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2 Special Assistant Attorney General
3 State Auditor's Office
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5 Helena, MT 59601
6 406-444-2040
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8 STATE AUDITOR'S OFFICE
9 SECURITIES DEPARTMENT
10 HELENA, MONTANA

11 IN THE MATTER OF:) Case No.: 445-04
12)
13 TRI ENERGY INC. ("TRI Energy"), H&J) **FIRST AMENDED**
14 ENERGY COMPANY, INC. ("H&J") and) NOTICE OF PROPOSED AGENCY
15 MARINA INVESTORS GROUP ("Marina"),) DISCIPLINARY ACTION AND NOTICE OF
16 and their agents and representatives including) OPPORTUNITY FOR HEARING
17 Robert Jennings, Arthur Simburg, Lowell)
18 Decker, Thomas Avery, Henry Jones, Debbie)
19 Loveless and John and Jane Does 1-10)

20 Respondents.

21 _____
22 **Staff of the Securities Department of the office of the State Auditor as**
23 **Commissioner of Securities of the state of Montana (Department), pursuant to the**
24 **authority of the Securities Act of Montana, § 30-10-101, et seq., Mont. Code Ann. (2005),**
25 **proposes to the Commissioner that he take specific action against Tri-Energy, Inc. (Tri-**
Energy), H & J Energy Company, Inc. (H&J), Marina Investors Group (Marina), Robert
Jennings (Jennings), Arthur Simburg (Simburg), Lowell Decker (Decker), Thomas Avery
(Avery), Henry Jones (Jones), Debbie Loveless (Loveless), and John and Jane Does 1-10
(Does) for violations of the Montana Securities Act. The Commissioner has authority to
take such action under the provisions of §§ 30-10-102, 30-10-107, 30-10-201, 30-10-301, 30-
10-304, 30-10-305 and 30-10-309, Mont. Code Ann. (2005).

1 6. Debbie Loveless, acting in concert with and on behalf of respondents H&J
2 Energy, Tri Energy, Avery, Decker, Jennings, Simburg, Marina Investors Group and Jones
3 solicited and introduced approximately seven of the investors to these investment opportunities.
4 Loveless told them about the Tri Energy and Marina Investors Group investment opportunity and
5 provided the potential investors with a telephone number for a nightly conference call
6 coordinated by Decker for Tri Energy.

7 7. When the investors called the conference call telephone number, they were
8 introduced to Simburg and Jennings who explained to them the investment opportunity in Tri
9 Energy and directed the callers to the company web site, *www.trienergy.net*, for additional
10 information.

11 8. Jennings and Simburg told the investors that the investors would double their
12 investment in 30 to 60 days by investing in Tri Energy. Investors were also told that if they
13 invested \$100,000 the money was going to be used for an investment in a gold transaction
14 through Jones and Marina Investors Group and that they could triple their money in the gold
15 investment. Simburg and Jennings said that the money was going toward the gold investment
16 because they were going to get so much money from that transaction that they would be able to
17 pay the investors back and finance the development and expansion of the coal mine operations.

18 9. Investors were told that Jones was facilitating the sale and transfer of 5,000 metric
19 tons of Israeli gold to Dubai. Investors were told that the gold was stored in Jordan, that the deal
20 was going to be finalized in Luxemburg and that it was politically sensitive because the countries
21 involved would not want the public to know they were conducting business with one another.
22 Investors were told that their money was going to be used to pay costs, including legal fees and
23 storage fees associated with the transaction.

24 10. Interested individuals were sent a packet of information that included a memo
25 from Simburg on Tri Energy letterhead explaining particular coal mine acquisitions the company

1 was making, a promissory note stating that the investor would receive their principal and 100%
2 interest in sixty days or their principal and 200% interest if the money was used for the Marina
3 Investors Group project. The packet of information also included a coal mine project evaluation
4 and wire instructions for where investors should send their money.

5 11. Loveless solicited others, including Ms. C, to pay \$100,000.00 for a return of
6 \$300,000.00 in 30 days. Loveless facilitated Ms. C getting information on Tri Energy from a
7 Robert B. Jennings (Jennings), the president of Tri Energy. Loveless also approached other
8 members of her church, M.N., Dr. S.F. and Ms. S.F. along with Ms. S.F.'s two daughters, K.F.
9 and J.S, all who invested various amounts into Tri Energy.

10 12. D.O. was solicited by Art Simburg, Sr. Vice President of Tri Energy. D.O.
11 invested \$70,000.00 into Tri Energy and its predecessor, H & J. D.O. indicated that he has not
12 received any of the promised interest on his investment and that he has requested the return of
13 his principal several times. He was eventually repaid his principal.

14 13. In a Sept. 1, 2004 fax from Jennings to Ms. C, Jennings promised a return of "3x"
15 within thirty days. The accompanying memo dated 16 August 2004 from Simburg promised a
16 100% return within 60 days. Attached was a promissory note for Ms. C to sign along with the
17 instruction that Ms. C needed to remit remuneration with the signed promissory note.

18 14. On October 11, 2004, J.S. and G.S. advised the Department that they had invested
19 \$5,000.00 on January 29, 2004.

20 15. On October 14, 2004, M.N. advised the Department that she and her husband
21 R.N. had invested \$7,000.00 in August, 2004.

22 16. On November 1, 2004, S.F. advised the Department that six or seven months
23 prior, S.F. had invested \$13,000.00. S.F. had received his \$13,000.00 back in September or
24 October, 2004. S.F. did not receive any return on the funds that he had invested.

1 17. B.S. had been solicited by Robert Jennings and had been promised a 3:1 return
2 that was supposed to be paid within 4-8 weeks after the initial investment. He invested \$5000.00
3 in Tri Energy on November 21, 2003.

4 18. M.N. advised that M.N. and her husband R.N. invested \$7,000.00 in August of
5 2004 with the promise of double or triple returns. In October of 2004, M.N. and R.N. had
6 requested that their money be returned due to concerns regarding the investment, and a need for
7 the funds to pay other obligations as M.N. and R.N. were in dire straights for cash. Prior to the
8 end of 2004, M.N. and R.N. had received their \$7,000.00 back, but had not received any return
9 on the money as promised.

10 19. In February, 2005, Debbie Loveless visited M.N. and R.N. and convinced them to
11 reinvest in Tri Energy. M.N. and R.N. obtained a mortgage on their home and reinvested
12 \$29,000.00. As of May 3, 2005, M.N. and R.N. have not received their investment back and
13 have not received any return on the investment as promised.

14 20. Ms. C, M.N., R.N., Dr. S.F., Ms. S.F., K.F., J.S., B.S. and D.O. as Montana
15 investors, were not provided appropriate disclosure documents including but not limited to:

- 16 a. the use of their investment funds;
- 17 b. investors were not informed that Tri Energy was not conducting any
18 significant coal mining operations in Kentucky;
- 19 c. at all times material hereto, the programs were not registered as securities in
20 the State of Montana;
- 21 d. the liquidity of the investment and whether the promissory notes were
22 secured;
- 23 e. financial information regarding Tri Energy and its officers;
- 24 f. the solvency of Tri Energy and its officers.

1 **STATEMENT OF RIGHTS**

2 **You are entitled to a hearing to respond to this notice, present evidence and arguments**
3 **on all issues involved in this case. You have a right to be represented by an attorney at any**
4 **and all stages of this proceeding. You may demand a formal hearing before a hearing**
5 **examiner appointed by the Commissioner pursuant to the Montana Administrative**
6 **Procedure Act, §§ 2-4-601, Mont. Code Ann. and following, including § 2-4-631, Mont.**
7 **Code Ann. If you demand a hearing, you will be given notice of the time, place and the**
8 **nature of the hearing.**

9 **If you want to contest the proposed action under the jurisdiction of the Commissioner,**
10 **you must advise the Commissioner within 15 days of the date you receive this notice. You**
11 **must advise the Commissioner of your intent to contest the proposed action by writing to**
12 **Roberta Cross Guns, Special Assistant Attorney General, State Auditor’s Office, 840**
13 **Helena Avenue, Helena, Montana 59601. Your letter must clearly indicate whether you**
14 **demand a hearing, or whether you waive formal proceedings and, if so, what informal**
15 **proceedings you prefer for disposition of this case. Pursuant to § 2-4-603(2), Mont. Code**
16 **Ann., you may not request to proceed informally if the action could result in suspension,**
17 **revocation or any other adverse action against a professional license.**

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

22 **CONTACT WITH SECURITIES COMMISSIONER’S OFFICE**

23 **If you have questions or wish to discuss this matter, please contact Roberta Cross Guns,**
24 **legal counsel for the State Auditor, at 840 Helena Avenue, Helena, MT, 59601, (406)-444-**
25

1 2040 or, within Montana, (800)-332-6148. If an attorney represents you, please make any
2 contacts with this office through your attorney.

3 POSSIBILITY OF DEFAULT

4 Failure by Respondent to give notice or to advise of Respondent's demand for a hearing
5 or informal procedure within 15 days, will result in the entry of a default order imposing
6 the disciplinary sanctions against Respondent, without further notice to Respondent,
7 pursuant to 6.2.101, Administrative Rules of Montana and the Attorney General's Model
8 Rule 10, 1.3.214.

9
10 DATED this 4th day of September 2007.

11 JOHN MORRISON
12 State Auditor and ex-officio
13 Commissioner of Securities

14 By: Roberta Cross Guns
15 Roberta Cross Guns
16 Special Assistant Attorney General

17
18 CERTIFICATE OF SERVICE

19 This is to certify that on this 4th day of September, 2007, a copy of the foregoing was
20 served upon the following persons by depositing a copy of the action in the U.S. Mail, first-class
21 postage prepaid, addressed to:

22 Mr. David Gallik
23 1124 Billings Avenue
24 Helena, MT 59601

25 Austin Paulson - Davis
State Auditor's Office