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BEFORE THE STATE AUDITOR;
EX-OFFICIO COMMISSIONER OF SECURITIES AND INSURANCE
HELENA, MONTANA

IN THE MATTER OF:)	Case No.: SEC-2009-6
)	I-12-29-08-281
CORNERSTONE FINANCIAL CORPORATION)	
13 2 nd Ave.)	NOTICE OF PROPOSED AGENCY
Polson, MT, 59860)	DISCIPLINARY ACTION and
an unregistered broker-dealer firm and securities)	OPPORTUNITY FOR HEARING
issuer;)	
)	
K & B INVESTMENTS, LLC)	
49158 Highway 93)	
Polson, MT, 59860)	
An unregistered broker-dealer and securities issuer;)	
)	
KEITH KOVICK, individually, in his capacity as)	
President, Director and incorporator for Cornerstone)	
Financial Corporation, in his capacity as an)	
unregistered securities salesperson, and in his capacity)	
promoting and conducting a Ponzi scheme;)	
ROBERT J. CONGDON, individually, in his capacity)	
as Secretary and incorporator for Cornerstone)	
Financial Corporation, in his capacity as an)	
unregistered securities salesperson, and in his capacity)	
promoting and conducting a Ponzi scheme;)	
)	
JOHN AND JANE DOES 1-10;)	
)	
Respondents.)	

Staff of the Securities Department (hereafter "Department") of the office of the State Auditor as Commissioner of Securities of the state of Montana (hereafter "Commissioner"),

pursuant to the authority of the Securities Act of Montana, §§30-10-101, *et seq.*, MCA (2007), is proposing to the Commissioner that she take specific action against CORNERSTONE FINANCIAL CORPORATION (“Cornerstone,”) K & B INVESTMENTS, KEITH KOVICK (“Kovick,”) and ROBERT CONGDON (“Congdon,”) named above 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, 30-10-202, 30-10-301, 30-10-304, 30-10-305, 30-10-309, and 30-10-325 (2007) MCA.

In particular, the Department’s staff is recommending specific action against Cornerstone, K & B Investments, Kovick, and Congdon including imposition of appropriate fines and appropriate restitution, with interest, pursuant to the provisions of the Montana Securities Act.

Service of process is pursuant to Section 30-10-107 (8), (2007) MCA.

REASONS FOR ACTION

There is probable cause to believe that the following facts, if true, justify and support the identified specific action. Furthermore, there is reason to believe that the following facts will be proven true and, therefore, justify and support an order enjoining Respondents to cease and desist their activities in violation of the Montana Securities Act.

PARTIES

1. Respondent Cornerstone is a Montana corporation, registered since May 16, 2000, with its principal place of business in Lake County, Montana. Until March 2, 2009 its registered agent was Christy L. Brandon, attorney at law. Cornerstone is not now nor has it ever been registered with the Department in any capacity.

2. Respondent K & B Investments is a Montana Limited Liability Company, with its principal place of business in Polson, Montana. Its registered agent is Respondent Congdon. It is not now nor has it ever been registered with the Department in any capacity.

3. Respondent Kovick is President, Director and an incorporator of Cornerstone Financial. He is not now nor has he ever been registered with the Montana Securities Department in any capacity.

4. Respondent Congdon is Secretary and an incorporator of Cornerstone Financial. He is not now nor has he ever been registered in any capacity with the Montana Securities Department.

5. Does 1-10 remain unknown and are named fictitiously.

GENERAL ALLEGATIONS

6. Cornerstone advertised through a variety of media, including newspaper ads and an internet site (www.cornerstonemt.com), billing itself as “Montana’s Premier Hard Money Source.”

8. Cornerstone, K & B Investments, Kovick, and Congdon acted in concert to seek investment opportunities and investors, whereby they would receive substantial commissions for placing investor money with recipients¹ of the same.

9. Generally speaking the commissions and fees were generated when a potential recipient would contact Cornerstone with a need for funding. Cornerstone, K & B Investments, Kovick and Congdon, in turn, would market the potential investment opportunity to investors through verbal and/or written communications and various publications.

¹ As used here the term “recipients” are persons who received investor funds through the efforts of Cornerstone, K & B Investments, Kovick and Congdon.

10. When each investment transaction was consummated, the investors would place their funds with Cornerstone or K & B Investments. Cornerstone would take a commission and then remit funds to the recipient who would, in turn, issue a note created and provided to the recipient by Cornerstone. K & B Investments would keep the investor funds and then make payments to the investors based on the terms of the notes. The notes indicated the promised rate of return payable to the investor, the amount of the principal due at the end of the term, and the length of the term of the note. In some cases the notes were secured with real property.

11. In most, if not all, instances, and as described in more detail below, Cornerstone, Kovick and Congdon represented to the investors and to the recipients that certain funds would be reserved from disbursement to the investment fund recipients for a first-year interest guaranty to the investors. Cornerstone, Kovick, and Congdon further represented to investors and recipients that the reserved sums would be held in an escrow account.

12. Cornerstone, Kovick and Congdon, typically received a commission of 10% for each investment which was withheld from the investments proceeds provided to the investment recipient. Upon information and belief, other individuals also may have received commissions and/or other types of remuneration for services rendered in connection with the offering of these investments.

13. Despite an obligation to do so under Montana law, Cornerstone, K & B Investments, Kovick and Congdon failed to register with the Montana Securities Department and have never been licensed to offer or sell securities in Montana. On information and belief, Cornerstone, K & B Investments, Kovick and/or Congdon further failed to provide information to potential investors required by the Montana Securities Act and to otherwise comply with the same.

14. Cornerstone, Kovick and Congdon commingled investor funds with Cornerstone's operating funds rather than escrowing the investor funds as represented in the solicitation of the investment and in fact, began using those funds to pay returns on previous investor notes unrelated to the commingled funds.

15. Cornerstone, Kovick and Congdon were increasingly relying on new investors to pay older investors and, by at least 2008, they were operating a Ponzi scheme. Cornerstone's bank accounts were empty, the "escrow accounts" promised to investors did not exist and, as obligations to old investors came due, Cornerstone, Kovick and Congdon had to find new investors to pay prior investor obligations.

16. In the fall of 2008, the Ponzi scheme collapsed. Cornerstone, K & B Investments, Kovick and/or Congdon began to further pledge its and/or their own assets to secure investor money, including their residences, often misrepresenting the status of title for the properties involved, the available equity in the property and the position of various investors on the same.

17. On or about September 9, 2008, the Department received the first complaint from Cornerstone investors alleging, among other things, that the notes they received in return for their investment funds were in default; that important information, including appraisals on collateral securing their investments; that had been promised by Cornerstone, Kovick and/or Congdon, had not been provided to them; that Cornerstone had failed to escrow certain investor funds as promised; and otherwise complaining of the activities of Cornerstone, Kovick and/or Congdon. These complaints prompted the Department to initiate an investigation into the activities of these Respondents.

18. Beginning in December 2008, the Department began receiving additional complaints from other Cornerstone investors as the Ponzi scheme collapsed.

19. In a letter dated January 26, 2009, Robert Congdon, writing on behalf of Cornerstone, addressed the “*Dear Valued Investor[s]*” to update on the company’s status. In this letter, Congdon indicated Cornerstone’s staff was working “diligently to make sure our *investor’s interests* are taken care of” after Kovick’s apparent departure and apparently due to some perceived concerns about things Kovick may have told some of these investors. In the final paragraph, Congdon indicated Cornerstone was selling some “corporate properties” and that once those sales were complete “[investor’s] investments will be made current.” He closes saying “[p]lease know that you, *the investor*, are our first priority.”

20. The Department’s investigation of these complaints revealed Cornerstone, through its agents Kovick and Congdon, made at least 181 offers and sales of unregistered securities in or from Montana for an aggregate investment of at least \$14,330,902.

21. The Department’s investigation of these complaints revealed Cornerstone, through its agents Kovick and Congdon, represented to investors that at least \$1,564,730 from this aggregate amount would be escrowed with an escrow agent. These dollars represented the first year of payments on the rate of return to the investors. However, Cornerstone failed to escrow these dollars, commingling them with Cornerstone’s funds.

22. The Department’s investigation of these complaints revealed Cornerstone and its agents Kovick and Congdon, took at least \$1,334,590 in commissions for the solicitation of investors for the investment opportunities identified herein as Akana, Apple, Bender, Canton, Cavanaugh, D & D Management, Hand, Hanson/Pursley, Harding, Holt, Klemann, Melvin, Rolling Glen, Snavely, Stewart and Thrasher Investments.

23. The Department’s investigation of these complaints revealed Cornerstone and its agents, Kovick and Congdon sold notes on Cornerstone’s behalf, some securitized by property

owned by Cornerstone in an aggregate amount of at least \$545,000. All of the Cornerstone notes are in default.

24. The Department's investigation of these complaints revealed K & B Investments, through its agents Kovick and Congdon, offered and sold notes on K & B Investments, some securitized by property owned by K & B Investments, for an aggregate amount of at least \$210,000. All of these notes are in default.

25. The Department's investigation of these complaints revealed Kovick offered and sold notes on his own behalf, some securitized with property owned by Kovick, for an aggregate amount of at least \$290,000. All of these notes are in default.

26. The Department's investigation of these complaints revealed Congdon offered and sold notes on his own behalf securitized with property owned by Congdon for an aggregate amount of at least \$40,000. These notes are in default.

27. The Department's investigation of these complaints revealed Congdon and Kovick offered and sold notes on their own behalf securitized with property they owned jointly for an aggregate amount of at least \$30,000. These notes are in default.

28. In summary, the named Respondents sold notes for their own benefit, some securitized by property they owned jointly or separately, for an aggregate amount of at least \$1,115,000. These named Respondents also took a commission from other notes they sold in an aggregate amount of at least \$1,334,590. These named Respondents commingled investor funds they took to be used to pay investors' first year's interest payments with their own funds in an aggregate amount of at least \$1,564,730. Thus, the named Respondents obtained an aggregate amount of at least \$4,014,320 in the course of selling securities without proper registration, by engaging in fraudulent acts and practices, and by operating a Ponzi scheme.

29. The Department's investigation of these complaints revealed with regard to every offer and sale of securities, Cornerstone, Kovick, Congdon and K & B Investments failed to provide investors with material disclosures, including but not limited to the following:

- a. the use of the proceeds from the investments;
- b. any adverse judgment, orders or insolvencies relevant to the persons issuing the notes;
- c. a legal opinion regarding the legality of the securities being offered;
- d. a prospectus or offering circular with regard to the investment opportunities offered;
- e. balance sheet regarding the investments from a date within four months of the offerings;
- f. neither the securities nor the issuers were registered pursuant to Montana law; and
- g. no consent to service of process was filed with the Montana State Auditor's office pursuant to the requirements of Montana law.

ALLEGATIONS SPECIFIC TO THE INVESTMENT OPPORTUNITIES

AKANA INVESTMENT

30. Cornerstone, through its agents, Kovick and Congdon, offered and sold investment opportunities in the form of notes to 24 individual investors for an aggregate investment of \$1,737,000 in five separate offerings on or about January 28, 2005, February 8, 2006, March 10, 2006, March 13, 2006, and May 2, 2007. The notes were for 5-years duration and carried an interest rate of 15%. Cornerstone represented to investors their notes were securitized by real property having a value equal to or greater than the aggregate investment. Cornerstone represented to investors they had either first or second positions on real property

securitizing their investments, depending on which offering they participated in. The recipient of the investors' proceeds is an individual identified as Stacy Akana.

31. Investors in the fourth offering were told the real property collateralizing their investment totaled 515 acres but when they received the documentation of the collateral, there were only 473 acres. In its second offering on the Akana investment opportunity, Cornerstone offered and sold notes secured by a 40 acre parcel owned by Akana. Then Cornerstone made three additional solicitations of investors on behalf of Akana. Cornerstone represented to these last investors that their investments were secured with a second position in real estate located in St. Mary's Idaho, however the investors were in third, fourth and fifth secured position on the property.

32. Cornerstone took a commission for itself of approximately \$173,700 of the investors' aggregate proceeds and took an additional \$260,550 as the first year's interest payments. Cornerstone represented to investors the interest payments would be held in an escrow account, but the funds were held by Cornerstone and commingled with other Cornerstone funds.

33. The Akana property securitizing the investors' notes is currently in foreclosure and investors are not receiving monthly interest payments and have not received a return of their principal.

APPLE INVESTMENT

34. Cornerstone, through its agents, Kovick and Congdon, offered and sold an investment opportunity in the form of a promissory note for an aggregate investment of \$375,000 in or near June 2008. The promissory notes were for 5-year's duration and carried a rate of return of 15%. Cornerstone represented to the investors their note was securitized by real

property having a value equal to or greater than the aggregate investment and owned by Thomas and Sandra Apple ("Apple") of Lewistown, Montana. Cornerstone took a commission for itself of approximately \$37,500 of the investors' aggregate proceeds and took an additional \$56,250 as the first year's worth of interest payments. Cornerstone represented to investors the interest payments would be held in an escrow account, but it appears the funds were held by Cornerstone and commingled with other Cornerstone funds. The investors are not receiving monthly interest payments.

BENDER INVESTMENT

35. Cornerstone, through its agents, Kovick and Congdon, offered and sold investment opportunities in the form of notes to nine individual investors for an aggregate investment of \$650,000 in or near August 2007. The notes were for 5-years duration and carried an interest rate of 15%. Investors were told their notes were securitized by real property owned by William F. Bender ("Bender.")

36. Cornerstone took a commission for itself of approximately \$65,000 of the investors' aggregate proceeds and took an additional \$97,500 as the first year's worth of interest payments. Cornerstone represented to the investors the interest payments would be held in an escrow account, but the funds were held by Cornerstone and commingled with other Cornerstone funds. This property securitizing the notes is currently in foreclosure and investors are not receiving monthly interest payments and have not received a return of their principal.

CANTON INVESTMENT

37. Cornerstone, through its agents, Kovick and Congdon, offered and sold investment opportunities in the form of notes to 10 investors for an aggregate investment of \$1,500,000 in or near January, 2005. The notes were for 5-years duration and carried an interest

rate of 15%. Investors were told their notes were securitized by land owned by James Canton (“Canton.”) Cornerstone took \$150,000 as a commission for its solicitation of investors and took an additional \$225,000 as the first year’s interest payments.

38. Cornerstone, through its agents, Kovick and Congdon, offered and sold investment opportunities in the form of notes to 11 investors for an aggregate investment of \$350,000 on or about December 6, 2006. The notes were for 5-years duration and carried an interest rate of 15%. Investors were told their notes were securitized by land owned by Canton. Cornerstone took \$35,000 as a commission for its solicitation of investors and took an additional \$52,500 as the first year’s interest payments.

39. Cornerstone represented to the Canton investors the first year’s interest payments would be held in an escrow account. Instead, Cornerstone held the money and commingled it with other Cornerstone funds. The Canton property securitizing the notes is currently in foreclosure and bankruptcy and investors are not receiving monthly interest payments and have not received a return of their principal.

CAVANAUGH INVESTMENT

40. Cornerstone, through its agents Kovick and Congdon, offered and sold investment opportunities in the form of notes to two investors for an aggregate investment of \$100,000 on or about March 3, 2006. The note was of 3-year’s duration and carried a 12% interest rate. Investors were told their investment was securitized by real property owned by Steve & Susie Cavanaugh (“Cavanaugh’s”) for a subdivision called Rolling Glen Ranch near Three Forks.

41. Cornerstone took a commission for itself of approximately \$10,000 of the investors’ aggregate proceeds and took an additional \$12,000 as the first year’s worth of interest payments. Cornerstone represented to the investors the interest payments would be held in an

escrow account, but the funds were held by Cornerstone and commingled with other Cornerstone funds. The investors did not receive interest payments and were forced to foreclose on the property securitizing the notes.

42. Cornerstone, through its agents Kovick and Congdon, offered and sold another investment opportunity in the form of a note to investors for an aggregate investment of \$100,000 on or about July 4, 2006. The note was of 3-year's duration and carried a 13% interest rate. Investors were told their investments were securitized by real property owned by Cavanaugh Limited Partnership and the Cavanaughs for a subdivision called Rolling Glen Ranch near Three Forks.

43. Cornerstone took a commission for itself of approximately \$10,000 of the investors' aggregate proceeds and took an additional \$13,000 as the first year's worth of interest payments. Cornerstone represented to investors the interest payments would be held in an escrow account, but the funds were held by Cornerstone and commingled with other Cornerstone funds. The investors did not receive interest payments and were forced to begin a foreclosure action on the property securitizing their investment. The investors have been unable to foreclose on the property because of the stay imposed by the bankruptcy court.

44. Cornerstone, through its agents, Kovick and Congdon, offered and sold an investment opportunity in the form of a note to investors for an investment of \$140,000 investment in the Cavanaugh Limited Partnership on or about Sept. 14, 2007. The note was securitized by land which is part of the five lot Crimson Bluff subdivision near Townsend, Montana, owned by the Cavanaughs and the Cavanaugh Ltd. Partnership. It was also guaranteed by the Cavanaughs individually. The note was for 5-year's duration and promised a rate of return of 15%.

45. Cornerstone took \$14,000 for itself as a commission on the sale and took an additional \$21,000 for payment of the first year's interest payments to the investors. The investors have not received the interest payments promised in the note. The Cavanaugh Limited Partnership filed bankruptcy along with Cavanaugh and their Rolling Glen Corporation on or about July 25, 2008. The investors have been unable to foreclose on the property because of the stay imposed by the bankruptcy court.

CONGDON INVESTMENT

46. Congdon offered and sold an investment opportunity to an investor in the form of a note for \$40,000 in or near September 2007. The note was for 1-year's duration and paid a rate of return of 10%. Congdon represented to the investor that the note was securitized by property owned by Congdon. However, the note fails to identify a secured interest in any property. The investor did not receive the interest nor did the investor receive the principal due and payable at the note's maturity date.

CONGDON AND KOVICK INVESTMENT

47. Kovick and Congdon, offered and sold an investment opportunity in the form of a note in the amount of \$30,000 in or near January 2004. The investors were solicited to invest with Keith Kovick and Robert Congdon personally. The note was of 3-year's duration and carried a rate of return of 10%. The principal became due in or near January 2007. The principal was not paid. Congdon offered to renew the note at 12% for another two years and securitize the note with an interest in a trailer park owned by Kovick and Congdon. The investors agreed to the renewal, but never received any documentation extending the note. The investors were never provided documentation identifying them as securitized parties on the trailer park title. The investors recently learned their notes were not securitized, as promised, and that the

trailer park was sold approximately three years ago. The investors did not receive their \$30,000 principal when the trailer park was sold, nor did they receive their principal when the two-year note matured in February 2009.

CORNERSTONE INVESTMENTS

48. Cornerstone, through its agents Kovick and Congdon, offered and sold an investment opportunity in the form of a note for \$20,000 on or about June 3, 2004. The note was to be for 3-year's duration and carried a rate of return of 10%. Cornerstone represented to the investor that the note was securitized by property owned by Cornerstone. However, the note fails to identify a secured interest in any property. Cornerstone has not repaid the investor's principal on the note.

49. Cornerstone, through its agents Kovick and Congdon, offered and sold another investment opportunity in the form of a note for \$20,000 on or about December of 2004. The note was for 2-year's duration and carried a rate of return of 10%. Cornerstone again told the investor that the note was securitized by property owned by Cornerstone, but the note fails to identify a secured interest in any property. Cornerstone has not repaid the investor's principal on the note.

50. Cornerstone, through its agents Kovick and Congdon, offered and sold an investment opportunity in the form of a note for \$30,000 on or about January 5, 2005. The note was for 5-year's duration and carried a rate of return of 8%. Cornerstone represented to the investor the investment was securitized by real property owned Cornerstone. The investment principal was never returned as promised in the note. The investor attempted foreclose on the property securitizing the investment, however the investor's secured position had not been recorded.

51. Cornerstone, through its agents Kovick and Congdon, offered and sold an investment opportunity in the form of a note for \$40,000 on or about January 5, 2005. The note was for 5-year's duration and was to pay a rate of return of 8%. At the time Cornerstone solicited the investment the investor was in failing health and had diminished mental capacity. The investor has since died. Upon the investor's death on or about May 31, 2006, the investor's heirs assumed ownership of the note. The interest payments on the note are in arrears and the investors have not received a return on their principal.

52. Cornerstone, through its agents, Kovick and Congdon, offered and sold an investment opportunity in the form of a note for \$55,000 on or about February 21, 2005. The note was for 5-year's duration and was to pay a rate of return of 8%. Cornerstone represented to the investor that the note was securitized by a Burger King restaurant Cornerstone allegedly owned. The note was guaranteed by Cornerstone as well as Kovick and Congdon personally. Interest on the note was not paid in November 2008 and has not been paid since then. When the investor attempted to foreclose on the property, it was discovered that the note fails to identify any property securitizing the note.

53. Cornerstone, through its agents, Kovick and Congdon, offered and sold an investment opportunity in the form of a note for \$50,000 on or about June 12, 2005. The note was for 5-year's duration and was to pay a rate of return of 8%. At the time Cornerstone sold this investment, the investor was in failing health and diminished mental capacity². Upon the investor's death, the investor's heirs assumed ownership of the note. The interest payments on the note are in arrears and the investors have not received a return on their principal.

54. Cornerstone, through its agents, Kovick and Congdon, offered and sold an investment opportunity in the form of a note for \$35,000 on or about October 10, 2005. The note

² This investor is the same investor identified in paragraph (50).

was for 5-year's duration and was to pay a rate of return of 8.5%. Cornerstone provided the investor a Trust Indenture for property owned by Cornerstone to secure this note. However, the note fails to identify any real property as security for the note. The investor has not received interest payments. When the investor attempted to foreclose on the property, the investor discovered the secured position had not been recorded.

55. Cornerstone, through its agents, Kovick and Congdon, offered and sold an investment opportunity in the form of a note for \$40,000 on or about October 10, 2005, to an elderly investor who was in failing health and with diminished mental capacity³. The note was for 5-year's duration and was to pay a rate of return of 8.5%. Upon the investor's death, the investor's heirs assumed ownership of the note. The interest payments on the note are in arrears and the investors have not received a return on their principal.

56. Cornerstone, through its agents Kovick and Congdon, offered and sold an investment opportunity in the form of a note to an investor for an investment of \$50,000 on or about November 4, 2005. The notes were for 5-year's duration and carried an interest rate of 8.5%. Cornerstone represented to the investor that this note would be securitized by property owned by Cornerstone, specifically the Diamond Horseshoe Casino near Polson, Montana. The investor received the note from Cornerstone but the note does not indicate it is securitized by any property. The investor is not receiving any interest payments or the principal investment.

57. Cornerstone, through its agents Kovick and Congdon, offered and sold an investment opportunity in the form of a note for the amount of \$26,000 on or about November 4, 2005, that was apparently never invested. The note was for 3-year's duration and carried an interest rate of 10%. The investor requested the return of the investment principal, but Cornerstone has not returned the investor's money. The investor is not receiving any interest.

³ This is the same investor identified in paragraph (50).

58. Cornerstone, through its agents Kovick and Congdon, offered and sold an investment opportunity in the form of a note on or about February 22, 2007, in the amount of \$11,000. The note was of 3-year's duration and carried a rate of return of 10%. Although Kovick told the investors that the note would be securitized by property owned by Cornerstone, the note from Cornerstone does not indicate it is securitized by any property. The note is guaranteed not only by Cornerstone but by Kovick and Congdon personally. The investors are not currently receiving their monthly interest payments promised under the note.

59. Cornerstone, through its agents Kovick and Congdon, offered and sold an investment opportunity in the form of a note in the amount of \$12,000, on or about August 10, 2007. The note was supposed to be securitized by property owned by Cornerstone. The note was for 3-year's duration and carried a rate of return of 10%. The investment was guaranteed by Cornerstone and Kovick and Congdon personally. Cornerstone's January 2009 interest payment check to this investor was returned because Cornerstone's account had insufficient funds to cover the check. Monthly payments continue to be in arrears. When the investor attempted to foreclose on the property securitizing the investment, it was discovered that the note fails to identify a secured interest in any property.

60. Cornerstone, through its agents Kovick and Congdon, offered and sold an investment opportunity in the form of a note in the amount of \$60,000, on or about December 10, 2007. The investment was supposed to be securitized by property which appears to be Cornerstone's office building in Polson. The note was for 3-year's duration and carried a rate of return of 10%. Cornerstone's January 2009 interest payment check to this investor was returned because Cornerstone's account had insufficient funds to cover the check. Monthly payments

continue to be in arrears. When the investor attempted to foreclose on the property securitizing the investment, it was found that the secured position had never been recorded by Cornerstone.

61. Cornerstone, through its agents Kovick and Congdon, offered and sold an investment opportunity in the form of a note on or about December 10, 2007, to an investor for an investment of \$46,000. The note is securitized by property which appears to be Cornerstone's office building in Polson. The note was for 3-year's duration and carried rate of return of 10%. The investor received only sporadic interest payments from Cornerstone and then only if the investor called or went in to Cornerstone's office to collect. The payments are currently in arrears.

62. On or about October 15, 2008, Kovick solicited an investor to invest \$50,000 in a note for 3-year's duration with a rate of return of 15%. The note was allegedly securitized by a building owned by Cornerstone located in Polson. Kovick promised the investor a second position secured interest in the building owned by Cornerstone. The investor subsequently learned that the investor's secured position is not second in the building but a substantially lower position. Additionally the investor learned that the position was not filed with Lake County as promised by Congdon and Kovick.

D & D MANAGEMENT INVESTMENTS

63. Cornerstone, through its agents Kovick and Congdon, offered and sold notes to investors in and during 2006 in the aggregate amount of \$3,000,000 and subsequently securitized these investment proceeds with real property owned by D & D Management and Property Development, Inc. ("D & D.") The notes were of 5-year's duration and indicated a rate of return of 15%. Cornerstone took a commission of \$300,000 for the solicitation of investors. Cornerstone took approximately \$450,000 of the investors' proceeds as the first year's interest

payments to the investors. The notes were sold to four different groups of investors, each for an aggregate of \$750,000, and were securitized by real property owned by D & D.

64. Cornerstone represented to investors in marketing materials for the D & D investment that "...one year of payments to be held in escrow" and that those payments would be "...escrowed at an Escrow Company of your choice." Instead, Cornerstone kept the first year's interest payments, forwarding the interest payments one month at a time to an escrow company for distribution to the recipients. Cornerstone represented to investors there were appraisals and personal inspections done on the securitizing properties, these actions were not taken and the value of the land was overstated. A recent appraisal indicates the value of the land at \$270,000 rather than the \$1.5 million expressed in the marketing materials.

65. The property securitizing the notes is currently in foreclosure and investors are not receiving monthly interest payments and have not received a return of their principal.

HAND INVESTMENT

66. Through its investigation, the Department determined that Cornerstone, through its agents, Kovick and Congdon, offered and sold investment opportunities in the form of notes to 20 individual investors for an aggregate investment of \$1,210,002 in two separate offerings in or about May 2005. The notes were of 5-year's duration and carried an interest rate of 12.95%. Cornerstone represented to investors their notes were securitized by real property owned by Gary Hand and his mother, Jean Hand ("Hand.") Cornerstone represented to investors the investments had either first or second positions, depending on which of the two offerings they participated in, on real property securitizing their investments.

67. Cornerstone also represented to the investors the Hand property had a value equal to or greater than the aggregate investment, but the property was actually valued at only

\$895,000. Because Gary Hand's property had a value of only \$895,000, Hand's mother, Jean, was required to include her residence and property as additional securitizing collateral for the note.

68. Through its investigation, the Department learned that, unbeknownst to the investors, Cornerstone had promised the Hands that it would obtain a release of Jean Hand's property after the investors had invested. A memorandum from Congdon dated May 6, 2005, substantiates this information. After receiving the investment proceeds from Cornerstone, the Hands personally wrote the investors and asked them to sign a release of Jean Hand's property as collateral to their investment. The investors refused to do so and the Hands have hired two law firms to get the release for them causing the investors to incur attorney fees to protect their securitized interest.

69. Cornerstone took a commission for itself of approximately \$121,000 of the investors' aggregate proceeds on the Hand investment and took an additional \$156,695 as the first year's worth of interest payments. Cornerstone represented to investors the interest payments would be held in an escrow account, but the funds were held by Cornerstone and commingled with other Cornerstone funds. The property securitizing the notes is currently in foreclosure and investors are not receiving monthly interest payments and have not received a return of their principal.

HANSON/PURSLEY INVESTMENT

70. Cornerstone, through its agents Kovick and Congdon, offered and sold investment opportunities in the form of notes to three individual investors for an aggregate investment of \$483,500 in or about April 2008. The notes were of 5-year's duration and carried a rate of return of 15%. Cornerstone represented to investors their investments were securitized by real property

owned by Michael Hanson (“Hanson”) and Michael Pursley (“Pursley”) that was being developed for a subdivision near Great Falls, Montana. Cornerstone took a commission for itself of approximately \$48,350 of the investors’ aggregate proceeds and took an additional \$72,525 as the first year’s worth of interest payments.

71. Cornerstone represented to investors the interest payments would be held in an escrow account, but the funds were held by Cornerstone and commingled with other Cornerstone funds. Investors have received every interest payment late and now the monthly interest payments have stopped even though Cornerstone withheld the first year’s interest payments on the note.

HARDING INVESTMENT

72. Cornerstone, through its agents, Kovick and Congdon, offered and sold investment opportunities in the form of notes in the amount of \$150,000 to investors in or near April 2006. The note was for 3-year’s and carried a rate of return of 15%. The notes were securitized by personal property owned by David Harding (“Harding,”) Great Falls, Montana, in the form of five cars that were verbally guaranteed by Congdon as having a value equal to or greater than the investment. Cornerstone took a commission for itself of approximately \$15,000 of the investors’ aggregate proceeds and took an additional \$22,500 as the first year’s worth of interest payments.

73. Cornerstone represented to investors the interest payments would be held in an escrow account, but the funds were held by Cornerstone and commingled with other Cornerstone funds. The investors are not getting their interest payments.

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HOLT INVESTMENT

74. Cornerstone, through its agent Robert Congdon, offered and sold investment opportunities in the form of two notes to an investor who has Alzheimer's disease. One investment was for \$60,000 and the other investment was for \$80,000 for a total investment of \$140,000, on or about May 12, 2008. The notes were for 3-year's duration and carried a rate of return of 15%. Congdon represented to the investor and the investor's daughter the notes were securitized by real property in the form of two lots in Jefferson County owned by Colleen Holt ("Holt.") Cornerstone also represented the securitizing property had a value equal to or greater than the aggregate investment.

75. Congdon is a friend of this investor's daughter. The investor's daughter is partially disabled from an auto accident which occurred two years ago. The investor lives with the investor's daughter who provides care for the investor. Congdon persuaded the investor and the investor's daughter to take money from a certificate of deposit the investor held at Wells Fargo Bank and invest it through Cornerstone.

76. Cornerstone took a commission for itself of approximately \$14,000 of the investors' aggregate proceeds and took an additional \$21,000 as the first year's worth of interest payments. Congdon represented to the investor and the investor's daughter the interest payments would be held in an escrow account, but the funds were held by Cornerstone and commingled with other Cornerstone funds.

77. The investor only received three interest payments but has not received any further monthly interest payments. The investor invested with Cornerstone so that the interest income would help pay the investor's daughter's house payment in return for providing the investor a home and care. The investor currently is unable to make those payments without the

interest income and the investor's daughter may lose her home as a result of the lost investment payments.

78. Cornerstone offered and sold an investment opportunity in the form of a note to two investors for an investment of \$60,000 on or about May 22, 2008. The note was for 3-year's duration and carried a rate of return of 15%. Investors were told that the note would be securitized by property owned by Holt in Whitehall, Montana. Cornerstone took a commission for itself of approximately \$6,000 of the investors' proceeds and withheld \$9,000 as the first year's worth of interest payments.

79. Cornerstone represented to the investors the interest payments would be held in an escrow account, but the funds were held by Cornerstone and commingled with other Cornerstone funds. The investors have not received any of the first year's monthly interest payments.

K & B INVESTMENTS

80. K & B Investments, through its agents, Kovick and Congdon, offered and sold an investment opportunity in the form of a note for \$100,000 on or about May 2, 2007. The note was for 3-year's duration and was to pay a rate of return of 10%. K & B Investments represented to the investors the note was securitized by real property owned by K & B, but the Trust Indenture for the property was never recorded. The interest payments on the note are in arrears and the investors have not received a return on the principal.

81. K & B, through its agents Kovick and Congdon, offered and sold an investment opportunity in the form of a note for \$25,000 on or about May 6, 2007. The note was for 3-year's duration and was to pay a rate of return of 10%. K & B represented to the investors their investment was securitized by real property owned by K & B Investments and that the investors' secured interest identified on the note would be in first position. Interest payments stopped in or

near November 2008, and when the investors attempted to foreclose on the property securitizing the investment, they discovered that the secured position had not been recorded by K & B. The investors further discovered K & B had sold its interest in the property securitizing the investors' note. The investors allege that K & B did not actually own the property the day the note was signed.

82. K & B Investments, through its agents, Kovick and Congdon, offered and sold an investment opportunity in the form of a note for \$35,000 on or about April 1, 2008. The note was for 3-year's duration and was to pay a rate of return of 12%. K & B Investments represented to the investors their investment was securitized by real property owned by K & B Investments and their secured position would be in first position. Interest payments stopped in or near December 2008. When the investors attempted to foreclose on the property securitizing the investment, they discovered the secured position had not been recorded by K & B Investments and there were several other liens against the property.

83. K & B Investments, through its agents Kovick and Congdon, offered and sold an investment opportunity in the form of a note for \$50,000 on or about April 17, 2008. The note was for nine months duration and was to pay a rate of return of 12%. The investors were told their investment was securitized by real property owned by K & B Investments and that their securitized investment would be secured in first position. Interest payments stopped in or near December 2008, and when the investors attempted to foreclose on the property securitizing their investment, they discovered that their secured position had not been recorded and there were several other liens against the property. The investors were not repaid their principal on January 17, 2009, the date the note matured.

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KLEMANN INVESTMENT

84. Cornerstone, through its agents, Kovick and Congdon, offered and sold investment opportunities in the form of notes to 6 individual investors for an aggregate investment of \$150,000 on or about October 1, 2007. The notes were for 5-year's duration with a rate of return of 15%. Cornerstone represented to the investors their notes were securitized by land owned by Dan Klemann ("Klemann") that he was developing in Alaska. Cornerstone took \$15,000 as a commission for its solicitation of investors and took an additional \$22,500 as the first year's interest payments. Cornerstone represented to investors the first year's interest payments would be held in an escrow account. Instead, Cornerstone held the money and commingled it with other Cornerstone funds. Investors are not receiving interest payments nor have they received a return of their principal. The Klemann property securitizing the investments is in foreclosure.

KOVICK INVESTMENT

85. Keith Kovick and Robert Congdon offered and sold an investment opportunity in the form of a note to 3 individual investors for an aggregate of \$100,000 on or about December 13, 2005. The note was for 3-year's duration and promised a rate of return of 8.5%. The note was securitized with Kovick's residence and indicated the investors would be in second position on the title. When the note became due in December 2008, Kovick and Congdon did not repay the principal. When the investors attempted to foreclose on the property they discovered Kovick and Congdon had failed to record the investors' secured position and there were at least four liens already filed against the property.

86. Kovick offered and sold an investment opportunity in the form of a note for \$80,000 on or about April 1, 2007. The note was for 3-year's duration and was to pay a rate of

return of 12%. Kovick told the investors that the note was securitized by property owned by Kovick, but the Trust Indenture relative to the property securitizing the note was never recorded. The investors have not received the interest on the note for several months.

87. Kovick offered and sold an investment opportunity to investors in the form of a note for \$45,000 in or near September 2007. The note was for 3-year's duration and was to pay a rate of return of 12%. Kovick told the investors that the note was securitized by property owned by Kovick, but the Trust Indenture relative to the property securitizing the note was never recorded. The investors have not received the interest on the note for several months.

88. Kovick offered and sold an investment opportunity in the form of a note for \$65,000 on or about January 19, 2008. The note was for 5-year's duration and promised a rate of return of 13.5%. The note was securitized with Kovick's residence and indicated the investor would hold second position on the title. In May 2008 and November 2008, Kovick solicited another \$5,000 and \$30,000 from this investor, increasing the rate of return to 15% on the aggregate investment of \$100,000. Kovick never recorded the secured position.

MELVIN INVESTMENT

89. Cornerstone, through its agents, Kovick and Congdon, offered and sold investment opportunities in the form of notes to three investors for an aggregate investment of \$90,000 in or near October 2007. The notes were for 1-year's duration and promised a rate of return of 14%. The notes were securitized by property owned by Ronald and Natalie Melvin ("Melvin".) Cornerstone took \$9,000 as a commission on the transaction and took an additional \$12,600 as the first year's worth of payments.

90. Cornerstone represented to these investors that they were in first position on the land which securitized the note, but the investors recently found out First Citizens Bank of

Polson is in first position and these investors are in second. When the note came due in October 2008, they did not receive their principal as promised in the note.

ROLLING GLEN CORPORATION INVESTMENT

91. Cornerstone, through its agents Kovick and Congdon, offered and sold investment opportunities in the form of notes to an investor in an amount of \$83,400 on or about February 4, 2008. Cornerstone represented to the investor that the note would be securitized by real property owned by Rolling Glen Corporation. The note was for 5-year's duration and promised a rate of return of 15%.

92. Cornerstone took \$8,340 for itself as commission for the sale and took an additional \$12,510 to pay the first year's interest payments. The Rolling Glen Corporation investor did not receive any monthly interest payments even though Cornerstone retained the first year's interest payable on the note. This investor has not received a return of his principal.

93. Rolling Glen Corporation filed Chapter 11 bankruptcy on July 25, 2008. Through its investigation, the Department determined Rolling Glen was in financial trouble immediately prior to the investor's investment. The president of Rolling Glen, Steve Cavanaugh sent a letter to Broadwater County on January 23, 2008, notifying the county commissioners that he would not be paying his assessments as set out in his subdivision agreement with them. Because of Rolling Glen's failure to pay sums agreed upon for development of the subdivision, Broadwater County Commissioners met on or about February 25, 2008 and rescinded its subdivision approval. Earlier investors, including the Cornerstone investor, became part of a lawsuit filed against them by Broadwater County on May 23, 2008 seeking to obtain monies from the investors that were promised by Rolling Glen when Rolling Glen failed to pay its assessments.

Cornerstone omitted the material facts regarding the negative financial circumstances involved in Rolling Glen's problems with Broadwater County to the investor.

SNAVELY INVESTMENTS

94. Cornerstone, through its agents, Kovick and Congdon, offered and sold investment opportunities in the form of notes to 12 investors for an aggregate investment of \$2,300,000 in or near February 2006. The notes were of 5-year's duration and carried a rate of return of 15%. Investors were told their notes were securitized by real property having a value equal to or greater than the aggregate investment. Cornerstone loaned the investors' proceeds to an individual identified as Bonnie Snavely ("Snavely.")

95. Snavely's property, located west of Missoula in an area called the Big Flat, was the subject of family litigation for years and Snavely incurred millions of dollars in debt over a period of about 15 years. During a Chapter 11 bankruptcy, Snavely was able to sell assets and pay off her secured creditors, but needed \$12 million to pay off the unsecured creditors. Cornerstone allegedly told Bonnie Snavely it could obtain a loan in the amount of \$12 million for her through Sterling Bank in Seattle. Cornerstone was unable to get the loan from Sterling and could only come up with \$2.3 million from other sources.

96. Cornerstone told Snavely it would abstain from taking its 10% fee of \$270,000 on this transaction. On or about February 28, 2006, Cornerstone instead solicited four investors to invest \$270,000 in a note securitized with the Snavely real estate. Cornerstone then retained the \$270,000 as its fee for obtaining the \$2.3 million. Cornerstone did not tell the investors it did not secure the notes with Snavely's property. Rather, the note lists Cornerstone as the holder of the note and the mortgage lists Cornerstone as the mortgagee. An assignment of Cornerstone's

interest described in its note and mortgage with Snavely was provided to the four investors, but was not recorded.

97. Some of Snavely's property which securitized some of the notes was recently sold at Sheriff's sale. The four investors who had invested \$270,000 were not notified of the sale because their names did not appear on any documents of record at the Clerk and Recorder's Office which would establish their claim. The Department contacted Missoula County and ascertained that Cornerstone has not filed an Assignment of this note or mortgage.

98. Cornerstone represented to these investors their first year's interest payments would be held by an escrow company but the funds were simply all taken by Cornerstone. The Snavely property securitizing the notes is currently in foreclosure and bankruptcy and investors are not receiving monthly interest payments and have not received a return of their principal.

STEWART INVESTMENT

99. Cornerstone, through its agent Robert Congdon, offered and sold an investment opportunity in the form of a note to two investors for an aggregate investment of \$145,000 on or about July 23, 2008. The note was for 5-year's duration and promised a rate of return on the investment of 14%. The note was securitized by property owned by David Stewart ("Stewart".) Cornerstone took a commission for itself of approximately \$14,500 of the investors' aggregate proceeds and took an additional \$20,300 as the first year's worth of interest payments. Congdon represented to investors the interest payments would be held in an escrow account, but the funds were held by Cornerstone and commingled with other Cornerstone funds. The investors are not receiving their monthly interest payments even though the first year's interest payments to cover those payments through July 2009 were withheld by Cornerstone.

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THRASHER INVESTMENT

100. Cornerstone, through its agents Kovick and Congdon, offered and sold an investment opportunity in the form of a note to an individual investor for an investment of \$182,000 on or about March 6, 2008. The note was for 1-year duration and carried a 15% rate of return. Cornerstone represented to the investor its investment was securitized by real property owned by William Thrasher (Thrasher".)

101. Cornerstone took a commission for itself of approximately \$18,200 of the investor's proceeds and took an additional \$27,300 as the first year's worth of interest payments. Cornerstone represented to the investor the interest payments would be held in an escrow account, but the funds were held by Cornerstone and commingled with other Cornerstone funds. After six months of interest payments were paid to the investor, the payments stopped and the investor contacted Thrasher. Thrasher went to Cornerstone and demanded that it cut a check to Thrasher for the remaining six months of interest Cornerstone was to have reserved. Cornerstone did so and Thrasher paid the monthly interest payment to the investor.

ALLEGATIONS SPECIFIC TO PONZI SCHEME

102. The Department obtained and reviewed bank records for accounts owned or controlled by Cornerstone, Congdon and Kovick. The Department's review of those records indicates Congdon and Kovick operated a Ponzi scheme. The bank records indicate Congdon and Kovick routinely paid returns to investors from money paid by subsequent investors rather than from any actual profit earned or from funds allegedly placed in an escrow account for the purpose of paying returns.

103. One specific example of the Ponzi scheme occurred in October 2008. On October 15, 2008, Cornerstone's account with Whitefish Credit Union, the account where Congdon and

Kovick usually deposited the 15% representing investors' first year's interest hold back, had an account balance of only \$245.57.

104. As outlined above in paragraph (62), Cornerstone solicited a \$50,000 investment which was to be securitized with a building owned by Cornerstone. The investor's \$50,000 check was deposited into the Whitefish Credit Union account on October 16, 2008, bringing the balance in the account to \$50,245.57. The Department's review shows the \$50,000 received by Kovick and Congdon from the investor's pension and profit sharing plan was spent as follows:

- a) \$ 6,000.00 withdrawn in cash;
- b) \$28,521.21 was used to pay more than a dozen previous note investors,
- c) \$11,010.00 was paid as a return of investment proceeds to the Thrashers, as outlined in paragraph (103). The Thrashers demanded the return of those dollars after it was discovered the funds were not escrowed;
- d) \$1,549.80 was used to pay other expenses; and
- e) \$4,000.00 was transferred to Glacier Bank.

105. By November 2008 Kovick and Congdon stopped making payments to investors because the stream of new investors in Cornerstone's notes had ceased. If Kovick and Congdon had funds to pay investors at this time, it was sporadic, payments were 2-3 months late and many of the checks written to investors were returned marked "NSF."

CONCLUSIONS OF LAW

1. The Montana State Auditor is the Commissioner of Securities (Commissioner) pursuant to §§ 30-10-107, 2-15-1901, MCA.

2. The Commissioner has jurisdiction over this matter pursuant to §§ 30-10-102, 30-10-107, 30-10-201, 30-10-202, 30-10-301, 30-10-304, 30-10-305, and 30-10-307, MCA.

3. The administration of the Securities Act of Montana ("Act"), § 30-10-101, *et seq.*, MCA, and is under the supervision and control of the Securities Commissioner, pursuant to § 30-10-107, MCA.

4. The Commissioner shall administer the Securities Department to protect investors, pursuant to § 30-10-102, MCA.

5. Cornerstone operated as a broker-dealer as defined at § 30-10-103(1), MCA. Cornerstone has never been registered as a broker-dealer while engaged in the business of effecting transactions in securities for the account of others in violation of § 30-10-201, MCA.

6. Cornerstone operated as an issuer as defined at § 30-10-103(13), MCA. Cornerstone, while acting in its capacity as an issuer, employed salespersons to represent it who were not registered as required by the Act, in violation of § 30-10-201, MCA.

7. K & B Investments operated as a broker-dealer as defined at § 30-10-103(1), MCA. K & B Investments has never been registered as a broker-dealer while engaged in the business of effecting transactions in securities for the account of others in violation of § 30-10-201, MCA.

8. K & B Investments operated as an issuer as defined at § 30-10-103(13), MCA. K & B Investments, while acting in its capacity as an issuer, employed salespersons to represent it who were not registered as required by the Act, in violation of § 30-10-201, MCA.

9. Kovick is not now nor any time during the period beginning January 1, 2004 to the present registered as a securities salesperson as defined at § 30-10-103 (20), MCA. Kovick, while acting as a representative of either a broker-dealer or issuer attempted to effect or effected the sales of securities without first being properly registered to do so, in violation of § 30-10-201, MCA.

10. Congdon is not now nor any time during the period beginning January 1, 2004 to the present registered as a securities salesperson as defined at § 30-10-103 (20), MCA. Congdon, while acting as a representative of either a broker-dealer or issuer attempted to effect or effected the sales of securities without first being properly registered to do so, in violation of § 30-10-201, MCA.

11. The notes offered and sold by Cornerstone, K & B Investments, Kovick and Congdon are securities as defined at § 30-10-103 (22), MCA. None of the notes offered and sold by these Respondents were registered or eligible for exemptions, in violation of § 30-10-202, MCA.

12. Cornerstone, K & B Investments, Kovick and Congdon omitted material facts regarding each of the securities transactions described herein, in violation of § 30-10-301 (1) (b), MCA.

13. Cornerstone, K & B Investments, Kovick and Congdon made untrue statements of material facts regarding each of the securities transactions described herein, in violation of § 30-10-301 (1) (b), MCA.

14. Cornerstone, K & B Investments, Kovick and Congdon engaged in acts, practices and a course of business that acted as a fraud on investors regarding the securities transactions described herein, in violation of § 30-10-301 (1) (c), MCA.

15. Cornerstone, K & B Investments, Kovick and Congdon conducted and promoted a Ponzi scheme when they made payments to investors from money obtained from later investors, rather than from any profits or other income of an underlying business venture, in violation of § 30-10-325, MCA.

RELIEF SOUGHT

1. Order Respondents to pay restitution to the victims in this case, including 10% interest from the date of the wrong-doing, pursuant to § 30-10-309, MCA;
2. Order Respondents to pay fines not to exceed \$5,000 for each identifiable violation of § 30-10-301 (1) (b), MCA, pursuant to § 30-10-305 (3), MCA;
3. Order Respondents to pay fines not to exceed \$5,000 for each identifiable violation of § 30-10-301(1) (c), MCA, pursuant to § 30-10-305 (3), MCA;
4. Order Respondents to pay fines not to exceed \$5,000 for each identifiable violation of § 30-10-201, MCA, pursuant to §§ 30-10-201 (18) and 30-10-305 (3), MCA;
5. Order Respondents to pay a fine not to exceed \$5,000 for violating § 30-10-201, MCA, pursuant to § 30-10-201 (18), MCA;
6. Order Respondents to pay fines not to exceed \$5,000 for each identifiable violation of § 30-10-202, MCA, pursuant to § 30-10-305 (3), MCA;
7. Order Respondents to pay fines not to exceed \$10,000 for each identifiable violation of § 30-10-325, MCA, pursuant to § 30-10-325, MCA;
8. Any other such relief allowed by law or required by justice.

PUBLIC INTEREST

For any and all of the reasons set forth above, it is in the public interest and will protect Montana investors to:

1. Seek an injunction from a court of competent jurisdiction enjoining Respondents from further violations of the Act and from transferring or encumbering any assets owned either entirely or partially by Respondents;

2. Order Respondents to pay administrative fines in an amount and upon such terms and conditions as supported by the evidence and determined at hearing of this matter;

3. Order Respondents to pay restitution to Complainants/Investors in an amount and upon such terms and conditions, including the statutory 10% per annum interest on the losses Complainants/Investors incurred, as supported by the evidence and determined at hearing of this matter; and

4. Take such other actions which may be in the public interest and necessary and appropriate for the protection of Montana investors.

STATEMENT OF RIGHTS

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

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

action against a professional license. Should you request a hearing on the matters raised in this Notice, a hearing must be held within 45 days of the request, unless postponed by mutual consent of the parties, pursuant to § 33-1-701 (2), MCA.

Should you request a hearing, you have the right to be accompanied, represented, and advised by counsel. If the counsel you choose has not been admitted to practice law in the state of Montana, he or she must comply with the requirements of *Application of American Smelting and Refining Co.*, (1973), 164 Mont. 139, 520 P.2d 103 and *Montana Supreme Court Commission on the Unauthorized Practice of Law v. Jerry O'Neil* (2006), 2006 MT 284, 334 Mont. 311, 147 P.3d 200.

CONTACT WITH SECURITIES COMMISSIONER'S OFFICE

If you have questions or wish to discuss this matter, please contact Roberta Cross Guns or John J. Mudd, legal counsels for the State Auditor, at 840 Helena Avenue, Helena, MT, 59601, (406)-444-2040 or, within Montana, (800)-332-6148. If an attorney represents you, please make any contacts with this office through your attorney.

POSSIBILITY OF DEFAULT

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

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DATED this 15th day of April, 2009.

MONICA LINDEEN
State Auditor
Commissioner of Securities and Insurance

By: Roberta Cross Guns
Roberta Cross Guns
John J. Mudd
Special Assistant Attorneys General

CERTIFICATE OF SERVICE

I hereby certify the foregoing was served by US mail, certified, first-class postage paid, to the following:

Mr. Doug James
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Mr. Milton Datsopoulos
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Roberta Cross Guns