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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

DOCKETED

SEP 02 2016

COMMISSIONERS

- DOUG LITTLE - Chairman
- BOB STUMP
- BOB BURNS
- TOM FORESE
- ANDY TOBIN

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In the matter of:

USA BARCELONA REALTY ADVISORS, LLC, an Arizona limited liability company,

USA BARCELONA HOTEL LAND COMPANY I, LLC, an Arizona limited liability company,

RICHARD C. HARKINS, an unmarried man,

ROBERT J. KERRIGAN (CRD no. 268516) an unmarried man,

GEORGE T. SIMMONS and JANET B. SIMMONS, husband and wife,

BRUCE L. ORR and SUSAN C. ORR, husband and wife,

Respondents.

DOCKET NO. S-20938A-15-0308

SECURITIES DIVISION'S REPLY TO POST-HEARING BRIEF OF RESPONDENT RICHARD C. HARKINS

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The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") replies to the post-hearing brief of Respondent Richard C. Harkins ("Harkins") as follows. This reply addresses only specific issues that especially need correction. The Division otherwise relies on its original post-hearing brief.

I. All of the Investors' Notes and Rights to Purchase LLC Units Were Securities

Harkins argues that Roberta Burleson's second note, Richard Andrade's second note, and Rodney Eaves' second, third, fourth, fifth, and sixth notes (collectively, "Additional Notes") are not securities. He identifies the correct legal standard, the Reves test, but he misapplies the standard. In MacCollum v. Perkinson, the Arizona Court of Appeals held that for purposes of the anti-fraud

1 provisions of the Arizona Securities Act (“the Act”) all notes are presumed to be securities, and the
2 presumption may only be rebutted by showing a “strong resemblance” to an instrument that is not a
3 security based on four factors adopted in Reves v. Ernst & Young. MacCollum v. Perkinson, 185
4 Ariz. 179, 186–187 (Ct. App. 1996) (citing Reves v. Ernst & Young, 494 U.S. 56 (1990)). The four
5 factors are 1) the motives of the parties, 2) the plan of distribution, 3) the public’s reasonable
6 expectations, and 4) the existence of a risk-reducing factor such as another regulatory scheme.
7 MacCollum, 185 Ariz. at 187. Harkins argues, incorrectly, that a note is a security only when all four
8 factors of the Reves test are met.¹ On the contrary, the MacCollum case found a note to be a security
9 based on only three factors on facts very similar to the present case.

10 The first factor, the motives of the parties, is similar in both cases. In MacCollum, the issuer’s
11 motive was to raise capital and the investor’s motive was to earn a profit on the interest. MacCollum,
12 185 Ariz. at 187. Similarly, in the present case, Barcelona Advisor’s motive was to raise working
13 capital, and Harkins’ own list of investors counts all of the notes, including the Additional Notes,
14 among USA Barcelona Realty Advisors, LLC’s (“Barcelona Advisors”) “total capital sources.”² Ms.
15 Burleson’s financial advisor, Kerrigan, told her money would be “rolling in” from the investment, so
16 the Commission can infer that the interest payments were her motive to invest.³ Mr. Eaves’ motive
17 for his second note was the same interest payments that he had been receiving for his first note.⁴ His
18 motive for his third, fourth, fifth, and sixth notes was also interest payments, specifically to help keep
19 Barcelona Advisors afloat so it could make the interest payments.⁵ Mr. Andrade’s motive for his
20 second note was also to ensure that the company could continue to make the interest payments for his
21 first note.⁶ Therefore the parties’ motives were similar to those in MacCollum.

22 Skipping ahead to the third factor, the public’s reasonable expectations, this factor is also
23 similar in both cases. In MacCollum, the court noted that “the essence of a security is its character as

24 ¹ Amended Post-Hearing Brief of Respondent Richard C. Harkins p.88

25 ² H-5

26 ³ T.633:16–24

⁴ T.199:23–T.200:8; T.203:3–13

⁵ T.282:24–T.283:15; T.287:13–T.288:5; T.305:22–T.306:3

⁶ T.396:9–13

1 an investment” and the note in that case was referred to as an investment. MacCollum, 185 Ariz. at
2 187. Likewise, Ms. Burleson, Mr. Andrade, and Mr. Eaves believed themselves to be investors. Ms.
3 Burleson referred to herself as having invested, and there is no evidence that she viewed her
4 investment in her first note under the normal 12-6-12 terms differently from her second note, which
5 had the same interest terms.⁷ Mr. Andrade testified that he considered both of his notes to be
6 investments.⁸ Mr. Eaves also testified that he considered all six of his notes to be investments.⁹

7 The fourth factor, the existence of a risk-reducing factor such as another regulatory scheme,
8 is also similar. In MacCollum, the note was not secured and not subject to substantial regulation under
9 any Arizona laws other than the Act. MacCollum, 185 Ariz. at 187–188. Nor are any of the notes in
10 the present case. Harkins argues that the risk was reduced because some of the Additional Notes also
11 carried options to purchase Barcelona Advisors’ limited liability company membership units (“LLC
12 Units”).¹⁰ However, those options just put more eggs in the same basket rather than reducing the risk
13 of the notes. The options are now just as worthless as the notes themselves.

14 Most importantly, the second factor, the plan of distribution, is also similar in both cases. In
15 MacCollum, the issuer sold only a single note to a single investor, and marketed its notes to only a
16 “limited number of investors.” MacCollum, 185 Ariz. at 187. Similarly, in the present case, although
17 the standard 12-6-12 Notes and 10-5-10 Notes were marketed more broadly, the Additional Notes had
18 terms unique to them.¹¹ The court in MacCollum found that although this factor did not indicate a
19 security, the evidence as a whole failed to rebut the presumption that the note was a security. Id. at
20 188. For the same reasons, the Additional Notes are securities despite the limited plan of distribution
21 for those particular notes because the other factors are consistent with securities.

22 Harkins also argues that rights to purchase LLC Units are not securities because they were
23 associated with a note.¹² Rights to purchase LLC Units are securities because, as Harkins has not

24 ⁷ T.632:25–T.633:5; S-39; S-184

25 ⁸ T.376:8–19

26 ⁹ T.190:12–21

¹⁰ Amended Post-Hearing Brief of Respondent Richard C. Harkins p.87

¹¹ S-42; S-52 through S-56; S-184

¹² Amended Post-Hearing Brief of Respondent Richard C. Harkins pp.90–92

1 contested, the LLC Units themselves were securities in the form of investment contracts, and the Act
2 defines the right to purchase an investment contract (or any other security) as being a security. See
3 A.R.S. § 44-1801(26) (“‘Security’ means any ... investment contract ... or right to purchase, any of
4 the foregoing.”). Harkins was on notice that rights to purchase LLC Units were a subject of the hearing
5 because the Division’s January 25, 2016, Amended Temporary Order to Cease and Desist and Notice
6 of Opportunity for Hearing noted that Mr. and Mrs. Eaves made “investments ... in Barcelona
7 Advisors’ ... rights to purchase investment contracts in the form of limited liability company
8 membership interests.”¹³

9 **II. Neither the Securities Nor Any of the Respondents Met Any Exemption from**
10 **Registration**

11 Harkins misstates the legal standard for exemptions from registration. He argues that the
12 securities and the Respondents either met the requirements of an exemption or failed to comply but
13 made a good faith effort.¹⁴ Good faith is not enough. “Because of the vital public policy underlying
14 the registration requirement, there must be strict compliance with all the requirements of the
15 exemption statute.” State v. Baumann, 125 Ariz. 404, 411 (1980). Neither the securities nor the
16 Respondents strictly complied with either of the exemptions that Harkins raises, so none of those
17 exemptions apply.

18 Harkins argues that Barcelona Advisors was exempt as an issuer selling its own securities and
19 that the individual Respondents were exempt as officers of Barcelona Advisors, but none of the
20 Respondents qualified for this exemption. Although Harkins cites the Uniform Securities Act, the
21 relevant exemption under Arizona law is R14-4-140, which exempts the securities, the issuer, and
22 officers making offers and sales for the issuer. See R14-4-140(B). The Respondents do not qualify for
23 this exemption for two reasons. First, Barcelona Advisors sold securities to a non-accredited investor.
24 Regardless of what was represented on forms that the investors were told to sign, Kathleen Carolin
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26 ¹³ Amended Temporary Order to Cease and Desist and Notice of Opportunity for Hearing at ¶¶ 42, 45

¹⁴ Amended Post-Hearing Brief of Respondent Richard C. Harkins p.98

1 testified that she was not an accredited investor at the time she invested.¹⁵ This exemption requires
2 that each investor actually be an accredited investor, and whether Harkins or the company believed
3 Ms. Carolin was accredited is irrelevant. See R14-4-140(D). Second, Barcelona Advisors never filed
4 the required Form D notice with the Commission that the exemption requires. See R14-4-140(L).
5 Accordingly, the Respondents did not qualify for the R14-4-140 exemption.

6 Nor were any of Barcelona Advisors' securities sales exempt as "transactions by an issuer not
7 involving any public offering" ("Non-Public Offering") pursuant to the Act. See A.R.S. § 44-
8 1844(A)(1). Although there is no Arizona authority on the meaning of A.R.S. § 44-1844(A)(1), it is
9 identical to Section 4(a)(2) of the federal Securities Act of 1933. See 15 U.S.C. § 77d(a)(2). Therefore
10 court authorities on Section 4(a)(2) should be used as an interpretive guide for the Non-Public Offering
11 provision of the Act. See Laws 1996, Ch. 197, § 11(C) (Legislature intends that court interpretations
12 of substantially similar federal securities provisions be used as interpretive guide for the Act).

13 The federal Non-Public Offering provision only exempts offerings in which the offerees can
14 "fend for themselves" and do not need the protection of a securities registration statute, such as the
15 executive officers of the issuer. See S.E.C. v. Ralston Purina Co., 346 U.S. 119, 125–126 (1953). "A
16 court may only conclude that the investors do not need the protection of the [Securities Act of 1933]
17 if all of the offerees have relationships with the issuer affording them access to or the disclosure of the
18 sort of information about the issuer that registration reveals." S.E.C. v. Murphy, 626 F.2d 633, 647
19 (9th Cir. 1980). The information required is "quite extensive" and includes the use of investor funds.
20 Id. The test for the federal Non-Public Offering exemption is based on, 1) the number of offerees, 2)
21 the sophistication of the offerees, 3) the size and manner of the offering, and 4) the relationship of the
22 offerees to the issuer. Id. at 644–645.

23 In the present case, however, it is not necessary to analyze these factors because none of the
24 Respondents can prove that the Non-Public Offering exemption applies based on the hearing record.
25 "The party claiming the exemption must show that it is met not only with respect to each purchaser,

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¹⁵ T.431:19–T.432:9

1 but also with respect to each offeree.” Murphy, 626 F.2d at 645. Therefore “... the exact number and
2 identity of all offerees must be produced.” Western Fed. Corp. v. Erickson, 739 F.2d 1439, 1442 (9th
3 Cir. 1984). However, the hearing record does not establish the identity of all of Barcelona Advisors’
4 offerees or even the number of offerees. For example, sometime before December 31, 2013, several
5 offerees visited Barcelona Advisors’ offices, met the Executive Members, and committed to making
6 investments, but they did not follow through and never invested.¹⁶ There is no evidence in the record
7 about the identity or sophistication of these offerees or their relationship to Barcelona Advisors. Also,
8 Harkins estimated that there were no more than 20 offerees, but he did not know the precise number.¹⁷
9 Without proving the exact number and identify of all of these offerees, Harkins cannot even begin to
10 meet his burden of proving that the Non-Public Offering exemption applies.

11 **III. Harkins’ Applies the Wrong Standard to the Materiality of Barcelona Advisors’**
12 **Omissions**

13 Harkins argues that Barcelona Advisors’ omissions were not material because some investors
14 testified that they might be willing to overlook some of the bad facts based on the “rest of the story”
15 as represented by the Respondents.¹⁸ However, these reactions to the “rest of the story” just confirm
16 that the omitted facts were material. A fact is material if there is a substantial likelihood that, under
17 all of the circumstances, the fact would have assumed actual significance in the deliberations of a
18 reasonable investor. Caruthers v. Underhill, 230 Ariz. 513, 524 ¶ 43 (Ct. App. 2012). This is an
19 objective standard, so the actual investors’ subjective beliefs are not dispositive. See id. If a
20 reasonable investor would consider overlooking bad facts based on an explanation of the
21 circumstances, that shows that the bad facts and the explanation are both material because they
22 assume actual significance in the investor’s deliberations when the investor weighs the bad facts
23 against the explanation and decides how the competing information should influence a decision to
24 invest. For example, Mr. Jordan, Mr. Eaves, and Mr. Woods would have wanted to know the

25 ¹⁶ S-32 p.112:21–114:6; S-65

26 ¹⁷ S-32 p.103:16–21

¹⁸ Amended Post-Hearing Brief of Respondent Richard C. Harkins p.20–21

1 circumstances of Kerrigan's recent debts, which shows that it would have been significant to their
2 decision to invest to weigh Kerrigan's explanation against the unfavorable information.¹⁹ But instead
3 of telling the investors the whole story, the Respondents told the investors none of the story for the
4 issues they omitted. For example, Harkins argues that the failure of the AVC venture was caused by
5 the economic downturn and did not reflect on his ability to manage Barcelona Advisors.²⁰ That
6 explanation is an issue that a reasonable investor would want to consider before investing, but the
7 investors did not get a chance to consider it because they were never told about the failure of the
8 AVC venture at all.²¹

9 Harkins' arguments that investors should have learned about the failure of the AVC venture
10 by asking questions and doing internet research ignores the correct legal standard.²² "The statutes do
11 not require investors to act with due diligence To the contrary, defendants have an affirmative
12 duty not to mislead potential investors. ... This requirement ... removes the burden of investigation
13 from an investor" Trimble v. Am. Sav. Life Ins. Co., 152 Ariz. 548, 553 (Ct. App. 1986) (internal
14 citation omitted)

15 Harkins also argues that Barcelona Advisors' failure to timely pay interest to the 12-6-12
16 investors would not have been material to the subsequent 10-5-10 investors because the 12-6-12
17 investors consented to the late payments.²³ However, the very fact that Barcelona Advisors was
18 forced to seek such a deferral would have been significant to the deliberations of a reasonable
19 investor and therefore material.

20 Harkins also effectively concedes other materiality issues. Harkins notes that a third party
21 fund-raiser's, "lack of performance in raising the capital he had assured the company would be raised
22 was potentially devastating to the company and forced the Company's affiliate ... to implement
23 another component of its business plan, development rather than acquisition."²⁴ However, Mr.

24 ¹⁹ T.180:4-T.181:4; T.186:7-12; T.307:13-T.308:2; T.665:4-11

25 ²⁰ Amended Post-Hearing Brief of Respondent Richard C. Harkins p.71

26 ²¹ T.132:10-22; T.229:15-24; T.303:23-T.305:21; T.397:15-T.398:1; T.664:15-21; S-136 p.33-p.34:3

²² Amended Post-Hearing Brief of Respondent Richard C. Harkins p.71-72

²³ Amended Post-Hearing Brief of Respondent Richard C. Harkins p.80

²⁴ Amended Post-Hearing Brief of Respondent Richard C. Harkins p.73

1 Andrade was not told that the change in business plans to focus on developing rather than acquiring
 2 property was forced on the company by a potentially devastating turn of events.²⁵ Harkins also
 3 concedes that Barcelona Advisors was unable to pay Kerrigan's notes when they matured on June
 4 30, 2013, stating, "Member Loans were not paid for two reasons. First, the Company was not in a
 5 surplus working capital position to do so."²⁶ A reasonable investor would consider Barcelona
 6 Advisors' lack of capital to pay Kerrigan's notes to be significant because it would call into doubt
 7 whether the company would have enough capital to repay the investor.

8 **IV. Harkins Argues Many Matters Outside the Hearing Record**

9 Many of Harkins' arguments should be disregarded because they are not supported by the
 10 hearing record and rely on matters outside the record. There is no offering memorandum of USA
 11 Barcelona Realty, Inc. in the record.²⁷ Nor is there any evidence that the Division was aware of such a
 12 memorandum in 2013.²⁸ Similarly, there is no evidence that the Division was aware in 2013 of
 13 Barcelona Advisors advertisements for its 8-8 Offering. There is no evidence of anything attorney
 14 James Burgess stated to Harkins outside the hearing transcript.²⁹ There is no evidence of the Division's
 15 opinion about any past intrastate offering.³⁰ There is no evidence that the Division instructed any
 16 investor to sue Barcelona Advisors, told them what remedies the Division would seek from Barcelona
 17 Advisors, or led them to believe that restitution was available.³¹ In fact, Pam Stewart specifically denied
 18 that she was told to sue Barcelona Advisors.³² There is no evidence of why Ms. Carolin and Kerrigan
 19 ended their relationship.³³ There is no evidence of what Harkins claims to have overheard during an
 20 investigator's interview of Roberta Burleson.³⁴ There is no evidence that the Division declined to call

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 23 ²⁵ T.398:15–T.399:2

²⁶ Amended Post-Hearing Brief of Respondent Richard C. Harkins p.78; S-133; S-134

²⁷ Amended Post-Hearing Brief of Respondent Richard C. Harkins pp.11, 70

²⁸ Amended Post-Hearing Brief of Respondent Richard C. Harkins p.11

²⁹ Amended Post-Hearing Brief of Respondent Richard C. Harkins p.34

³⁰ Amended Post-Hearing Brief of Respondent Richard C. Harkins p.14

³¹ Amended Post-Hearing Brief of Respondent Richard C. Harkins pp.19–20, 23, 43

³² T.275:6–12

³³ Amended Post-Hearing Brief of Respondent Richard C. Harkins p.42

³⁴ Amended Post-Hearing Brief of Respondent Richard C. Harkins p.19

1 witnesses whose interviews did not support its allegations.³⁵ There is no evidence that Kelly Bair
 2 decided not to testify or whether the Division was able to contact her at all.³⁶ There is no evidence that
 3 the Division contacted Steven Betts or of what he purportedly told Harkins after the hearing.³⁷

4 Similarly, Harkins improperly speculates about how witnesses he declined to call would have
 5 testified. He speculates about how Steven Betts, Jim Wilkerson, Paul Meka, and Allen Weintraub
 6 would have testified.³⁸ Harkins named all four of these witnesses on his witness list.³⁹ He knew they
 7 might have relevant information, but he declined to call them. He also speculates about how attorney
 8 Charles Berry would have testified. Mr. Berry was present for the entire hearing, and Harkins could
 9 have called him to testify but did not.

10 **V. Harkins Misstates the Record in Several Ways**

11 Harkins argues that former Division investigator Dee Morin “testified about the Division’s
 12 activities, its absence of supervision of his activities and his own independent actions totally unvetted
 13 by any person in the Division.”⁴⁰ This misstates Mr. Morin’s testimony. He testified that the case team
 14 he worked on had no leader but that he had multiple supervisors.⁴¹

15 Harkins argues that because the Division did not call Ms. Bair or Nancy Chaimson, the Division
 16 had “ample freeboard to make up their own version of the relationships between the Company, its
 17 executives and these two persons.”⁴² This misstates the record. Harkins himself testified about his
 18 relationship with Ms. Bair in his examination under oath (“EUO”) and during the hearing, and the
 19 Division’s arguments rest only on his testimony.⁴³ Likewise, Kerrigan testified about his relationship
 20 with Ms. Chaimson, and the Division’s arguments are based on his testimony.⁴⁴

22 ³⁵ Amended Post-Hearing Brief of Respondent Richard C. Harkins p.24

23 ³⁶ Amended Post-Hearing Brief of Respondent Richard C. Harkins p.44

24 ³⁷ Amended Post-Hearing Brief of Respondent Richard C. Harkins pp.24–25

25 ³⁸ Amended Post-Hearing Brief of Respondent Richard C. Harkins pp.24–27, 33, 102

26 ³⁹ Respondent Richard C. Harkins’ List of Witnesses and Exhibits, filed March 15, 2016, p.2

⁴⁰ Amended Post-Hearing Brief of Respondent Richard C. Harkins p.17

⁴¹ Amended Post-Hearing Brief of Respondent Richard C. Harkins p.17

⁴² Amended Post-Hearing Brief of Respondent Richard C. Harkins p.99

⁴³ T.844:3–4; S-32 p.61:5–9, p.71:10–11, p.74:8–p.75:1; p.79:15–18, 95:10–11

⁴⁴ T.1020:15–20; T.1030:15–T.1031:2; T.1031:8–13

1 **VI. Harkins' Other Arguments Are Also Incorrect**

2 Harkins lists elements required for a common law fraud claim, but those elements are not
3 required for the anti-fraud provisions of the Act. "The nine elements of common-law fraud ... are not
4 essential to establishing statutory securities fraud. ... The elements of securities fraud are articulated
5 within the statute itself." Aaron v. Fromkin, 196 Ariz. 224, 228 ¶ 13 (Ct. App. 2000). Neither intent
6 to deceive nor investor reliance on a seller's statements are elements required to prove misleading
7 omissions in connection with the sale of securities. A.R.S. § 44-1991(A)(2).

8 Contrary to Harkins' arguments, the Commission can infer the relevant contents of the
9 October 2012 PPM. Although there is no copy of that document in the record, the record does include
10 the first and second amended versions of the document, and Harkins wrote all three versions.⁴⁵
11 Because Harkins gave the October 2012 PPM to Ms. Bair,⁴⁶ the contents of the October 2012 PPM
12 are relevant to two specific issues: 1) whether the October 2012 PPM stated that Harkins had been
13 involved in the creation and executive management of AVC, a land acquisition and investment
14 company, and 2) whether it disclosed the failure of the AVC venture. Harkins testified in his EUO
15 that the biographies in the October 2012 PPM were likely the same as the biographies in the amended
16 versions, and those biographies do state that Harkins had been involved in the creation and executive
17 management of AVC, a land acquisition and investment company.⁴⁷ The Commission can infer that
18 the October 2012 PPM did not disclose the failure of the AVC venture because the subsequent
19 versions disclosed only that it ceased operations in 2009 and because Harkins indicated in his EUO
20 that this was the only AVC disclosure used and that investors were expected to inquire or research if
21 they wanted to know more about the AVC venture.⁴⁸ Other than those two issues, the Division does
22 not rely on the contents of the October 2012 PPM.

23 Harkins' arguments about the "collision principal" are irrelevant. Barcelona Advisors did not
24 merely give its investors information about its cash flow problems. It expressly asked them to invest

25 ⁴⁵ S-5; S-57; S-32 p.35:22-p.36:6, p.72:2-3, p.86:18-20

⁴⁶ T.844:3-4

26 ⁴⁷ S-32 p.60:16-p.61:4; S-5 at ACC7229; S-57 at ACC751

⁴⁸ S-32 p.51:7-14; S-5 at ACC7229; S-57 at ACC751

1 more to fix those problems. Barcelona Advisors sent its June 11, 2014, letter to all existing investors.⁴⁹
 2 The letter warned that the company critically needed capital and it stated, “we would appreciate your
 3 participation in funding this requirement by making a short-term loan to us of any portion of the
 4 \$150,000 we are seeking.”⁵⁰ Also, Respondents Kerrigan, Simmons, and Harkins each expressly
 5 asked Mr. Eaves to invest in one or more of his additional note investments based on Barcelona
 6 Advisors’ need for more capital.⁵¹ Therefore these requests were offers to sell securities.

7 Harkins’ argument that Mrs. Stewart was close to being a “basket case” during her testimony
 8 is also incorrect. The transcript of her cross-examination testimony shows that she was calm and
 9 bemused.⁵²

10 Harkins claims he is entitled to \$5,000,000 of “compensation” for defamation, pain and
 11 suffering, malicious prosecution, and curtailment of his business pursuits.⁵³ However, there is no legal
 12 or factual basis for this claim.

13 **VII. Harkins’ Arguments About Coached Witnesses Are Baseless**

14 Harkins repeatedly argues that witnesses were “coached.”⁵⁴ There is no such evidence. What
 15 the evidence shows is that the Division did what any competent counsel does to prepare for litigation:
 16 meet with witnesses and ask them the expected questions in advance to learn what their answers will
 17 be. For example, Mr. Andrade and Ms. Carolin testified that they had previously been asked some of
 18 the questions asked during the hearing, but they testified that they were not told how to answer those
 19 questions.⁵⁵ And Mr. Andrade testified that his answers were truthful and not rehearsed.⁵⁶

20 Mr. Harkins argues that investors using the phrase “red flag” is a sign that they were coached.⁵⁷
 21 However, of the five investor witnesses who testified, only two of them used this phrase, and they only

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 23 ⁴⁹ S-32 p.96:5–12; S-60

24 ⁵⁰ S-60

25 ⁵¹ T.282:6–20; T.287:16–22; T.288:17–23; T.290:20–T.291:3; T.293:23–T.294:18

26 ⁵² T.234:12–T.279:3

⁵³ Amended Post-Hearing Brief of Respondent Richard C. Harkins p.109

⁵⁴ Amended Post-Hearing Brief of Respondent Richard C. Harkins pp.10, 21–22, 62

⁵⁵ T.416:15–22; T.447:25–T.448:6

⁵⁶ T.403:2–15

⁵⁷ Amended Post-Hearing Brief of Respondent Richard C. Harkins p.2

1 used it twice each.⁵⁸ And as Ms. Carolin noted, it is a “common saying” that she used on her own
2 initiative, not at the Division’s suggestion.⁵⁹

3 **VIII. Conclusion**

4 The arguments in Harkins’ post-hearing brief, including about whether certain interest are
5 securities and about exemptions and materiality, should be rejected. His arguments do not correctly
6 apply the proper legal standards, and many of them misstate or go outside the hearing record.

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RESPECTFULLY SUBMITTED this 2nd day of September, 2016.

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ARIZONA CORPORATION COMMISSION

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By: Paul Kitchin

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Paul Kitchin
Attorney for the Securities Division of the
Arizona Corporation Commission

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⁵⁸ T.173:19; T.174:8-10; T.446:12-13, 22

⁵⁹ T.473:16-T.474:3; T.476:6-10

1 On this 2nd day of September, 2016, the foregoing document was filed with Docket Control as a
2 Securities Division Brief, and copies of the foregoing were mailed on behalf of the Securities
3 Division to the following who have not consented to email service. On this date or as soon as
4 possible thereafter, the Commission's eDocket program will automatically email a link to the
5 foregoing to the following who have consented to email service.

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