BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

JEFF HATCH-MILLER, Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES

In the matter of: **GREG McCRACKEN,** a/k/a **K.G. McCRACKEN,** a/k/a **KENNETH McCRACKEN,** an individual 8530 North 22nd Avenue, #1005 Phoenix, Arizona 85021 *and/or* 7630 NE Todd Drive Corvallis, Oregon 97330, Respondent.	DOCKET NO. S-20397A-05-0549 **NOTICE OF OPPORTUNITY FOR HEARING REGARDING PROPOSED ORDER TO CEASE AND DESIST, ORDER FOR RESTITUTION, ORDER FOR ADMINISTRATIVE PENALTIES, AND OTHER AFFIRMATIVE ACTION**

NOTICE: THE RESPONDENT HAS 10 DAYS TO REQUEST A HEARING

THE RESPONDENT HAS 30 DAYS TO FILE AN ANSWER

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that Respondent Greg McCracken, a/k/a K.G. McCracken, a/k/a Kenneth McCracken ("McCRACKEN") has 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.

II.

RESPONDENT

2. During a period from approximately 1997 through 2002, Respondent McCRACKEN was an officer with Johnson Estate Planning Services, Inc. ("JEP Inc.") and, shortly thereafter, a general partner with JOHNSON ESTATE PLANNING SERVICE, L.L.P. ("JEPS"). Both JEP Inc. and JEPS functioned as small financial services firms located at 11022 North 28th Drive in Phoenix, Arizona. While working in these capacities, Respondent McCRACKEN served as one of the companies' primary sales agents.

III.

FACTS

3. In early 1997, JEP Inc. was approached by a recruiter for CapitalPro Asset Management Fund, Inc., ("CapitalPro"), a purported equipment-leasing company based out of Newport Beach, California. This recruiter sought to have JEP Inc. serve as an agent for CapitalPro by promoting, offering, and selling long-term promissory notes.

4. In connection with these recruitment efforts, CapitalPro representatives provided JEP Inc. with a package of CapitalPro promotional materials and promissory note solicitation forms.

5. By July 1997, McCRACKEN was offering and selling, first through the offices of JEP Inc., and later through JEPS, CapitalPro promissory notes to both existing clients and other individuals brought in through general solicitations.

The CapitalPro Promissory Note Program

6. As described in the company's "offering" materials, the CapitalPro promissory note program presented investors with the choice of selecting promissory notes with various maturity dates and with various annual rates of return. The notes ranged from 12 to 60 month in maturity, and offered varying interest rates ranging from 8% to 12.6% per annum, depending on the maturity date of the note.

. . .

7. According to CapitalPro literature, the proceeds from the sale of these long-term notes were to be designated solely for equipment lease financing. The investors' CapitalPro notes were also allegedly secured by a separate, adequately funded cash collateral account.

8. Per the CapitalPro offering memorandum, the minimum investment amount allowed in connection with the CapitalPro promissory note program was $10,000. CapitalPro, through its sales agents, originally set out to raise $5 million in investment capital through this promissory note offering. (Capital Pro later marketed a second $10 million issue of promissory notes, known as "CapitalPro Asset Management Fund II notes." McCRACKEN sold both the original CapitalPro notes and the subsequent CapitalPro II notes to Arizona investors).

9. CapitalPro investors received annual rates of return on their notes for a period of roughly three to four years. In May 2001, however, the interest payments ceased and, shortly thereafter, CapitalPro notified investors that it had declared bankruptcy.

10. A filing made by the trustee of the CapitalPro notes during the subsequent bankruptcy proceeding alleged that the officers and directors of CapitalPro had in fact grossly mismanaged the sale of CapitalPro promissory notes and had misappropriated the resulting funds for, *inter alia*, improper compensation, gifts and loans. The trustee also declared that the note sale proceeds had systematically been exhausted.

11. The bankruptcy proceedings resulted in the liquidation of all remaining assets, and the Capital Pro (and CapitalPro II) note-holders were ultimately reimbursed 1 percent of their original investment principal. To date, CapitalPro investors have received no further distributions from this liquidation.

McCRACKEN's involvement in the CapitalPro note program

12. Upon a review of the CapitalPro promotional literature in 1997, McCRACKEN and other JEP Inc. employees agreed to serve as sales agents for the CapitalPro promissory note program. Over the next 14 months, from July 1997 through August 1998, McCRACKEN directly or indirectly engaged in the offer and sale of CapitalPro promissory notes to Arizona investors.

13. In connection with these sales, McCRACKEN indicated to prospective investors that the CapitalPro promissory notes could provide far better yields than other portfolio options such as annuities, and that the liquidation of current savings and/or retirement accounts in favor of the CapitalPro notes could be a prudent financial decision.

14. Consistent with CapitalPro literature, McCRACKEN told prospective investors that these CapitalPro promissory notes were a safe investment option. In so doing, McCRACKEN failed to articulate material risks associated with the CapitalPro note program.

15. In fact, investments in the CapitalPro promissory notes presented a number of inherent risks. These risks included, without limitation, the fact that this start-up equipment-leasing company could fail and/or declare bankruptcy without a sufficiently funded collateral account, thereby jeopardizing the investors' entire principal.

16. From approximately July 1997 through August 1998, McCRACKEN played a direct or indirect role in the offer and/or sale of at least 115 CapitalPro promissory notes to at least 83 known investors. The principal amount of these promissory note investments totaled approximately $3.5 million.

17. In connection with these sales of CapitalPro promissory notes, McCRACKEN directly or indirectly received approximately $398,000 in sales commissions, incentives and bonuses.

18. In 2001, following announcements of CapitalPro's insolvency, McCRACKEN attempted to access a purported cash collateral fund securing the CaptialPro Investment program. Despite various efforts to access the cash collateral fund and other existing CapitalPro assets, McCRACKEN was ultimately unsuccessful in recovering any of his clients' investment funds.

19. McCRACKEN and other members of JEPS gave up on their attempts at securing any CapitalPro recovery for their clients in August 2002; JEP Inc. and JEPS ceased business operations a short time later.

20. At no time was McCRACKEN ever registered as a securities salesman in the state of Arizona, and at no time was JEP Inc., JEPS or McCRACKEN ever registered as dealers in the state of Arizona.

21. On June 29, 2004, the Commission entered a final Order against JEP INC., JEPS, and McCRACKEN's former colleague, Gary Johnson, based on the same CapitalPro sales activities.

IV.

VIOLATION OF A.R.S. § 44-1841

(Offer or Sale of Unregistered Securities)

22. From on or about mid 1997 through late 1998, Respondent McCRACKEN offered or sold securities in the form of promissory notes within or from Arizona.

23. The securities referred to above were not registered pursuant to Articles 6 or 7 of the Securities Act.

24. This conduct violates A.R.S. § 44-1841.

V.

VIOLATION OF A.R.S. § 44-1842

(Transactions by Unregistered Dealers or Salesmen)

25. Respondent McCRACKEN offered or sold securities within or from Arizona while not registered as a dealer or salesman pursuant to Article 9 of the Securities Act.

26. This conduct violates A.R.S. § 44-1842.

VI.

VIOLATION OF A.R.S. § 44-1991

(Fraud in Connection with the Offer or Sale of Securities)

27. In connection with the offer or sale of securities within or from Arizona, Respondent McCRACKEN directly or indirectly: (i) employed a device, scheme or artifice to defraud; (ii) made untrue statements of material fact or omitted to state material facts which were necessary in order to

make the statements made not misleading in light of the circumstances under which they were made; and/or (iii) engaged in transactions, practices or courses of business which operated or would operate as a fraud or deceit upon offerees and investors. Respondent McCRACKEN's conduct includes, but is not limited to, the following:

a) Misrepresenting the safety and purported guaranteed nature of these promissory note investments;

b) Offering and selling securities to investors without any concomitant risk disclosures;

c) Failing to disclose the amount of commissions McCRACKEN earned in connection with his sale of CapitalPro promissory notes;

d) Failing to disclose that the CapitalPro promissory notes were neither registered nor exempt from securities registration in the State of Arizona.

28. This conduct violates A.R.S. § 44-1991.

VII.

REQUESTED RELIEF

The Division requests that the Commission grant the following relief:

1. Order Respondent McCRACKEN to permanently cease and desist from violating the Securities Act pursuant to A.R.S. § 44-2032;

2. Order Respondent McCRACKEN to take affirmative action to correct the conditions resulting from his acts, practices or transactions, including a requirement to make restitution pursuant to A.R.S. § 44-2032;

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

4. Order any other relief that the Commission deems appropriate.

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VIII.

HEARING OPPORTUNITY

Respondent McCRACKEN may request a hearing pursuant to A.R.S. § 44-1972 and R14-4-306. **If any respondent requests a hearing, respondent must also answer this Notice.** A request for hearing must be in writing and received by the Commission within 10 business days after service of this Notice of Opportunity for Hearing. Each respondent must deliver or mail the request to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007. A Docket Control cover sheet must accompany the request. A cover sheet form and instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at www.cc.state.az.us/utility/forms/index.htm.

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

Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting Linda Hogan, Executive Assistant to the Executive Secretary, voice phone number 602/542-3931, e-mail lhogan@azcc.gov. Requests should be made as early as possible to allow time to arrange the accommodation.

IX.

ANSWER REQUIREMENT

Pursuant to A.A.C. R14-4-305, if Respondent McCRACKEN requests a hearing, Respondent McCRACKEN must deliver or mail an Answer to this Notice of Opportunity for Hearing to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007, within 30 calendar days after the date of service of this Notice. A Docket Control

cover sheet must accompany the Answer. A cover sheet form and instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at www.cc.state.az.us/utility/forms/index.htm.

Additionally, Respondent McCRACKEN must serve the Answer upon the Division. Pursuant to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-delivering a copy of the Answer to the Division at 1300 West Washington, 3rd Floor, Phoenix, Arizona, 85007, addressed to the attention of attorney Jamie Palfai.

The Answer shall contain an admission or denial of each allegation in this Notice and the original signature of each respondent or each 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 a respondent or his attorney intends in good faith to deny only a part or a qualification of an allegation, respondent or his attorney shall specify that part or qualification of the allegation and shall admit the remainder. A 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.

Dated this ___3___ day of ___August_____, 2005.

__/s/ Matthew J. Neubert_____
Matthew J. Neubert
Director of Securities