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BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
MONTANA STATE AUDITOR

| | | |
|-----------------------------|---|-----------------------------------|
| IN THE MATTER OF |) | CASE NO. SEC-2015-171 |
| |) | |
| HALEN CAPITAL, CRD #135966, |) | NOTICE OF PROPOSED AGENCY |
| |) | ACTION AND OPPORTUNITY FOR |
| Respondent |) | HEARING |
| |) | |

The Office of the Montana State Auditor, Commissioner of Securities and Insurance (CSI), pursuant to the authority of the Securities Act of Montana, Mont. Code Ann. § 30-10-101 et seq (the Act), is proposing to the Commissioner of Securities and Insurance, Office of the Montana State Auditor (Commissioner), that she take specific action against Halen Capital (Respondent) for violations of the Act. The Commissioner has authority to take such action under the provisions of §§ 30-10-102, 30-10-107, 30-10-201, 30-10-211, 30-10-301, 30-10-302, 30-10-304, 30-10-305, and 30-10-321.

REASONS FOR ACTION

There is reasonable cause to believe that the following facts will be proven true and justify disciplinary action against Respondent.

ALLEGATIONS OF FACT

1. Respondent is a CSI registered broker dealer firm, CRD #135966.
2. Steven Ossello is a CSI registered securities salesperson, CRD #1674243. Ossello has been a registered salesperson in Montana since December of 2014.
3. Redwood Scientific Technologies (Redwood) is a privately-held company specializing in the development and marketing of over-the-counter drugs.
4. On March 9, 2015, the CSI received a Form D filing and \$200 payment from Redwood. The filing of a Form D indicates an issuer's intent to rely upon a federal covered security exemption pursuant to Regulation D, Rule 506.
5. The \$200 payment was subsequently returned for insufficient funds and was, at any rate, less than the required filing fee of \$225. On June 4, 2015, Redwood remitted a payment of \$235 in satisfaction of the Form D filing fee.
6. Respondent acted as the underwriting and placement agent for the Redwood Form D offering.
7. The CSI requested, and Redwood provided, the names and dates of investment for all sales made in connection with the Form D filing. Redwood reported two transactions:
 - a. \$75,000 sale on January 13, 2015, to G.O. IRA; and
 - b. \$50,000 sale on January 13, 2015, to G.O. and M.O.
8. Both transactions were effectuated by Steven Ossello as a salesperson for Respondent. Respondent received an eight percent commission on each sale on behalf of Redwood, for a combined total of \$10,000 in commissions.
9. In connection with the January 13, 2015, transactions, Steven Ossello did not inform the purchasers that Redwood and Respondent had not, and would not, satisfy the Form D filing

requirements under Montana law. Additionally, he failed to inform them that Respondent had likewise failed to satisfy those filing requirements in multiple other offerings within approximately the past year.

10. Approximately one year prior to the two transactions, Respondent acted as a private placement agent for multiple offerings involving Montana sales. In each case, the required Form D filings and fee payments were not timely made in Montana.

11. Both January 13, 2015, transactions occurred approximately 55 days prior to the Form D filing, and 142 days prior to the satisfaction of the Form D filing fee.

12. On October 6, 2015, the Commissioner signed a final order adopting a consent agreement between the CSI and Redwood, which resolved the CSI's allegations against Redwood

CONCLUSIONS OF LAW

1. The Montana State Auditor is the Commissioner of Securities and Insurance (Commissioner) pursuant to §§ 30-10-107, 2-15-1901, and 2-15-1903.

2. The Commissioner has jurisdiction over this matter pursuant to §§ 30-10-102, 30-10-107, 30-10-201, 30-10-202, 30-10-209, 30-10-211, 30-10-301, 30-10-302, 30-10-304, and 30-10-305.

3. The Commissioner administers the Act, pursuant to §§ 2-15-1901 and 30-10-107.

4. The Commissioner shall administer the Act to protect the investor, persons engaged in securities transactions, and the public interest, pursuant to § 30-10-102(1).

5. A person may not offer or sell a security in Montana unless the security is properly registered, qualifies for an exemption, or is a federal covered security filed with the

Commissioner pursuant to § 30-10-211 and the fee prescribed in § 30-10-209 has been paid.
§ 30-10-202.

6. To notice file a federal covered security, a person must pay to the Commissioner for the initial year a fee of \$200 for the first \$100,000 of initial issue or portion of the first \$100,000 in this state, based on offering price, plus 1/10 of 1% for any excess over \$100,000, with a maximum fee of \$1,000. § 30-10-209(1)(a).

7. The issuer of a federal covered security under 18(b)(4)(D) of the Securities Act of 1933 is required to file within 15 days after the first sale a notice on a form prescribed by the Commissioner and a consent of service, and is required to pay the notice filing fee. § 30-10-211(2).

8. A person may not, in connection with the offer or sale of a security, directly or indirectly, in or into Montana, make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading. § 30-10-301(1)(b).

9. A person may not, in connection with the offer or sale of a security, directly or indirectly, in or into Montana, engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any person. § 30-10-301(1)(c).

10. The Commissioner may suspend or revoke the registration of a broker-dealer if the Commissioner finds it to be in the public interest, and the broker-dealer:

a. has willfully violated or willfully failed to comply with any provision of parts 1 through 3 of the Act,

b. has engaged in dishonest or unethical practices in the securities business;

c. is not qualified on the basis of such factors as training, experience, or knowledge of the securities business; or

d. has failed to reasonably supervise the person's salespersons or employees to ensure their compliance with the Act. § 30-10-201(13).

11. For purposes of §§ 30-10-201 and 30-10-301, fraudulent and unethical practices include engaging in nondisclosure, incomplete disclosure or misstatement of material facts. Admin. R. Mont 40 10 401(1)(u).

12. Respondent violated § 30-10-202(2) when it offered and sold a security to G.O. that did not qualify as a federal covered security because the requirements of §§ 30-10-211 and 30-10-209 were not met, and the security was not registered or eligible for exemption.

13. Respondent violated 30-10-209(1)(a) when the \$225 fee applicable to the Redwood security was not timely paid in connection with the offering.

14. Respondent violated § 30-10-301(1)(b) when Steven Ossello offered and sold the Redwood security to G.O. without disclosing that (1) neither Halen nor Redwood had satisfied or would satisfy the requirements of §§ 30-10-209(1)(a) or 30-10-211(2), and (2) this was the second instance of unregistered Form D-related security sales in Montana within approximately the past year.

15. Respondent violated § 30-10-301(1)(c) and Admin. R. Mont. 40.10.401(1)(u) when Steven Ossello offered and sold the Redwood security to G.O. without disclosing that (1) neither Halen nor Redwood had satisfied or would satisfy the requirements of §§ 30-10-209(1)(a) or 30-10-211(2), and (2) this was the second instance of unregistered Form D-related security sales in Montana within approximately the past year.

16. The Commissioner may suspend or revoke the registration of Respondent because such violation is in the public interest, and Respondent:

- a. willfully violated §§ 30-10-202(2), 30-10-209(1)(a), 30-10-301(1)(b), 30-10-301(1)(c), and 30-10-302;
- b. engaged in dishonest and unethical business practices, including engaging in nondisclosure, incomplete disclosure and/or misstatement of material facts to G.O., Redwood, and/or the Commissioner;
- c. is not qualified to act as a broker-dealer, as evinced by the above-referenced violations and its repeated failures to abide by the requirements of Montana law with respect to federal covered security filings; and
- d. failed to reasonably supervise Steven Ossello when he offered and sold the Redwood product when the product did not satisfy the requirements of Montana law.

RELIEF REQUESTED

WHEREFORE, the CSI seeks the following relief:

1. That the Commissioner fine Respondent in an amount not to exceed \$5,000 for each identifiable violation of the Act, pursuant to § 30-10-305(3).
2. That the Commissioner suspend or revoke the Montana broker-dealer registration of Respondent, pursuant to § 30-10-201(13).
3. Such other relief as the Commissioner deems necessary and appropriate.

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 et seq., including § 2-4-631. If you demand a hearing, you will be given notice of the time, place, and the nature of the hearing.

If you wish to contest the proposed action under the jurisdiction of the Commissioner, you must advise the Commissioner within 21 days of the date you receive this notice. You must advise the Commissioner of your intent to contest the proposed action by **writing** to Jesse Laslovich, Office of the Montana State Auditor, Commissioner of Securities and Insurance, 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), 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 a reasonable period of time unless postponed by mutual consent of the parties, pursuant to § 30-10-305.

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. O'Neil*, 2006 MT 284, 334 Mont 311, 147 P.3d 200.

CONTACT WITH COMMISSIONER'S OFFICE

If you have questions or wish to discuss this matter, please contact Jesse Laslovich, Chief Counsel for the CSI, by telephone at (406) 444-2040, or by email at jlaslovich2@mt.gov. If an attorney represents you, please make any contacts with the CSI through your attorney.

POSSIBILITY OF DEFAULT

Failure to give notice or to advise of your demand for a hearing or informal procedure within 21 days will result in the entry of a default order imposing the disciplinary sanctions against you without further notice to you, pursuant to Mont. Admin. R. 6.2.101, and the Attorney General's Model Rule 10, Mont. Admin. R. 1.3.214.

DATED this 7th day of March, 2016.

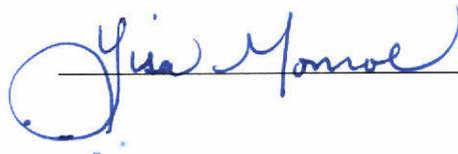


JESSE LASLOVICH
Chief Counsel for the CSI

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served on the 7th day of March, 2016, by certified US mail, first-class postage paid, to the following:

Datsopoulos, MacDonald & Lind P.C.
Attn: Milt Datsopoulos
Central Square Building
21 W. Main Street, Suite 201
Missoula, Montana 59802



A handwritten signature in blue ink, appearing to read "Lisa Monroe", is written over a horizontal line.