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BEFORE THE STATE AUDITOR
AND COMMISSIONER OF SECURITIES
HELENA, MONTANA

IN THE MATTER OF.) Case No. 03-22-04-129 I
)
MONTANA HEDGE PARTNERS, LP) TEMPORARY CEASE AND DESIST
and ROBERT M. SEAMONS) ORDER and
) NOTICE OF PROPOSED AGENCY
Respondents) ACTION AND OPPORTUNITY FOR
) HEARING
)

14 Staff of the Securities Department of the office of the State Auditor and Commissioner of
15 Securities of the State of Montana (Commissioner), pursuant to the authority of the Securities
16 Act of Montana, §§ 30-10-101, et seq., Mont Code Ann. (2003), is proposing to the
17 Commissioner that he take action against Respondents Montana Hedge Partners, LP and Robert
18 M. Seamons, of 1470 Silverado Trail, Big Sky, MT 59716, for violations of the Securities Act of
19 Montana (hereafter "Act"). The Commissioner has authority to take such action under the
20 provisions of Mont. Code Ann. §§ 30-10-102, 30-10-107, 30-10-201, 30-10-301, 30-10-304, 30-
21 10-305, 30-10-307 and 30-10-309.

22 Specifically, the staff is recommending that the Commissioner issue an order requiring
23 Respondent to immediately cease and desist his activities that are in violation of the Act and an
24 order to impose appropriate administrative fines, an immediate cease and desist order, as well as
25 any equitable relief deemed appropriate.

Service of process is pursuant to §30-10-107(8), Mont. Code Ann.

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REASONS FOR ACTION

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There is reason to believe that the following facts will be proven true and, therefore, justify and support immediate issuance of an order requiring Respondent to cease and desist his activity in violation of the Montana Securities Act. Additionally, appropriate fines should be imposed after a hearing of the matter.

ALLEGATIONS OF 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, L.P, a Montana Limited Partnership designed to make profits through trading by Seamons for investors, through SEAMONS, a Montana resident.
2. This office commenced an investigation and determined the following information:
 - a. MONTANA HEDGE PARTNERS, LP, filed with the Secretary of State on July 23, 1999, and indicated "Robert M. Seamons" as its registered agent.
 - b. LONE MOUNTAIN TRADING, LLC, filed with the Secretary of State on July 23, 1999, and indicated "Robert M. Seamons" as its registered agent and President. LONE MOUNTAIN TRADING, LLC is the General Partner for MONTANA HEDGE PARTNERS, LP.
 - c. SEAMONS, a Montana resident, provided this office a Partner List which indicated he sold partnership units in MONTANA HEDGE PARTNERS, LP to investors as follows. If funds were returned to 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
October 1999	JS	\$250,000	\$225,000
October 1999	RW IRA	\$49,900	\$50,000
October 1999	JF Trust	\$10,000	\$17,580
October 1999	CF Trust	\$10,000	\$17,580
October 1999	JC	\$60,000	\$80,311
October 1999	TF Trust	\$10,000	\$17,580
October 1999	CL	\$20,000	\$19,809
April 2000	RY & MY	\$50,000	\$0
April 2000	DH & SH	\$100,000	\$0
September 2000	MS	\$115,900	\$0
March 2001	TP	\$132,800	\$0

June 2001	JR	\$99,900	\$0
	TOTALS	\$1,648,400	\$490,801

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- d. MONTANA HEDGE PARTNERS, LP opened an account in October 1999 with Wall Street Access, an online securities trading company, and deposited investor funds. SEAMONS was the sole individual authorized to transact business for the account. During the period October 1999 through February 2002 SEAMONS transacted 2,048 trades in its Wall Street Access account. During this period, Wall Street Access charged the account approximately \$299,092.53 in fees that include commission charges and margin interest.
- e. Throughout the period, SEAMONS made withdrawals totaling \$1,257,897.25 from this account. SEAMONS used \$490,801 from these withdrawals to make payments to various limited partners.
- f. From the withdrawals from MONTANA HEDGE PARTNERS, LP's account with Wall Street Access, SEAMONS placed \$200,000 in a joint account with his wife.
- g. SEAMONS cannot demonstrate that the balance of the withdrawn funds from MONTANA HEDGE PARTNERS, LP's account with Wall Street Access, totaling \$567,096.25, were used for other authorized partnership activities.
- h. Investors in MONTANA HEDGE PARTNERS, LP's were provided with a Limited Partnership Agreement that indicates, among other things, the following requirements and limitations:

1 i. the Partnership shall reimburse the General Partner for routine
2 Partnership operating and administrative expenses not to exceed three
3 (3%) of the Assets per fiscal year. In addition, the Partnership Agreement
4 indicates there shall not be a management fee charged to any Partner
5 admitted to the Partnership before December 31, 1999.

6 ii. there shall be established for the General Partner and each Limited
7 Partner on the books the first day of each fiscal year (calendar year) a
8 "Hurdle Amount" equal to multiplying each opening capital account
9 balance by a factor of 0.10, reflecting an annualized appreciation goal of
10 10%.

11 iii. the General Partner will establish on the books of the Partnership a
12 "special expense" deficit account with an allocation to each Partner of
13 his/her share of Special Expenses and a requirement that on the last day for
14 each accounting period, the net profits/net losses of the Limited Partnership
15 were to be allocated to each Limited Partner.

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

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

23 vi. Limited Partnership Agreement indicates books of the account for
24 the Partnership shall be kept in accordance with generally accepted
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1 accounting principles consistently applied. Such books of the account shall
2 be kept at the principal place of business of the Partnership and each
3 Partner shall have, at all times during regular business hours of the
4 Partnership, the right to inspect such books. Furthermore, the Limited
5 Partnership Agreement indicates the books and records of the Partnership
6 shall be maintained on the accrual basis and shall be audited at the end of
7 each Fiscal Year of the Partnership by an independent certified accountant.

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

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21 J. SEAMONS failed to follow his own governance to the detriment of certain
22 investors when he failed to meet the requirements and limitations outlined by
23 the Limited Partnership Agreement by not maintaining an accounting of the
24 funds received and expended; by not creating a "hurdle amount" for each
25 account; by not preparing tax returns for years 1999, 2001, 2002 or 2003; by
allowing the CF Trust, JF Trust and TF Trust to receive payouts of 175.8% of

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

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

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8 l. The records of the Montana Securities Department indicate MONTANA
9 HEDGE PARTNERS, LP did not file for an exemption from registration or
10 seek an exemption in Montana;

11 m. The records of the Montana Securities Department indicate SEAMONS has
12 never been registered in any capacity to offer or sell securities in this State.

13 n. The records of the Montana Securities Department indicate SEAMONS was
14 not licensed as an investment adviser in Montana when he provided
15 investment advisory services to the limited partnership;

16 o. In connection with the above sales of MONTANA HEDGE PARTNERS, LP,
17 SEAMONS failed to disclose, at a minimum, certain material facts which
18 were necessary to disclose in order to make the statements made about the
19 investment, in light of the circumstances under which they were made, not
20 misleading, including, but not limited to, the following:

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22 i. at all times material hereto, MONTANA HEDGE PARTNERS, LP was
23 not registered as a security in the state of Montana;

24 ii. at all times material hereto, MONTANA HEDGE PARTNERS, LP was
25 not registered as an investment adviser in Montana;

1 iii. at all times material hereto, SEAMONS was not licensed as a securities
2 salesperson in Montana;

3 iv. at all times material hereto, neither MONTANA HEDGE PARTNERS,
4 LP, LONE MOUNTAIN TRADING LLC nor SEAMONS could set up
5 and administer an IRA pursuant to IRS rules and regulations;

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

8 vi. at all times material hereto, MONTANA HEDGE PARTNERS, LP and
9 SEAMONS sold securities under a Purchase Agreement that contained
10 language and provisions in which MONTANA HEDGE PARTNERS, LP
11 and SEAMONS failed to follow.
12

13 CONCLUSIONS OF LAW

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

17 2 MONTANA HEDGE PARTNERS, LP and SEAMONS transacted securities
18 business in Montana. § 30-10-103(22) and (24), Mont. Code Ann.

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

21 4. SEAMONS transacted investment advisory business in Montana. § 30-10-
22 103(11)(a), Mont. Code Ann.

23 5. Interests in MONTANA HEDGE PARTNERS, LP are investment contracts, and
24 thus constitute securities as defined by § 30-10-103(22), Mont. Code Ann.
25

1 6. The definition of "offer" or "offer to sell" includes "each attempt or offer to dispose
2 of or solicitation of an offer to buy a security or interest in a security for value." § 30-10-
3 103(15), Mont. Code Ann.

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

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

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

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

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

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

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

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

1 PUBLIC INTEREST

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

- 4 1. Issue a cease and desist order barring MONTANA HEDGE PARTNERS, LP and
5 SEAMONS from further violations of the Act;
- 6 2. Order MONTANA HEDGE PARTERS, LP and SEAMONS to pay an
7 administrative fine in an amount and upon such terms and conditions as supported
8 by the evidence and determined at a hearing of this matter; and
- 9 3. Take such other actions which may be in the public interest and necessary and
10 appropriate for the protection of Montana investors.

11 RELIEF REQUESTED

12 WHEREFORE, the Department seeks the following relief:

- 13 1. Imposition of an administrative fine for each violation of the Securities Act of
14 Montana. The maximum fine allowed pursuant to the Act is \$5,000 for each
15 violation, pursuant to §30-10-305(3), Mont. Code Ann.
- 16 2. Imposition of an administrative fine for each violation of §30-10-301, Mont. Code
17 Ann., of not more than \$5,000.
- 18 3. The Department seeks a finding that all sanctions and remedies detailed and
19 described here are in the public interest and necessary for the protection of
20 Montana investors.
- 21 4. The Department seeks a finding as fact the allegations set forth in paragraphs 1-9
22 of the Conclusions section, above.
- 23 5. Issuance of an immediate Order to cease and desist from committing further
24 violations of the Act.
- 25 6. Any further action as deemed just and appropriate for the protection of Montana
investors.

1 STATEMENT OF RIGHTS

2 You are entitled to a hearing on the NOTICE OF PROPOSED AGENCY
3 ACTION and to respond to this notice and present evidence and arguments on all issues
4 involved in this case. You may have a formal hearing before a hearing examiner
5 appointed by the Commissioner. This is provided for by 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 You have a right to be represented by an attorney at any and all stages of this
10 proceeding.

11 If you want to resist the proposed action under the jurisdiction of the
12 Commissioner, you must so advise him within fifteen (15) days of the date you receive
13 this notice. See §30-10-201(16), Mont. Code Ann., pending final determination of this
14 proceeding. You may so advise him by writing to Karen Powell, Special Assistant
15 Attorney General, State Auditor's Office, 840 Helena Ave., Helena Avenue, Helena,
16 Montana, 59601. While so advising Ms Powell, you should make clear whether you
17 demand a hearing, or whether you waive formal proceedings and, if so, what informal
18 proceedings you prefer for handling this case. Pursuant to § 2-4-603(2), Mont. Code
19 Ann , you may not request to proceed informally if the action could result in suspension,
20 revocation or any other adverse action against a professional license.

21 Should you request a hearing, you have the right to be accompanied, represented,
22 and advised by counsel. If the counsel you choose has not been admitted to practice law
23 in the State of Montana, he or she must comply with the requirements of Application of
24 American Smelting and Refining Co., (1973), 164 Mont. 139, 520 P 2d 103.
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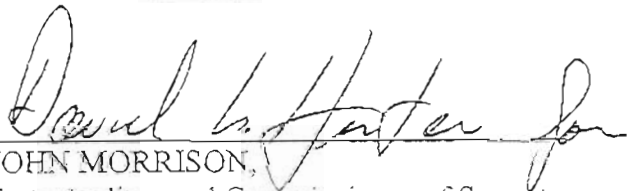
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2 CEASE AND DESIST ORDER
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4 Pursuant to §30-10-305(1)(a), Mont. Code Ann., it appears to the Commissioner that the
5 above named Respondents, Montana Hedge Partners and Robert Seamons, have engaged or are
6 about to engage in an act or practice constituting a violation of the Securities Act of Montana,
7 and pursuant to §30-10-102, Mont. Code Ann., and it is in the public interest to ORDER
8 Montana Hedge Partners, LP and Robert Seamons to CEASE AND DESIST from the following
9 actions:

- 10 1. Any actions or activity wherein Montana Hedge Partners, LP or Seamons offers or
11 sells an unregistered security to or from the State of Montana, in violation of § 30-10-
12 202, Mont. Code Ann.;
- 13 2. Any actions or activity wherein Seamons acts as an unregistered investment adviser
14 or securities salesperson, in violation of §30-10-201, Mont. Code Ann.;
- 15 3. Any act, practice, or course of business that operates or would operate as a fraud or
16 deceit upon any person, in violation of §30-10-301, Mont. Code Ann.;
- 17 4. Any act that is an untrue statement of material fact or the omission of such a material
18 fact, in violation of §30-10-301, Mont. Code Ann.;
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20 Section 30-10-306(1), Mont. Code Ann., provides that any willful violation of this cease
21 and desist order, upon conviction, may be punished by imprisonment for not more than ten
22 (10) years and/or a fine not exceeding five thousand dollars (\$5,000).

23 DATED this 2nd date of September, 2004.

24 
25 JOHN MORRISON,
State Auditor and Commissioner of Securities