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5 STATE AUDITOR'S OFFICE
6 SECURITIES DEPARTMENT
7 HELENA, MONTANA

8 IN THE MATTER OF:) Case No.: 445-04
9 TRI ENERGY INC. ("TRI Energy"), H&J)
ENERGY COMPANY, INC. ("H&J") and) ORDER TO CEASE AND DESIST AND
10 MARINA INVESTORS GROUP ("Marina"),) NOTICE OF PROPOSED AGENCY
and their agents and representatives including) ACTION
11 Robert Jennings, Arthur Simburg, Lowell)
Decker, Thomas Avery, Henry Jones, Debbie)
12 Loveless and John and Jane Does 1-10

13 Respondents.

14
15 The Montana Securities Commissioner (Commissioner), pursuant to the authority of the
16 Securities Act of Montana, Section 30-10-101, et seq., Montana Code Annotated [hereinafter
17 cited as MCA], and Section 30-10-305, MCA, hereby issues the following allegations of fact,
18 proposed conclusions of law, order and notice of right to a public hearing:
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20 ALLEGATIONS OF FACT

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22 RESPONDENTS

23 1. H & J Energy Company, Inc. (H & J Energy), a Nevada corporation, with
24 corporate offices at 350 S Center Street, Suite 500, Reno, Nevada represents that it is in the
25 business of coal mining.

1 2. Respondent Loveless solicited other private individuals to purchase said
2 investment contracts.

3 3. Respondents failed to register said sales contracts as securities with the
4 Securities Department of the Montana State Auditor's Office.

5 4. Loveless is a participant in the sales plan, operation, investment contract or
6 investment program, and has solicited other private individuals to join the sales plan, operation,
7 investment contract or investment program while living in Kalispell, Montana. Loveless is not
8 registered as a salesperson with the Securities Department of the Montana State Auditor's Office.

9 5. Beginning no later than September 2003 and continuing through at least February,
10 2005, H & J Energy, Tri Energy, Avery, Decker, Jennings and Simburg have solicited over
11 \$257,000.00 from at least nine Montana investors towards funding alleged coal mine operations
12 of Tri Energy and H & J Energy and a Middle East "gold investment" organized by Marina
13 Investors Group and Jones.

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

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

24 8. Jennings and Simburg told the investors that the investors would double their
25 investment in 30 to 60 days by investing in Tri Energy. Investors were also told that if they

1 invested \$100,000 the money was going to be used for an investment in a gold transaction
2 through Jones and Marina Investors Group and that they could triple their money in the gold
3 investment. Simburg and Jennings said that the money was going toward the gold investment
4 because they were going to get so much money from that transaction that they would be able to
5 pay the investors back and finance the development and expansion of the coal mine operations.

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

12 10. Interested individuals were sent a packet of information that included a memo
13 from Simburg on Tri Energy letterhead explaining particular coal mine acquisitions the company
14 was making, a promissory note stating that the investor would receive their principal and 100%
15 interest in sixty days or principal and 200% interest if the money is used for the Marina Investors
16 Group project. The packet of information also included a coal mine project evaluation and wire
17 instructions for where investors should send their money.

18 11. Loveless solicited others, including Ms. C, to pay \$100,000.00 for a return of
19 \$300,000.00 in 30 days. Loveless facilitated Ms. C getting information on TRI Energy from a
20 Robert B. Jennings (Jennings), the president of TRI Energy. Loveless also approached other
21 members of her church, M.N., Dr. S.F. and Ms. S.F. along with Ms. S.F.'s two daughters, K.F.
22 and J.S, all whom invested various amounts into TRI energy.

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

3 13. In a Sept. 1, 2004 fax from Jennings to Ms. C, Jennings promised a return of "3x"
4 within thirty days. The accompanying memo dated 16 August 2004 from Simburg promised a
5 100% return within 60 days. Attached was a promissory note for Ms. C to sign along with the
6 instruction that Ms. C needed to remit remuneration with the signed promissory note.

7 14. On October 11, 2004, J.S. and G.S. advised the Department that they had invested
8 \$5,000.00 on January 29, 2004.

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

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

14 17 B.S. had been solicited by Robert Jennings and had been promised a 3:1 return
15 that was supposed to be paid within 4-8 weeks after the initial investment. He invested \$5000.00
16 in Tri Energy on November 21, 2003.

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

23 19. In February, 2005, Debbie Loveless visited M.N. and R.N. and convinced them to
24 reinvest in TRI Energy. M.N. and R.N. obtained a mortgage on their home and reinvested
25

1 \$29,000.00. As of May 3, 2005, M.N. and R.N. have not received their investment back and
2 have not received any return on the investment as promised.

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

- 5 a. the use of their investment funds;
- 6 b. investors were not informed that TRI Energy was not conducting any
7 significant coal mining operations in Kentucky;
- 8 c. at all times material hereto, the programs were not registered as securities in
9 the State of Montana;
- 10 d. the liquidity of the investment and whether the promissory notes were
11 secured;
- 12 e. financial information regarding TRI Energy and its officers;
- 13 f. the solvency of TRI Energy and its officers.

14 21. Jennings, Simburg, Avery, Decker, Jones and Loveless have not been registered as
15 securities salespersons or broker-dealers in the state of Montana.

16 22. On February 28, 2005, the State of Washington, Department of Financial Institutions,
17 Securities Division issued a Cease and Desist Order against TRI Energy, Inc., H&J Energy
18 Company, Inc., Marina Investors Group, Thomas Avery, Lowell Decker, Robert Jennings, Henry
19 Jones, Arthur Simburg, Mildred Stultz and Ronald Stultz, Cause # S-04-181-05-TO01.

20 21 CONCLUSIONS OF LAW

22 1. The Commissioner has jurisdiction over this matter by reason of Respondents'
23 offer and sale of securities to persons in Montana. Section 30-10-107, MCA.

24 2. Offer or offer to sell includes "every attempt to offer to dispose of or solicitation
25 of an offer to buy a security or interest in a security for value." Section 30-10-103(15), MCA.

1 3. Respondents' sales plans, operations, investment contracts or investment
2 programs constitute securities within the meaning of the Securities Act of Montana per Section
3 30-10-103(22), MCA.

4 4. Respondents are salespersons as defined by the Securities Act of Montana,
5 Section 30-10-103(20), MCA.

6 5. In connection with the above offers of securities to/from persons in Montana,
7 Respondents violated Section 30-10-201(1), MCA, by transacting business as a salesperson in
8 Montana without registering as such.

9 6. In connection with the above offers of securities to/from persons in Montana,
10 Respondents violated Section 30-10-202, MCA, by transacting business in unregistered
11 securities.

12 7 In connection with the above offers of securities to/from persons in Montana,
13 Respondents violated Section 30-10-301(1)(b), MCA, by failing to disclose the following
14 material facts, which facts were necessary to disclose in order to make the statements made about
15 the investment, in light of the circumstances under which they were made, not misleading:

- 16 a. how the proceeds will be used;
- 17 b. at all times material hereto, the programs were not registered as securities in
18 the State of Montana;
- 19 c. the liquidity of the investment and whether the promissory notes were
20 secured;
- 21 d. financial information regarding TRI Energy and its officers;
- 22 e. the solvency of TRI Energy and its officers; and
- 23 f. registration of officers/registration of product.

24 8. In connection with the above offers of securities to/from persons in Montana,
25 Respondents violated Section 30-10-301(1)(c), MCA, by engaging in an act, practice, or course

1 of business which operates or would operate as a fraud or deceit upon any person in the sale of
2 unregistered securities.

3 ORDER

4 Pursuant to Section 30-10-305(1)(a), MCA, it appears to the Commissioner that the
5 above named Respondents have engaged or are about to engage in an act or practice constituting
6 a violation of the Securities Act of Montana and therefore hereby orders Respondents to cease
7 and desist from engaging in any act, practice, or course of business that operates or would
8 operate as a fraud or deceit upon any person, in violation of Section 30-10-301, MCA, to cease
9 and desist from offering and selling unregistered securities by unregistered salespersons in
10 violation of Section 30-10-201 and Section 30-10-202, MCA and to cease and desist from
11 violating Section 30-10-321, MCA by providing substantial assistance to another person or other
12 persons in violation of a provision of Section 30-10-301 through 30-10-325, MCA or of any rule
13 or regulation issued under 30-10-301 through 30-10-325, MCA.

14 PENALTIES

15 Section 30-10-306(1), MCA, provides that any willful violation of this cease and desist
16 order, upon conviction, may be punished by imprisonment for not more than ten (10) years
17 and/or a fine not exceeding five thousand dollars (\$5,000) per violation.
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19 NOTICE

20 Respondents are notified that the Commissioner has issued this temporary cease and
21 desist order. If Respondents wish to contest the allegations herein, they shall make a written
22 request for a hearing within fifteen (15) days of receipt of this order to Kevin Phillips, Chief of
23 Enforcement, State Auditor's Office, 840 Helena Ave., Helena, MT 59601. The hearing shall
24 then be held within a reasonable time following the Commissioner's receipt of the hearing
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1 request unless otherwise agreed by the parties. If no hearing is requested within fifteen (15) days
2 of receipt of this order by Respondents, and the Commissioner orders none, this order shall
3 become permanent, and the above allegations of fact will be declared findings of fact and the
4 above proposed conclusions of law will be declared conclusions of law.

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

9 DATED this 17th day of May, 2005.

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11 John Morrison
12 State Auditor and
13 Commissioner of Securities

14 By:



15 Karen Powell
16 Deputy Commissioner of Securities
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