

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE AUDITOR'S OFFICE
SECURITIES DEPARTMENT
HELENA, MONTANA

IN THE MATTER OF:) Case No.: 03-22-04-129 I
MONTANA HEDGE PARTNERS, LP)
and ROBERT M. SEAMONS) CONSENT AGREEMENT
AND ORDER
Respondents)

The Montana Securities Commissioner (Commissioner), pursuant to the authority of the Securities Act of Montana, § 30-10-101, et seq., Mont. Code Ann. (2001), hereby alleges the following:

I. COMMISSIONER'S FACTS

1. During the period of September 8, 2003 through August 9, 2004 this office received six complaints from individuals regarding MONTANA HEDGE PARTNERS, LP and ROBERT SEAMONS (SEAMONS). In those complaints, investors indicated they had invested in Limited Partnership interests in MONTANA HEDGE PARTNERS, LP, a Montana Limited Partnership, through SEAMONS, a Montana resident.

2. This office commenced an investigation and determined the following information:

- 1 a. MONTANA HEDGE PARTNERS, LP, filed with the Secretary of
 2 State on July 23, 1999, and indicated " Robert M. Seamons " as its
 3 registered agent.
- 4 b. LONE MOUNTAIN TRADING, LLC, filed with the Secretary of State
 5 on July 23, 1999, and indicated "Robert M. Seamons " as its registered
 6 agent and President. LONE MOUNTAIN TRADING, LLC is the
 7 General Partner for MONTANA HEDGE PARTNERS, LP.
- 8 c. SEAMONS, a Montana resident, provided this office a Partner List
 9 which indicated he sold partnership units in MONTANA HEDGE
 10 PARTNERS, LP to investors as follows. If funds were returned to
 11 investors, the amount is indicated below:

Date	Investor	Invested	Returned
September 28, 1999	DK & RK	\$141,000	\$0
October 1999	JD & MBM	\$100,000	\$0
October 1999	KS	\$185,000	\$0
October 1999	AS & JS	\$75,000	\$0
October 1999	JL Family Trust	\$35,000	\$0
October 1999	JF IRA	\$20,000	\$0
October 1999	CF IRA	\$20,000	\$0
October 1999	RW & VW	\$25,000	\$0
October 1999	EE & ME	\$35,000	\$0
October 1999	JL, Jr. IRA	\$3,900	\$0
October 1999	JF & CF	\$100,000	\$62,941

1	October 1999	JS	\$250,000	\$225,000
2	October 1999	RW IRA	\$49,900	\$50,000
3	October 1999	JF Trust	\$10,000	\$17,580
4	October 1999	CF Trust	\$10,000	\$17,580
5	October 1999	JC	\$60,000	\$80,311
6	October 1999	TF Trust	\$10,000	\$17,580
7	October 1999	CL	\$20,000	\$19,809
8	April 2000	RY & MY	\$50,000	\$0
9	April 2000	DH & SH	\$100,000	\$0
10	September 2000	MS	\$115,900	\$0
11	March 2001	TP	\$132,800	\$0
12	June 2001	JR	\$99,900	\$0
13		TOTALS	\$1,648,400	\$490,801

- 16
- 17 d. MONTANA HEDGE PARTNERS, LP opened an account in October 1999
- 18 with Wall Street Access, an online securities trading company, and deposited
- 19 investor funds. SEAMONS was the sole individual authorized to transact
- 20 business for the account. During the period October 1999 through February
- 21 2002 SEAMONS transacted 2,048 trades in its Wall Street Access account.
- 22 During this period, Wall Street Access charged the account approximately
- 23 \$299,092.53 in fees that include commission charges and margin interest.
- 24 e. Throughout the period, SEAMONS made withdrawals totaling \$1,257,897.25
- 25 from this account. SEAMONS used \$490,801 from these withdrawals to
- make payments to various limited partners.

- 1 f. From the withdrawals from MONTANA HEDGE PARTNERS, LP's account
2 with Wall Street Access, SEAMONS placed \$200,000 in a joint account with
3 his wife.
- 4 g. Seamons cannot demonstrate that the balance of the withdrawn funds from
5 MONTANA HEDGE PARTNERS, LP's account with Wall Street Access,
6 totaling \$567,096.25, were used for authorized partnership activities.
- 7 h. Investors in MONTANA HEDGE PARTNERS, LP's were provided with a
8 Limited Partnership Agreement that indicates, among other things, the
9 following requirements and limitations:
- 10
- 11 i) the Partnership shall reimburse the General Partner for routine
12 Partnership operating and administrative expenses not to exceed three
13 (3%) of the Assets per fiscal year. In addition, the Partnership
14 Agreement indicates there shall not be a management fee charged to
15 any Partner admitted to the Partnership before December 31, 1999.
- 16 ii) there shall be established for the General Partner and each Limited
17 Partner on the books the first day of each fiscal year (calendar year) a
18 "Hurdle Amount" equal to multiplying each opening capital account
19 balance by a factor of 0.10, reflecting an annualized appreciation goal
20 of 10%.
- 21 iii) the General Partner will establish on the books of the Partnership a
22 "special expense" deficit account with an allocation to each Partner of
23 his/her share of Special Expenses and a requirement that on the last day
24 for each accounting period, the net profits/net losses of the Limited
25 Partnership were to be allocated to each Limited Partner.

1 iv) for each fiscal year (calendar year), the Limited Partnership
2 income, deductions, gains, losses or credits shall be allocated for
3 income tax purposes among the Partners in such a manner as to reflect
4 equitably amounts credited or debited to each Partner's Capital
5 Account.

6 v) The Limited Partnership Agreement indicates a 180-day waiting
7 period, measured from the initial contribution date, is required before
8 any withdrawals can be made by a limited partner.

9 vi) Limited Partnership Agreement indicates books of the account for
10 the Partnership shall be kept in accordance with generally accepted
11 accounting principles consistently applied. Such books of the account
12 shall be kept at the principal place of business of the Partnership and
13 each Partner shall have, at all times during regular business hours of
14 the Partnership, the right to inspect such books. Furthermore, the
15 Limited Partnership Agreement indicates the books and records of the
16 Partnership shall be maintained on the accrual basis and shall be
17 audited at the end of each Fiscal Year of the Partnership by an
18 independent certified accountant.

19
20
21 i. MONTANA HEDGE PARTNERS, LP failed to follow its own
22 governance to the detriment of investors when it failed to meet the
23 requirements and limitations outlined by the Limited Partnership
24 Agreement by not maintaining an accounting of the funds received and
25 expended; by not creating a "hurdle amount" for each account; by not
preparing tax returns for years 1999, 2001, 2002 or 2003; by allowing

1 the CF Trust, JF Trust and TF Trust to receive payouts of 175.8% of
2 their initial capital investment without incurring the 180-day waiting
3 period; by not maintaining an accounting of funds in accordance with
4 generally accepted accounting principles and by not having an annual
5 audit by a certified public accountant, as required by the Limited
6 Partnership Agreement.

7 j. SEAMONS failed to follow his own governance to the detriment of
8 investors when he failed to meet the requirements and limitations
9 outlined by the Limited Partnership Agreement by not maintaining an
10 accounting of the funds received and expended; by not creating a
11 "hurdle amount" for each account; by not preparing tax returns for
12 years 1999, 2001, 2002 or 2003; by allowing the CF Trust, JF Trust
13 and TF Trust to receive payouts of 175.8% of their initial capital
14 investment without incurring the 180-day waiting period; by not
15 maintaining an accounting of funds in accordance with generally
16 accepted accounting principles and by not having an annual audit by a
17 certified public accountant, as required by the Limited Partnership
18 Agreement.

19 k. MONTANA HEDGE PARTNERS, LP and SEAMONS failed to
20 establish IRA accounts for the investments made by JF, CF, DK and
21 MS.

22 l. The records of the Montana Securities Department indicate
23 MONTANA HEDGE PARTNERS, LP did not file for an exemption
24 from registration or seek an exemption in Montana.
25

- 1 m. The records of the Montana Securities Department indicate
2 SEAMONS has never been registered in any capacity in this State.
- 3 n. The records of the Montana Securities Department indicate
4 SEAMONS was not licensed as an investment adviser in Montana
5 when he provided investment advisory services to the limited
6 partnership.
- 7 o. In connection with the above sales of MONTANA HEDGE
8 PARTNERS, LP,
- 9 p. SEAMONS failed to disclose, at a minimum, certain material facts
10 which were necessary to disclose in order to make the statements
11 made about the investment, in light of the circumstances under which
12 they were made, not misleading:
- 13 i. at all times material hereto, MONTANA HEDGE PARTNERS, LP
14 was not registered as a security in the state of Montana;
- 15 ii. at all times material hereto, MONTANA HEDGE PARTNERS, LP
16 was not registered as an investment adviser in Montana;
- 17 iii. at all times material hereto, SEAMONS was not licensed as a
18 securities salesperson in Montana;
- 19 iv. at all times material hereto, neither MONTANA HEDGE
20 PARTNERS, LP, LONE MOUNTAIN TRADING LLC nor
21 SEAMONS could set up and administer an IRA pursuant to IRS rules
22 and regulations;
23
24
25

1 v. a management fee based on a share of capital gains upon or capital
2 appreciation of the limited partners funds, is a violation of Montana
3 law;

4 vi. at all times material hereto, MONTANA HEDGE PARTNERS, LP
5 and SEAMONS sold securities under a Purchase Agreement that
6 contained language and provisions in which MONTANA HEDGE
7 PARTNERS, LP and SEAMONS failed to follow.
8

9 II. CONCLUSIONS

10 1. The Commissioner has jurisdiction over this matter by virtue of MONTANA
11 HEDGE PARTNERS, LP and SEAMONS ' offer and sale of securities in Montana to investors
12 located within and outside of Montana.

13 2. MONTANA HEDGE PARTNERS, LP and SEAMONS transacted securities
14 business in Montana. § 30-10-103(22) and (24), Mont. Code Ann.

15 3. SEAMONS sold limited partnership interests in MONTANA HEDGE
16 PARTNERS, LP in Montana. § 30-10-103(20) and § 30-10-103(22)(a), Mont. Code Ann.

17 4. SEAMONS transacted investment advisory business in Montana. § 30-10-
18 103(11)(a), Mont. Code Ann.

19 5. Interests in MONTANA HEDGE PARTNERS, LP are investment contracts, and
20 thus constitute securities as defined by § 30-10-103(22), Mont. Code Ann.

21 6. The definition of "offer " or "offer to sell " includes "each attempt or offer to
22 dispose of or solicitation of an offer to buy a security or interest in a security for value." § 30-10-
23 103(15), Mont. Code Ann.

24 7. A limited partnership is a security and must be registered or exempt from the
25 registration provisions pursuant to §30-10-202, Mont. Code Ann. before it can be offered or sold
in this state.

1 8. A salesperson offering or selling limited partnership interests to or from this State
2 must be registered or exempt from the registration provisions pursuant to §30-10-201, Mont.
3 Code Ann.

4 9. An investment advisor transacting business to or from this State must be
5 registered pursuant to § 30-10-201, Mont. Code. Ann.

6 10. The definition of "investment adviser" includes a person who, for compensation,
7 engages in the business of advising others, either directly or through publications or writings, as
8 to the value of securities or as to the advisability of investing in, purchasing or selling securities.

9 11. Pursuant to §30-10-301(1)(b), Mont. Code Ann., it is unlawful to omit a material
10 fact necessary to prevent investors from being misled.

11 12. Pursuant to §30-10-301(1)(b), Mont. Code Ann., it is unlawful to misrepresent a
12 material fact necessary to prevent investors from being misled.

13 13. Pursuant to §30-10-301(1)(c), Mont. Code Ann., it is unlawful to engage in any
14 act, practice or course of business that operates or would operate as a fraud or deceit upon an
15 investor.

16 14. Upon each conviction of a violation of any part of Title 30, Chapter 10, Mont.
17 Code Ann. MONTANA HEDGE PARTNERS, LP and SEAMONS are subject to an
18 administrative fine of not more than \$5000.

19 **III. AGREEMENT**

20 The parties agree to the following:

21 1. MONTANA HEDGE PARTNERS, LP and SEAMONS violated § 30-10-201,
22 Mont. Code Ann., by acting as an unregistered investment adviser, § 30-10-202, Mont. Code
23 Ann., by offering and selling interests in MONTANA HEDGE PARTNERS, LP without proper
24 registration and without the benefit of an exemption, and § 30-10-301, Mont. Code Ann. through
25 misrepresentation and omission of material facts with regards to the solicitation and sale of the
Limited Partnership interests.

1 2. MONTANA HEDGE PARTNERS, LP and SEAMONS shall provide within 30
2 days of signature of this agreement individual notarized statements of assets and current
3 liabilities and/or other business entities in which any of the parties has had an interest in from
4 1999 to present; and disclose any asset with a value over \$5,000, including real or other property,
5 that has been assigned to any other person or entity by deed or other instrument from November
6 1999 to the present. Financial information provided shall be considered as nonpublic
7 investigative information.

8 3. MONTANA HEDGE PARTNERS, LP and SEAMONS will deposit \$2,000.00
9 monthly, beginning February 1, 2005, into a Restitution Fund. In addition, MONTANA HEDGE
10 PARTNERS, LP and SEAMONS will deposit the proceeds of the sale of the home located on
11 Silverado Trail, Big Sky, Montana into the Restitution Fund by May 5, 2005 or within 15 days of
12 closing on the home, whichever comes first. MONTANA HEDGE PARTNERS, LP and
13 SEAMONS will then make a restitution offer, via certified mail, to the limited partners identified
14 in attached Schedule A of the funds in the Restitution Fund on May 10, 2005 or within 15 days
15 upon closing on the sale of the home located on Silverado Trail, Big Sky, Montana, whichever
16 occurs first.

17 4. The proceeds from the fund will be paid out to each investor in MONTANA
18 HEDGE PARTNERS, LP by invested percentage. MONTANA HEDGE PARTNERS, LP and
19 SEAMONS will provide the Department with copies of each restitution payment and proof that
20 the payment was accepted. In the event an investor identified on attached Schedule A does not
21 accept restitution within sixty (60) days of the restitution offer, such amount will be pro-rated
22 amongst the investors choosing to accept the restitution offer.

23 5. MONTANA HEDGE PARTNERS, LP shall pay a fine of \$150,000 by May 10,
24 2005 or within 15 days upon closing on the sale of home identified pursuant to item (3) under
25 Agreement. Such fine will be reduced by any amounts paid in restitution pursuant to item (3)
under Agreement.

1 6. SEAMONS shall pay a fine of \$150,000 by May 10, 2005 or within 15 days upon
2 closing on the sale of home identified pursuant to item (3) under Agreement. Such fine will be
3 reduced by any amounts paid in restitution pursuant to item (3) under Agreement.

4 7. SEAMONS shall not accumulate or control assets valued in excess of \$5,000
5 gained through any lawful endeavor until satisfaction of this agreement has been made.

6 8. SEAMONS will not hold a position of fiduciary relationship with any individual
7 or within any organization within the State of Montana in any capacity for a period of not less
8 than five years.

9 9. SEAMONS does not intend to and shall not act as a licensed broker of securities
10 in the State of Montana for a period of not less than fifteen years.

11 10. SEAMONS does not intend to and shall not act as an investment advisor in the
12 State of Montana for a period of not less than fifteen years.

13 11. SEAMONS shall abide by all provisions of the Securities Act of Montana.

14 12. SEAMONS waives his right to a hearing under the Securities Act of Montana on
15 the above-mentioned allegations.

16 13. By signing this agreement, SEAMONS agrees to a tolling of the statute of
17 limitations, §30-10-305(4)(c), Mont. Code Ann. with regards to the allegations and specific
18 actions set forth in this agreement while restitution payments are made.

19 14. In the event SEAMONS fails to abide by any of the above provisions, or the
20 Commissioner, through actions and investigation of the Department, determines that SEAMONS
21 has assets or constructive control over assets that exceed his liabilities in excess of \$25,000, not
22 to include his primary residence, at the time of signing and executing this agreement; or that
23 SEAMONS has transferred significant assets to avoid payment of fines or other liabilities such as
24 restitution, the Department may institute any or all of the following actions:
25

- a. a fine of \$250,000 for each respondent to be fully and immediately due to this office;

- 1 b. void the Consent Agreement and reinstate this action;
2 c. take any action previously available under its authority, including criminal
3 prosecution.

4 15. In consideration for the Commissioner and the State of Montana not initiating any
5 civil or administrative action for violations of the Securities Act of Montana, SEAMONS fully
6 and forever releases and discharges the Office of the State Auditor, the elected State Auditor and
7 all State Auditor employees from any and all actions, claims, causes of action, demands, or
8 expenses for damages or injuries, whether asserted or unasserted, known or unknown, foreseen
9 or unforeseen, arising from the conduct or action of the persons and entities identified in this
10 paragraph that occurred on or before the date that SEAMONS signed this Agreement.

11 16. SEAMONS attests he has read the foregoing Consent Agreement and that he
12 knows and fully understands its contents and effect. SEAMONS acknowledges he has been
13 advised of his constitutional rights as set forth in Exhibit 1. Additionally, SEAMONS
14 acknowledges he has been advised of the following: he has the right to a hearing in this matter;
15 he has the right to present evidence and arguments to the Commissioner; and he has the right to
16 appeal an adverse determination after hearing.

17 17. SEAMONS understands that by signing this Consent Agreement, he waives those
18 rights mentioned above in their entirety.

19 18. SEAMONS understands that this Consent Agreement is part of the
20 Commissioner's file, which is a public record. As a public record it may not be sealed.

21 19. SEAMONS understands that this Consent Agreement constitutes the entire
22 agreement between the parties, there being no other promises or agreements, either express or
23 implied.
24

25 DATED this 28th day of January, 2005.

Robert M. Seamon

ROBERT M. SEAMONS

Subscribed and Sworn to before me this 20th day of January, 2005.

(SEAL)

Michelle Marie Hubbell
Notary Public for the State of Montana
Residing at Helena
My commission expires March 29, 2008

Dated this 28th day of January, 2005.

JOHN MORRISON
State Auditor and
Commissioner of Insurance

By: *Roberta Cross Guns*
Roberta Cross Guns
Special Assistant Attorney General

ORDER

1 On the basis of the Department and Respondents ' consent to the entry of this order, the
2 Commissioner orders Respondents to pay a fine of \$150,000 each, such fine will be reduced by
3 any amounts paid in restitution pursuant to paragraph (3) under the III. Agreement, submit
4 financial information as outlined in the Consent Agreement, and to make restitution in the
5 amount of \$348,000 by May 10, 2005 or within 15 days upon closing on the sale of the home
6 located on Silverado Trail, Big Sky, Montana, whichever occurs first, to investors in
7 MONTANA HEDGE PARTNERS, LP, by invested percentage. The Commissioner further
8 orders Respondents to comply with the Securities Act of Montana and the rules promulgated
9 thereunder and to complete all other Agreements outlined in the Consent Agreement.

10 Dated this 20th day of January 2005.

11 JOHN MORRISON, COMMISSIONER OF SECURITIES

12 By: [Signature] KAREN POWELL
13 Title: Deputy Securities Commissioner