

STATE AUDITOR'S OFFICE  
SECURITIES DEPARTMENT  
HELENA, MONTANA

IN THE MATTER OF ) Case No : 01-21-04-123 I  
)  
JOHN DAVID FOX, KATHERINE A. FOX, ) CEASE AND DESIST ORDER  
MBIA ASSOCIATES and their agents and )  
representatives, )  
)  
Respondents. )

The Montana Securities Commissioner (Commissioner), pursuant to the authority of the Securities Act of Montana, Section 30-10-101, et seq., Montana Code Annotated [hereinafter cited as MCA], and Section 30-10-305, MCA, hereby issues the following allegations of fact, proposed conclusions of law, order and notice of right to a public hearing:

ALLEGATIONS OF FACT

1. Respondent MBLA Associates' (referred to hereinafter as "MBLA") program is a sales plan, operation, investment contract or investment program originating from Montana that, in the course of conducting its business, offers securities to participants in the form of investment contracts. Respondents John David Fox (hereinafter referred to as "John") and Katherine A. Fox (hereinafter referred to as "Katherine") solicited other private individuals to join MBLA and to purchase said investment contracts. Respondents failed to register said sales contracts as securities with the Securities Department of the Montana State Auditor's Office.

2. John and Katherine are participants in the sales plan, operation, investment contract or investment program, and have solicited other private individuals to join the sales plan, operation, investment contract or investment program from their residence located at U.S.

1 Highway 89 South #16, Livingston, Montana 59047 Neither John nor Katherine are registered  
2 as a salesperson with the Securities Department of the Montana State Auditor's Office

3 3. John's and Katherine's actions constitute the offer and sale of securities in that  
4 they solicit others to pay them \$10.00 for the right to receive compensation derived primarily  
5 from obtaining the participation of other private individuals in the sales plan, operation,  
6 investment contract or investment program. They do this by mailing what they refer to as Shared  
7 Benefit Plans to unsolicited individuals throughout the United States and Canada

8 4. John and Katherine promise to pay a total of \$100.00 for an initial investment of  
9 \$10.00 to individuals who sign up to participate in the Shared Benefit Program. Participants then  
10 receive a Benefits Package, which the participants are required to mail to other individuals such  
11 as family members or friends. John and Katherine promise to pay recipients of Benefit Packages  
12 a "steadily increasing cash benefit at regular intervals," which John and Katherine state will total  
13 earnings up to \$5,115.00.

14 5. Respondents solicit individuals who receive Benefit Packages to purchase  
15 additional Benefit Packages for \$10.00 each that they also can provide to family members or  
16 friends under the same terms hereinabove described. Respondents further promise to provide an  
17 additional Benefit Package to participants for their individual benefit for every four Benefit  
18 Packages the participants purchase

19 6. Participants may also purchase Benefit Packages for themselves at a cost of  
20 \$10.00 for each package under the same terms hereinabove described. John and Katherine also  
21 promise to pay such participants a total of \$100.00 in return for their initial \$10.00 payment

22 7. If any family member or friend refuses to accept and register with MBLA their  
23 receipt of the Benefit Package sent to them by a participant, John and Katherine promise  
24 participants they will still receive their \$100.00 return regardless of participation of the family  
25

1 member or friend, thereby guaranteeing participants a \$100.00 return for their initial \$10 00  
2 investment.

3 8 Respondents require participants to provide all payments to MBLA in cash via the  
4 U.S. mail system to 1106 W. Park Street, PMB 444, Livingston, MT 59047. The operation does  
5 not involve the sale of any goods or services, therefore Respondents' operation constitutes a  
6 sales plan or operation in which participants give consideration for the opportunity to receive  
7 compensation derived primarily from obtaining the participation of others in the sales plan or  
8 operation rather than from the sale of goods or services by the participants or the other persons  
9 induced to participate in the sales plan or operation by the participants. Therefore, Respondents'  
10 program constitutes an illegal pyramid promotional scheme.

11 9. In conducting and/or offering their sales plans, operations, investment contracts or  
12 investment programs, Respondents failed to disclose the following material facts, which facts  
13 were necessary to disclose in order to make the statements made about the investment, in light of  
14 the circumstances under which they were made, not misleading:

15 a. the market for their sales plans, operations, investment contracts or investment  
16 programs will eventually become saturated as the supply of new members declines and  
17 individuals recruited at the bottom of the pyramid structure or later in time may be unable to  
18 generate promised returns and.

19 b. at all times material hereto, the programs were not registered as securities in the  
20 State of Montana.

### 21 CONCLUSIONS OF LAW

22 1. The Commissioner has jurisdiction over this matter by reason of Respondents'  
23 offer and sale of securities to persons in Montana. Section 30-10-107, MCA.

24 2. The Commissioner has jurisdiction over this matter by reason of Respondents'  
25 operation of a pyramid promotional scheme in Montana. Section 30-10-107 MCA.

1           3       Respondents' sales plans, operations, investment contracts or investment  
2 programs constitute securities within the meaning of the Securities Act of Montana per Section  
3 30-10-103(22), MCA.

4           4.       Respondents' program is an illegal pyramid promotional scheme within the  
5 meaning of the Securities Act of Montana, Section 30-10-324(6), MCA.

6           5.       Offer or offer to sell includes "every attempt to offer to dispose of or solicitation  
7 of an offer to buy a security or interest in a security for value " Section 30-10-103(15), MCA.

8           6       Respondents are salespersons as defined by the Securities Act of Montana,  
9 Section 30-10-103(20), MCA.

10          7       In connection with the above offers of securities to/from persons in Montana.  
11 Respondent violated Section 30-10-201(1), MCA, by transacting business as a salesperson in  
12 Montana without registering as such.

13          8.       In connection with the above offers of securities to/from persons in Montana.  
14 Respondents violated Section 30-10-202, MCA, by transacting business in unregistered  
15 securities.

16          9       In connection with the above offers of securities to/from persons in Montana.  
17 Respondents violated Section 30-10-301(1)(b), MCA, by failing to disclose the following  
18 material facts, which facts were necessary to disclose in order to make the statements made about  
19 the investment, in light of the circumstances under which they were made, not misleading.

20          a       the market for the programs will eventually become saturated as the supply of  
21 new members declines and individuals recruited at the bottom of the pyramid structure or later in  
22 time may be unable to generate promised returns,

23          b.       at all times material hereto, the programs were not registered as securities in the  
24 State of Montana.

1           10.    In connection with the above offers of securities to/from persons in Montana,  
2 Respondents violated Section 30-10-301(i)(c), MCA, by engaging in an act, practice, or course  
3 of business which operates or would operate as a fraud or deceit upon any person in that the  
4 operation constitutes a pyramid scheme

5           11     Respondents violated Section 30-10-325, MCA, by conducting or promoting or  
6 causing to be conducted or promoted a pyramid promotional scheme in Montana

#### 7                                   ORDER

8           Pursuant to Section 30-10-305(1)(a), MCA, it appears to the Commissioner that the  
9 above named Respondents have engaged or are about to engage in an act or practice constituting  
10 a violation of the Securities Act of Montana and therefore hereby orders Respondents to cease  
11 and desist conducting, promoting or causing to be conducted or promoted any pyramid  
12 promotional schemes in violation of Section 30-10-325, MCA, as well as any other sales plan,  
13 operation or investment program that operates or would operate as a pyramid promotional  
14 scheme. Further the Commissioner orders Respondents to cease and desist from engaging in  
15 any act, practice, or course of business that operates or would operate as a fraud or deceit upon  
16 any person, in violation of Section 30-10-301, MCA, and to cease and desist from offering and  
17 selling unregistered securities by unregistered salespersons in violation of Section 30-10-201 and  
18 Section 30-10-202, MCA

#### 19                                   PENALTIES

20           Section 30-10-306(1), MCA, provides that any willful violation of this cease and desist  
21 order, upon conviction, may be punished by imprisonment for not more than ten (10) years  
22 and/or a fine not exceeding five thousand dollars (\$5,000) per violation. Section 30-10-325  
23 MCA provides that a person who conducts or causes to be conducted or promoted a pyramid  
24 promotional scheme shall, for each participant giving consideration, be punished by a fine not to  
25 exceed \$100,000.00 and/or imprisonment for not more than ten (10) years.

1 NOTICE

2 Respondents are notified that the Commissioner has issued this temporary cease and  
3 desist order. If Respondents wish to contest the allegations herein, they shall make a written  
4 request for a hearing within fifteen (15) days of receipt of this order to John K. Kurtz, Staff  
5 Attorney, State Auditor's Office, 840 Helena Ave., Helena, MT 59601. The hearing shall then  
6 be held within a reasonable time following the Commissioner's receipt of the hearing request  
7 unless otherwise agreed by the parties. If no hearing is requested within fifteen (15) days of  
8 receipt of this order by Respondents, and the Commissioner orders none, this order shall become  
9 permanent, and the above allegations of fact will be declared findings of fact and the above  
10 proposed conclusions of law will be declared conclusions of law.

11 Should you request a hearing, you have the right to be accompanied, represented and  
12 advised by counsel. If the counsel you choose has not been admitted to the practice of law in the  
13 State of Montana, he or she must comply with the requirements of Application of American  
14 Smelting and Refining Co., 164 Mont. 139, 520 P.2d 103 (1973).

15 DATED this 20<sup>th</sup> day of January, 2004.

16 Karen Powell  
17 Karen Powell  
18 Deputy Commissioner of Securities  
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