ARIZONA CORPORATION COMMISSION—SECURITIES DIVISION

DECISION DIGEST (1986-present)

DOCKET NBR JUDGE	DECISION NBR DATE SECURITY	RESPONDENTS	ANALYSIS/HOLDING **(The analysis is a summary only. See the order for the complete analysis and holding.)**
S-20575A-08-0046 Martin	70754 12-23-09 Stock	Scott Hutchinson d/b/a Marine 3	44-1841, 44-1842, 44-1991 Commission found that respondent offered and sold unregistered securities. Respondent did not register as a dealer or salesman. Respondent misrepresented the use of the offering proceeds. Respondent misrepresented that the investment involved no risk and that the investor was guaranteed to receive a return of the investment, at a minimum, by early 2006. Respondent failed to disclose the risks inherent in the investment. Respondent misrepresented that he was president of Marine 3. Commission found that respondent violated registration and antifraud provisions of the Securities Act.
S-20482A-06-0631 Stern	70656 12-22-08 Stock Investment contracts Promissory notes	Edward A. Purvis and Maureen H. Purvis	44-1841, 44-1842, 44-1991 Commission found that respondent offered and sold unregistered securities. Respondent did not register as a dealer or salesman. Respondent misrepresented the nature of the offerings, the rate of return on the investments, his background, and his ability to guarantee individual investors' security for their investments. Respondent failed to disclosed the risks associated with the investments, hidden fees and commission, and that the proceeds would be used for his personal expenses. Commission found that respondent violated registration and antifraud provisions of the Securities Act.
S-20437A-05-0925 Stern	70630 12-9-08 Investment contracts	Reserve Oil & Gas, Inc. Allen C. Stout and Eugenia Stout	44-1841, 44-1842, 44-1991 Commission found that respondents offered and sold investment contracts involving oil and gas wells in Texas. Respondents offered the securities on an Internet web site. Commission found that respondents failed to disclose Mr. Stout's criminal record and commission and fee information. Commission found that respondents violated registration and antifraud provisions of the Securities Act.
S-20392A-05-0507 Stern	68942 9-12-06 Promissory notes Investment contracts	Thomas C. Messina aka Thomas Campbell Messina aka Tom C. Messina and Donna M. Messina	44-1841, 44-1842, 44-1991 Commission found that respondent offered and sold securities for the stated purposes of real estate development and investment. Respondent did not register the securities. Respondent did not register as a dealer or salesman. Respondent misrepresented the nature of the offering, the size of the offering, the promised rate of return on the investment, and his background as an investor or developer. The Commission found that respondent's actions, even if unintentional, resulted in multiple violations of the Securities Act.

Last updated 3/2/09

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S-03584A-05-0000 Stern	68159 9-23-05 Stock Investment contracts	Centenarios Gold, Inc. Robert Timothy Watt aka Tim Watt	44-1841, 44-1842 Commission found that respondents were engaged in a public offering of securities by openly advertising in a newspaper of general circulation and via the internet. The securities were "founders shares" of stock or some form of an investment contract termed a "grub stake arrangement" in a gold mining scheme. The unregistered offering was conducted by an unregistered dealer and/or salesman. A violation of the Securities Act neither requires an intentional act by the violator nor the offer to be in well-defined form. The Commission found no evidence that any sales of securities were made to any investors. The Commission ordered respondents to cease and desist from future violations and to pay administrative penalties.
S-03580A-04-0000 Stern	67931 6-9-05 Promissory notes Investment contracts	John E. Hannon and Rebecca F. Shannon Gary R. Shannon	44-1841, 44-1842, 44-1991 Notes and contracts used to raise capital for an entity engaged in the business of purchasing and leasing back automobiles held to be securities; Promissory notes and interests in automobile sale-lease-back programs held to be securities; securities and dealer registration violations found and antifraud violations found through omissions and misrepresentations of material fact, including: misrepresentation of the financial health of the business, failure to disclose inherent risks, failure to disclose past criminal convictions of the company's business manager, misrepresentation of liquidity of investment, misrepresentation of credentials of business management and employees, misrepresentation of use of proceeds from sales of securities, and use of investor money to repay earlier investors.
S-03557A-04-0000 Stern	67776 5-2-05 Salesman revocation	Lonzo Archer	44-1962(A)(8) Respondent was subject to an order of an administrative tribunal revoking his registration as a broker for at least six months. On January 27, 2004, the state of Washington entered a final order that revoked Mr. Archer's registration as a securities salesman in Washington. While respondent may have had meritorious defenses to the state of Washington's claims, he could not raise them in Arizona to defend against revocation pursuant to 44-1962(A)(8).
S-03435A-01-0000 Dion	66649 12-22-03 Salesman revocation	James T.M. Verbic	44-1962(A)(10), R14-4-130(15) Respondent borrowed money or attempted to borrow money from a customer, who was neither a relative nor a person in the business of lending funds at the time of the loans. Registration was automatically suspended on January 3, 2000, when employment with dealer ended. Commission has authority to bring action and suspend or revoke salesman registration under 44-1963(D) and 44-1947(D). A registered or licensed individual is responsible for knowing and complying with the law applicable to his profession. Attempting to obtain loan from customer is dishonest or unethical conduct.
S-03450A-02-0000 Dion	66614 12-9-03 Salesman revocation	Philip William Merrill	44-1962, 44-1991 Respondent made unauthorized and unsuitable transactions in customer accounts constituting a fraud or deceit upon his clients. Omissions along with a failure to diversify investments held to be material omissions and misstatements. A high concentration of a specific security in a

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			portfolio held to be unsuitable. Due to pattern and practice of making unauthorized and unsuitable transactions, registration as securities salesman revoked.
S-03415A-01-0000 Dion	65162 8-29-02 Promissory notes Investment contracts	Easy Money Auto Leasing, Inc. Superior Financial Services, Inc. James Anthony Cicerelli David P. French	44-1841, 44-1842, 44-1991 Promissory notes and interests in automobile sale-lease-back programs held to be securities; securities and dealer registration violations found and antifraud violations found through omissions and misrepresentations of material fact, including: promissory notes were secured by adequate collateral, investments liquid and insured against loss, no risk associated with investments, financial condition, business experience, market competition, investor funds used to pay personal expenses, use of proceeds, expected investor returns, criminal record of key personnel, and securities industry experience. Commission found enterprise was a ponzi scheme.
S-03184A-97-0000 Wolfe	65160 8-29-02 Procedural order	Robert Shakman Healthcare Purchasing Alliance, Inc.	44-2036(C), R14-3-112 Commission does not divest itself of jurisdiction to modify an order after the Commission has filed the order with the superior court. To modify a past order, the Commission must make a determination that modification would serve the public interest. The Commission has no authority to recognize/enforce private contracts between defrauded investors.
S-00329A-01-0000 Dion	64849 5-03-02 Investments in medical clinic	Early Detection Centers Johnathon Roberts, Inc. David Hitzig Paul C. Woodcock	44-1841, 44-1842, 44-1991 Investments in a medical clinic held to be securities; securities and dealer registration found and antifraud violations found through omissions and misrepresentations of material fact, including failure to disclose risk factors, information regarding key personnel, capitalization, plan of distribution, use of proceeds, tax consequences, and redemptions. Restitution ordered and administrative fine imposed.
S-03438A-00-0000 Stern	64672 3-26-02 Certificates of deposit, Viatical settlements Investment contracts	The Chamber Group, Inc. Joseph L. Hiland Tyson J. Hiland Travis D. Hiland	44-1841, 44-1842, 44-1991, 44-1999, 44-3151 Securities registration violations, broker-dealer registration violations, and investment adviser licensure violations found. The burden of proof regarding the applicability of an exemption rests with the party making the claim of exemption. Sale of brokered certificates of deposit were not exempt from registration requirements of the Securities Act. Commission has adopted test for investment contracts set forth in *S.E.C. v. W.J. Howey.* Tax lien certificates and money voucher machine programs found to be investment contracts. Citing *Siporin v. Carrington*, the Commission found viatical settlements were investment contracts and therefore securities, regardless of when Arizona Securities Act was amended to specifically define viatical settlements as securities. Evidence that one party: made sales presentations, trained personnel in sales presentation, created marketing material, and sold securities for respondent company was insufficient to find control person liability. Decision upheld on appeal to superior court. *See* CV 2002-008296.

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S-03439A-00-0000 Stern	64559 2-22-02 Dealer/salesman revocation	Tower Equities, Inc. Philip A. Lehman	444-1961(A)(9), 44-1962(A)(8), 44-1961(B) (currently reordered as subsection C) Revocation of dealer and salesman registration under A.R.S. §§ 44-1961(A)(9), 44-1961(B), and 44-1962(A)(8) based upon SEC order to cease and desist violation of federal securities laws. Despite no Arizona investors, Commission stated that Arizona law is clear in favoring investor protection. Commission found SEC cease and desist order equivalent to a dealer being permanently enjoined by an administrative tribunal as required under A.R.S. § 44-1961(A)(9), citing *National Labor Relations Board v. Colten*, which found that a cease and desist order of NLRB, an administrative agency, was of the nature of an injunction.
S-03353A-00-0000 Rodda	64284 12-28-01 Promissory notes	Charles Ray Stedman Wendell T. Decker, Jr. Oxford Development, LLC Profutura, LLC CNT Family Fun Outlets, Inc. Charles W. Testino, Jr. Arizona Investment Advisors, Inc. Keith B. "Skip" Davis Keith B. Davis, Inc. Spy Glass Enterprises, LLC	44-1841, 44-1842, 44-1991 Promissory notes issued by real estate development firm held to be securities; securities and dealer registration violations found and antifraud violations found through omissions and misrepresentations of material fact, including failure to disclose the terms and security of the notes, the use of proceeds, the risks of the investment, an inability to pay on previous notes, the background and financial condition of the principals, specifically a previous bankruptcy, a NASD censure and bar, termination of employment because of the sale of the subject notes, and that the notes were securities and were being sold to unaccredited investors.
S-03280A-00-0000 Stern	64005 8-30-01 Investment contracts Certificates of participation in profit sharing agreement	Joseph Michael Guess, Sr. Progressive Financial Management James Douglas Sherriffs Richard Gordon Davis RGD RGD Enterprises, Inc. Ira Joe Patterson Randall Wayne Smith, Jr. Bally Overseas Trading Inc.	44-1841, 44-1842, 44-1991, 44-2032, 44-3101, 44-3151, 44-3241, A.A.C. R14-4-308. Securities, salesman, and investment adviser registration and licensure violations found. Antifraud violations found through misrepresentation of material fact, including misrepresenting that a trading market existed for European discounted debt instruments from major banks guaranteeing a high rate of interest, investor funds would be invested in such a market, invested monies were guaranteed and such an investment was "safe", payments to investor were interest or returns on investment when in fact the monies came from later investors, and invested funds were used for respondents' personal expenses. Additionally, respondents failed to disclose their financial conditions to investors.
S-03361A-00-0000 Stern	63873 7-25-01 Stock	Calumet Slag, Inc. Gareth N. Patton Jeffrey G. Crawford Matthew Hunziger	44-1841, 44-1842, 44-1991 Shares of common stock in slag mine held to be securities; securities and dealer registration violations found; antifraud violations found through omissions and misrepresentations of material fact, including failure to disclose a mechanics lien against company; pending litigation, the financial position of company, stock being purchased was respondent Patton's personal shares in company, risks of investment in the company, investor funds were being used to pay respondent Patton's personal expenses; and overstatement of the value of the company's primary asset. Decision affirmed on appeal to superior court, February 25, 2003, CV 2001-

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			017336. Decision affirmed on appeal to court of appeals, Memorandum Decision, February 26, 2004, 1 CA-CV 03-0419.
S-03285A-99-0000 Behun	63156 11-16-00 Promissory notes	William Boyd Gregory Irma Delores Sanchez Eye International, LLC American International Beneficial Association, Inc.	44-1841, 44-1842, 44-1991 Promissory notes found to be securities; securities and dealer registration violations found and antifraud violations found through omissions and misstatements of material fact, including the value of the bonds that were offered as security for the notes, the return to investors, respondent's criminal convictions, respondent's educational background and employment history, investment risk, and respondents failed to determine if investment was suitable for investors.
S-003375A-99-0000 Rodda	62509 5-4-00 Promissory notes	Charles Shull John Ebdon Cochise Financial Corporation Carol Ebdon Daniel Joe Garcia	44-1841, 44-1842, 44-1991 Promissory notes found to be securities; securities and dealer registration violations found and antifraud violations found through omissions and misstatements of material fact, including notes were issued to fund collection of a nonexistent judgment; investor funds would pay court costs and fees, attorney fees, bonding company fees, and other miscellaneous expenses associated with the collection of the judgment; and the notes would be paid at face value from collection of judgment.
S-03177A-98-0000 Behun	62403 3-31-00 Commodity investment contract	Forex Investment Services Corporation Eastern Vanguard Forex Ltd. HWR Services Limited Eastern Vanguard Group Limited K. (David) Sharma Sammy Lee Chun Wing Peter Suen Suk Tak James Charles Simmons, Jr. Michael E. Cho To Fai Cheng Jean Yuen Y&T Inc. and Tokyo International Investment Ltd. Wing Ming Tam Guo Quan Zhang	44-1841, 44-1842, 44-1991, 44-1999 Commodity investment contract was a security subject to Commission jurisdiction. Section 2(ii) of the Commodity and Exchange Act did not provide the CFTC with exclusive jurisdiction over items listed in Section 2(i) of that act unless such items involved the sale of futures on a board of trade. Investor restitution not preempted by arbitration clause in investor contract. Arbitration clause in investor contracts invalidated for lack of mutuality of obligation, doctrine of reasonable expectations, unconscionability, repudiation, and prejudice. Arizona follows the doctrine of separability , in which an arbitration clause in a contract is considered to be an agreement independent and separate from the principal contract. *See U.S. Insulation, Inc. v. Hilro Construction Company, Inc, citing Prima Paint Corp., v. Flood & Conklin Mfg.* and *Stevens/Leinweber/Sullens, Inc. v. Holm Development and Management, Inc*. *Holm* applied the Arizona Uniform Arbitration Act, A.R.S. § 12-1501 *et. seq.*, which used policy identical to that in the Federal Arbitration Act, giving force and effect to arbitration provisions in contracts. An analysis of the arbitration provisions must be conducted to determine whether grounds exists for its revocation. *Allied-Bruce Terminix Cos. v. Dobson* did not refute the doctrine of separability. Arizona Uniform Arbitration Act and *Holm* comply with the Federal Arbitration Act. Failure to respond to discovery request resulted in sanction of adverse inference that records not produced would show respondents were control persons within the meaning of A.R.S. § 44-1999. A strict interpretation of control person liability test in *Paracor Finance, Inc. v. General*

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			Electric Capital Corp., 79 F.3d 878 (9th Cir. 1996)(control liability requires actual participation in specific violative activity) found too restrictive to guard the public interest directed by Arizona legislature. Ninth Circuit test not barred for use in the broader sense of requiring power to control the type of action causing fraud. Respondents failed to satisfy burden of proof of an affirmative defense regarding control liability under A.R.S. § 44-1999 and were subject to control liability for actions under *Paracor* and under Fifth Circuit test in *G. A. Thompson Co., Inc., v. Partridge*, 636 F.2d 945, 958 (5th Cir. 1981)(liability accompanies possession of actual power to directly or indirectly influence the general affairs and policy of the primary violator). Securities and dealer registration violations found. Antifraud violations found through omissions and misstatements of material fact, including: salesmen experience and training, business experience of respondent company and its principals, financial condition of respondent company, order execution, interest calculation and payment, location of investor funds, applicability of federal and state securities laws, and risks of investment, including lack of investor protections under federal and state securities laws. Court of appeals upheld superior court re jurisdiction; reversed superior court re control person liability of Cheng, Yuen, and Sharma. 206 Ariz. 399, 79 P.3d 86 (Ct. App. 2003).
S-03233A-98-0000 Stern	61614 4-1-99 Investment contracts Evidences of indebtedness Certificates of interest or participation in a profit sharing agreement	Buckhorn Financial Services, Inc., d/b/a Buckhorn Financial Service of Arizona Joseph K. Hilyard Michael Lee Mathis Safe Keeping, Inc., d/b/a Sate Keeping Depository, Inc. Steven L. Shook	44-1841, 44-1842, 44-1991 Respondents ordered to cease and desist violations of Securities Act in Decisions No. 61041 and 61081 issued by Commission. Joint venture agreements, warranties, and liens are securities in the form of investment contracts and evidences of indebtedness pursuant to A.R.S. § 44-1801(23). Respondent Shook was not liable solely for that portion of the judgment that corresponded to his percentage of responsibility as a "covered person." Respondent Shook consented to Commission jurisdiction in Decision No. 61041 and the proceeding was an administrative action before the Commission, not a private action in a civil proceeding. All respondents held joint and severally liable for restitution ordered.
S-03187A-97-0000 Stern	61291 12-14-98 LLC membership interests Investment contracts	European Marketing Group, L.C. Charles Cox David Kimmel Charles Gregory Planned Estate Consultants, Inc. Marvin Beckman	44-1841, 44-1842, 44-1991, 44-3151 LLC membership interests were securities in the form of investment contracts. The Commission has adopted the test in *SEC v. W.J.Howey* which requires (1) an individual invest his/her money, (2) in a common enterprise, and (3) with the expectation that he/she will earn a profit through the efforts of others. The commission of a fraud by promoters prevents a claim that the offering is exempt from registration or sold in an exempt transaction. *Trump v. Badet.* Securities, dealer registration, and investment adviser licensure violations found. Antifraud violations found through omissions and misrepresentations of material fact, including: utilization of investor funds, investor funds would be invested in "European bank notes" for which no market exists, diversion of funds to an another entity, failure to disclose a SEC cease and desist order, lack of operating history, financial condition, rate of return, commission and

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			remuneration of respondent's personnel, and the investment was safe. Decision affirmed on appeal to superior court. See CV 99-07047
S-03262A-98-00000 Behun	61292 12-14-98 Salesman suspension	Dwight A. Morris	44-1841; 44-1962(A)(10); R14-4-130(A)(17) Respondent violated Securities Act by effecting transactions in unregistered securities – transactions were not recorded on the records of the dealer with whom he was registered at the time of the transaction.
S-3175-I Stern	61138 9-25-98 Investment contracts Certificates of interest Notes	Federal Funding Foundation Corporation Security Marketing Alliance, Inc. FFF Secured Notes Sierra Short Term Investment Trust No. 1 Sierra Management Group, Inc. George Wetterwald Viaticum, Ltd. John M. Frick K. Nelson Harris Kirwan M. Flannery	44-1841, 44-1842, 44-1991, 44-1844(A)(1), R14-4-126(F). Dealer and securities registration violations found. Party claiming exemption has burden of proving exemption. Respondent violated terms of R14-4-126 by using general solicitation in the form of radio, television, newspaper, magazine and Internet advertising. The information on Internet specifically identified offering and was not generic in nature. While the offering may have been designed to be exempt, the manner respondent chose to market violated the Securities Act. Antifraud violations found through omissions and misrepresentations of material fact. Material fact is substantial likelihood that fact would have assumed actual significance in deliberations of a reasonable buyer (*Trimble v. American Sav. Life Ins Co.*) Because scienter is not an element of an A.R.S. § 44-1991 violation, respondents did not have to intentionally misrepresent material facts or intentionally omit to state material facts. Omissions and misrepresentations of material fact included: trust interests had no principal risk, the viatical settlements were screened, costs were born by investors due to sales fees and respondents' relationship. Commission decision affirmed in Court of Appeals, Division 1 Memorandum Decision. See CA CV 01-0542, reversing lower court decisions in CV 98-19417 and CV 98-20053.
S-03265A-98-0000 Stern	61102 8-27-98 Investment contracts LLC membership interests	Hanover Financial Corporation Mayfair Group, LLC Anchor Trading Company, LLC Manhattan Financial Corporation Executive Investment Group, LLC Monument Financial Group, LLC Steven R. Vereen Douglas P. Avery Stephen Silberfarb Richard H. Jameson	LLC membership interests in respondent entities held to be securities in the form of investment contracts. The Commission found the interests met the test set forth in *SEC v. W.J. Howey Co.*, that (1) an individual invest his/her money, (2) in a common enterprise, and (3) with the expectation that they will earn a profit through the efforts of others. Securities and dealer registration violations found. Antifraud violations found through omissions and misrepresentations of material fact, including: funds were invested contrary to offering representations, investor funds were used for expenses instead of investment, investor funds used to purchase an interest in a respondent entity instead of for investment, failure to disclose the relationships between the respondent entities, failure to disclosure control over investor funds, risks of offering were misrepresented, and past criminal history of some respondents.

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		Vaughn Dille Darrell G. Hailstone Raymond D. Pollard	
S-03047A-97-0000 Behun	61040 8-6-98 Investment contracts Fractional interests in oil and gas mineral rights	Ronald H. Weiner Douglas Dean Sackett	44-1841, 44-1842, 44-1991 Fractional interests in oil and gas held to be securities in that investors investment money in a common enterprise with the expectation of profit to be derived substantially from the efforts of others. Securities and dealer registration violations found. Antifraud violations found through the omission or misstatement of material fact, including: respondents had experience in organizing and managing oil and gas investment projects, calculation of respondents' compensation, operational problems, financial condition, use of proceeds, one respondent was not registered to sell securities, and one respondent was selling securities off the books the dealer with whom he was registered.
S-3243-I Rodda	60958 6-19-98 Promissory notes Salesman Revocation	Alan E. Koeneman	44-1841, 44-1843 (A)(8), 44-1962(A)(10), R14-4-130(A)(17) Promissory notes held to be securities and not exempt under the "commercial paper" exemption under A.R.S. § 44-1843(A)(8). Notes are exempt under Arizona law if they (1) are commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions; and (2) evidence an obligation to pay cash within nine months of the day of issuance or sale, exclusive of days of grace, or any renewal of such paper which is likewise limited, or any guarantee of such paper or of any such renewal. Although respondent did not intentionally sell unregistered securities, believing the notes to be exempt, the law does not require intent and the sale of notes violated the Securities Act. The practice of selling the notes without notifying the respondent's dealer constituted dishonest and unethical conduct.
S-03253A-97-0000 Stern	60957 6-19-98 Viatical settlements Salesman Suspension	Lee May Blanche	44-1841, 44-1962(A)(10); R14-4-130(A)(17) Viatical settlements held to be securities. Despite respondent's belief that the viatical settlements were not securities, the sale of which would not violate her dealer's selling policy, the practice of selling the viatical settlements without notifying the respondent's dealer constituted dishonest and unethical conduct.
S-3154-I Stern	S-3042-I 4-8-98 Interests in limited partnerships Investment contracts	Western Universal Fund Company, LLC Billy Michael Blair Vincent James Liuzzi, III Christian Peter Tamburrelli James Bennett Scott	44-1841, 44-1842, 44-1991 Interests in limited partnerships held to be securities in the form of investment contracts. Securities and dealer registration violations found. Antifraud violations found through the omission and misrepresentation of material fact, including: use of offering proceeds, financial and business history of respondent and respondent entities, past bankruptcy filing by respondent, failure to disclosure offering risks, and failure to provide financial statements.
S-03234A-97-0000 Behun	60738 3-24-98 Stock	Black Diamond Mining Corporation James Albert Ashpole	44-1841, 44-1842, 44-1991 Securities and dealer registration violations found. Exemption filing under A.A.C. R14-4-126 not available because respondent's did not timely file. Securities sales did not qualify for statutory private placement exemption. Antifraud violations found through omissions and misrepresentations of material fact, including: failure to disclosure risks, misrepresentation of

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			the reserves of the mine, failure to disclose past criminal record, public listing on stock exchange was imminent, false and misleading appraisal of the property, false information about past, current, and potential production, projections had no basis in fact, misrepresentation of sample load, misrepresentation of financial condition, and use of investor funds for purposes other than mining
S-3191-I Stern	60522 12-18-97 Partnership interests in FCC licenses Investment contracts	Interactive Television, Inc. Jerome Morris Michael French	44-1841, 44-1842, 44-1991 General partnership interests in FCC licenses held to be securities as investment contracts. Commission has adopted the *Howey* test (as modified in *United Housing Foundation v. Forman)* for investment contracts; transaction characterized at time it transpired (*Daggett v. Jackie Fine Arts);* look to underlying economic reality of transaction, disregarding the form in favor of substance *(Rose v. Dobras)*; investment of money requires commitment subjecting investor to risk of financial loss (*Hector v. Wiens)*; common enterprise established by horizontal commonality or vertical commonality; efforts of others looked at broadly e.g. whether efforts of others were the undeniably significant ones, those essential managerial efforts which affect the failure or success of the enterprise (*SEC v. Glen W. Turner Enterprises, Inc.);* general partners had no meaningful control and were passive investors; efforts of others element requires significant managerial efforts that affect the success or failure of the investment--met because investors had no right to exercise partnership powers. Securities and dealer registration violations found. Antifraud violations found through omissions and misrepresentations of material fact. Material fact is substantial likelihood that fact would have assumed actual significance in deliberations of a reasonable buyer (*Trimble v. American Sav. Life Ins Co.* Omissions and misrepresentations included: how investor funds would be utilized, percentage of investment monies used to pay commissions, escrow account funds used to pay legal fees, escrowed funds used for personal vacations, financial condition, business history (*State v. Goodrich*), business experience, projected financial success and investor returns, prior felony conviction and prior Commission order, and registration status as salesman.
S-3163-I Behun	60475 11-25-97 Promissory notes Investment contracts	Charles Thomas Brown d/b/a Preferred Trust Company Sun West Investments, Inc.	44-1841, 44-1842, 44-1991 Promissory notes held to be securities as investment contracts. Commission has adopted the *Howey* test (as modified in *SEC v. Glen W. Turner Enterprises, Inc)* for investment contracts; transaction characterized at time it transpired (*Daggett v. Jackie Fine Arts)* Antifraud violations found through omissions and misrepresentations of material fact. Material fact is substantial likelihood that fact would have assumed actual significance in deliberations of a reasonable buyer (*Trimble v. American Sav. Life Ins Co.* A.R.S. § 44-1991 is a strict liability statute (*State v. Gunnison*). Misrepresentations and omissions do not have to be intentional and investors do not have to rely upon the misrepresentation or omission (*Rose v. Dobras*). Omissions and misrepresentations included: failure to disclose associated risks; failure to

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			disclose use of funds; failure to disclose track record of the investment program, failure to disclose funds were being used for personal benefit and to repay earlier investors as program was a ponzi scheme, representations regarding financial condition, and business operations.
S-3175-I Stern	60080 2-20-97 Procedural hearing	Federal Funding Foundation Corporation Security Marketing Alliance, Inc. FFF Secured Notes Sierra Short Term Investment Trust No. 1 Sierra Management Group, Inc. George Wetterwald Viaticum, Ltd. John M. Frick K. Nelson Harris Kirwan M. Flannery	44-1972, 44-2032 R14-4-307 Commission has jurisdiction to ensure that restitution occurs on an equitable pro rata basis when some funds are recovered that had been collected as a result of a fraudulent scheme.
S-3157-I Wakefield	59988 1-21-97 Salesman revocation Denial of investment advisor license	Robert Apgar Zakian AIM Financial Group Inc., d/b/a Alliance Investment Management	44-1962(A)(4), 44-1962(A)(10), 44-3201(A)(10), 44-3201(A)(13) Failure to disclose revocation of NASD membership to investors constitutes grounds for revocation of salesman registration and denial of investment-advisor application as respondent was subject to order revoking NASD membership, engaged in dishonest and unethical conduct in the securities industry, was lacking in integrity or not of good business reputation, and it was in the public interest to deny the investment adviser and investment adviser representative applications and to revoke salesman registration.
S-3147-I Farmer	59922 12-18-96 Salesman-registration denial	Robert C. Brandenburg	44-1962(A)(2) Failure to pay Commission ordered restitution grounds to deny application for registration as a securities salesman.
S-3046-I Stern	59808 8-22-96 Membership Interests in LLC Investment contracts	Nutek Information Systems, Inc. Jeffrey A. Shuken AKS DAKS Communication, Inc. SMR Advisory Group, LC Albert Koenigsberg	44-1841, 44-1842, 44-1991 Membership interests in LLCs held to be securities as investment contracts. Commission has adopted the *Howey* test for investment contracts; transaction characterized at time it transpired (*Daggett v. Jackie Fine Arts);* look to underlying economic reality of transaction, disregarding the form in favor of substance *(Rose v. Dobras)*; investment of money requires commitment subjecting investor to risk of financial loss (*Hector v. Wiens)*; common enterprise established by horizontal commonality or vertical commonality; profit may be derived from income or capital appreciation (*United Housing Foundation v. Forman)*; investors had no management authority; investors lacked experience to exercise real control; respondents indispensable to develop LLCs. Securities and dealer registration violations found. Antifraud violations found through

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			omissions and misstatements of material fact. Material fact is substantial likelihood that fact would have assumed actual significance in deliberations of a reasonable buyer (*Trimble v. American Sav. Life Ins Co*. Omissions and misstatements included: misrepresentation of the type of service which could be provided to generate the bulk of LLC revenues, the capacity of the systems to provide portable cellular service, the expense of the equipment compared to other cellular equipment, unfounded predictions of success, financial projections, status of FCC licenses, risks of the investment, and use of investor proceeds. Decision affirmed. See 977 P.2d 826, 194 Ariz. 104 (Ariz. App. Div. 1 1998).
S-3073-I Stern	59640 5-15-96 Procedural order	Corporation of Lloyd's a/k/a Society of Lloyd's a/k/a Lloyd's of London R.W. Sturge Ltd. f/k/a A.L. Sturge (Management) Limited d/b/a R.W. Sturge & Co. Falcon Agencies Limited Charles Parnell Stephen Wilcox	Private agreements to bring claims in English courts did not bar Commission from exercising jurisdiction as State of Arizona was not a party to the agreements and Arizona investors continue to need protection of Securities Act. Motion to dismiss/stay proceeding denied.
S-2901-I Stern	59513 2-21-96 Dealer/salesman Revocation	Franklin-Lord, Inc. Richard Carl Whelan Brett Leon Bouchy William Spiro Mentis John Everett Cathcart Raymond Robert Newberg George Edward Looschen, Jr. Jeffrey Roger Lindsey	44-1841, 44-1991(1), 44-1991(3), 44-1992 Failure to disclose use of manipulative practice causing unexplained delays in execution of sell orders, encouraging the use of tie-ins, and the prearrangement of after market sales violation of 44-1992. Filing of Form BD which contained false information violation of 44-1992. Respondents held responsible for false filing because of substantial financial interest and open representation of control over entity. Sales of unregistered securities in violation of 44-1841. Evidence of use of market-manipulation devices cross-selling, tie-in arrangements, and prearrangement of after market sales before IPO registered violation of 44-1991(1) and (3). Dealer and salesmen registration revoked.
S-3093-I Farmer	59390 11-28-95 Salesman-registration denial	Robert Clark Brandenburg	44-1962(A)(2) Failure to pay Commission ordered restitution grounds to deny application for registration as a securities salesman.
S-3065-I Behun	59316 10-11-95 Real estate investment contracts Investment contracts Certificates of interest or participation in a profit sharing agreement	Four Star International Inc. a/k/a FS Real Estate Acquisitions Ernest Burt Buxton	44-1841, 44-1842, 44-1991 Participation in a real estate investment program held to be a security in the form of an investment contract. Commission has adopted the *Howey* test for investment contracts; transaction characterized at time it transpired (*Daggett v. Jackie Fine Arts);* look to underlying economic reality of transaction, disregarding the form in favor of substance *(Rose v. Dobras)*; investment of money requires commitment subjecting investor to risk of financial loss (*Hector v. Wiens)*; common enterprise established by horizontal commonality or vertical commonality; profit may be derived from income or capital appreciation (*United Housing Foundation v.*

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			Forman); efforts of others looked at broadly e.g. whether efforts of others were the undeniably significant ones, those essential managerial efforts which affect the failure or success of the enterprise (*SEC v. Glen W. Turner Enterprises, Inc.)* Antifraud violations found through omissions and misstatements of material fact. Material fact is substantial likelihood that fact would have assumed actual significance in deliberations of a reasonable buyer (*Trimble v. American Sav. Life Ins Co*). Misrepresentations and omissions do not have to be intentional and investors do not have to rely upon the misrepresentation or omission (*Rose v. Dobras*). Material misstatements or omissions include: failure to provide disclosure documents or financial information; failure to disclose associated risks and guaranteed risk-free return; failure to disclose use of funds; representations regarding business history and experience in industry; representations regarding availability of funds for venture; representations regarding operation of refund.
S-3044-I Stern	59073 5-3-95 Investment adviser license denial	Capital Financial Consultants, Ltd. Charles Edward Conatser	44-3201(A)(1) Filing of a misleading application for licensure as an Investment Advisor Representative, which contained inaccurate/misleading responses to specific questions regarding court orders and bankruptcy grounds for denial of investment adviser licensure application.
S-3025-I Blair	58909 12-21-94 Investment adviser license denial	Robert S. Burgman, dba Financial Design Equities	44-3201(A)(13) Investment adviser license application denied on grounds applicant engaged in dishonest and unethical practices in the securities industry in that the Commission had previously revoked salesman's registration because of unsuitable sales, and application failed to disclose accurately the nature of the Commission order revoking salesman registration.
S-3035-I Blair	58911 12-21-94 Denial of investment adviser and representative license	Kobey Corp. Ivan M. Kobey	44-3201(A)(10), 44-3201(B) It is in the public interest to deny investment adviser and representative license applications based on censure and 10-year bar from membership in the NYSE.
S-2896-I Cooper	58364 8-11-93 Unregistered Dealer	Judith Marie Otto Judith Marie Otto & Associates, Inc. d/b/a Accounting & Tax Services	44-1842, 44-1991(A)(2), (3) Dealer registration required for sale of exempt securities. Antifraud violations found through omissions and misstatements of material fact, including: failure to provide disclosure documents; failure to disclose the true purchase price; failure to inform investors of the terms and conditions of the investment, including the risks associated with the investment; and continuing to make misrepresentations concerning the investment to mislead the investor for several years after the purchase.
S-2947-I Carroll	58302 6-9-93 Salesman revocation	Gene Arthur Tyrrell	44-1962(A)(1), (2),(4) Failure to disclose insurance license revocation in application for salesman registration grounds for revocation.

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S-2299-I (No Hearing Officer Listed)	58279 5-19-93 (Procedural Hearing, related to Dec. # 58259 below)	Lost Dutchman Investments, Inc. Breken And Associates, Inc. American Investment Retirement Corporation Mammoth Resources, Inc. Paul Virgil Patterson Curtis Wright Patterson Robert Derald Green Allen Garth Monroe William Douglas Dennison Rickey Duane Gardner James Arthur Ryan Rudy J. Garcia William J. Taylor Dean Marc Slome Patricia A. Willett	R14-3-112 Non-parties to Commission proceedings have no standing to challenge Commission orders (see also Decision # 58259).
S-2299-I Carroll	58259 4-8-93 Real Estate General Partnerships Investment Contract Promissory Note	Lost Dutchman Investments, Inc. Breken And Associates, Inc. American Investment Retirement Corporation Mammoth Resources, Inc. Paul Virgil Patterson Curtis Wright Patterson Robert Derald Green Allen Garth Monroe William Douglas Dennison Rickey Duane Gardner James Arthur Ryan Rudy J. Garcia William J. Taylor Dean Marc Slome Patricia A. Willett	44-1841, 44-1842, 44-1991(A)(2), 44-1991(A)(3) Commission has adopted the *Howey* test for investment contracts; transaction characterized at time it transpired (*Daggett v. Jackie Fine Arts);* look to underlying economic reality of transaction, disregarding the form in favor of substance *(Rose v. Dobras)*; real estate general partnerships held to be investment contracts; investment of money requires commitment subjecting investor to risk of financial loss (*Hector v. Wiens)*; common enterprise established by horizontal commonality or vertical commonality; profit may be derived from income or capital appreciation (*United Housing Foundation v. Forman)*; management authority vested in managing general partners; general partners had no meaningful control and were passive investors; transactions were securities in the form of notes by meeting family resemblance test (*Reves v. Ernst & Young).* Participant liability attaches if a person is directly responsible for the distribution of unregistered securities by conduct that is both necessary to and a substantial factor in the unlawful transaction (*SEC v Rogers*); direct contact between participant and offerees is not required (*SEC v. Holschuh*); telemarketing to produce leads sufficient to impose participant liability; sinister or ulterior motives not necessary to find participant liability for president , director, and general partner. Did not meet limited or private offering exemption requirements; statutory private offering must be restricted to knowledgeable sophisticated investors; offering to diverse group of individuals with no particular relationship to the issuer was not private offering. Rollover transaction falls within definition of sale (*US v. Wernes).* Advice of counsel is not a defense to a strict liability violation of the act; bad advice of counsel

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			may be mitigating factor in determining penalties and sanctions. To apply equitable estoppel against the state, must meet test in *Freightways Inc. v. Corporation Commission*; agency delay in bringing this action recognized, in part, as a valid defense by certain Respondents. Material fact is substantial likelihood that fact would have assumed actual significance in deliberations of a reasonable buyer (*Trimble v. American Sav. Life Ins Co.*). Scienter is not an element of 44-1991(A)(2) or 44-1991(A)(3). Material misstatements or omissions include: development costs included land payments; associated risks; financial condition of managing general partners; cash flow problems; prior performance records; rollover investors did not contribute cash; further loans would be needed; use of proceeds; lawsuits; inaccurate or incomplete financial statements; money improperly withdrawn from impound account; prior bankruptcies; lack of registration.
S-2932-I Carroll	58235 3-24-93 C&D Order, Administrative Penalty	Robert G. Peterson (same Respondent and case as in Dec. # 58301 5-20-93)	44-1992 Applicant for registration of securities represented that securities were guaranteed by insurance policy; insurance policy did not exist. Test to determine materiality is showing of substantial likelihood that, under all circumstances, the misstated or omitted fact would have assumed actual significance in the deliberations of a reasonable buyer. (*Trimble v. American Savings Life Ins. Co.)* Untrue statement of material fact contained in a registration statement filed with the Securities Division constituted violations of § 44-1992 (grounds for Cease & Desist Order and monetary Administrative Penalty). Statute is strict liability to impose liability on the only persons who can perform the due diligence on the documents upon which others rely (*Laws 1951, Chap. 18, Sec. 20)*; failure to confirm fact warrants liability (*State v. Tarzian*). Decision later overturned by the ACC (see Dec. # 58301 5-20-93).
S-2938-I Carroll	58191 2-24-93 Salesman registration revocation	Christian Peter Tamburelli	44-1962(A)(3), (4), (6) Prior conviction for felony theft, and failure to report this conviction to the Division as required, constitutes grounds for revocation of securities salesman registration.
S-2811-I Carroll	58187 2-4-93 Units in mining enterprise Investment contract	Terry L. Barrett Joe B. Barrett Barrett Mines Barrett Mines, Inc.	44-1841, 44-1842, 44-1991 Commission has adopted the *Howey* test for investment contracts; transaction characterized at time it transpired (*Daggett v. Jackie Fine Arts);* investment of money requires commitment subjecting investor to risk of financial loss (*Hector v. Wiens)*; common enterprise established by horizontal commonality or vertical commonality; profit may be derived from income or capital appreciation (*United Housing Foundation v. Forman);* profit must be derived substantially from managerial efforts of others; managerial of others established by fact that investors had no experience or background in mining, understanding that promoter was in charge, belief they were investing in limited partnership interests. § 44-1941(A) is modeled on section 5 of the Securities Act of 1933, section 5 creates participant liability (*SEC v. Rogers, SEC v. Holschuh, SEC v. Murphy*); participant liability attaches if person is directly responsible for distribution of unregistered securities if conduct is necessary to and a substantial factor in the transaction;

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			direct contact between participant and offerees is not required to impose liability (*Holschuh*);. Material misstatements or omissions include: failure to disclose lack of registration; time of commencement of mining operation; potential return on investment; failure to disclose associated risks; failure to provide documentation regarding title and value of property; diversion of investors' funds.
S-2798-I Carroll	58113 12-10-92 Stock	The Woodington Group Integrated Environmental Services, Inc. William J. Riggs Rebecca W. Riggs Sara J. Goldman Abigail C. Woodington Kenneth Garvey Michael L. Goldman Jeff Foster Martha Woodington William Kerr Thomas Manno Stephen Elssmann	44-1841, 44-1842, 44-1991(A)(2) and (3) (Note: Elssmann was the only Respondent who presented a defense against the Division's action). "Investor" in a corporation who substantially participated in sales of unregistered securities to other investors found to have violated the statutes referenced above. § 44-1941(A) is modeled on section 5 of the Securities Act of 1933, section 5 creates participant liability (*SEC v. Rogers, SEC v. Holschuh, SEC v. Murphy*); participant liability attaches if person is directly responsible for distribution of unregistered securities if conduct is necessary to and a substantial factor in the transaction (*Rogers*). Legislative intent was not to interpret Act narrowly or restrictively (*Laws 1951, Chap. 18, Sec. 20*); conduct met definition of sale because stockholder maintained office at company offices, conducted business on company's behalf, served as signatory on account where investor funds were placed. Stockholder received value within the definition of § 44-1801(16) because motivation was to prevent loss of own investment and to insure financial viability of company through infusion of additional capital. Stockholder conduct makes him an offeror and seller within the meaning of § 44-1841(A). Material misstatements or omissions include: failure to disclose nonregistration; failure to disclose failure of previous business; representation that company would go public and that investment would double or triple; failure to disclose associated risks; failure to provide disclosure documents or financial information.
S-0000-92-125 Commission	58091 12-9-92	John Mazur Prudential Securities Inc. (William G. Mueller, complainant)	44-1971 "Interested person" means a person who has been served a Notice of Opportunity for Hearing; 44-1971 does not provide a private person a statutory right to petition for a hearing or investigation.
S-2885-I Carroll	58088 12-9-92 Wireless Cable TV Licenses Investment contract	American Microtel, Inc. Halo Holdings Group James D. Greenbaum U.S. Microwave, Inc. Jeffrey N. Jolcover	44-1841, 44-1842, 44-1991(A)(2) and (A)(3) The sale of wireless cable TV licenses held to be investment contract. Commission has adopted the *Howey* test for investment contracts; transaction characterized at time it transpired (*Daggett v. Jackie Fine Arts);* investment of money requires commitment subjecting investor to risk of financial loss (*Hector v. Wiens)*; common enterprise established by horizontal commonality or vertical commonality; profit may be derived from income or capital appreciation (*United Housing Foundation v. Forman)*; efforts of others element satisfied because none of the offerees had any experience in industry, expectation of engaging in significant managerial efforts, decision making authority, or knowledge of location for which application for license was filed. § 44-1941(A) is modeled on section 5 of the Securities Act of 1933, section 5 creates participant liability (*SEC v. Rogers, SEC v. Holschuh, SEC v. Murphy*); participant liability

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			attaches if person is directly responsible for distribution of unregistered securities if conduct is necessary to and a substantial factor in the transaction; need only be a "but for" cause of the unlawful sale and does not need to participate in the sale in more than a de minimis manner (*Rogers*); direct contact between participant and offerees is not required to impose liability (*Holschuh*). Corporate fiction should be disregarded when corporation is an alter ego of the parent and observance of corporate form would sanction a fraud (*Employer's Liability Assurance Corp. v. Lunt*); alter ego is found if there is such a unity of interest and ownership that individuality or separateness has ceased (*G.E.J. Corp. v. Uranium Aire, Inc.*). To establish aiding and abetting liability, establish (1) a primary violation occurred, (2) knowledge of or a duty of inquiry regarding the primary violation, and (3) a necessary contribution to the underlying scheme by the person charged *(State v. Superior Court of Maricopa County*). Findings of Fact and Conclusions of Law in consent order do not constitute precedence. Material misstatements or omissions include: failure to disclose true nature of offering and material risks; failure to disclose state regulatory orders, financial condition, and operating history; failure to provide disclosure documents; targeting potential investors with no industry experience.
S-2915-I Carroll	58066 11-12-92 Salesman Revocation	Ahmad Shayesteh	44-1862(1), (2), (4), (6), (9) Felony conviction for mail fraud, and revocation of probation (with subsequent imprisonment), together with failure to report these matters as required to the Division, constitutes grounds for revocation of securities salesman registration.
S-2903-I Carroll	57999 8-27-92 Promissory Note Investment contract	Charles Anthony Colp Jerry Elda Coker	44-1841, 44-1842, 44-1991(A)(2) Commission has adopted the *Howey* test for investment contracts; common enterprise established by horizontal commonality or vertical commonality; profit may be derived from income or capital appreciation (*United Housing Foundation v. Forman)*; efforts of others element met because investors had no right to manage or direct their investment. Transactions were securities in the form of notes by meeting family resemblance test (*Reves v. Ernst & Young).*
S-2775-I Carroll	57998 8-27-92 Sale/leaseback program Restaurant equipment Investment contract	Restaurant Associates of America, Inc. d/b/a Guardian International Resources John A. Dougherty Eric Paul Russell Russell Financial Services, Inc. George Ginder Ginder & Associates, Inc. Todd D. Bothwell James J. Olson Dan Lee Davis	44-1841, 44-1842, 44-1991(A)(2) and (A)(3) No equipment purchased; ponzi scheme. Commission has adopted the *Howey* test for investment contracts; common enterprise established by horizontal commonality or vertical commonality; profit may be derived from income or capital appreciation (*United Housing Foundation v. Forman)*; effort of others element met because investors had no right to manage or direct their investment. Intent to defraud is not required under Arizona law. Material misstatements or omissions include: failure to provide disclosure documents or financial information; failure to disclose lack of registration; failure to disclose associated risks.

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		James Lee Foley Albert Alex Cummings Cummings Realty & Trust Co., Inc.	
S-2743-I Carroll	57979 8-7-92 Dealer/Salesman Revocation Limited partnership interests	Boucher, Oehmke & Company Boucher-Oehmke Investments Bryce Emory Boucher Lorin W. Surpless Robert Scott Burgman	44-1962(2), (4), (9), 44-1991(A)(2) and (A)(3) Respondent Burgman's salesman registration revoked; Respondent Surpless' salesman registration suspended for one year; cease and desist order entered; administrative penalties assessed. Unsuitable sales supports finding of lacking integrity. Failure to disclose risks violates § 44-1991(A)(2). Violation of § 44-1991(A)(1) requires a showing of intent. NASD Rules of Fair Practice establish industry standard and failure to comply with rules may be considered in determining whether salesman is lacking in integrity or is not of good business reputation. Section 44-1991(A)(3) violated by failing to adequately disclose risks and minimizing risks; making unsuitable recommendations; failing to know customer within meaning of NASD rule. Material misstatements or omissions include: failure to disclose associated risks; misrepresentations regarding safety of investment.
S-2882-I Carroll	57958 7-22-92 Denial Of Salesman Registration	Murl Dean Calton	44-1962(2), (4), (9) Applicant seeking reinstatement of registration as a securities salesman commission does not re-register salesman after one year without a showing of extraordinary or special circumstances; application filed with the Division less than one year following applicant's revocation for violations of 44-1948 and 44-1991, properly denied reinstatement; applicant had failed to pay restitution to investor injured as a result of activities leading to his revocation, and failed to demonstrate "special circumstances" justifying reinstatement.
S-2845-I Carroll	57795 4-1-92 Independent distributorships re participation in Gold Network Marketing Program Pyramid Investment contract	Plus Gold, Inc. Gwen Baldwin Todd Krieg Carol Goodsitt	44-1841, 44-1842, 44-1991 Commission has adopted the *Howey* test for investment contracts; common enterprise established by horizontal commonality or vertical commonality; profit may be derived from income or capital appreciation (*United Housing Foundation v. Forman)*; efforts of others element requires significant managerial efforts that affect the success or failure of the investment--met because investors had no right to manage or direct their investment. Material misstatements or omissions include: failure to disclose investment was pyramid promotional scheme illegal in Arizona; failure to provide disclosure documents, business history, or financial information; failure to disclosure regulatory agency order; misrepresented program was approved by Arizona and Ohio Attorney General's offices;
S-2781-I Carroll	57776 4-1-92 Investment Agreement re Government securities Investment contract	CBI International William D. Dennison Frank Hernandez Warren Yee	44-1841, 44-1842, 44-1991 Commission has adopted the *Howey* test for investment contracts; common enterprise established by horizontal commonality or vertical commonality; profit may be derived from income or capital appreciation (*United Housing Foundation v. Forman)*; efforts of others element met because investors had no right to manage or direct their investment. Stated rate of

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	Promissory Note		return does not necessarily create a loan agreement. Transactions were securities in the form of notes by meeting family resemblance test (*Reves v. Ernst & Young).* Material misstatements or omissions include: failure to provide disclosure documents, business history, or financial information; failure to disclose lack of registration; misrepresentation regarding use of funds; diversion of funds for personal use.
S-2665-I Stern	57595 11-6-91 Interests in Oil Leases	Eastern Resources, Inc. Amtech Energy, Inc. Jeffrey A. Butler James A. Shaffer Russell C. Roddy	44-1841, 44-1842, 44-1991 Interests in oil leases constituted securities; registration and antifraud violations found. Material misstatements or omissions include; failure to disclose prior permanent injunction in connection with oil offerings; failure to disclose associated risks; failure to disclose financial condition; failure to disclose lack of registration or authority to conduct business; failure to provide disclosure documents; failure to disclose use of funds.
S-2757-I Carroll	57582 10-11-91 Interests in water well Investment contract Stock Mineral rights limited partnership interests	Joel K. Barr Joel K. Barr & Associates Showlow Pines Water Utility Corporation	44-1841, 44-1842, 44-1991 Commission has adopted the *Howey* test for investment contracts; common enterprise established by horizontal commonality or vertical commonality; profit may be derived from income or capital appreciation (*United Housing Foundation v. Forman; Seasons Resorts, Inc. v. Abrams)*; efforts of others element requires significant managerial efforts that affect the success or failure of the investment--met because investors had no right to manage or direct their investment; well interests found to be investment contract; limited partnership interests were not securities because purchase was not an investment of money, but a purchase of service to obtain mineral rights on own property, no expectation of profit. Presumption that common stock is a security; look to actual characteristics of the instrument; traditionally (1) right to receive dividends contingent upon apportionment of profits (2) negotiability (3) ability to be pledged (4) voting rights in proportion to shares owned (5) capacity to appreciate in value *Landreth Timber Co. v. Landreth*); stock satisfies both *Landreth* and *Howey* analysis. Material misstatements or omissions include: failure to disclose that water would be provided even if interests were not purchased; failure to disclose that free water hookups would be provided because of commitment to Commission even if stock was not purchased; failure to disclose actual use of proceeds; failure to disclose personal use of corporate assets without remuneration; misrepresentation that AGMA affected lot owners' rights; misrepresented well ownership at time interests were sold; misrepresentations regarding use of proceeds. Decision upheld on appeal to superior court. See CV1993-006331. See also TJ2001-002750, TJ1993-000556, CV1999-000687, and CV1993-000200.
S-2618-I Rudibaugh	57546 9-9-91 Limited Partnership and Joint Venture Interests	Harvey K. Ziskis Jamie Ziskis a/k/a Roberta Ziskis Par Three Kennels, Inc. a/k/a Par Three Kennel, Inc. Robert C. Brandenburg	44-1841, 44-1842, 44-1991 Limited partnership and joint venture interests in a dog-breeding/racing enterprise constituted securities within the meaning of § 44-1801(22). Material misstatements or omissions include: failure to disclose associated risks or misrepresentations that there were no risks; failure to provide investors with offering documents; misrepresentations that investment money would be refunded upon demand; failure

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		Jay A. Nenninger	to disclose prior disciplinary history; failure to disclose financial conditions; failure to disclose lack of registration.
S-2776-I Rudibaugh	57532 8-14-91 Real Estate investment program	Robert Darrel Winn d/b/a Union Security Alliance Company	44-1841, 44-1842 Respondent was Arizona licensed insurance salesman. Investment program purchasing real estate operated like a limited partnership. Marketed exclusively to Navajo coal mining community. Registration violations found. Respondent to file monthly reports with Commission until full restitution made.
S-2693-I Rudibaugh	57508 8-2-91 Stock Notes	Robert Carl Martin Judith Anne Martin a/k/a Anne J. Martin Robert Herman Wagner RAM Sales Associates, Inc. RAM International, Inc. RAM Dynamics	44-1841, 44-1842, 44-1991 Respondents RMI, RAM Sales, and RAM International did not request a hearing. Allegations deemed admitted. Sales of stock in AZ-based air-conditioning/refrigeration business and notes evidencing loans to business violated registration and antifraud statutes. Material misstatements or omissions include: failure to provide offering documents; failure to disclose associated risk factors; failure to disclose previous bankruptcy filing; failure to disclose previous tax liens; failure to inform re lack of registration. Conversion of funds for personal expenditures.
S-2686-I Stern	57401 6-6-91 Stock	AMMO, Inc. Robert J. Walton Robert D. Bjerken	44-1841, 44-1842, 44-1991 Sales of stock in a company (formed to purchase/renovate old hotels into medical buildings) constituted unlawful securities offering; registration and antifraud violations found. Material misstatements or omissions include: failure to provide disclosure documents, financial information, or disclosure re business history; failure to disclose lack of registration; failure to disclose associated risks; representations regarding potential return on investment; representations regarding return of investment upon request; representations regarding going public.
S-2783-I Rudibaugh	57394 5-23-91 Investment contracts Coins	Sales & Marketing Specialists, Inc. Sharon Siegfried Jacquelyn Hewitt	44-1841, 44-1842, 44-1991 Silver coin purchase/sale program constituted investment contract. Investment of money element satisfied by sale of coins with minimal value in relationship to the price and the right to continue on in the program with the possibility of a large payoff. Common enterprise of investors who pooled monies and efforts in bringing additional investors into program. Pooling of funds and efforts managed through periodic seminars. Expectation of profit due solely to the efforts of others satisfied because only effort required by investor was to solicit three additional sales, large profits expected primarily through efforts of others. Material misstatements or omissions include: representations regarding guaranteed nature of investment; failure to provide disclosure documents; failure to provide disclosure regarding financial information or business history; failure to disclose use of offering proceeds; failure to disclose lack of registration.

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S-2430-I Stern	57365 5-2-91 Dealer/Salesman Revocation	Buchanan & Co., Inc. Holliday Securities, Inc. Cornell Securities, Inc. Robert Morris Buchanan, Jr. Robert Clarence Fairly, Jr. Ronald Carroll Holliday Murl Dean Calton Matt Kollin Bolka Daryl Ray Calton Derek Jay Calton Russell Wesley Clark Kenneth Edwin Crowl Grant Martin Hollingsworth Patricia Ellen Holinsgworth James Carlton Johnstonbaugh Caren Louis Michalski Kirk Devon Smith Charles Robert Snyder Lorin Wilcox Surpless Jonathon Derwood Ulrich Allen Oege Vanderwey Kenneth Carl Weber Randall John Whyte	44-1843.02, 44-1948, 44-1961, 44-1962, 44-1991, 14-4-103 Sales of speculative, high-yield, unrated EIDR bonds. Failure to perform adequate due diligence to investigate underwritings; underwriter bears fiduciary responsibility to investors to market issue backed by reputable developers who will follow through with the representations outlined in official statement. Feasibility studies incorrect and without foundation. Failure to file sales materials. Failure to train and supervise sales representatives: no training manual, learn-by-doing training method inadequate. Division failed to establish control person liability: no authority to make underwriting decisions, not involved in due diligence, promotional materials not within purview, input with management not sufficient. Failure to timely update U-4 information. Burden on salesman to point out unsuitability of investment; salesman has right to do business with client who freely chooses to make an unsuitable investment. Failure to properly diversify clients' investment portfolio. Material misstatements or omissions include: failure to disclose prior business history and prior IDA bond defaults, risks of inability to obtain business permits, risk factors associated with revenue bonds, high amount of leverage, inadequacy of property value securing first mortgages, right to cancel bond order; representation that bonds were not rated because cost of obtaining rating resulted in lower interest rate, safety of bonds, security of investment because of first mortgage and personal guarantees.
S-2668-I Rudibaugh	57272 2-15-91 Promissory notes Stock Real estate limited partnership units	Red Key Gold Mines, Inc. First Sun West Corporation Rio Salado Traders, Inc. Roy Dean Higgs Leon Henry Ritchie Darrell E. Reed Lawrence Michael Labine	44-1841, 44-1842, 44-1843, 44-1948, 44-1991 Loan evidenced by promissory note and secured by deed of trust on real property exempt under 44-1843(10). Being an incorporator does not in and of itself make one liable for all offers and sales of securities for the corporation. Listing of name on letterhead is not sufficient to show named individual participated in offer and sale of securities made by other persons. Burden of proof of exemption from registration on party raising the defense. In determining appropriate penalty, sophistication and knowledge of investors factor for consideration. Failure to update home address with NASD in a timely manner did not warrant revocation or suspension of salesman's license. Acceptance of a salesman's license imposes a duty to cooperate with the Division in an examination of the salesman's affairs. Material misstatements or omissions include: failure to disclose that previous investors had lost all or a portion of their investment, risks inherent in investing in mining venture.

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S-2670-I Stern	57148 11-29-90 Foreign Currency Exchange Program	Michael D. Mullet Intercontinental Foreign Exchange, Ltd.	44-1841, 44-1842, 44-1991 Commodity investment contract was a security. Conversion of investment funds to personal use. Material misstatements and omissions: Failure to disclose former felony conviction for making false statements on loan application, previous prison sentence, lack of securities and salesman registration; failure to provide offering documents; representation regarding high returns, security of investment, use of proceeds, fake profit statements, profitability of trading account, overstatement of trading account balance.
S-2626-I Hachman	56851 3-14-90 Salesman Revocation	Geoff A. Havre	44-1962(A)(5) Conviction of salesman convicted of felony (sale of marijuana) creates rebuttable presumption that salesman is lacking in integrity or is not of good business reputation. Purpose is not to punish salesman for the past but to determine present fitness to engage in purchase and sale of securities for the public. Determination regarding revocation of registration rests on a number of factors including mitigating circumstances. Division has authority to place conditions and terms on a salesman's registration. Mitigating circumstances include: crime occurred when quite young, salesman straight forward in providing information, no evidence of other convictions, cooperation with authorities after arrest, positive steps to turn life around.
S-2355-I Stern	56850 3-14-90 Dealer/Salesman Revocation Vancouver Stock Exchange stocks	First Affiliated Securities, Inc. Century Capital Corporation James Scott Cole Lee Robert Christian Sanford Barry Venitt John Alexander Schroeder Stanley James Allen Michael Patrick Fantetti James Roe Paul John Robinson Sonya Marie Rozen	44-1841 (Various respondents entered consent orders: Dec. # 55760, 56019, 56079, 56316, 56366, 56413). Respondents and the Division stipulated as to the facts, sole issue was appropriate disciplinary action. Change in A.R.S. § 44-2032 was a substantive change, not a procedural change in the law. The Division's request for revocation was denied, although restitution was ordered. Order amended by Dec. No. 56850, April 26, 1990, approving monthly restitution payments by Respondent Robinson.
S-2565-I Burns	56761 12-20-89 Investments in Strategic Metals	Central States Metals Zoe, Inc. Central States Metals Zoe, TN, Inc. Mary Lyons John William Rockenstein, Jr.	44-1841, 44-1842, 44-1991 Strategic metals were sold in form of investment contracts and commodity investment contracts. Proceeds were not used to purchase metal as represented. Securities and salesmen were not registered. Material misstatements and omissions: failure to disclose associated risks, financial condition or business history, lack of authority to conduct business in Arizona, lack of registration or

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			exemption of securities or salesmen; representations regarding average performance, future of cobalt, satisfaction of prior investors with performance, past performance, low financial risk.
S-2553-I Burns	56733 12-6-89 Ore contracts Promissory Notes	White Rock Mining, Inc. Accrued Financial Services, Inc. Apache Rand Corporation, d/b/a Apache Rand Refinery, d/b/a Apache Rand, Inc., c/o Floyd Robertson Gayle B. Gunn II, d/b/a G.B. Gunn Marcel, Edwards, Hall & Associates Steven J. Bourque, a/k/a J.W. Hall Houston R.R. Corporation, d/b/a The Houston Corporation Reese T. Houston Lloyd B. Sharp d/b/a Lloyd Sharp Business Consultant Roger D. Swayze Madre Mining Incorporated Rochdale Recovery Group Rick Stevens Carl Grodin Siegfried Jachmann	44-1841, 44-1842, 44-1991 Issuance of newsletter with intentional misrepresentations by consecutive management individuals was primary violation of 44-1991 and thus issue of control person liability not reached. To determine if Houston exceeded the role of independent professional, consider involvement in matters other than management of project, such as preparation of offering materials, meetings with investors, sale of securities. A finding that Houston committed fraud as the project manager or acted as a significant participant is not supported by the fact that he was present during one illegal sale of securities and he accompanied investors to the bank to obtain funds for additional investments. Material misstatements and omissions include: failure to disclose earnings and business history, background and business experience of individual respondents, existence of previous regulatory orders, lack of registration of securities or salesmen, lack of authorization to do business in Arizona; representations that construction of the process plant would be completed by early 1989, the ore would be processed within one to three years from the date of purchase, ore carries an average of one ounce of gold per ton, extensive assay work had been performed, the estimated cost of production would be in the range of industry standards, the ore was warranted to be worth at least $00 per ton, the ore purchase was not a security, interest income was adequate capital to put the mine fully into operation, an ore reserve of 50,000 tons had been placed with an agency to be used in the event the values did not meet the $400 per ton warranty.
S-2495-I Stern	56724 12-6-89 Oil & Gas Partnership Interests	Texas Coastal Securities, Inc. Texas Coastal Petroleum, Inc. Michael Edward Potter Robert Polk Riordan, Jr. William Thomas Harper Robert Polk Riordan	44-1841, 44-1842, 44-1961, 44-1991 Sales of Oil & Gas Partnership Interests were found to be securities. The facts that investors did not participate in day-to-day operations of wells, investors did not know one another and had not done business together previously, the investors were scattered throughout 13 states, the investors had no previous experience in the operation of an oil and gas partnership, and the decision making power was in the hands of the promoter did not support respondents' contention that the investors were general partners. Misrepresented that dealer was registered. Failed to timely disclose regulatory actions by other states. TCS lacked integrity or was not of a good business reputation because TCS officials exercised very poor business judgment in failing to deal honestly with the Division in regards to its registration problems in other jurisdictions. Deny application for registration as a dealer.

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			No violation of 44-1991. Order amended Dec. No. 56741, December 20, 1989, amending time frame for restitution payments.
S-2486-I Stern	56709 11-7-89 Precious Metals	R&T Metals Corporation Henry Irving Ramer Melvin Douglas Thornton Willard Bennard Lee Gail Leslie Jones Eric Nobriga A.J. Ferrara	44-1841, 44-1842, 44-1991 Sale of gold ore through "Production Agreements." Investments were securities. Investor funds expended by R&T principals, but not accounted for. Investors had no experience mining or intention of actually mining. Material misstatements and omissions: Failure to disclose regulatory order from other state, use of proceeds, no work contracts had been signed, risk of unavailability of gold ore, lack of adequate funding, financial and business history, that neither securities nor salesmen were registered, inherent risks involving in investing in a Mexican mining operation; representations regarding excessive profits.
S-2551-I Rudibaugh	56708 11-7-89 Salesman Suspension	Daniel Burl Horton	44-1962(5) Companion case to Dec. No. 56707 (Respondents had been arrested together for, and pled guilty to, attempted theft of corporate records. Upon completion of probation, court designated the matter a misdemeanor.) Attempted theft of list of names of CD owners from bank reflects upon respondent's integrity and business reputation within the meaning of § 44-1962(5). Balancing concern for public versus respondent's actions, commission suspended license for six months.
S-2550-I Rudibaugh	56707 11-7-89 Salesman Suspension	James Mason Lepow	44-1962(5) Companion case to Dec. No. 56708 (Respondents had been arrested together for, and pled guilty to, attempted theft of corporate records. Upon completion of probation, court designated the matter a misdemeanor.) Attempted theft of list of names of CD owners from bank reflects upon respondent's integrity and business reputation within the meaning of § 44-1962(5). Balancing concern for public versus respondent's actions, commission suspended license for one year.
S-2161-I Stern	56653 10-5-89 Promissory Notes/Salesman Registration Revocation	Ronald Arthur Tober	44-1841, 44-1842, 44-1962(3) and (5) Sale of unregistered promissory notes. Respondent Tober's registration as a securities salesman revoked. Respondent found lacking in integrity, not of good business reputation, and not qualified by training or experience to be a registered salesman. Failed to disclose that the note maker had previously defaulted on at least two other notes of which salesman had personal knowledge, the financial condition of the maker, that the maker would require additional funding, that the notes were unsecured, that the salesman would receive a 5 percent commission, the associated risks. The promissory note investments were unsuitable to the investors.

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S-2544-I Stern	56602 8-4-89 Gold and silver delivery agreements	Pannos Mining Company Christopher E. Pannos James E. Pannos Lynn Diltz William B. Mooney Rick Stevens Jacquelin Sirota d/b/a Global Consultants Loren Tweed Paul Cohen Leonard Grassi Associates, Inc.	44-1841, 44-1842, 44-1991 Gold and silver ingots sold by agreement for future delivery at discounted prices were securities—commodity investment contracts. Material misstatements and omissions: Failure to disclose promoter's financial condition, that the corporations were not authorized to do business in Arizona, use of proceeds, associated risks. Registration and antifraud violations.
S-2496-I Burns	56492 5-18-89 Stock	Wade Bruce Cook American Business Alliance, Inc. Monarch Funding Corporation	44-1841, 44-1842, 44-1991 Administrative or transfer fees exceeding actual cost of transfer, enhanced marketability of shell companies through development of stockholder base, creation of good will with seminar attendees, and enticement to purchase additional shares were value received by respondents for "gifts" of stock. Gifts of stock constituted sales. In a civil proceedings, an adverse inference may be drawn from the invocation of the fifth amendment privilege (*Phelps Dodge Corp. v. The Superior Court in and for the county of Cochise*). Conversion of investor funds for personal uses. Material misstatements and omissions: Failure to disclose Utah corporation of same name as Arizona corporation, prior regulatory agency orders against respondents, bankruptcy, nonregistration of securities or securities salesmen, financial condition of corporation; representations regarding corporate mergers and formation states. Registration and antifraud violations. Appealed:
S-2341-I Stern	56354 2-16-89 Salesman Suspension	Thomas Patrick Garrity	44-1962(9) Suspension of securities salesman's registration under 44-1962(9), based on 4-year suspension by the NYSE, upheld for 6 months (Division had sought revocation).
S-16245 Burns	56336 1-26-89 Modification of stock escrow agreement	Amtech Systems, Inc.	R14-4-105 Respondent's request for partial release of shares from an escrow imposed by the Division pursuant to A.A.C. R14-4-105, in connection with registration of securities, granted. Commission previously authorized modification to stock escrow agreement in *America West Airlines, Inc.*, Dec. # 54215, 10-25-84. Removal of shares from escrow does not represent material change to escrow agreement upon which public investors may have relied. Shares not to be resold for two years following release from escrow.

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S-2483-I Stern	56198 11-16-88 Commodity investment contract Promissory note Stock Investment Contract Fractional undivided interest in mineral rights Certificates of interest or participation in profit sharing agreements	R.R. ("Dick") Carl Triple C. Energy Co. Recovery Systems, Inc. Cannon Coal Co., Inc.	44-1841, 44-1842, 44-1991 Interest in gold/silver mining operation in Mexico sold in violation of registration and antifraud statutes. Material misstatements or omissions: Failure to disclose lack of authority to do business in Arizona, use of proceeds, associated risks.
S-2447-I Stern	56161 10-3-88 Promissory Notes	L.G. Friedman Associates, Inc. Southwestern Assistance, Inc. Leonard Gregory Friedman Michael King Thomas	44-1841, 44-1842, 44-1991 Promissory Notes issued by company that used funds to make loans to personal-injury litigants awaiting settlement/payment of their claims constituted securities; registration and antifraud violations found. Material misstatements or omissions: Failure to disclose lack of registration, associated risks, prior problems as a securities principal in Colorado, fact that Respondent Friedman was a convicted felon, use of proceeds, personal bankruptcy.
S-2471-I Stern	56137 9-15-88 gold or silver ore Investment contract	NRG Corporation of America Merlyn Berg Kim Baker Ralph Baker John Giustino Mike Upchurch Hydromet, Inc. Dudley W. Hardin Nevada Business Services Roy Bonn Results Plus, Inc.	44-1841, 44-1842, 44-1991 Interests in gold/silver mining operation in California sold in violation of registration and antifraud statutes. Respondents must be represented by an attorney licensed to practice law in Arizona. Investments were securities: described as investments from which the investors expected to earn a profit; investor funds were collected in a pool used to further mining programs; no evidence that investors had prior commercial mining or ore processing experience; no evidence that the investors had any intention to actually mine or refine their own ore; offering materials failed to disclose any other mining or ore processing company; ore was not segregated in individual allotments but sold by a tonnage amount; one of the investors were required to exercise any administrative or professional skills in the mining or processing of their ore. Material misstatements or omissions: Failure to disclose regulatory cease and desist orders from other states, that corporate respondents were not authorized to do business within Arizona, use of proceeds, associated risks; representations that ore would be mined at Soda Lake.

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S-2442-I Rudibaugh	56043 6-29-88 Promissory notes Investment contracts Denial of Salesman Registration	Herbert Julius Schwager c/o Financial Architects Securities Corporation	44-1841, 44-1962(5), 44-2066.03[1] Sale of promissory note secured by first deed of trust or mortgage on real estate did not constitute the sale of a security, unlike *Hall v. Security Planning Service, Inc.* Commission looked to 44-1962(7) for guidance as to how much time must lapse before an applicant's past miscreant acts can be overcome through a conscientious effort of applicant to warrant registration as a salesman. Lapse time of 10 years appropriate period to mitigate bad deeds,[2] in addition to character letters and spotless record as securities salesman. [1]Repealed by Laws 1987, Ch. 174, Section 11. [2]See In Re Guardianship of Styer, 24 AZ App 148, 536 P.2d 717 (1975), for conduct underlying initial revocation of license.
S-2379-I Rudibaugh	56017 6-13-88 Limited Partnership Interests	Maricopa Nursery, Ltd. LB Sterling Capital Corporation Jack Craig Garber David Brein David Angard	44-1841, 44-1842, 44-1991 Units of limited partnership interest in a nursery constituted investment contract under *Howey* test, the third element of which was modified in *SEC v. Glenn W. Turner Enterprises* to include that profits were to be derived primarily through the efforts of others. Burden of proving any exemption from registration falls upon party raising the defense. No evidence of sales from or within Arizona; totality of evidence shows an offer for sale was made to the Division's investigator. Material misstatements and omissions: Failure to disclose lawsuits against key employee in operating and managing the nursery. Registration and antifraud violations found.
S-2384 Stern	55978 5-5-88 stocks, notes, evidence of indebtedness, investment contracts, fractional undivided interests in mineral rights	Shell Mining, Ltd. Alaskan Banquegrowth Corporation Richard Eugene Shell Merton Pekrul	44-1841, 44-1842, 44-1991 Interests in an Alaskan gold and gravel mining operations sold in violation of registration and antifraud statutes. Conversion of investor funds for personal use. Commission lacks jurisdiction over respondent not served pursuant to law as required by the Arizona Rules of Civil Procedure and Rules of Practice and Procedure before the Commission. Material misrepresentations and omissions: failure to disclose associated risks, prior regulatory order.
S-2454-I Burns	55972 5-5-88 Stock	Yes Investments, Inc. William B. Yvon	44-1921, 44-1992. Denial of application for registration of securities by financing company (for used-car loans). Offering circular contained untrue/misleading statements of material fact. Statement that corporation purchases contracts from reputable Phoenix used car departments "today" is not true even though the corporation is ready and willing to do so because the corporation has not purchased contracts for several years. The misstatement is material because there is a substantial likelihood that a reasonable investor even remotely familiar with the Phoenix car market would attached importance to the

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			corporation's business dealings with well-established and reputable dealerships when making the investors decision to purchase stock. Respondents violated 44-1992. Registration denied because the application is misleading and because the issuer has violated a provision of this chapter. Respondents assessed an administrative penalty.
S-2376-I Rudibaugh	55706 8-26-87 Salesman Revocation	Craig Allen Van Buskirk	44-1962(2), (3), and (5) Failure to report unsatisfied judgments and bankruptcy petition of form U-4, even though Respondent was not aware of judgments, constituted filing an inaccurate application for registration. Respondent's lack of training in securities constituted "not qualified by training or experience." Registration revoked.
S-2390-I Stern	55668 7-30-87 Commodity investment contract	Strategic Metals Investments, Inc. John M. Lefebvre Dale Holtby	44-1841, 44-1842, 44-1991 Precious metals marketing firm found to have violated registration statutes. Record did not establish a violation of 44-1991.
S-2332-I Rudibaugh	55565 5-7-87 Vacating Previous C&D Order	Incor Sedona Properties	Respondent's motion to set aside consent orders, Decs. # 55081 and 55082. Motion granted because respondent promptly agreed to the cease and desist orders, amended its prospectus, and offered rescission to investors; the orders were no longer necessary for the public interest, and since the Respondents had committed no further violations since the issuance of the orders. A.A.C. R14-3-101 gives the Commission authority to waive rules for "good cause," including procedures for vacating final orders by consent.
S-2382-I Mumaw	55542 4-23-87 Denial of Securities Salesman Registration	James Edward Dutra	44-1841, 44-1842, 44-1962(2), 44-1991 Respondent's application for registration as a securities salesman denied under 44-1962(2). Respondent violated registration and antifraud provisions while working for the Arizona Petroleum Research Corporation (which company had previously been the subject of a Division enforcement action). Respondent submitted false information regarding his employment history on form U-4 salesman application.
S-2277-I Hachman	55472 3-18-87 Promissory Notes Stock	Dwight Edward (Ike) Depottey Sandra A. Depottey Masterplan of Arizona a/k/a Masterplan, Inc. Car-Loan, Inc. a/k/a Car-Loan #801 East-West Technologies, Inc. Conch Investment Co., Inc. d/b/a Champ Automotive	44-1841, 44-1842, 44-1991 Promissory notes and stock sold in violation of registration and antifraud statutes. Material misstatements or omissions: See amended notice paragraph 18, b, c, and d.

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		International Corporation Champ International	
S-2354-I Stern	55460 3-4-87 Gold mining investment contracts	Western Labs & Engineering M&M Holding, Inc. Marshall Ott	44-1841, 44-1842, 44-1991 Interests in a gold-mining operation sold in violation of registration and antifraud statutes. Material misstatements or omissions: Failure to disclose regulatory proceedings of other states against respondents, associated risks; representations regarding costs for processing.
S-2242-I Rudibaugh	55251 10-29-86 Motion to set aside cease and desist	Parker Bryant, Inc. David C. Knight Gary Kosacz Andrew M. Shubert	§ 44-1972(C) does not require actual notice be given to each respondent, but only that the notice shall be sent by registered ail, return receipt requested, to the addressee's business address. Commission would consider hearing even after failure to timely request a rehearing under A.A.C. R14-3-112 if Respondents demonstrate that they did not, in fact, have an opportunity to make a timely request for a rehearing. Motion was denied because respondents failed to either testify or call witnesses.
S-2326-I Stern	55362 12-30-86 Salesman Registration Revocation	Leo Thomas Marzoni, III	44-1962(3) and (5) Integrity means "rigid adherence to a code or standard of values; probity." Respondent was not truthful with the Commission about his failure to repay a loan; salesman converted funds from a client for his personal use and failed to reimburse client for losses. Salesman lacked the degree of integrity required for a salesman to maintain his license. Salesman registration revoked.
S-2219-I Rudibaugh	55301 12-3-86 Equipment Leasing Program Investment contracts	American Energy Systems Leasing, Inc. Jerome Anthony Cadden David Craig Motti Gilbert Paul Marrero	44-1841, 44-1842, 44-1991 Equipment leasing program sold as a tax shelter constituted unlawful securities offering; registration and antifraud violations found. Arizona has adopted in interpreting analogous state law provisions the reasoning and analyses regarding the definition of a security set forth in *SEC v. W.J. Howey Co.*, the seminal U.S. Supreme Court decision on investment contracts as securities. Investors were unable to control leased equipment because promoter refused to release codes to program equipment. Thus, expectations of profits were almost solely dependent upon the efforts of others. Material misstatements or omissions: Division's allegations were unrefuted, thus violation of 44-1991 established.