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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

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COMMISSIONERS

ARIZONA CORP COMMISSION  
DOCKET CONTROL

AUG - 9 2013

- BOB STUMP, Chairman
- GARY PIERCE
- BRENDA BURNS
- BOB BURNS
- SUSAN BITTER SMITH

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<p>In the matter of:</p> <p>OUT OF THE BLUE PROCESSORS, LLC, an Arizona limited liability company, d/b/a Out of the Blue Processors II, LLC,</p> <p>MARK STEINER (CRD# 1834102) and SHELLY STEINER, husband and wife,</p> <p style="text-align: center;">Respondents.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>DOCKET NO. S-20837A-12-0061</p> <p><b>MOTION FOR LEAVE TO AMEND NOTICE OF OPPORTUNITY FOR HEARING</b></p> <p>(Assigned to Hon. Marc E. Stern)</p>
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The Securities Division ("Division") of the Arizona Corporation Commission requests leave to amend its *Temporary Order to Cease and Desist and Notice of Opportunity for Hearing* ("Original Notice"), filed on February 22, 2012, to incorporate additional factual allegations regarding the matter at issue in the Original Notice and to incorporate an additional claim against the respondents named in that notice.

The officer presiding over an administrative proceeding, in his discretion, may permit a notice to be amended.<sup>1</sup>

The Division seeks leave to amend the Original Notice to reflect information recently obtained by the Division. The Original Notice asserted violations of certain registration provisions of the Securities Act of Arizona<sup>2</sup> stemming from a specific offer to sale securities. The new information suggests that Respondents not only offered but also sold securities in the amount of at least \$1,773,000 to at least 28 investors. In fact, Respondents have acknowledged the existence of actual investors in pleadings filed in this matter.<sup>3</sup> Furthermore, the new

<sup>1</sup> See A.A.C. R14-3-106(E).  
<sup>2</sup> A.R.S. § 44-1801 *et seq.*  
<sup>3</sup> See Respondents' *Motion to Dismiss*, filed January 28, 2013.

1 information suggests the Respondents diverted investor monies for improper purposes in  
2 violation of their offering agreements. Based on this new information, the Division seeks to  
3 amend the Original Notice to include additional factual allegations and a fraud claim. A copy of  
4 the proposed amended notice is attached as Exhibit A.

5 The Division requests that this motion be granted.<sup>4</sup> The proposed amended notice will  
6 more thoroughly appraise the Respondents of the factual bases for the claims asserted against  
7 them. The amendment will also serve efficiency by incorporating in one action all claims arising  
8 from that offering and those respondents already at issue in this action. For these reasons,  
9 granting the Division leave to amend the Original Notice is proper.

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RESPECTFULLY SUBMITTED August 9, 2013.

ARIZONA CORPORATION COMMISSION

By: Stephen J. Womack  
Stephen J. Womack, Esq.  
Securities Division  
Arizona Corporation Commission

25 <sup>4</sup> If this application is granted, certain dates will need to be continued. Through the *Joint Stipulation to Extend*  
26 *Deadline for Exchanging Witness Lists and Exhibit Lists*, filed July 30, 2013, the deadline for the parties to exchange  
witness and exhibit lists is August 9, 2013. And through the *Ninth Procedural Order*, filed February 4, 2013, an  
evidentiary hearing is currently scheduled for September 16 - 20, 2013. The parties are seeking the continuance of  
those dates through the *Joint Motion for Continuance*, filed contemporaneously with this application.

1 ORIGINAL AND 13 COPIES of the foregoing filed August 9, 2013, with:

2 Docket Control  
3 Arizona Corporation Commission  
4 1200 W. Washington St.  
5 Phoenix, AZ 85007

6 COPY of the foregoing hand-delivered August 9, 2013, to:

7 Hon. Marc E. Stern  
8 Administrative Law Judge  
9 Arizona Corporation Commission/Hearing Division  
10 1200 W. Washington St.  
11 Phoenix, AZ 85007

12 COPY of the foregoing mailed August 9, 2013, to:

13 Arthur P. Allsworth  
14 7501 North 16th Street Suite 200  
15 Phoenix AZ 85020-4677

16 *Attorney for Respondents*

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By: Karen Houde

# EXHIBIT A

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**BEFORE THE ARIZONA CORPORATION COMMISSION**

COMMISSIONERS

BOB STUMP, Chairman  
GARY PIERCE  
BRENDA BURNS  
BOB BURNS  
SUSAN BITTER SMITH

In the matter of:  OUT OF THE BLUE PROCESSORS, LLC, an Arizona limited liability company, d/b/a Out of the Blue Processors II, LLC,  MARK STEINER (CRD# 1834102) and SHELLY STEINER, husband and wife,  <div style="text-align: center;">Respondents.</div>	) DOCKET NO. S-20837A-12-0061 ) ) <b>AMENDED NOTICE OF</b> ) <b>OPPORTUNITY FOR HEARING</b> ) <b>REGARDING PROPOSED</b> ) <b>ORDER TO CEASE AND DESIST,</b> ) <b>ORDER FOR RESTITUTION,</b> ) <b>ORDER FOR ADMINISTRATIVE</b> ) <b>PENALTIES, ORDER OF REVOCATION,</b> ) <b>AND ORDER FOR OTHER</b> ) <b>AFFIRMATIVE ACTION</b> ) ) (Assigned to Hon. Marc E. Stern)
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**NOTICE: EACH RESPONDENT HAS 10 DAYS TO REQUEST A HEARING**  
**EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER**

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that respondents Out of the Blue Processors, LLC, directly and doing business as Out of the Blue Processors II, LLC, and Mark Steiner have engaged in acts, practices, and transactions that constitute violations of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act").

**I.**

**JURISDICTION**

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

1 **II.**

2 **RESPONDENTS**

3 2. At all times relevant, Mark Steiner ("STEINER"), CRD# 1834102, has been an  
4 Arizona resident.

5 3. Out of the Blue Processors, LLC is an Arizona limited liability company organized  
6 on December 18, 2000.

7 4. Out of the Blue Processors, LLC also conducts business as "Out of the Blue  
8 Processors II, LLC," an unorganized business. Out of the Blue Processors, LLC, directly and  
9 doing business as Out of the Blue Processors II, LLC, is referred to below as "BLUE."

10 5. STEINER is a managing member of BLUE.

11 6. STEINER has not been a registered securities salesman with the Commission since  
12 April 13, 2005.

13 7. STEINER and BLUE, collectively, are referred to below as "Respondents."

14 8. Shelly Steiner has been at all relevant times the spouse of Respondent STEINER, and  
15 may be referred to as "Respondent Spouse." Respondent Spouse is joined in this action under A.R.S.  
16 § 44-2031(C) solely for purposes of determining the liability of the marital community.

17 9. At all relevant times, Respondent STEINER has been acting for his own benefit and  
18 for the benefit or in furtherance of his and Respondent Spouse's marital community.

19 **III.**

20 **FACTS**

21 **A. BLUE I Offering**

22 10. Beginning in about 2008, STEINER began soliciting potential investors residing in  
23 Arizona regarding membership interests in Out of the Blue Processors, LLC in the hope of raising  
24 operating capital for participation in various Chinese projects.

25 11. More specifically, STEINER stated that he, through a third party, had strategic  
26 relationships in China with influential Chinese associates that allowed them to work with the

1 Chinese on various projects, including, but not limited to, projects related to oil, alternative energy,  
2 firearms and ammunition, beauty supplies, and other retail products.

3 12. In addition, STEINER represented to certain investors that he and a third party had  
4 strategic relationships in China with influential Chinese associates that allowed them to work with  
5 the Chinese on certain infrastructure projects in Africa, including projects with estimated values of  
6 over \$1 billion.

7 13. STEINER provided to investors the "Operating Agreement of Out of the Blue  
8 Processors, LLC" dated June 1, 2008 ("BLUE I Operating Agreement").

9 14. The BLUE I Operating Agreement promised investors would become members of  
10 BLUE and share in the profits and losses as follows:

11 Division of Profits and Losses. Per the 'Private Placement Agreement' between  
12 Lunsford Consulting, Ltd. and the Company, the Company agreed to raise one  
13 million five hundred thousand dollars (\$1,500,000.00) for operating capital for  
14 Lunsford Consulting, Ltd, in exchange for ten percent (10%) of Lunsford  
15 Consulting, Ltd.'s gross revenue until investment is returned, then five percent (5%)  
16 of gross revenues in perpetuity. In the event the Company raises less than  
\$1,500,000.00, the percentage of Lunsford Consulting, Ltd,'s [sic] revenue will be  
prorated in accordance with the percentage of monies raised. Members' percentage  
interest will be proportionate to the total investment dollars invested in the  
Company, and therefore will not be diluted.

17 15. STEINER, on behalf of BLUE, and "Lunsford Consulting" executed a "PRIVATE  
18 PLACEMENT AGREEMENT" dated March 25, 2008, ("Private Placement Memorandum").

19 16. The Private Placement Memorandum contains the following recitals:

20 a) Lunsford Consulting is in the business of acting as an "intermediary for  
21 various Chinese interests ("the Clients") for the purpose of identifying, documenting, and  
22 securing funding for Client controlled projects;"

23 b) BLUE can provide Lunsford Consulting with "capital for its operations" in  
24 exchange for a fee;

1           c)     Lunsford Consulting would pay 10% of its gross revenues, less any  
2 commissions or fees, to BLUE in exchange for \$1,500,000 until principal is returned, then  
3 5% in perpetuity thereafter; and

4           d)     If Lunsford Consulting requires additional capital, Lunsford Consulting  
5 would pay an additional 5% of its Gross Revenue, less any commissions or fees, to BLUE  
6 in exchange for up to \$750,000 until principal is returned, then 2.5% in perpetuity  
7 thereafter.

8           17.     STEINER stated to investors that, for each project that STEINER facilitated with  
9 the Chinese, a consulting fee would be paid based on a percentage of the total project cost.

10           18.     The consulting fee was estimated to be between 1% and 3% of the total project  
11 development cost. The consulting fee would be due and payable upon project funding or the  
12 execution of an equipment purchase contract.

13           19.     Based on the BLUE I Operating Agreement and Private Placement Memorandum, if  
14 Respondents successfully facilitated a deal with the Chinese, Lunsford would be paid a negotiated  
15 consulting fee. Lunsford would then pay BLUE a fee based on the terms of the Private Placement  
16 Memorandum. Finally, BLUE would pay investors their share of profits pursuant to the BLUE I  
17 Operating Agreement.

18           20.     Respondents represented to investors an opportunity to participate in the  
19 development of a 1200 megawatt power plant in Kogi State, Nigeria, with an estimated project cost  
20 of \$1.5 billion and an agreed-upon consulting fee of 1%. For example, the BLUE I fee  
21 arrangement, as applied to this project, would be paid out as follows:

22           a)     Lunsford Consulting would be paid \$15 million, which is 1% of \$1.5 billion;  
23           b)     Lunsford Consulting would then pay BLUE \$1.5 million, which is 10% of  
24 \$15 million; and

25           c)     BLUE would then distribute pro rata the \$1.5 million to the investors based  
26 on their initial investment amount and membership interest.

1 Under this scenario, the initial \$1.5 million raised from BLUE investors would be repaid fully.

2 21. Pursuant to the BLUE I Operating Agreement:

3 a) STEINER is the Manager of the BLUE I Offering;

4 b) The principal place of business of BLUE is Mesa, Arizona;

5 c) The Manager has the general powers to: employ and dismiss from  
6 employment people, firms or corporations; invest company funds; execute all documents on  
7 behalf of the company as the Manger deems appropriate in carrying out the purpose of the  
8 company; reimburse himself for expenses incurred in the conduct of BLUE's business; and  
9 pay any ordinary and necessary expenses of the company; and

10 d) The Manager can only be removed for "cause."

11 22. STEINER told investors that investment principal would be used solely for business  
12 expenses related to facilitating investment in various projects around the world, including for travel  
13 to China and for entertaining certain Chinese officials or individuals.

14 23. STEINER failed to disclose to all investors that Respondents diverted investor funds  
15 to pay for expenses unrelated to BLUE's business. For example, on August 25, 2010, a bank  
16 account held in the name of Out of the Blue Processors, LLC, on which account STEINER is the  
17 sole signatory, had a beginning balance of \$0. That same day, \$100,000 from two investors was  
18 deposited into the account. Between August 25, 2010, and November 30, 2010, the only other  
19 material deposit occurred on October 1, 2010, for \$49,543. During that time period, \$23,400 in  
20 cash was withdrawn from the account, \$20,000 was transferred to a personal account held in the  
21 name of STEINER and Respondent Spouse, \$71,930 was transferred to the account of an unrelated  
22 business that is managed by STEINER, approximately \$28,000 was paid on STEINER's credit  
23 card for various charges, only about \$3,200 of which were incurred for international travel,  
24 international lodging, or related international expenses, and \$29,500 was used to purchase a  
25 cashier's check bearing the notation "RE: LEASE AGREEMENT" and made payable to the owner  
26 of the house at which STEINER resided. By November 30, 2010, the ending balance of \$922.

1 **B. BLUE II Offering**

2 24. In January 2012, an Arizona resident reviewed an email that discussed an  
3 opportunity to earn “very handsome returns on multi-billion dollar infrastructure project funding in  
4 Africa and South America” based on STEINER’s and Lunsford’s close relationship with influential  
5 Chinese leaders.

6 25. The Arizona resident replied to the email promising handsome returns, requesting  
7 more information on the investment opportunity. In response, the Arizona resident received  
8 STEINER’s contact information. Subsequently, the Arizona resident corresponded with STEINER  
9 about investment opportunities.

10 26. Particularly, on January 9, 2012, the Arizona resident received an email from  
11 STEINER that stated:

12 “I appreciate your interest in our business relationship with China .... In  
13 short, we are structured as an LLC, with investors owning their relative  
14 portion of that LLC. The LLC contractually receives 10% of the gross  
15 revenues generated on all business out of China, in perpetuity. Because of  
the magnitude of the projects, those returns are expected to exceed 50% -  
100% annually.”

16 27. Thereafter, the Arizona resident sought from STEINER additional information.

17 28. An investment amount of approximately \$200,000 was discussed by the Arizona  
18 resident and STEINER.

19 29. About January 19, 2012, the Arizona resident received an email from STEINER.  
20 Attached to that email was the Operating Agreement of Out of the Blue Processors II, LLC, dated  
21 May 1, 2011 (“BLUE II Operating Agreement”). Also, the email included wiring instructions for a  
22 BLUE bank account.

23 30. The BLUE II Operating Agreement contains the following information:

24 a) BLUE is an Arizona limited liability company with a principal place of  
25 business in Mesa, Arizona;

26

1           b)     The Arizona resident would be a Member of BLUE and have a 33.33%  
2 interest;

3           c)     STEINER shall be the Manager of BLUE;

4           d)     STEINER shall have full discretion, responsibility, and authority to manage  
5 BLUE's business, including to hire and fire employees, invest the funds available in any  
6 manner he deems appropriate, execute all documents he deems appropriate to carry out the  
7 purpose of BLUE, and to pay all ordinary and necessary expenses;

8           e)     STEINER will receive compensation out of the gross revenues of BLUE;

9           f)     "[N]o Member may have or exercise any right or power, the possession or  
10 exercise of which would cause it to incur personal liability or which would cause the  
11 Company to be taxed as an association...;"

12          g)     STEINER can only be removed for cause;

13          h)     That except as stated in the Operating Agreement, "Members shall have no  
14 voting, approval, or consent rights;" and

15          i)     Based on a separate agreement, BLUE agreed to raise \$750,000 for  
16 operating capital for Lunsford Consulting, LLC ("Lunsford"), in exchange for 5% of  
17 Lunsford's gross revenue, until the investment is returned, then 2.5% of gross revenues in  
18 perpetuity.

19     31.     Lunsford is an Arizona limited liability company organized on July 30, 2010.

20     32.     STEINER is a managing member of Lunsford.

21     33.     The Arizona resident also received a Lunsford executive summary from STEINER,  
22 which stated the following:

23           a)     Lunsford has deep, strong business relationships in China. The principals  
24 have significant relationships with "influential people in the private sector and the Central  
25 Government who are part of the decision-making echelon of the PRC;"<sup>1</sup>

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<sup>1</sup> PRC stands for the People's Republic of China.

1           b) China is seeking opportunities to expand its economy through the building  
2 and funding of civil engineering projects in various countries around the world;

3           c) Lunsford's current portfolio of projects "exceeds more than \$15B in  
4 funding, with additional projects in discussion. These projects will generate tens of  
5 millions of dollars in revenue to Lunsford, beginning as early as 1<sup>st</sup> quarter of 2012.  
6 Depending on the project, Lunsford will generate revenue from a percentage of project  
7 funding, monthly revenue from ongoing sales transactions, and from potential equity  
8 positions;" and

9           d) Finally, the executive summary included a list of various infrastructure and  
10 power plant developments in Africa and South America.

11       34. On February 14, 2012, the Arizona resident received a communication from  
12 STEINER stating that he would like to meet to discuss "this China Investment Opportunity."

13       35. Ultimately, the Arizona resident did not invest in the BLUE II Offering.

14 **C. General Allegations**

15       36. Between about 2008 and 2012, Respondents raised at least \$1,773,000 from  
16 approximately 28 investors.

17       37. Investors did not have day-to-day input or control of BLUE nor did they have any  
18 direct interactions related to the projects involving the Chinese and other countries.

19       38. At least one investor was told that the investment was a "slam dunk," that, in terms  
20 of the potential payout, the "sky's the limit," and that the investor's returns could be "ten-fold."

21       39. STEINER told certain investors that their monies were only to be used for business  
22 expenses to travel and entertain certain influential Chinese individuals related to the investment  
23 and not to pay STEINER a salary or commission, or to pay for expenses unrelated to BLUE's  
24 business.

25       40. To date, the investors have not received any profits or returns of their principal from  
26 Respondents.



1 offerees and investors. Respondents' conduct includes, but is not limited to, misrepresenting to certain  
2 investors that their monies were only to be used for business expenses to travel and entertain certain  
3 influential Chinese individuals related to the investment; however, on multiple occasions investor  
4 funds were diverted for other, non-business-related uses.

5 **VII.**

6 **REQUESTED RELIEF**

7 The Division requests that the Commission grant the following relief:

- 8 1. Order Respondents to permanently cease and desist from violating the Securities Act,  
9 pursuant to A.R.S. §44-2032;
- 10 2. Order Respondents to take affirmative action to correct the conditions resulting from  
11 Respondents' acts, practices, or transactions, including a requirement to make restitution pursuant to  
12 A.R.S. § 44-2032;
- 13 3. Order Respondents to pay the state of Arizona administrative penalties of up to five  
14 thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;
- 15 4. Order that the marital community of Respondent STEINER and Respondent Spouse  
16 be subject to any order of restitution, rescission, administrative penalties, or other appropriate  
17 affirmative action pursuant to A.R.S. § 25-215; and
- 18 5. Order any other relief that the Commission deems appropriate.

19 **VIII.**

20 **HEARING OPPORTUNITY**

21 Each respondent, including Respondent Spouse, may request a hearing pursuant to A.R.S. § 44-1972  
22 and A.A.C. R14-4-306. **If a Respondent or Respondent Spouse requests a hearing, the requesting**  
23 **respondent must also answer this Notice.** A request for hearing must be in writing and received by  
24 the Commission within 10 business days after service of this Notice of Opportunity for Hearing. The  
25 requesting respondent must deliver or mail the request to: Docket Control, Arizona Corporation  
26 Commission, 1200 W. Washington, Phoenix, Arizona 85007. Filing instructions may be obtained

1 from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at  
2 <http://www.azcc.gov/divisions/hearings/docket.asp>.

3 If a request for a hearing is timely made, the Commission shall schedule the hearing to begin  
4 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the  
5 parties, or ordered by the Commission. If a request for a hearing is not timely made the Commission  
6 may, without a hearing, enter an order granting the relief requested by the Division in this Notice of  
7 Opportunity for Hearing.

8 Persons with a disability may request a reasonable accommodation such as a sign language  
9 interpreter, as well as request this document in an alternative format, by contacting Shaylin A.  
10 Bernal, ADA Coordinator, voice phone number 602-542-3931, e-mail [sabernal@azcc.gov](mailto:sabernal@azcc.gov).

11 Requests should be made as early as possible to allow time to arrange the accommodation.

12 Additional information about the administrative action procedure may be found at  
13 <http://www.azcc.gov/divisions/securities/enforcement/AdministrativeProcedure.asp>

14 **IX.**

15 **ANSWER REQUIREMENT**

16 Pursuant to A.A.C. R14-4-305, if a Respondent or Respondent Spouse requests a hearing,  
17 the requesting respondent must deliver or mail an Answer to this Temporary Order and Notice to  
18 Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona  
19 85007, within 30 calendar days after the date of service of this Temporary Order and Notice.  
20 Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the  
21 Commission's Internet web site at [www.azcc.gov/divisions/hearings/docket.asp](http://www.azcc.gov/divisions/hearings/docket.asp).

22 Additionally, the answering respondent must serve the Answer upon the Division.  
23 Pursuant to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-  
24 delivering a copy of the Answer to the Division at 1300 West Washington, 3<sup>rd</sup> Floor, Phoenix,  
25 Arizona, 85007, addressed to Stephen J. Womack.

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The Answer shall contain an admission or denial of each allegation in this Temporary Order and Notice and the original signature of the answering respondent or the respondent's attorney. A statement of a lack of sufficient knowledge or information shall be considered a denial of an allegation. An allegation not denied shall be considered admitted.

When the answering respondent intends in good faith to deny only a part or a qualification of an allegation, the respondent shall specify that part or qualification of the allegation and shall admit the remainder. Respondent waives any affirmative defense not raised in the Answer.

The officer presiding over the hearing may grant relief from the requirement to file an Answer for good cause shown.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION, this \_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Matthew J. Neubert  
Director of Securities

SJW