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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

10 THE PEOPLE OF THE STATE OF
11 CALIFORNIA, by and through the
12 CALIFORNIA CORPORATIONS
COMMISSIONER,

13 Plaintiff,

14 vs.

15 CANAM CAPITAL CORP. a Nevada
corporation; PREMIER EQUITY FUND, LLC,
16 a Nevada limited liability company; PREMIER
EQUITY FUND II, LLC, a Nevada limited
17 liability company; PREMIER EQUITY FUND
III, LLC, a Nevada limited liability company;
18 PREMIER EQUITY FUND IV, LLC, a Nevada
limited liability company; JAY JORDAN
19 BARNHARDT, as an individual; KELLY
20 KEITH MORGAN, as an individual; AARON
KANE BARNHARDT, as an individual, and
21 Does 1 through 10, inclusive,

22 Defendants.

23 And

24 POWER RESEARCH CORP., a California
corporation; SANTA RITA PARTNERS, INC.,
25 a California corporation; STEVE BOWLING
HERATY, as an individual, and Relief Does 1-
26 10, inclusive,

27 Relief Defendants.
28

Case No.:

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF EX PARTE
APPLICATION FOR TEMPORARY
RESTRAINING ORDER; ASSET FREEZE;
APPOINTMENT OF RECEIVER; AND
ORDER TO SHOW CAUSE RE:
PRELIMINARY INJUNCTION

(Corporations Code sections 2511, 25401, 25530
and CCP 527(a), CA Rules of Court section
3.1175(a), 3.1201, 3.1202, 3.1203, 3.1204

Date:

Time:

Dept:

1 Memorandum Of Points And Authorities in support of Ex Parte Application for a
2 Temporary Restraining Order, Asset Freeze, Appointment of Receiver and Order to Show Cause
3 Re: Preliminary Injunction as follows:

- 4 1) enjoining defendants from the offer or sale of unqualified non-exempt securities;
- 5 2) enjoining defendants from the offer or sale of securities by means of misrepresentations or
6 omissions of material facts;
- 7 3) enjoining defendants from violating the desist and refrain order issued against them on
8 February 11, 2009;
- 9 4) issuing an order freezing all business and personal assets and companies related to or
10 controlled by defendants; and
- 11 5) appointing a receiver to take control of assets for the benefit of investors/victims of
12 defendants' unlicensed and fraudulent activities.

13 **I. INTRODUCTION**

14 The People of the State of California, by and through the California Corporations
15 Commissioner, seek an ex parte Order, appointing a receiver to preserve assets illegally obtained,
16 to prevent the destruction of books and records, and an Order issuing a Temporary Restraining
17 Order to prevent ongoing and continuing violations of the California Securities Law of 1968.
18 *Corporations Code §§25000 et seq.*

19 From February 2004 through December 2009, CanAm Capital Corp. ("CanAm"), Premier
20 Equity Fund, LLC, Premier Equity Fund II, LLC, Premier Equity Fund III, LLC, and Premier
21 Equity Fund IV, LLC Jay Jordan Barnhardt ("J. Barnhardt"), Aaron Kane Barnhardt ("A.
22 Barnhardt"), Kelly Keith Morgan ("Morgan"), and their agents, employees and representatives
23 (collectively "Defendants") fraudulently raised approximately \$15,000,000 from at least 337
24 investors, from securities transactions in which Defendants conducted general solicitations in the
25 form of "cold calls", in violation of the Corporate Securities Law of 1968 (Corporations Code
26 Section 25000 *et seq.*) ("CSL"). The California Corporations Commissioner ("Commissioner")
27 issued a desist and refrain order on February 11, 2009 ("2009 Order") because Defendants
28 CanAm, J. Barnhardt, and Morgan were offering and selling unqualified non-exempt securities

1 through the use of “cold calls”, in violation of the CSL. (*Declaration of Archie Tarver, (hereinafter*
2 *“Dec. A. Tarver”)* *Ex. A desist and refrain order and proof of service*)

3 Despite the 2009 Order, Defendants knowingly and willfully violated CSL section 25401
4 and the 2009 Order, and raised \$3,279,000.00 from 90 investors without disclosing the 2009
5 Order. Defendants used approximately \$1,588,000.00 of investor funds in contradiction to the
6 stated purposes in the offering materials, including personal expenses. Defendants depleted
7 approximately \$1,014,800.00 of investor funds upon learning that the Department of Corporations
8 subpoenaed the account records for J. Barnhardt’s personal American Express credit card.

9 The Commissioner asks the Court to immediately put an end to Defendants’ illegal
10 conduct by issuing a temporary restraining order: 1) enjoining defendants from the offer or sale of
11 unqualified non-exempt securities; 2) enjoining defendants from the offer or sale of securities by
12 means of misrepresentations or omissions of material facts; 3) enjoining defendants from violating
13 the desist and refrain order issued against them on February 11, 2009; 4) freezing all business and
14 personal assets and companies related to or controlled by defendants; and 5) appointing a receiver
15 to take control of assets for the benefit of investors/victims of defendants’ unlicensed and
16 fraudulent activities.

17 **II. STATEMENT OF FACTS**

18 From February 2004 through at least December 2009, Defendants, raised at least
19 \$15,000,000.00 from at least 337 investors in violation of the CSL. Securities defined in CSL
20 section 25019 must be qualified with the Department of Corporations or exempted. Defendants
21 offered and sold securities in the form of units of membership interest in the limited liability
22 companies named Premier Equity Fund, LLC, Premier Equity Fund II, LLC, Premier Equity Fund
23 III, LLC, and Premier Equity Fund IV, LLC, (collectively referred to as “the Funds”). (*See*
24 *Witness Declarations (hereinafter “Wit. Dec.”) of Alan Fisher, Craig Dzukola, Orville C. Barr,*
25 *Walter Joyce and Hans Glarner*)

26 The purported purpose of the offering was to raise money so that CanAm through the
27 limited liability companies could provide financing to selected start-up and/or early stage
28 companies. Defendants offered and sold these securities by means of general solicitations to the

1 public in the form of “cold calls”. The securities were not qualified pursuant to CSL section
2 25110, and were not exempt from the qualification requirements of the CSL. (*Dec. A. Tarver, Ex.*
3 *H, Certificates of Search*) Defendants filed Notices of Transaction with the Department of
4 Corporations, claiming that the offerings were exempt pursuant to CSL section 25102(f), however
5 use of the exemption is not applicable due to the Defendants’ use of “cold calls.” (*Id., Ex. I,*
6 *Notices of Transaction*)

7 On February 11, 2009, the Commissioner issued a Desist and Refrain Order (“2009
8 Order”) against Defendants CanAm, J. Barnhardt and Morgan along with CDNX Fund, LLC, TSX
9 Venture Fund, LLC, Northern Equities, LLC, for violating CSL section 25110 by offering and
10 selling securities through the use of general solicitations in the form of “cold calls”. (*Id., Ex. A*)
11 The 2009 Order was served on March 18, 2009. (*Id.*) CanAm, J. Barnhardt and Morgan requested
12 a hearing then later withdrew their request, therefore the 2009 Order is final. (*Id., Ex. B,*
13 *Withdrawal Letter*)

14 The 2009 Order prohibits CanAm, J. Barnhardt and Morgan from offering and selling
15 securities in the form of membership units in limited liability companies in California unless the
16 offering is qualified or exempt from registration. One month after the 2009 Order was served on
17 CanAm, J. Barnhardt and Morgan, they continued to offer and sell securities using “cold calls” in
18 violation of the CSL and the 2009 Order. (*Wit. Decs.*)

19 After the 2009 Order was served on Defendants, they raised approximately \$3,279,000.00
20 from at least 90 investors. In relation to the offers and sales of securities that occurred after the
21 2009 Order, Defendants violated CSL section 25401 by making misrepresentations and omissions
22 of material fact in the following manner:

- 23 a. Failing to disclose the 2009 Order;
- 24 b. Spending approximately \$1,588,000.00 of investor funds in contradiction to the
25 purposes stated in the offering materials;
- 26 c. Using funds on personal expenses including the following:
 - 27 i. From December 2009 to April 2010, approximately \$200,000.00 was
28 used to pay J. Barnhardt’s personal income taxes;

- 1 ii. From September 2009 to July 2010, approximately \$716,000.00 was
- 2 used to fund the CanAm Corp. Defined Benefit Plan for the years 2008,
- 3 2009, and 2010;
- 4 iii. Approximately \$42,000.00 was used to purchase a custom roadster from
- 5 East Coast Custom;
- 6 iv. On September 28, 2009, \$12,000.00 was given to Steve Heraty for
- 7 purchase of Santa Rita Partners, Inc;
- 8 v. On March 16, 2009 \$26,000.00 was used to purchase an oriental rug;
- 9 vi. From April 2009 to September 2010, approximately \$574,000.00 was
- 10 paid to American Express to pay for the personal credit card of J.
- 11 Barnhart for items such as art, college tuition, jewelry, luxury home
- 12 furnishings, fixtures, chandeliers, interior decorating, floor coverings,
- 13 household furnishings, household appliances, crystal, landscaping,
- 14 veterinary services, retail services and tires.
- 15 vii. From April 1, 2009 through September 2010 approximately
- 16 \$322,500.00 was routinely transferred to Power Research Corporation,
- 17 owned by Aaron Barnhardt.

18 (*Dec. A. Tarver*)

19 Defendants' state in their offering memorandums that CanAm as manager will receive

20 \$20,000.00 per month for management fees for each fund and that a certain percentage of the net

21 proceeds from each offering will be used for "offering related organizational, legal and accounting

22 expenses payable by the Company, as well as reimbursement of expenses incurred by the Manager

23 (CanAm) in connection with its sale of the Units (including salaries for certain personnel of the

24 Manager)." For Premier Equity Fund I the amount is estimated at 9.1%, for Premier Equity Fund

25 II the amount estimated is at 9.1%, for Premier Equity Fund III the amount is estimated at 13%

26 and for Premier Equity Fund IV the amount is estimated at 4.4%. Defendants used approximately

27 \$1,588,000.00 of investor funds in contradiction to the stated purposes of the offerings in violation

28 of CSL section 25401. (*Dec. A. Tarver, Ex. E, Portions of Offering Memorandums*)

1 At least one investor decided to invest after being told by Kelly Morgan in 2009 that there
2 would be a resolution to the investment in six months. (*Wit. Dec. of Walter Joyce*) CanAm records
3 did not reveal that it had invested in a start-up company from October 31, 2008 through April 30,
4 2010. (*Dec. A. Tarver, Ex. C*)

5 Defendants used investor funds to purchase a licensed broker-dealer business – Santa Rita
6 Partners, Inc. (“Santa Rita”) where they continue their fraudulent activities. (*Dec. A. Tarver, Ex. J*
7 (*Financial Industry Regulatory Authority, Inc. (“FINRA”) Report on A. Barnhardt*) and *Ex. K*
8 (*FINRA report on Santa Rita*)) Defendants Morgan and A. Barnhardt continue to solicit CanAm
9 investors for securities offerings under the broker-dealer Santa Rita while failing to tell investors
10 that their own investment dollars were used to purchase this broker-dealer, that Morgan’s
11 employment with this broker-dealer was fraudulently obtained and that the 2009 Order was issued
12 against Morgan. (*Dec. A. Tarver, Exhibit L and Wit. Dec. of Hans Glarner*)

13 In November 2009, A. Barnhardt was employed as a registered representative with Santa
14 Rita, and A. Barnhardt’s company Power Research Corporation, Inc. became a shareholder in
15 Santa Rita. (*Dec. A. Tarver, Ex. J (Financial Industry Regulatory Authority, Inc. (“FINRA”)*
16 *Report on A. Barnhardt*) and *Ex. K (FINRA report on Santa Rita)*) In December 2009, Morgan
17 was employed as a registered representative with Santa Rita. Morgan failed to disclose on his
18 application to become a registered representative that he was the subject of the 2009 Order. (*Dec.*
19 *A. Tarver, Ex. L (FINRA Report on Morgan)*) Defendants A. Barnhardt and Morgan contacted
20 CanAm investors soliciting business for the broker-dealer which “specializes in private placement
21 of securities, selling oil and gas interests, and selling tax shelters or limited partnerships.”(*Wit.*
22 *Dec. of Hans Glarner*)

23 The remaining balances in the four fund accounts of approximately \$1,014,800.00 was
24 depleted and the accounts closed two days after the Department of Corporations sent a Consumer
25 Notice to J. Barnhardt, notifying him that the Department was seeking the account records for his
26 personal American Express credit card. (*Dec. A. Tarver, Ex. G*)

27 Despite the 2009 Order prohibiting otherwise, Defendants offered and sold securities in
28 violation of the CSL section 25110 and made material misrepresentations and omissions in

1 conjunction with the offer and sale of securities, in violation of Corporations Code section 25401,
2 when Defendants purposely misled and defrauded investors as to the true nature of the use to
3 which Defendants were to make of their money. Additionally, Defendants failed to disclose to
4 investors the 2009 Order. Defendants will continue to violate the CSL unless enjoined by this
5 court.

6 III. LAW AND ARGUMENT.

7 A. The Commissioner has the Authority To Bring This Action And To 8 Seek A Temporary Restraining Order.

9 California Securities Law of 1968 (“CSL”), Corporations Code 25530(a) authorizes the
10 Commissioner to bring this action for injunctive and ancillary relief whenever it appears that any
11 person has engaged or is about to engage in any violation under the CSL. Where an injunction is
12 authorized by statute to protect the public interest, the usual equitable considerations, such as
13 inadequacy of legal remedy, irreparable harm, and balancing of interests are irrelevant and it is not
14 necessary to allege or prove them. *Porter v. Fiske* (1946) 74 Cal.App.2d 332, 338.

15 The California Supreme Court in *IT Corp. v. County of Imperial* (1983) 35 Cal.3d 63, 72,
16 states the proper standard to be applied when a governmental entity seeks to enjoin alleged
17 violations of a statute as follows:

18 Where a governmental entity seeking to enjoin the alleged violation of an ordinance
19 which specifically provides for injunctive relief establishes that it is reasonably
20 probable it will prevail on the merits, a rebuttable presumption arises that the
21 potential harm to the public outweighs the potential harm to the defendant...
(Emphasis added.)

22 Here, plaintiff has provided substantive evidence, that Defendants have committed
23 violations of CSL section 25110, and 25401 and violated the Commissioner’s 2009 Order. The
24 Court can and should grant the injunctive and ancillary relief prayed for.

25 B. Defendants Offered and Sold Unqualified Non-Exempt Securities in 26 Violation of CSL section 25110.

27 CSL section 25110 makes it unlawful for any person to offer or sell in this state any
28 security in an issuer transaction unless such sale has been qualified under the CSL or unless such

1 transaction is exempted from qualification. Defendants' Notices of Transaction admit that the
 2 units of membership interest being offered are securities. (*Dec. A. Tarver, Ex. H and I*) Defendants
 3 offered and sold investors units of membership in the Funds, for the purpose of investing in start-
 4 up companies. (*Wit. Decs.*)

5 Corporations Code section 25019 defines the term "security", in relevant part, as follows:
 6 "... any note; ... interest in a limited liability company; ... or in general, any interest or
 7 instrument commonly known as a 'security' All of the foregoing are securities whether or not
 8 evidenced by a written document . . ."

9 CSL section 25163 provides that the burden of proving an exemption is on the person
 10 claiming it. See also *People v. Park* (1978) 87 Cal. App. 3d 550, 556-557 [state did not bear
 11 burden of proving lack of private offering exemption in prosecution under § 25110]. Defendants
 12 filed Notices of Transaction claiming an exemption applies to each offering however, the use of
 13 the exemption is unavailable due to Defendants' own conduct. Defendants violated CSL 25110
 14 numerous times, and will continue to do so unless enjoined by this court.

15 **C. Defendants Violated the Anti-Fraud Provisions of CSL section 25401**
 16 **By Making Misrepresentations and Omissions of Material Fact During**
 17 **the Offer and Sale of Securities.**

18 It is unlawful for any person to offer or sell any security by means of any untrue statement
 19 or omission of material fact. *Corporations Code §25401.*

20 In *People v. Simon* (1995) 9 Cal.4th 493, the court stated that such misrepresentations or
 21 omissions need not be knowing:

22 An enforcement action by the commissioner to enjoin future sales by means of
 23 false or misleading statements is designed to protect the public *People v. Pacific*
 24 *Land Research Co.* (1977) 20 Cal.3d 10, 17 [141 Cal.Rptr. 20, 569 P.2d 125];
 25 *People v. Martinson* (1986) 188 Cal.App.3d 894, 899 [233 Cal.Rptr. 617].) For that
 26 reason, it is irrelevant that the defendant knows that the statements or omissions are
 27 false or misleading. In light of the language of section 25401, it is reasonable to
 28 conclude that the Legislature did not intend to permit members of the public to be
 harmed by such sales simply because the offeror was unaware that his or her sales
 pitch was misleading. [*Id.*, at 515-516.]

Section 25401 does not require that a misrepresentation or omission be made knowingly

1 and the express wording of section 25401 contains no requirement of proof of intended reliance by
2 a person to whom the statement is made. As a result, section 25401 differs from common law
3 fraud in that no proof of reliance is required. *Bowden v. Robinson* (1977) 67 Cal.App.3d 705, 715.

4 Finally, the misrepresentation or omission must be made with regard to a material fact.
5 Under section 25401, a fact is “material” if there is a substantial likelihood that, under all the
6 circumstances, a reasonable investor would consider it important in reaching an investment
7 decision. *Insurance Underwriters Clearing House, Inc. v. Natomas Co.* (1986) 184 Cal.App.3d
8 1520, 1526. Defendants told investors that their money would be used to invest in start-up and
9 early stage companies. (*Wit. Decs.*) At least one investor invested after being told by Kelly
10 Morgan in 2009 that there would be a resolution to the investment in six months. (*Wit. Dec. of*
11 *Walter Joyce*) CanAm records did not reveal that it had invested in a start-up company from
12 October 31, 2008 through April 30, 2010. (*Dec. A. Tarver*) Additionally, Defendants made
13 material misrepresentations and omissions by failing to disclose the 2009 Order, spending
14 approximately \$1,588,000.00 of investor funds in contradiction to the purposes stated in the
15 offering materials and failing to disclose to investors that their money would be used for personal
16 expenses. (*Dec. A. Tarver and Wit. Decs.*)

17 The sale of securities by means of a material misrepresentation or omissions of material
18 facts is unlawful, even if the sale of securities would otherwise be exempt from qualification. In
19 *People v. Smith* (1989) 215 Cal.App.3d 230, 235-236, the court found that “[i]n contrast to the
20 qualification requirements, the prohibition against making false or misleading statements in the
21 offer or sale of securities does not contain exemptions (§25401), and so is applicable to the offer
22 or sale of all securities, whether public or not.” Defendants have violated section 25401 hundreds
23 of times over the past year, and will continue to do so unless enjoined by this court.

24 **D. Defendants Violated the California Corporations Commissioner’s**
25 **Desist and Refrain Order filed on February 11, 2009.**

26 CSL section 25532 permits the Commissioner to issue a desist and refrain order when it is
27 the Commissioner’s opinion that such security is subject to qualification. The 2009 Order
28 prohibits Defendants CanAm, J. Barnhardt, and Morgan for selling unqualified non-exempt

1 securities through the use of general solicitations in the form of “cold calls”. (*Dec. A. Tarver*) One
2 month after being served the 2009 Order, CanAm, J. Barnhardt, and Morgan continued to conduct
3 the exact activity prohibited and violated the 2009 Order while raising an additional \$3,279,000.
4 (*Wit. Decs.*)

5 Accordingly, pursuant to Corporations Code section 25530 the Commissioner may bring
6 an action in the name of the people of the State of California when it appears that a person has
7 engaged in any act or practice that violates any order under the CSL.

8 **E. Appointment of a Receiver is Necessary and Proper to Protect**
9 **Investors.**

10 As discussed above, Plaintiff need not allege or prove the usual equitable considerations
11 when bringing an action authorized by statute. *IT Corp. v. County of Imperial, supra*, 35 Cal.3d
12 63.

13 Corporations Code section 25530 authorizes the appointment of a receiver upon a proper
14 showing when “any person has engaged, or is about to engage, in any act or practice constituting a
15 violation of any provision” of the CSL. The evidence that accompanies this Application
16 documents the serious violations of the California securities law. Since the 2009 Order was
17 served, Defendants raised an additional \$3,279,000.00 of investor funds without disclosing the
18 2009 Order. (*Dec. A. Tarver, Wit. Decs*) Defendants misled investors about the use of the investor
19 money. Defendants used investor money for personal expenses including but not limited to paying
20 J. Barnhardt’s income taxes, funding CanAm’s retirement plan for the past three years, purchasing
21 a custom roadster, funding A. Barnhardt’s company Power Research Corporation, paying over
22 \$500,000.00 to J. Barnhardt’s personal American Express card, and purchasing a broker-dealer
23 company – Santa Rita. (*Dec. A. Tarver*)

24 Defendants depleted approximately \$1,014,800.00 of investor money just two days after
25 receiving notice that Plaintiff subpoenaed the records for J. Barnhardt’s personal American
26 Express credit card.

27 Further, Defendants Morgan and A. Barnhardt continue their fraudulent activity by
28 soliciting CanAm investors for securities offerings under the broker-dealer Santa Rita while

1 failing to tell investors that their own investment dollars were used to purchase this broker-dealer
2 and that Morgan's employment with this broker-dealer was fraudulently obtained. (*Dec. A.*
3 *Tarver, Ex. L and Wit. Dec. of Hans Glarner*)

4 Defendants' egregious conduct and continuous disregard for the laws of California
5 necessitate the appointment of a receiver on terms and conditions as are detailed in the
6 accompanying Order.

7 A receiver is necessary to trace the funds and determine the use of investor money. If a
8 receiver is not appointed to take control of the businesses and possession of the business assets, it
9 is likely that investor money will never be recovered.

10 Appointment of a receiver has been upheld in cases where a prima facie showing was
11 made of fraud in connection with the sale of securities to the public. *Securities and Exchange*
12 *Comm'n v. Keller Corporation* (1963) 323 F.2d 397. In addition, "a receiver is permissible and
13 appropriate where necessary to protect the public interest and where it is obvious . . . that those
14 who have inflicted serious detriment in the past must be ousted." *Securities and Exchange*
15 *Comm'n v. Bowler* (1970) 427 F.2d 190, 198. Defendants violated the 2009 Order issued by the
16 Commissioner by continuing the same violations as soon as one month after they had knowledge
17 of the 2009 Order. They failed to disclose the 2009 Order to investors and then used investor
18 funds for lavish personal expenses. (*Dec. A. Tarver and Wit. Decs.*) Defendants have a disregard
19 for the law that must be stopped.

20 Courts also have ordered the appointment of a receiver where "no injunction [the court]
21 could frame would cure for the past or prevent in the future the mismanagement and illegalities
22 found in the operation of the defendant . . ." *Securities and Exchange Comm'n v. Heritage Trust*
23 (1975) 402 F.Supp. 744, 753. That is the case here.

24 In the present case, there is significant evidence to support the allegations that Defendants
25 have engaged and continue to engage in illegal securities transactions. Defendants are spreading
26 investor money throughout business operations that are not consistent with the representations to
27 investors on how their money would be used. These business operations were not related to the
28 start-up companies referred to in the offering but were for the benefit of Defendants. Such

1 blatantly illegal activity, coupled with defendants' deliberately fraudulent practices and continued
2 violations compels the appointment of a receiver. In order to maintain the status quo, protect what
3 remains of investors' money, and to trace the investor money and determine the use of the funds,
4 the appointment of a receiver is necessary. Defendants cannot be relied upon to comply with any
5 temporary restraining order or other injunction without dissipating the assets rightfully belonging
6 to investors.

7 **IV. CONCLUSION**

8 The evidence filed with this Application demonstrates that the Defendants are causing
9 irreparable injury to California residents by engaging in a blatant and ongoing pattern of violating
10 Corporation Code sections 25110 and 25401 and the Commissioner's 2009 Desist and Refrain
11 Order. Additionally the evidence shows that Defendants have already depleted investor funds.

12 In order to protect the public and prevent further irreparable harm to the investors, Plaintiff
13 requests that this Court grant injunctive relief by: 1) enjoining defendants from the offer or sale of
14 unqualified non-exempt securities; 2) enjoining defendants from the offer or sale of securities by
15 means of misrepresentations or omissions of material facts; 3) enjoining defendants from violating
16 the desist and refrain order issued against them on February 11, 2009; 4) issuing an order freezing
17 all business and personal assets related to or controlled by defendants; and 5) appointing a receiver
18 to take control of assets for the benefit of investors of defendants' unlicensed and fraudulent
19 activities.

20 Dated: January 19, 2011

21 **PRESTON DuFAUCHARD**
22 California Corporations Commissioner

23 By: _____
24 **MARY ANN SMITH**
25 Senior Corporations Counsel
26 Attorney for the People of California
27
28