage to  
14 Respondent Abe. Since Respondent Abe failed to meet her burden and present "highly probable"  
15 evidence to rebut the presumptions, the debt is a liability of the marital community. See A.R.S. §  
16 25-215. Therefore, the marital community of Holgersson and Respondent Abe is subject to  
17 restitution in the amount of \$800,198.<sup>6</sup> *Id.* and *Stipulation ¶4.*

18 **B. The marital community clearly benefited from the actions taken by**  
19 **Holgersson.**

20 Though not required, the Division, at the hearing of this matter, provided numerous  
21 examples representing actual benefit to the marital community resulting from the actions taken  
22 by Holgersson. The Division's forensic accounting expert, Sean Callahan, C.P.A., C.F.E.,  
23 completed an analysis and summarized it in a report admitted as Exhibit S-15. *Hr'g Tr. p. 11,*

24 \_\_\_\_\_  
25 <sup>6</sup> The Consent Order signed and docketed by the Commission on September 15, 2011 as Decision No. 72588, with  
26 respect to Holgersson, does not order an administrative penalty as to the marital community. The Division agrees  
that there should continue to be no administrative penalty recommended as to the marital community of Holgersson  
and Respondent Abe.

1 *Ins. 12-18 and p. 28 Ins. 19-20.* Mr. Callahan testified that he analyzed three bank accounts into  
2 which investor funds were deposited, including an account held jointly by Holgersson and  
3 Respondent Abe. *Hr'g Tr. p. 12, ln. 15 to p. 13, ln. 8; Ex. S-15, p. 2;* All three bank accounts  
4 were opened after the date Holgersson and Respondent Abe were married. *Ex. S-15; Hr'g Tr. p.*  
5 *24, Ins. 18-24; Stipulation ¶2.* The investor funds (\$2,233,688) deposited into the three bank  
6 accounts represented approximately seventy percent of the total amount deposited into all three  
7 bank accounts. *Ex. S-15.* Beginning on about December 15, 2004, and continuing through at  
8 least June 11, 2009, Holgersson made disbursements from the three bank accounts to pay various  
9 expenses. *Id.* Mr. Callahan testified that several of the disbursements were used to make  
10 payments for such things as: approximately \$30,000 for the mortgage payment on the residence  
11 where both Holgersson and Respondent Abe resided<sup>7</sup>; principal and interest payments (\$53,000)  
12 on a line of credit secured by the residence where both Holgersson and Respondent Abe resided;  
13 checks or wire transfers (\$81,000) paid directly to Respondent Abe; payments (\$29,370) to a  
14 company, Labtech, owned and operated by Respondent Abe; and various other disbursements  
15 made to grocery stores, restaurants, utility companies, and department stores. *Hr'g Tr. p. 21, ln.*  
16 *7 to p. 23, ln. 20 and p. 34, ln. 5 to p. 38, ln. 7, Ex. S-15.* Mr. Callahan concluded that, based  
17 upon his analysis, both Holgersson and Respondent Abe while married benefited from the funds  
18 received from investors. *Hr'g Tr. p. 38. Ins. 8-11.* While testifying, Respondent Abe  
19 acknowledged benefit of the types of payments identified above and/or that the payments were in  
20 fact made. *Hr'g Tr. p. 86, Ins. 7-14 and p. 89, Ins. 13-22.*

21 Respondent Abe will most certainly argue that any benefit received by the community  
22 from the business conducted by Holgersson should somehow be offset by funds contributed to  
23 the community by Respondent Abe. For example, Respondent Abe testified that she provided  
24 funds to Holgersson from a line of credit attached to the residence owned by Respondent Abe.  
25

26 <sup>7</sup> Holgersson and Respondent Abe continued to reside together at this residence as of the date of the hearing. *See Hr'g Tr. p. 97, Ins. 5-13.* The total used for mortgage and HOA expenses on the residence was \$34,174. *Ex. S-15*

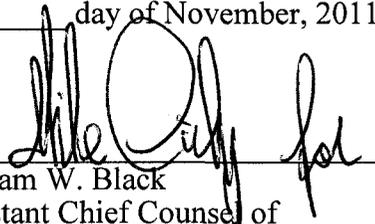
1 *Hr'g Tr. p. 73, lns. 17-21.* The burden is upon the party claiming a separate property interest in  
 2 the funds to prove it, together with the amount, by clear and satisfactory evidence. *Cooper v.*  
 3 *Cooper*, 130 Ariz. 257, 259-260, 635 P.2d 850, 852-853 (1981). Respondent Abe presented no  
 4 evidence that the funds contributed by her were, in any way, segregated from other funds held in  
 5 the accounts into which the funds were deposited. There was no prenuptial agreement between  
 6 Holgersson and Respondent Abe establishing the separate assets of either Holgersson or  
 7 Respondent Abe. *Hr'g Tr. p. 82, lns. 11-13.* Respondent Abe did not document the "loan" she is  
 8 alleged to have made to Holgersson because according to her, "we're husband and wife." *Hr'g*  
 9 *Tr. p. 79, ln. 23 to p. 80, ln. 2.* In Arizona, the law is clear that where separate and community  
 10 funds are so commingled that they become indistinguishable, they are presumed to be community  
 11 property. *Martin v. Martin*, 156 Ariz. 440, 443, 752 P.2d 1026, 1029 (Ct. App. 1986). In fact,  
 12 the only testimony provided as to the status of the funds alleged to have been contributed by  
 13 Respondent Abe was provided by forensic accounting expert Sean Callahan who testified that the  
 14 funds received from Respondent Abe and deposited into the three accounts were immediately  
 15 commingled with the other funds deposited into the accounts and used to make the types of  
 16 payments described above. *Hr'g Tr. p. 18, ln. 10 to p. 19 ln. 13 and p. 20, lns. 15 to p. 21, ln. 1.*

17 **IV. CONCLUSION**

18 Based on the foregoing, the Division respectfully requests the ALJ to submit a  
 19 recommended order consistent with the evidence presented in this matter finding that the marital  
 20 community of Holgersson and Respondent Abe is liable for restitution in the amount of  
 21 \$800,198.

22 Respectfully submitted this 10<sup>th</sup> day of November, 2011.

23  
 24 By:

  
 25 William W. Black  
 26 Assistant Chief Counsel of  
 Enforcement for the Securities Division

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of the foregoing filed this 10<sup>th</sup> day of  
November, 2011, with

Docket Control  
Arizona Corporation Commission  
1200 W. Washington St.  
Phoenix, AZ 85007

COPY of the foregoing hand-delivered  
this 10<sup>th</sup> day of November, 2011, to:

Administrative Law Judge Marc Stern  
Arizona Corporation Commission  
1200 W. Washington St.  
Phoenix, AZ 85007

COPY of the foregoing mailed this  
10<sup>th</sup> day of November, 2011, to:

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