

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

Oklahoma Department of Securities)
ex rel. Irving L. Faught,)
Administrator,)
)
Plaintiff,)
)
v.)
)
Firststar Financial Group of Central)
Oklahoma, LLC, an Oklahoma limited)
liability company; John Joseph Hamilton,)
an individual; and Robin L. Peck,)
an individual,)
)
Defendants.)

Case No. ^(C) 2010-5268

FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.
AUG 13 2010
PATRICIA PRESLEY, COURT CLERK
by ~~DEPUTY~~

**RESPONSE OF OKLAHOMA DEPARTMENT OF SECURITIES
TO APPLICATION TO VACATE ORDER GRANTING
TEMPORARY RESTRAINING ORDER AND ORDER FOR ACCOUNTING**

The Oklahoma Department of Securities *ex rel.* Irving L. Faught, Administrator (“Department”), respectfully submits this response to the *Application to Vacate Order Granting Temporary Restraining Order and Order for Accounting* (Application to Vacate) of Defendants Firststar Financial Group of Central Oklahoma, LLC (formerly known as First Fidelity Financial Group of Oklahoma City, LLC) and John Joseph Hamilton (collectively, “Defendants”) for the reasons set forth below.

INTRODUCTION

On June 24, 2010, the Department filed a *Petition for Permanent Injunction and Other Equitable Relief* (Petition) and an *Application for Temporary Restraining Order, Order for Accounting and Temporary Injunction* (Application for Temporary Order). See Exhibits “A” and “B.” On June 24, 2010, this Court granted a *Temporary Restraining Order and Order for Accounting* (Temporary Order) against Defendants. See Exhibit “C.” A hearing on the

Application for Temporary Order has been postponed. On July 23, 2010, Defendants filed a *Record of Accounting* with this Court. On July 26, 2010, Defendants filed the Application to Vacate.

ARGUMENTS AND AUTHORITIES

I.

Firststar Investment Program Interests are Securities

Section 1-102(32) of the Oklahoma Uniform Securities Act of 2004 (Act), Okla. Stat. tit. 71, §§1-101 through 1-701 (Supp. 2009), defines a “security” to include, among other things, an investment contract, evidence of indebtedness, and note. To determine that the interests in the Firststar investment program (“Investment Program Interests”), offered and sold by the Defendants and described in the Petition, are securities under Oklahoma law, the facts in this case must be analyzed in light of the statutory definition of the term “security” and various court decisions, including decisions of the Oklahoma Supreme Court and the United States Supreme Court.

The United States Supreme Court has ruled that remedial legislation such as the securities laws should be broadly construed to effectuate their purpose. *Tcherepnin v. Knight*, 389 U.S. 332, 336, 88 S. Ct. 548, 553, 19 L. Ed. 2d 564 (1967). Further, in analyzing an investment, “form is to be disregarded over substance and the emphasis should be on (the) economic reality” of the transaction. *United Housing Foundation, Inc. v. Forman*, 421 U.S. 837, 848, 95 S.Ct. 2041, 2058 (1975). Further, in *State ex rel. Day v. Sw. Mineral Energy, Inc.*, 1980 OK 118, 617 P.2d 1334, the Oklahoma Supreme Court recognized that the interpretative history of the federal securities laws was intended to be carried over in interpreting the Oklahoma securities laws. *See also State Oklahoma Dept. of Sec. ex rel. Faught v. Blair*, 2010 OK 16, 231 P.3d 645

The Oklahoma Supreme Court has recognized the federal standard used to evaluate whether an instrument is a security and stated, “as we understand the various rules set forth by

the Supreme Court in the securities area, although the name given an instrument may be relevant, the primary factor in determining whether an instrument is a security covered by the Act must turn on the economic realities of the transaction, not the name appended thereto.” *Indiana Nat. Bank v. State Dept. of Human Services*, 1994 OK 98, 880 P.2d 371 .

Defendants’ Investment Program Interests consist of a package containing a certificate of deposit (“CD”) issued by a bank insured by the Federal Deposit Insurance Corporation (“FDIC”) and a promotional incentive. The Supreme Court case of *Marine Bank v. Weaver*, 455 U.S. 551 (1982), is the landmark case holding that CDs issued by an FDIC-insured bank are not securities. However, the Court held that CDs do not always fall *outside* of the securities laws. In footnote 11, the Court stated:

It does not follow that a certificate of deposit or business agreement between transacting parties invariably falls outside of the definition of a “security” as defined by the federal statutes. Each transaction must be analyzed and evaluated on the basis of the content of the instruments in question, the purposes intended to be served, and the factual setting as a whole.

Id. at 1226.

Defendants offer to pay an interest rate substantially above current market rates for the purchase of the package. For the investor to receive the increased interest rate, Defendants must pay a promotional incentive - the difference between the insured institution’s actual rate and Defendants’ advertised above-market rate. The promotional incentive is the integral facet of the package as it is the inducement for the investment. The package is not insured or guaranteed by a bank or by the FDIC. The “integrated investment package” that is comprised of the investor’s money plus Firststar’s money “must be viewed in its entirety to determine whether it is within or without” of the definition of a security under the Act. *Safeway Portland Employees' Fed. Credit Union v. C. H. Wagner & Co., Inc.*, 501 F.2d 1120, 1123 (9th Cir. 1974). Further, the offer as

well as the sale of a security is subject to regulation under the Act. Therefore, the proper time for determining whether the Investment Program Interests are securities is at the time the offer is made and not at the time the promotional incentive is paid.

A. Certificate of Deposit Theory

Defendants rely on alternative theories under the Act to dispute that the Investment Program Interests are securities. One theory is that the Investment Program Interests offered by Defendants are exempt securities pursuant to Section 1-201(3)(b) of the Act. Section 1-201(3)(b) of the Act provides that the following securities are exempt from the registration requirements and the sales and advertising literature filing requirements of the Act:

3. A security issued by and representing or that will represent an interest in or a direct obligation of, or be guaranteed by:

* * *

b. a banking institution organized under the laws of the United States; a member bank of the Federal Reserve System; or a depository institution a substantial portion of the business of which consists or will consist of receiving deposits or share accounts that are insured to the maximum amount authorized by statute by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or a successor authorized by federal law or exercising fiduciary powers that are similar to those permitted for national banks under the authority of the Comptroller of Currency pursuant to Section 1 of Public Law 87-722 (12 U.S.C. Section 92a)[.]

If Defendants were offering and selling securities described in Section 1-201(3)(b) of the Act, the exemption would be available. However, the offers and sales would remain subject to other provisions of the Act, including the anti-fraud provisions. Here, Defendants are selling more than a CD. Critical to the investors' return is the promotional incentive that is not a direct obligation of, or guaranteed by, a banking or depository institution described in Section 1-201(3)(b) of the Act.

B. Investment Contract

The second theory Defendants rely on in the Application to Vacate is that the packages offered and sold by Defendants are not securities. It is the Department's position that the Investment Program Interests are securities under the definition of investment contract. Section 1-102(32)(d) of the Act includes an "investment contract" in the definition of security. The Act specifically "includes as an 'investment contract' an investment in a common enterprise with the expectation of profits to be derived primarily from the efforts of a person other than the investor[.]" This definition codifies the four-pronged test set forth by the United States Supreme Court in *SEC v. W. J. Howey Co.*, 328 U.S. 293, 66 S. Ct. 1100 (1946), and adopted by the Oklahoma Supreme Court in *State ex rel. Day v. Petco Oil & Gas, Inc.*, 1977 OK 4, 558 P.2d 1163. The four prongs of the *Howey* test, as restated in *Day* and now codified in the Act, are: (1) the investment of money, (2) in a common enterprise, (3) with the expectation of profits, (4) through the efforts of others.

The United States Supreme Court has stated that the definition of a security it adopted in *Howey* "embodies a flexible rather than a static principle, one that is capable of adaptation to meet the countless and variable schemes devised by those who seek the use of the money of others on the promise of profits." *Howey*, 328 U.S. at 299. The court in *Day* also adopted the flexible definition of investment contract under Oklahoma law. 558 P.2d at 1167.

The Ninth Circuit Court has found that a combined investment package of a CD issued by an FDIC-insured bank with an additional inducement to purchase the CD provided by a third party is an investment contract under federal law. *Safeway Portland Employees' Fed. Credit Union*, 501 F.2d at 1123. The *Safeway* court analyzed whether the "package," consisting of the CD and the incentive bonus, was a security using the *Howey* test and stated:

The district court was correct in concluding that the 'package' is a non-exempt investment contract. [The investor] was to receive 8 1/8% on its entire investment, without any further effort on its part. This return was dependent, at least in part, on the success of WagnerCo. Contrary to defendants' contention, [the investor] was led to expect profit as a result of WagnerCo's efforts in obtaining the issuance of the CDs and in completing the transaction whereby [the investor] would receive the bonus. Furthermore, the future payment of the bonus was dependent on the continued success and solvency of Wagner Co.

In rejecting the argument that the CD and added bonus transaction consisted of two separate parts, the *Safeway* court found:

Even if it be assumed that the CDs are not securities or that they are exempt securities, as defined in the Act, and that WagnerCo's indebtedness to [the investor] is a security, it does not follow that only the latter violated the Act. The combination of the two created an integrated investment package which must be viewed in its entirety in determining whether it is within or without the Act. This package differs fundamentally from the CDs issued by Bank in that there is a greater rate of return to [the investor]. WagnerCo's own ability to pay [the investor], an investment risk foreign to that associated with the CDs, is also an inherent part of the package. [Footnote omitted.]

Id.

Finally, the *Safeway* opinion brings to light a concluding similarity to the investment decision made by potential Firststar investors. The court points out that the nature of the economic inducement is of great significance. Firststar investors become interested in the investment package due to the interest rate that is only available to them with the added promotional incentive. Clearly, the interest rate advertised by Defendants is the inducement to invest and the only way to achieve the above-market rate is through the purchase of the CD supplemented by Firststar's incentive bonus.

The Investment Program Interests offered and/or sold by Defendants satisfy all prongs of the *Howey* test. First, there is an investment of money - money that comes from two sources. The money from investors is used to purchase a CD from a bank identified by Defendants and additional money is contributed by Defendants to achieve the advertised above-market rate.

Second, the Firststar investment involves a “common enterprise.” Section 1-102(32)(d) of the Act provides that a “‘common enterprise’ means an enterprise in which the fortunes of the investor are interwoven with those of either the person offering the investment, a third party, or other investors[.]” To obtain the interest rate promised by Defendants, the investor’s money must be combined with the promotional incentive provided by Defendants.

Third, the investor expects to receive profits in return - a specific percentage yield that is higher than that offered by the bank issuing the CD.

Fourth, any profits to be made by an investor are derived solely through the efforts of Defendants. The investor has no control over Defendants and is totally dependent on Defendants to identify the issuing banks and to pay the promotional incentive to achieve the advertised rate. Firststar’s ability to fund the additional bonus is essential for the investor to make the return promised by Defendants.

The Reiswig Case

Defendants rely heavily on *Reiswig v. Dep't of Corporations for State of California*, 144 Cal. App. 4th 327, 50 Cal. Rptr. 3d 386 (Cal. Ct. App. 2006), a case brought under California law, to show that a CD package similar to the Investment Program Interests is not a security. First, the *Reiswig* court only considered the package under the investment contract analysis. The court applied the *Howey* test and found that the investment was not an investment contract and therefore, not a security. In reaching its conclusion, the court created a “fifth element” in applying the *Howey* test, that is the payment of the bonus or expected profits must be made from the success of the enterprise. The court based this part of its holding on *Noa v. Key Futures, Inc.*, 638 F.2d 77 (9th Cir. 1980), in which the court found that purchasers of silver bars that would be stored for investors at no expense for one year did not constitute investment contracts because

investors did not rely on the managerial expertise or efforts of others to achieve the expected profits. Instead, such profits were actually dependent upon fluctuations in the silver market. This factual scenario is not analogous to the issue before this Court and the *Noa* case has no relevance to the issue.

The *Reiswig* court, and now Defendants, embellish certain facts from the *Safeway* case that the *Safeway* court never considered in finding the existence of an investment contract. In particular, the *Reiswig* court and Defendants over emphasize the brokers' solicitation of the borrowers willing to pay a premium to induce third parties to purchase CDs issued by the lending banks. However, such solicitations were not a basis for the *Safeway* decision finding the packaged CDs to be securities. The *Safeway* court stated: "[c]ontrary to defendants' contention, Credit Union was led to expect profit as the result of WagnerCo's efforts in obtaining the issuance of the CDs and in completing the transaction whereby Credit Union would receive the bonus." 501 F.2d at 1123. The *Reiswig* court effectively ignored the relevance of the required payment by the defendants to achieve the advertised rate of return.

Here, the *Reiswig* analysis is flawed in that the efforts of Firststar to (1) find the banking institutions offering the CDs at the highest market rates and (2) pay the incentive bonus are identical to the critical efforts identified by the court in *Safeway*. The efforts to find the CDs and to fund the promised profit are exclusively the responsibility of Defendants and outside the control of potential investors. While these actions require no specific expertise, they are essential to the investor receiving the promised profit from the purchase of the Investment Program Interests.

Finally, *Reiswig* is a case from the state of California and *Safeway* is a federal court decision. As previously stated, the Oklahoma Supreme Court has recognized that judicial

interpretations of the federal securities laws are instructive in interpreting this state's securities statutes. *Day v. Southwestern Mineral Energy, Inc, supra*. The *Safeway* case is a better reasoned opinion and should be given deference by this Court in finding the Investment Program Interests to be securities under Oklahoma law.

The Arkansas Case

Defendants also seek to distinguish a case filed by the Arkansas Department of Securities styled *In the Matter of Timothy Alonza Lilly, David Larry Puckett, Joe A. Richards, and First Fidelity Financial Group of Maumelle, LLC* (collectively "Arkansas First Fidelity"), Case No. S-08-043. Arkansas First Fidelity was conducting business in the same manner as Defendants as both Arkansas First Fidelity and Defendants are affiliated or associated with First Fidelity Financial Group, LLC, a Florida company that promotes the marketing concept involving the packaging of CDs with the promotional incentive. Arkansas First Fidelity placed advertising in the newspaper similar to that of Defendants that they were offering FDIC insured CDs with a higher than market interest rate. The company's advertisement contains fine print like Defendants stating a "promotional incentive may be included to obtain yield." In the Arkansas First Fidelity case, the hearing officer held that the Respondents offered, "a security in the form of an investment contract whereby potential investors were led to expect to make money based on the efforts of the Respondents to create a security paying 4.75% annual percentage yield from a bank-issued certificate of deposit paying less than a 4.75% annual percentage yield."

Investors in the Arkansas case were subject to two specific risk factors: (1) the possibility that Arkansas First Fidelity would not make the deposit of additional principal, and (2) the possibility that Arkansas First Fidelity would not make sufficient additional principal deposits to realize the promised return. Both risks are present with the Firststar Investment Program Interests.

Defendants argue that the Arkansas First Fidelity facts are distinguishable from the Firststar facts based on the sales techniques involved. The Department asserts that whether the Defendants employ “bait and switch” techniques in the sale of the Investment Program Interests, or whether investors are required to attend sales presentations, has no relevance to the consideration of whether the product sold by Defendants is a security.

The Eighth Circuit Court of Appeals has ruled that a CD issued by an FDIC-insured bank can be considered a security based on the manner of use. In *Olson v. E.F. Hutton & Co., Inc.*, 957 F.2d 622 (8th Cir. 1992), the court held that when the trustees of two employee benefit plans churned CDs, defined as selling CDs before maturity “in order to generate revenue from changes in the interest rate instead of being held to maturity (as is customary investment practice with regard to CDs), a risk is created that is not protected by banking regulations or the FDIC but which may be addressed by the application of securities laws.” *Id.* at 629. The Department contends that Defendants have created an instrument that is protected only in part by the FDIC, thereby introducing risk to purchasers of the Investment Program Interests and necessitating the protections afforded by the Act.

Purchasers of the Investment Program Interests make an investment of money in a common enterprise with the expectation of profits through the efforts of someone other than themselves; specifically the Defendants. The Investment Program Interests offered and/or sold by Defendants are investment contracts and, therefore, securities as defined by the Act.

C. Evidence of Indebtedness

Section 1-102(32) of the Act also defines a security to include an evidence of indebtedness. The Investment Program Interests are evidences of indebtedness as defined by the

Act. A CD is an evidence of indebtedness as stated in *S.E.C. v. Randy*, 38 F. Supp. 2d 657, 666 (N.D. Ill. 1999):

a security includes a “note” and any “evidence of indebtedness.” As the SEC correctly notes, a certificate of deposit is a specialized type of promissory note because it represents a promise to repay a principal amount, plus accrued interest at a specified rate, within a specified period of time on demand.

In *Safeway*, the court noted that even if the CD “package” was found not to be a security or exempt from registration, the agreement to pay the promotional incentive would in and of itself be an evidence of indebtedness and therefore a security. *Safeway* at 1123. The Investment Program Interests offered and/or sold by Defendants are evidences of indebtedness and, therefore, securities as defined by the Act.

D. Note

Section 1-102(32) of the Act also defines a security to include a note. As a result of the broad, general definition of the term “note,” a specialized test was declared by the United States Supreme Court in *Reves v. Ernst and Young*, 494 U.S. 56, 65, 110 S. Ct. 945, 951 (1990). In *Reves*, the Supreme Court held that the “family resemblance” test is to be used in deciding whether a note is a security. Under the *Reves* test, there is a presumption that a note or promise to pay in the future is a security. At the time of the offer of the Investment Program Interests, Defendants are making a promise to pay in the future. Therefore, contrary to Defendants contentions, the timing of the payment of the promotional incentive is not relevant.

The *Reves* Court stated that “it should always be remembered that Congress' purpose in enacting the securities laws was to regulate investments, no matter what the form or name given to the instruments used to facilitate a transaction.” *Reves*, 494 U.S. at 61. Clearly, the Investment Program Interests offered and/or sold by Defendants are notes and therefore, securities under the Act.

II.
**References to Houston, Texas News Reports
Have no Factual or Evidentiary Basis**

Defendants cite a Houston, Texas television news report to support their conclusion that the Firststar CD program is legal. In support of this proposition, Defendants quote excerpts by investigative reporter, Amy Davis, who prepared a story entitled "How Do You Know What's a Good Investment?" In the story, several comments by Denise Voigt Crawford, Commissioner of the Texas State Securities Board and President of the North American Securities Administrators' Association, are used regarding high yield CD programs. There is no mention of a company name in the story and no evidence that Ms. Crawford has ever reviewed the Firststar CD program. Comments about the legality of the Firststar CD program are actually made by Ms. Davis but Defendants attempt to attribute Ms. Davis' comments to Ms. Crawford. The references to Ms. Crawford's comments are taken completely out of context and the Department requests that the Court disregard consideration of Defendants' argument without direct testimony from Ms. Crawford after she has had an opportunity to consider the Firststar CD program at issue here.

III.
**Temporary Restraining Order was Proper and
Temporary Injunction is Necessary to Maintain the Status Quo**

The Temporary Order was properly granted by this Court on June 24, 2010, based on the Petition and Application for Temporary Order. See Exhibits "A" and "B." The Department obtained the order pursuant to statutory authorization. An action for an injunction is authorized by Section 1-603 of the Act that provides in pertinent part as follows:

A. If the Administrator believes that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this act or a rule adopted or order issued under this act or constituting a dishonest or unethical practice or that a person has, is, or is about to engage in an act, practice, or course of business that materially aids a violation of this act or a rule adopted or order issued under this act or a dishonest or unethical practice, the

Administrator may, prior to, concurrently with, or subsequent to an administrative proceeding, maintain an action in the district court of Oklahoma County or the district court of any other county where service can be obtained to enjoin the act, practice, or course of business and to enforce compliance with this act or a rule adopted or order issued under this act.

B. In an action under this section and on a proper showing, the court may:

1. Issue a permanent or temporary injunction, restraining order, or declaratory judgment[.]

It is well established that no showing of irreparable injury is required in such an action. *Bradford v. Sec. & Exch. Comm'n*, 278 F.2d 566 (9th Cir. 1960). The *Bradford* court stated, “even though, as appellant says, the government suffers no irreparable injury here, no such showing is required in these statutory actions.” The Oklahoma Court of Appeals incorporated the *Bradford* holding in *Oklahoma Sec. Comm'n ex rel. Day v. CFR Int'l, Inc.*, 1980 OK CIV APP 60, 622 P.2d 293. In this action against Defendants, the Administrator believed that Defendants had engaged, were engaging or were about to engage in violations of the Act and the Temporary Order was sought to prevent further violations of the Act.

Despite the defense that the A&O activities have ended, Defendant Hamilton continues to sell unregistered securities in the nature of the Investment Program Interests. Defendants are not and have never been registered to offer and sell securities under the Act. The A&O activities are indicative of the continuing nature of the securities violations of Defendant Hamilton. Despite the fact that the A&O activities may have concluded, the Department sought the Temporary Order based on the scope of unregistered and unlicensed activities of Defendants that violate the Act. The Department seeks the temporary injunction and rejects any request for bifurcation of this matter for the same reason.

The Temporary Order was validly issued and should be converted to a temporary injunction as requested by the Department in its Application for Temporary Order.

IV.
Defendants Filed Record of Accounting

In the Application to Vacate, Defendants requested this Court vacate the order for accounting included in the Temporary Order issued by this Court on June 24, 2010. However, on July 23, 2010, Defendants filed a Record of Accounting with supporting documentation with this Court. Thus, the application to vacate the order for accounting is moot as Defendants have produced records in accordance therewith.

CONCLUSION

For the reasons stated herein, the Plaintiff respectfully requests that this Court overrule the Defendants' Application to Vacate and issue a Temporary Injunction against Defendants.

Respectfully submitted,



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CERTIFICATE OF MAILING

The undersigned certifies that on the 13th day of August, 2010, a true and correct copy of the foregoing was mailed by first class mail, with postage prepaid thereon, addressed to:

P.R. Tirrell, Esq.
211 N. Broadway
PO Box 1432
Edmond, OK 73034

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Patricia A. LaBarthe

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OKLAHOMA COUNTY, OKLA.

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

JUN 24 2010

PATRICIA PRESLEY, COURT CLERK
by _____ DEPUTY

Oklahoma Department of Securities)
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Plaintiff,)

v.)

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Firststar Financial Group of Central)
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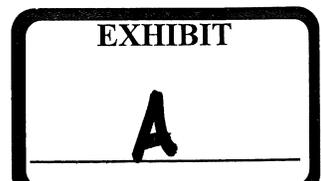
Defendants.)

**PETITION FOR PERMANENT INJUNCTION AND
OTHER EQUITABLE RELIEF**

COMES NOW the Plaintiff, Oklahoma Department of Securities, *ex rel.* Irving L. Faught (Department), and for its claims against the above-named Defendants, alleges and states as follows:

OVERVIEW

1. This case involves violations of the Oklahoma Uniform Securities Act of 2004 (Act), Okla. Stat. tit. 71, §§1-101 through 1-701 (Supp. 2009), by Firststar Financial Group of Central Oklahoma, LLC (formerly known as First Fidelity Financial Group of Oklahoma City, LLC); John Joseph Hamilton; and Robin L. Peck (collectively, "Defendants"). Specifically, the Department accuses Defendants of issuing, offering and selling unregistered securities in violation of Section 1-301 of the Act, failing to register as agents or employing unregistered agents in violation of Section 1-402 of the Act, and/or perpetrating a fraud in connection with the offer, sale or purchase of securities in violation of Section 1-501 of the Act.



JURISDICTION

2. The Administrator of the Department brings this action pursuant to Section 1-603 of the Act and is the proper party to bring this action against Defendants.

3. Pursuant to Sections 1-102 and 1-610 of the Act, Defendants, in connection with their activities in the offer, sale, and/or purchase of securities, are subject to the provisions of the Act. By virtue of their transaction of business by contract and otherwise and commission of other acts in this state, Defendants are subject to the jurisdiction of this Court and to service of summons within or outside of this state.

4. Defendants engaged in acts and practices in violation of the Act. Unless enjoined, they will continue to engage in the acts and practices set forth herein and acts and practices of similar purport and object.

DEFENDANTS

5. Firststar Financial Group of Central Oklahoma, LLC (formerly known as First Fidelity Financial Group of Oklahoma City, LLC) (Firststar) is an Oklahoma limited liability company domiciled in the state of Oklahoma. At all times material hereto, Firststar issued, offered and/or sold securities in and/or from Oklahoma as described herein.

6. John Joseph Hamilton (Hamilton), an Oklahoma resident, was licensed by the Oklahoma Insurance Commissioner, between March 2003 and March 2009, to sell life insurance and accident and health insurance. Hamilton is not currently licensed by the Oklahoma Insurance Commissioner to sell insurance in any capacity. Hamilton has not been registered in any capacity under the Act. Hamilton is the Managing Member of Firststar. At all times material hereto, Hamilton offered and/or sold securities in and/or from Oklahoma as described herein.

7. Robin L. Peck (Peck), an Oklahoma resident, is licensed by the Oklahoma Insurance Commissioner to sell life insurance and accident and health insurance. Peck has not been registered in any capacity under the Act. At times material hereto, Peck offered and/or sold securities in and/or from Oklahoma as described herein.

NATURE OF THE CASE

Firststar Investment Program

8. At times material hereto, Defendants Firststar and Hamilton have placed newspaper advertisements in *The Oklahoman* promoting certificates of deposit issued by FDIC-insured banks that purportedly offer the highest certificate of deposit rates in the country to investors (Firststar Investors). The advertisements also reference the availability of other “higher yielding tax deferred products” through Defendant Firststar. The most recent newspaper advertisement appeared on June 20, 2010.

9. The Firststar advertised rates on a three month certificate of deposit have ranged from five (5) to six (6) percent annual percentage yield (APY). Fine print in the advertisement states “Firststar Financial Group, LLC is a financial services firm that locates FDIC insured banks offering the highest CD yields nationwide.” The fine print also states “promotional incentive may be included to obtain yield.”

10. Defendant Firststar describes itself as an organization that focuses on the needs of the retired. While Defendant Firststar is not a state or federally insured financial institution, the entity brands itself as “Your Safe Money Solution®”.

11. Defendant Firststar is affiliated and/or associated with First Fidelity Financial Group, LLC located in the state of Florida (First Fidelity Florida). First Fidelity Florida promotes a marketing concept to entities across the country involving the packaging of FDIC-

insured bank certificates of deposit with promotional incentives that result in annual percentage yields higher than those offered by the issuing banks. First Fidelity Florida promotes this program as an inducement to obtain customers who may then purchase other products or services.

12. Defendant Firststar's promotional materials contain various representations including, but not limited to, the following:

- a. "Our objective is to provide you with financial instruments that can give you the peace of mind to enjoy your retirement – knowing that your funds are safe and secure."
- b. "At Firststar we follow the '3-P's' approach to investing" to wit: "Preservation of Principal . . . Provide the Best Possible Return . . . and Peace of Mind."
- c. "Firststar Financial wants to simplify your life. Retirement is a time to be enjoying the rewards of your life, so we spotlight investments that are predictable in terms of conserving principal and rate of return – certificates of deposit (CD's), savings accounts, money market accounts, fixed annuities, and other higher yielding accounts."

13. Most, if not all, of the certificates of deposit offered by Defendant Firststar are products of Discover Bank and Ally Bank. However, at no time material hereto, has Discover Bank or Ally Bank offered certificates of deposit with APY rates as high as those advertised by Firststar.

14. In order to achieve the yield advertised to Firststar Investors, Defendant Firststar must contribute additional cash (Promotional Incentives) to that paid by the Firststar Investors so

that such Firststar Investors will receive the advertised APY upon maturity of the certificates of deposit. The Promotional Incentives are funded by Defendant Firststar.

15. The interests in the Firststar investment program (Investment Program Interests) are not, and have never been, registered under the Act. The Investment Program Interests include the certificates of deposit with the Promotional Incentives.

16. Defendants Firststar and Hamilton (Firststar Defendants) made the following misrepresentations to purchasers of the Investment Program Interests:

- a. that certificates of deposit paying the advertised APY rate are available directly from and/or through an FDIC-insured bank; and/or
- b. that the advertised APY is offered by the issuing bank.

17. The Firststar Defendants omitted to state the following facts to purchasers of the Investment Program Interests:

- a. that purchasers of the Investment Program Interests cannot receive the advertised APY without the direct participation in, and control of, the transaction by the Firststar Defendants; and
- b. that banks issuing the certificates of deposit are not offering to pay and will not pay the advertised APY rate.

18. By reason of the foregoing, the Firststar Defendants, directly and indirectly, violated Sections 1-301, 1-402 and 1-501 of the Act.

A&O Appreciation Bonds

19. At times material hereto, Hamilton identified himself as “Managing Member” of A&O Life Funds, L.P.

20. Beginning in 2007, Hamilton and A&O Life Funds, L.P. hosted seminars for Oklahoma residents. A&O's invitations promoted each seminar as an "Accredited Investor Opportunity." The invitations described "[a]n extremely unique strategy for accredited and sophisticated investors to obtain true portfolio diversity without market risk or interest rate risk...." Various benefits were listed, to include (a) yields potentially higher than 12% to 15%; and (b) payments collateralized by "A" rated institutions.

21. The attendees at the seminars were offered potential investments in capital appreciation bonds issued by A&O Life Funds, L.P., and/or its affiliates (collectively, "A&O").

22. A&O described the capital appreciation bonds as "general obligations" of A&O "backed by bonded life insurance policies acquired for investment by [A&O]" (Capital Appreciation Bonds). A&O stated that Provident Capital Indemnity, Ltd. (Provident) was providing a surety bond as security for the Capital Appreciation Bonds.

23. A&O required all persons investing in the Capital Appreciation Bonds to be "accredited investors" as that term is defined under federal and state securities laws and regulations. Promotional materials used in connection with the offer of the Capital Appreciation Bonds state, *inter alia*, that the bonds should be purchased only by sophisticated persons who are able to bear the economic risk of the loss of their investment and who have limited need for liquidity.

24. The Capital Appreciation Bonds are not, and have not been, registered under the Act.

25. Defendants Hamilton and Peck (A&O Defendants) sold the Capital Appreciation Bonds issued by Life Fund 5.1 LLC, an A&O affiliate, to at least two Oklahoma residents (A&O

Investors). Neither were accredited investors nor able to bear the economic risk of the loss of their investments.

26. In completing the required subscription agreement to purchase the Capital Appreciation Bonds at the request of the A&O Defendants, the A&O Investors stated that they were not accredited investors.

27. The A&O Investors have not received interest payments of any amount.

28. In September of 2009, A&O Life Fund 5.1 LLC filed for bankruptcy protection under Chapter 11 in the Northern District of Illinois.

29. Since Provident was not registered to provide insurance or a surety bond, there was no valid surety bond against which the A&O Investors could file claims to recover their investment losses.

30. The A&O Defendants made the following misrepresentations to the A&O Investors:

- a. that the Capital Appreciation Bonds would pay interest at a rate of twelve percent (12%) per year with respect to one A&O Investor and fifteen percent (15%) with respect to another;
- b. that the Capital Appreciation Bonds were backed by a surety bond; and
- c. that the Capital Appreciation Bonds were more secure than bank investments.

31. The A&O Defendants omitted to state the following fact to the A&O Investors: that on November 6, 2006, the Texas Department of Insurance had issued an Emergency Cease and Desist Order against Provident for acting as an unregistered insurer or surety and for

committing unfair or deceptive acts or practices by selling, issuing, or administering fraudulent, false, or misleading insurance and/or engaging in the unauthorized business of insurance.

32. By reason of the foregoing, the A&O Defendants, directly and indirectly, violated Sections 1-301, 1-401 and 1-501 of the Act.

FIRST CAUSE OF ACTION

(Violation of Section 1-301 of the Act: Offer and/or Sale of Unregistered Securities)

33. Plaintiff realleges and incorporates by reference each and every allegation contained in paragraphs 1 through 32 above.

34. The Firststar Investment Program Interests are securities as defined by Section 1-102 of the Act.

35. The Capital Appreciation Bonds are securities as defined by Section 1-102 of the Act.

36. Defendants offered and sold the Investment Program Interests and/or the Capital Appreciation Bonds in and/or from Oklahoma.

37. The Investment Program Interests and/or Capital Appreciation Bonds offered and sold by Defendants are not and have not been registered under the Act nor have the Investment Program Interests and/or Capital Appreciation Bonds been offered or sold pursuant to an exemption from registration under Sections 1-201 through 1-203 of the Act.

38. By reason of the foregoing, Defendants have violated, are violating, and unless enjoined, will continue to violate Section 1-301 of the Act.

SECOND CAUSE OF ACTION

(Violation of Section 1-402 of the Act: Failure to Register as Agents and Employing Unregistered Agents)

39. Plaintiff realleges and incorporates by reference each and every allegation contained in the preceding cause of action.

40. Firststar is an issuer as defined in Section 1-102 of the Act.

41. A&O is an issuer as defined by Section 1-102 of the Act.

42. Defendant Hamilton, by virtue of his efforts and activities in representing Firststar in effecting or attempting to effect purchases or sales of its securities, is an agent as defined in Section 1-102 of the Act.

43. Defendants Hamilton and Peck, by virtue of their efforts and activities in representing A&O in effecting or attempting to effect purchases or sales of its securities, are agents as defined by Section 1-102 of the Act.

44. Defendants Hamilton and Peck are not registered under the Act as agents. Defendants Hamilton and Peck transacted and are transacting business in this state as agents without benefit of registration under the Act.

45. Firststar employed unregistered agents.

46. By reason of the foregoing, Defendants have violated, are violating, and unless enjoined, will continue to violate Section 1-402 of the Act.

THIRD CAUSE OF ACTION

(Violation of Section 1-501 of the Act: Untrue Statements of Material Fact and Omissions of Material Fact in Connection With Offer, Sale or Purchase of Securities)

47. Plaintiff realleges and incorporates by reference each and every allegation contained in the preceding causes of action.

48. As described in paragraph 16 above, the Firststar Defendants, in connection with the offer and/or sale of the Firststar securities, directly and indirectly, have made, and are making, untrue statements of material fact.

49. As described in paragraph 17 above, the Firststar Defendants, in connection with the offer and/or sale of the Firststar securities, directly and indirectly, omitted and are omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were and are made, not misleading.

50. As described in paragraph 30 above, the A&O Defendants, in connection with the offer and/or sale of the Capital Appreciation Bonds, directly and indirectly, have made, and are making, untrue statements of material fact.

51. As described in paragraph 31 above, the A&O Defendants, in connection with the offer and/or sale of the Capital Appreciation Bonds, directly and indirectly, omitted and are omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were and are made, not misleading.

52. By reason of the foregoing, Defendants, directly and/or indirectly, have violated, are violating, and unless enjoined, will continue to violate Section 1-501 of the Act.

FOURTH CAUSE OF ACTION

**(Violation of Section 1-501 of the Act:
Engaging in any Act, Practice, or Course of Business Which Operates or
Would Operate as a Fraud or Deceit upon any Person)**

53. Plaintiff realleges and incorporates by reference each and every allegation contained in the preceding causes of action.

54. The Firststar Defendants, in connection with the offer, sale or purchase of securities, and through the misrepresentations and omissions of material fact described in

paragraphs 16 and 17 above, have engaged and are engaging in an act, practice, or course of business that has operated and continues to operate as a fraud or deceit upon other persons.

55. By reason of the foregoing, the Firststar Defendants, directly and indirectly, have violated, are violating, and unless enjoined, will continue to violate Section 1-501 of the Act.

56. The A&O Defendants, in connection with the offer, sale or purchase of securities, and through the misrepresentations and omissions of material fact described in paragraphs 30 and 31 above, have engaged and are engaging in an act, practice, or course of business that has operated and continues to operate as a fraud or deceit upon other persons.

57. By reason of the foregoing, the A&O Defendants, directly and indirectly, have violated, are violating, and unless enjoined, will continue to violate Section 1-501 of the Act.

PRAYER FOR RELIEF

Defendants engaged in acts and practices in violation of the Act and, as a result of these activities, received a substantial amount of money from Investors.

WHEREFORE, based upon the foregoing, and pursuant to the authority specifically granted by Section 1-603 of the Act, the Department prays for the Court to grant the following relief:

I.

A temporary restraining order to issue *instanter* and temporary and permanent injunctions, restraining and enjoining the Defendants, their agents, servants, employees, assigns and all those persons, directly or indirectly, acting on their behalf, under their direction and control, and/or in active concert or participation with them, who receive actual notice of the restraining order or temporary and/or permanent injunctions, by personal service, facsimile or otherwise, and each of them from offering and selling any security in and/or from this state

including, but not limited to, the Investment Program Interests and/or Capital Appreciation Bonds;

II.

An order prohibiting Defendants, their affiliates, agents, servants, employees, assigns and all those persons, directly or indirectly, acting on their behalf, who receive actual notice of the order, by personal service, facsimile or otherwise, and each of them from tampering with, mutilating, altering, fabricating, erasing, concealing, removing, destroying or otherwise disposing of any and all books, records, documents, files, correspondence, computer disks, tapes or other data recordings of any type, pertaining to or referring to Defendants;

III.

An order requiring Defendants to make restitution to any and all Firststar and/or A&O Investors who purchased securities from Defendants or who transferred money to Defendants for the purpose of making investments on their behalf; and

IV.

An order *instanter* requiring Defendants to create, file with this Court and to serve on Plaintiff, within fifteen (15) days of the filing of this Petition, an accounting or other similar report, under oath, detailing all of the assets acquired and/or disposed of during the period beginning January 2007 through the present, and detailing all funds received from the Firststar Investors and/or the A&O Investors by name, date and amount, and the disposition and/or use of those funds by recipient, date and amount, and all documentation supporting the report;

V.

An order imposing a civil penalty against Defendants in the amount of Fifty Thousand Dollars (\$50,000.00) each; and

VI.

Such other equitable relief as the Court may deem necessary, just and proper in connection with the enforcement of the Act.

Respectfully submitted,

OKLAHOMA DEPARTMENT OF SECURITIES
Irving L. Faught, Administrator

By: Patricia A. Labarthe
Patricia A. Labarthe, OBA #10391
Jennifer Shaw, OBA #20839
Oklahoma Department of Securities
120 North Robinson, Suite 860
Oklahoma City, Oklahoma 73102
Telephone (405) 280-7700
Fax (405) 280-7742

STATE OF OKLAHOMA)
)
COUNTY OF OKLAHOMA) SS.

Irving Faught, of lawful age, being first duly sworn deposes and says: that he is the Administrator of the Oklahoma Department of Securities, that he has read the foregoing Petition for Permanent Injunction and Other Equitable Relief and knows the contents thereof, and that the matters and things stated therein have been provided to him by staff members of the Department under his authority and direction, and are true and correct to the best of his knowledge, information and belief.

(SEAL)



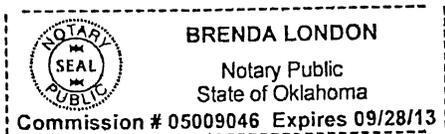
Irving L. Faught, ADMINISTRATOR OF THE
OKLAHOMA DEPARTMENT OF SECURITIES
120 North Robinson, Suite 860
Oklahoma City, Oklahoma 73102
(405) 280-7700

Subscribed and sworn to before me this 23rd day of June, 2010.

(NOTARIAL SEAL)



Notary Public



IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

JUN 24 2010

PATRICIA PRESLEY, COURT CLERK
by _____
DEPUTY

Oklahoma Department of Securities)
<i>ex rel.</i> Irving L. Faught,)
Administrator,)
)
Plaintiff,)
)
v.)
)
Firststar Financial Group of Central)
Oklahoma, LLC, an Oklahoma limited)
liability company; John Joseph Hamilton,)
an individual; and Robin L. Peck,)
an individual,)
)
Defendants.)

Case No. **CJ - 2010 - 5 2 6 8**

APPLICATION FOR TEMPORARY RESTRAINING ORDER,
ORDER FOR ACCOUNTING AND TEMPORARY INJUNCTION

The Oklahoma Department of Securities *ex rel.* Irving L. Faught, Administrator (“Department”), respectfully submits this application for a temporary restraining order against Defendants Firststar Financial Group of Central Oklahoma, LLC (formerly known as First Fidelity Financial Group of Oklahoma City, LLC); John Joseph Hamilton; and Robin L. Peck (collectively, “Defendants”); and an order for an accounting, and the records to support such accounting, to be prepared by or on behalf of the Defendants (“Accounting”), pursuant to the Oklahoma Uniform Securities Act of 2004 (“Act”), Okla. Stat. tit. 71, §§1-101 through 1-701 (Supp. 2009). The Department petitions this Court to halt further violations of the Act, to protect the rights of the Department in its obligation to safeguard the public interest, to prevent any dissipation or loss of investor funds and property, and to remedy acts that Defendants have already committed.

The Department moves this Court to issue *instanter* a temporary restraining order, and an order for the Accounting by the Defendants, until the Court may afford the parties a hearing, and



additionally moves for the entry of a temporary injunction at such hearing against Defendants. The entry of such orders are necessary for the reasons set forth below, to preserve the *status quo* and to protect the Department's rights in enforcing the Act.

I. THE DEFENDANTS

Firststar Financial Group of Central Oklahoma, LLC (formerly known as First Fidelity Financial Group of Oklahoma City, LLC) (Firststar) is an Oklahoma limited liability company domiciled in the state of Oklahoma. At all times material hereto, Firststar issued, offered and/or sold securities in and/or from Oklahoma as described herein.

John Joseph Hamilton (Hamilton), an Oklahoma resident, was licensed by the Oklahoma Insurance Commissioner, between March 2003 and March 2009, to sell life insurance and accident and health insurance. Hamilton is not currently licensed by the Oklahoma Insurance Commissioner to sell insurance in any capacity. Hamilton has not been registered in any capacity under the Act. Hamilton is the Managing Member of Firststar. At all times material hereto, Hamilton offered and/or sold securities in and/or from Oklahoma as described herein.

Robin L. Peck (Peck), an Oklahoma resident, is licensed by the Oklahoma Insurance Commissioner to sell life insurance and accident and health insurance. Peck has not been registered in any capacity under the Act. At times material hereto, Peck offered and/or sold securities in and/or from Oklahoma as described herein.

II. NATURE OF THE CASE

Firststar Investment Program

At times material hereto, Defendants Firststar and Hamilton have placed newspaper advertisements in *The Oklahoman* promoting certificates of deposit issued by FDIC-insured banks that purportedly offer the highest certificate of deposit rates in the country to investors

(Firststar Investors). The advertisements also reference the availability of other “higher yielding tax deferred products” through Defendant Firststar. The most recent newspaper advertisement appeared on June 20, 2010.

The Firststar advertised rates on a three month certificate of deposit have ranged from five (5) to six (6) percent annual percentage yield (APY). Fine print in the advertisement states “Firststar Financial Group, LLC is a financial services firm that locates FDIC insured banks offering the highest CD yields nationwide.” The fine print also states “promotional incentive may be included to obtain yield.”

Defendant Firststar describes itself as an organization that focuses on the needs of the retired. While Defendant Firststar is not a state or federally insured financial institution, the entity brands itself as “Your Safe Money Solution®”.

Defendant Firststar is affiliated and/or associated with First Fidelity Financial Group, LLC located in the state of Florida (First Fidelity Florida). First Fidelity Florida promotes a marketing concept to entities across the country involving the packaging of FDIC-insured bank certificates of deposit with promotional incentives that result in annual percentage yields higher than those offered by the issuing banks. First Fidelity Florida promotes this program as an inducement to obtain customers who may then purchase other products or services.

Defendant Firststar’s promotional materials contain various representations including, but not limited to, the following:

- a. “Our objective is to provide you with financial instruments that can give you the peace of mind to enjoy your retirement – knowing that your funds are safe and secure.”
- b. “At Firststar we follow the ‘3-P’s’ approach to investing” to wit: “Preservation of Principal . . . Provide the Best Possible Return . . . and Peace of Mind.”

- c. “Firststar Financial wants to simplify your life. Retirement is a time to be enjoying the rewards of your life, so we spotlight investments that are predictable in terms of conserving principal and rate of return – certificates of deposit (CD’s), savings accounts, money market accounts, fixed annuities, and other higher yielding accounts.”

Most, if not all, of the certificates of deposit offered by Defendant Firststar are products of Discover Bank and Ally Bank. However, at no time material hereto, has Discover Bank or Ally Bank offered certificates of deposit with APY rates as high as those advertised by Firststar.

In order to achieve the yield advertised to Firststar Investors, Defendant Firststar must contribute additional cash (Promotional Incentives) to that paid by the Firststar Investors so that such Firststar Investors will receive the advertised APY upon maturity of the certificates of deposit. The Promotional Incentives are funded by Defendant Firststar.

The interests in the Firststar investment program (Investment Program Interests) are not, and have never been, registered under the Act. The Investment Program Interests include the certificates of deposit with the Promotional Incentives.

Defendants Firststar and Hamilton (Firststar Defendants) made the following misrepresentations to purchasers of the Investment Program Interests:

- a. that certificates of deposit paying the advertised APY rate are available directly from and/or through an FDIC-insured bank; and/or
- b. that the advertised APY is offered by the issuing bank.

The Firststar Defendants omitted to state the following facts to purchasers of the Investment Program Interests:

- a. that purchasers of the Investment Program Interests cannot receive the advertised APY without the direct participation in, and control of, the transaction by the Firststar Defendants; and
- b. that banks issuing the certificates of deposit are not offering to pay and will not pay the advertised APY rate.

By reason of the foregoing, the Firststar Defendants, directly and indirectly, violated Sections 1-301, 1-402 and 1-501 of the Act.

A&O Appreciation Bonds

At times material hereto, Hamilton identified himself as “Managing Member” of A&O Life Funds, L.P.

Beginning in 2007, Hamilton and A&O Life Funds, L.P. hosted seminars for Oklahoma residents. A&O’s invitations promoted each seminar as an “Accredited Investor Opportunity.” The invitations described “[a]n extremely unique strategy for accredited and sophisticated investors to obtain true portfolio diversity without market risk or interest rate risk....” Various benefits were listed, to include (a) yields potentially higher than 12% to 15%; and (b) payments collateralized by “A” rated institutions.

The attendees at the seminars were offered potential investments in capital appreciation bonds issued by A&O Life Funds, L.P., and/or its affiliates (collectively, “A&O”).

A&O described the capital appreciation bonds as “general obligations” of A&O “backed by bonded life insurance policies acquired for investment by [A&O]” (Capital Appreciation Bonds). A&O stated that Provident Capital Indemnity, Ltd. (Provident) was providing a surety bond as security for the Capital Appreciation Bonds.

A&O required all persons investing in the Capital Appreciation Bonds to be “accredited investors” as that term is defined under federal and state securities laws and regulations.

Promotional materials used in connection with the offer of the Capital Appreciation Bonds state, *inter alia*, that the bonds should be purchased only by sophisticated persons who are able to bear the economic risk of the loss of their investment and who have limited need for liquidity.

The Capital Appreciation Bonds are not, and have not been, registered under the Act.

Defendants Hamilton and Peck (A&O Defendants) sold the Capital Appreciation Bonds issued by Life Fund 5.1 LLC, an A&O affiliate, to at least two Oklahoma residents (A&O Investors). Neither were accredited investors nor able to bear the economic risk of the loss of their investments.

In completing the required subscription agreement to purchase the Capital Appreciation Bonds at the request of the A&O Defendants, the A&O Investors stated that they were not accredited investors.

The A&O Investors have not received interest payments of any amount.

In September of 2009, A&O Life Fund 5.1 LLC filed for bankruptcy protection under Chapter 11 in the Northern District of Illinois.

Since Provident was not registered to provide insurance or a surety bond, there was no valid surety bond against which the A&O Investors could file claims to recover their investment losses.

The A&O Defendants made the following misrepresentations to the A&O Investors:

- a. that the Capital Appreciation Bonds would pay interest at a rate of twelve percent (12%) per year with respect to one A&O Investor and fifteen percent (15%) with respect to another;
- b. that the Capital Appreciation Bonds were backed by a surety bond; and
- c. that the Capital Appreciation Bonds were more secure than bank investments.

The A&O Defendants omitted to state the following fact to the A&O Investors: that on November 6, 2006, the Texas Department of Insurance had issued an Emergency Cease and Desist Order against Provident for acting as an unregistered insurer or surety and for committing unfair or deceptive acts or practices by selling, issuing, or administering fraudulent, false, or misleading insurance and/or engaging in the unauthorized business of insurance.

By reason of the foregoing, the A&O Defendants, directly and indirectly, violated Sections 1-301, 1-401 and 1-501 of the Act.

III. VIOLATIONS OF THE ACT

A. Violation of Section 1-301 of the Act: Offer and/or Sale of Unregistered Securities

The Firstar Investment Program Interests are securities as defined by Section 1-102 of the Act.

The Capital Appreciation Bonds are securities as defined by Section 1-102 of the Act.

Defendants offered and sold the Investment Program Interests and/or the Capital Appreciation Bonds in and/or from Oklahoma.

The Investment Program Interests and/or Capital Appreciation Bonds offered and sold by Defendants are not and have not been registered under the Act nor have the Investment Program Interests and/or Capital Appreciation Bonds been offered or sold pursuant to an exemption from registration under Sections 1-201 through 1-203 of the Act.

By reason of the foregoing, Defendants have violated, are violating, and unless enjoined, will continue to violate Section 1-301 of the Act.

**B. Violation of Section 1-402 of the Act:
Failure to Register as Agents and Employing Unregistered Agents**

Firststar is an issuer as defined in Section 1-102 of the Act.

A&O is an issuer as defined by Section 1-102 of the Act.

Defendant Hamilton, by virtue of his efforts and activities in representing Firststar in effecting or attempting to effect purchases or sales of its securities, is an agent as defined in Section 1-102 of the Act.

Defendants Hamilton and Peck, by virtue of their efforts and activities in representing A&O in effecting or attempting to effect purchases or sales of its securities, are agents as defined by Section 1-102 of the Act.

Defendants Hamilton and Peck are not registered under the Act as agents. Defendants Hamilton and Peck transacted and are transacting business in this state as agents without benefit of registration under the Act.

Firststar employed unregistered agents.

By reason of the foregoing, Defendants have violated, are violating, and unless enjoined, will continue to violate Section 1-402 of the Act.

**C. Violation of Section 1-501 of the Act:
Untrue Statements of Material Fact and Omissions of Material Fact
in Connection with the Offer, Sale or Purchase of Securities**

As described above, the Firststar Defendants, in connection with the offer and/or sale of the Firststar securities, directly and indirectly, have made, and are making, untrue statements of material fact.

As described above, the Firststar Defendants, in connection with the offer and/or sale of the Firststar securities, directly and indirectly, omitted and are omitting to state material facts

necessary in order to make the statements made, in light of the circumstances under which they were and are made, not misleading.

As described above, the A&O Defendants, in connection with the offer and/or sale of the Capital Appreciation Bonds, directly and indirectly, have made, and are making, untrue statements of material fact.

As described above, the A&O Defendants, in connection with the offer and/or sale of the Capital Appreciation Bonds, directly and indirectly, omitted and are omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were and are made, not misleading.

By reason of the foregoing, Defendants have violated, are violating, and unless enjoined, will continue to violate Section 1-501 of the Act.

**D. Violation of Section 1-501 of the Act:
Engaging in any Act, Practice, or Course of Business that Operates
or Would Operate as a Fraud or Deceit upon any Person**

The Firststar Defendants, in connection with the offer, sale or purchase of securities, and through the misrepresentations and omissions of material fact described above, have engaged and are engaging in an act, practice, or course of business that has operated and continues to operate as a fraud or deceit upon other persons.

By reason of the foregoing, the Firststar Defendants, directly and indirectly, have violated, are violating, and unless enjoined, will continue to violate Section 1-501 of the Act.

The A&O Defendants, in connection with the offer, sale or purchase of securities, and through the misrepresentations and omissions of material fact described above, have engaged and are engaging in an act, practice, or course of business that has operated and continues to operate as a fraud or deceit upon other persons.

By reason of the foregoing, the A&O Defendants, directly and indirectly, have violated, are violating, and unless enjoined, will continue to violate Section 1-501 of the Act.

PRAYER FOR RELIEF

IV. NEED FOR TEMPORARY RESTRAINING ORDER, ACCOUNTING AND TEMPORARY INJUNCTION

Temporary Restraining Order

Section 1-603 of the Act provides:

A. If the Administrator believes that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this act or a rule adopted or order issued under this act or constituting a dishonest or unethical practice or that a person has, is, or is about to engage in an act, practice, or course of business that materially aids a violation of this act or a rule adopted or order issued under this act or a dishonest or unethical practice, the Administrator may, prior to, concurrently with, or subsequent to an administrative proceeding, maintain an action in the district court of Oklahoma County or the district court of any other county where service can be obtained to enjoin the act, practice, or course of business and to enforce compliance with this act or a rule adopted or order issued under this act.

B. In an action under this section and on a proper showing, the court may:

1. Issue a permanent or temporary injunction, restraining order, or declaratory judgment;

2. Order other appropriate or ancillary relief, which may include:

a. an asset freeze, accounting, writ of attachment, writ of general or specific execution, and appointment of a receiver or conservator, that may be the Administrator, for the defendant or the defendant's assets,

b. ordering the Administrator to take charge and control of a defendant's property, including investment accounts and accounts in a depository institution, rents, and profits; to collect debts; and to acquire and dispose of property,

c. imposing a civil penalty up to a maximum of Five Thousand Dollars (\$5,000.00) for a single violation or up to Two Hundred Fifty Thousand Dollars (\$250,000.00) for more than one violation; an order of rescission, restitution, or disgorgement directed to a person that has engaged in an act, practice, or course of business

constituting a violation of this act or the predecessor act or a rule adopted or order issued under this act or the predecessor act, and

d. ordering the payment of prejudgment and postjudgment interest;
or

3. Order such other relief as the court considers appropriate.

A temporary restraining order has the object of preserving the *status quo*, in order to prevent irreparable injury, until such time as the Court may make a determination on Plaintiff's application for temporary injunction. *Granny Goose Foods, Inc. v. Brotherhood of Teamsters*, 415 U.S. 423, 439, 94 S.Ct. 1113, 1124 (1974); *Morse v. Earnest, Inc.*, 547 P.2d 955 (Okla. 1976). Issuing a temporary restraining order is in the public interest when the failure to grant the relief would allow dishonest businesses and individuals to take advantage of vulnerable investors. The protection of the public interest is paramount in this matter.

Defendants have engaged in acts and practices in violation of the Act and have, as a result of these activities, received a substantial amount of money from Investors. A danger exists that the money received from the Investors and/or held by Defendants will be lost, removed or transferred. A temporary restraining order to issue *instanter* against Defendants is necessary to preserve these funds, securities, and the records relating thereto, and to prevent further violations of the Act.

In addition, no injury will befall Defendants by granting such relief since Defendants have no right to act in the state of Oklahoma in violation of the Act, to include engaging in fraudulent conduct in connection with securities activities. The interference with Defendants' rights by granting the temporary restraining order will be minimal, if any, while protecting the public from immediate and irreparable injury or loss.

B. Accounting

Section 1-603 of the Act specifically grants this Court the power to fashion appropriate equitable relief to provide effective enforcement of the Act. Once the equity powers of the court are invoked, the court possesses the power to fashion appropriate interim remedies. *SEC v. Manor Nursing Centers*, 458 F. 2d 1082, 1103 (2nd Cir. 1972). Within the equity power of the court is the authority to order an accounting by the Defendants. *SEC v. R.J. Allen & Associates*, 386 F. Supp. 866, 880 (S.D.N.Y. 1974); *SEC v. Manor Nursing Centers, supra* at 1103-1104.

Defendants make use of untrue statements of material fact and omit to state material facts as alleged in Plaintiff's verified petition, in violation of Section 1-501 of the Act. The whereabouts of all of the money raised by Defendants through violations of the Act is not known at this time. These circumstances make it necessary that the Defendants account for the money raised through violations of the Act so as to protect Investors and to provide effective relief.

C. Temporary Injunction

Once the plaintiff has shown the defendants' past conduct is in violation of the Act, the proper test for the issuance of a statutory injunction is whether there is a reasonable expectation of future violations by defendants. *SEC v. Manor Nursing Centers, Inc., supra*; *SEC v. Culpepper*, 270 F.2d 241, 249 (2^d Cir. 1959). In considering this issue, past illegal conduct is strong support for the likelihood of future violations. *Oklahoma Securities Commission v. CFR International, Inc.*, 622 P.2d 293, 295 (Okla. Ct. App. 1980) (citing *Bradford v. SEC*, 278 F.2d 566 (9th Cir. 1960)). Here, the Defendants have violated the Act which creates a presumption of likelihood of future violations. Because the Plaintiff has conclusively demonstrated the existence of past violations, injunctive relief is appropriate and the burden of showing there is no reasonable expectation of future violations will shift to the Defendants and their burden "is a

heavy one.” *SEC v. Culpepper, supra; Oklahoma Securities Commission v. CFR International, Inc., supra.*

Unlike private actions for injunctions, the Department’s action is based on statute and no showing of irreparable injury or the inadequacy of other remedies is required. *Oklahoma Securities Commission v. CFR International, Inc., supra.* Although not required, the Department has also shown that the public will suffer irreparable injury if Defendants are not enjoined from further violations of the Act.

D. An *Ex Parte* Order Should be Issued

While courts have been cautious with the use of *ex parte* orders, they are approved in appropriate cases where a party may suffer irreparable harm during the time required to give notice to the opposite party. *SEC v. Bravata, 2009 WL 224564 (E.D. Mich).* The Department alleges facts that demonstrate a strong likelihood of ongoing violations of the Act by Defendants.

In addition, there is a great risk that Defendants will continue to perpetuate their activity of fraudulently offering and/or selling unregistered securities. Providing notice of this action to Defendants could lead to irreparable harm because the notice might stimulate the very actions the restraining order is intended to prevent. *Id* at *2. The issuance of a temporary restraining order *instanter*, and an order for an accounting by the Defendants will help maximize the relief to Investors and the protection of the public interest.

V. Conclusion

The Department, pursuant to Section 1-602 of the Act, conducted an investigation into Defendants’ activities in and/or from the state of Oklahoma. The investigation produced evidence that clearly indicates Defendants have issued, offered and/or sold unregistered securities in and/or from this state. Such activity is continuing. The investigation also revealed that Defendants, in connection with the offer, sale and/or purchase of securities: (1) made, and

are making, untrue statements of material fact; (2) omitted, and are omitting, to state certain material facts; and (3) engaged, and are engaging, in a course of business that has operated as a fraud or deceit upon other persons. Defendants have engaged and are engaging in substantial violations of the Act, including fraudulent practices. The Department submits that the evidence firmly establishes a *prima facie* case for the issuance of a temporary restraining order, an order for an accounting, and a temporary injunction.

In light of the facts presented and the authorities cited, the Department respectfully requests that this Court issue an order for an accounting, and a temporary restraining order, until such time as the Court may afford the parties a hearing on the Plaintiff's motion for temporary injunction, all to halt Defendants' unlawful practices and to provide effective relief to Investors and to the Department.

Respectfully submitted,

OKLAHOMA DEPARTMENT OF SECURITIES
Irving L. Faught, Administrator

By: Patricia A. Labarthe
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IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

JUN 24 2010

PATRICIA PRESLEY, COURT CLERK
by _____
DEPUTY

Oklahoma Department of Securities)
ex rel. Irving L. Faught,)
Administrator,)
)
Plaintiff,)
)
v.)
)
Firststar Financial Group of Central)
Oklahoma, LLC, an Oklahoma limited)
liability company; John Joseph Hamilton,)
an individual; and Robin L. Peck,)
an individual,)
)
Defendants.)

Case No. CS-2010-5268

TEMPORARY RESTRAINING ORDER AND ORDER FOR ACCOUNTING

This matter came on for hearing this 24 day of June, 2010, before the undersigned Judge of the District Court in and for Oklahoma County, State of Oklahoma, upon the verified *Petition for Permanent Injunction and Other Equitable Relief* of the Plaintiff ("Petition") and the application for a temporary restraining order and an order for accounting, both filed pursuant to the Oklahoma Uniform Securities Act of 2004 (Act), Okla. Stat. tit. 71, §§1-101 through 1-701 (Supp. 2009).

It appears to this Court from the facts alleged in the Petition that Plaintiff is entitled to the relief requested; it further appears that the public will suffer irreparable damage and injury unless the Defendants, their officers, directors, agents, and other individuals acting on their behalf and under their direction and control, are restrained forthwith and without notice. The irreparable injury to be suffered by Plaintiff is the continued violations of the Act by Defendants if not temporarily restrained.



IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendants, their agents, servants, employees, assigns, and those persons acting on their behalf, under their direction and control and/or in active concert or participation with them who receive actual notice of this Order, by personal service, facsimile or otherwise, be and hereby are, and until further notice of this Court, restrained from offering and selling any security in and/or from this state including, but not limited to, the Firststar Investment Program Interests and/or the A&O Capital Appreciation Bonds.

IT IS FURTHER ORDERED that Defendants, their affiliates, agents, servants, employees, assigns and all those persons, directly or indirectly, acting on their behalf, under their direction and control, and/or in active concert or participation with them who receive actual notice of this Order, by personal service, facsimile or otherwise, be and hereby are, and until further notice of this Court, restrained from tampering with, mutilating, altering, fabricating, erasing, concealing, removing, destroying or otherwise disposing of any and all books, records, documents, files, correspondence, computer disks, tapes or other data recordings of any type, pertaining to or referring to Defendants or any transactions by Defendants or to which Defendants were parties.

IT IS FURTHER ORDERED that Defendants create, file with this Court and serve on Plaintiff, within fifteen (15) days of the filing of this Petition, an accounting or other similar record, under oath, detailing all of the assets acquired and/or disposed of by each Defendant during the period beginning January 2007 through the present, and detailing all funds received from the Firststar Investors and/or the A&O Investors by name, date and amount, and the disposition and/or use of those funds by recipient, date and amount, and all documentation supporting the contents of such receipts and disbursements.

IT IS FURTHER ORDERED that, except by leave of Court during the pendency of this action, all creditors and other persons seeking money, damages or other relief from Defendants, and all others acting on behalf of any such creditor or other persons, including sheriffs, marshals, and other officers and their deputies, and their respective attorneys, servants, agents, and employees, are hereby stayed and restrained from doing any act or thing whatsoever to interfere in any manner during the pendency of this proceeding with the exclusive jurisdiction of this Court over Defendants. This Order shall not stay or restrain any pending or future action whatsoever by any government agency or any representative on behalf of any government.

IT IS FURTHER ORDERED that the Defendants shall provide notice of this Order to each of their affiliates, successors, directors, officers, and each of their employees, salespersons, representatives and independent contractors.

IT IS FURTHER ORDERED that a hearing is hereby set at 9:00 a.m. on the 14 day of July, 2010, before the Honorable Daniel L. Owens of the Oklahoma County District Court, Oklahoma County Courthouse, Oklahoma City, Oklahoma, at which time the Defendants may seek the dissolution of this Temporary Restraining Order and Order for Accounting and the Plaintiff may seek a temporary injunction and other equitable relief.

THIS ORDER IS ENTERED this 24 day of June, 2010, at 11:00, a.m.

WICKI ROBERTSON

DISTRICT COURT JUDGE

per Judge Owens

I, PATRICIA PRESLEY, Court Clerk for Oklahoma County, Okla., hereby certify that the foregoing is a true, correct and complete copy of the instrument herewith set out as appears of record in the District Court Clerk's Office of Oklahoma County, Okla., this 24 day of JUN, 2010.

By PATRICIA PRESLEY, Court Clerk Deputy