

1 **BEFORE THE DIRECTOR OF THE DEPARTMENT OF**
2 **CONSUMER AND BUSINESS SERVICES**
 STATE OF OREGON

3 In the Matter of:

4 CRAIG BERKMAN,

5 Respondent.
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) **No. O-98-0024**

) **STIPULATED AMENDED ORDER TO**
) **CEASE AND DESIST, DENYING**
) **EXEMPTIONS, and ASSESSING CIVIL**
) **PENALTIES**

) **AND**
) **STIPULATION AND CONSENT TO**
) **ENTRY OF ORDER BY RESPONDENT**

9 **WHEREAS**, the Director of the Department of Consumer and Business
10 Services for the State of Oregon (hereafter the "Director"), acting by and pursuant to
11 the authority of the Oregon Securities Law, Chapter 59 of the Oregon Revised Statutes
12 (hereinafter cited as ORS Chapter 59), and other applicable authority, has a pending
13 investigation into the activities of Craig Berkman (hereafter "Respondent");

14 **WHEREAS**, Respondent, without admitting or denying the allegations by the
15 Director, wishes to avoid the time and expense of further investigation and an action
16 by or before the Director and desires to obtain disposition of this matter without
17 invoking any rights to a hearing before the Director;

18 **WHEREAS**, Respondent is represented by legal counsel and has
19 acknowledged fully reading and understanding the contents of this Stipulated
20 Amended Order to Cease and Desist, Denying Exemptions, and Assessing Civil
21 Penalties (hereafter the "Amended Order"), and has waived any right to a hearing with
22 respect to this matter and to challenge or appeal this Amended Order;

23 **WHEREAS**, Respondent has consented to the jurisdiction of the Director of the
24 Department of Consumer and Business Services, State of Oregon for the purpose of
25 this Order and the issuance thereof;

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WHEREAS, Respondent has been notified and understands that a violation of this Order will potentially subject Respondent to the assessment of a further civil penalty or other action against Respondent by the Director;

WHEREAS, this Amended Order hereby amends and clarifies the Order issued on November 18, 1998 described in paragraph four of the Findings of Fact set forth below;

NOW, THEREFORE, the Director hereby makes the following Findings of Fact and Conclusions of Law, which Respondent neither admits nor denies, and issues the following Order, to which Respondent has consented, as is evidenced by the signature of Respondent in the Stipulation and Consent to Entry of Amended Order attached hereto.

FINDINGS OF FACT

The Director **FINDS** that:

1. Respondent Craig Berkman (hereafter "Respondent") was, at all times material herein, an individual and a resident of the State of Oregon. Respondent's business address is: 806 SW Broadway Ste. 900, Portland OR 97205.
2. Beginning in August, 1983, and continuing until September, 1997, Respondent, directly or indirectly, offered and sold in or from Oregon or to Oregon residents investments in the form of convertible promissory notes (hereafter referred to as "Convertible Notes").
3. At all times material herein, the Convertible Notes were not registered as securities in Oregon.
4. On November 18, 1998 the Oregon Division of Finance and Corporate Securities issued an Order to Cease and Desist, Denying Exemptions, and Assessing Civil Penalties against Respondent Craig Berkman in Case Number 0-98-0024 [the 1998 Order]. The 1998 Order provided, inter alia, 1. Respondent Craig Berkman shall

1 CEASE AND DESIST from offering, selling, and transferring, directly or indirectly, any
2 of the above described securities, or any other security which is issued by Respondent
3 or any other company in which Respondent owns all or a majority ownership interest,
4 including but not limited to Craig Berkman & Associates, Inc., in or from the State of
5 Oregon or to Oregon residents, in violation of ORS Chapter 59, Oregon Administrative
6 Rules Chapter 441, or Oregon Securities Law. 2. Respondent Craig Berkman, and any
7 company in which Respondent owns all or a majority ownership interest, including but
8 not limited to Craig Berkman & Associates, Inc. are hereby DENIED the use of any
9 exemptions authorized by ORS 59.025 and ORS 59.035, until further order of the
10 Director.

11 5. On January 9, 1998 "CB (Berkman) Capital LLC" was formed as an
12 Oregon Limited Liability Company (Craig Berkman & Associates, Inc. was the initial
13 "managing member"), with the express purpose of investing funds raised through the
14 efforts of Craig Berkman from accredited investors in securities. (Three additional
15 limited liability companies have been formed since that date.) These activities
16 continued after November 18, 1998 to the present.

17 6. "Craig Berkman & Associates, Inc.," an entity in which Craig Berkman
18 is the sole principal, provides investment management services to each LLC for a fee
19 pursuant to contract.

20 7. Respondent was not licensed to effect securities transactions in or from
21 Oregon as a salesperson or broker-dealer.

22 **CONCLUSIONS OF LAW**

23 The Director, based upon the findings of fact above, **CONCLUDES** that:

24 1. The Convertible Notes which were offered and sold in or from Oregon
25 or to Oregon residents by Respondent, as described herein above, are "securities"
26 under ORS 59.015(19)(a) and other applicable authority.

1 as well as compel him to immediately cease all affiliation with Craig Berkman &
2 Associates, Inc. and the CB (Berkman) Capital LLCs described in paragraph six
3 below, unless and until he passes the above described examinations. The Division
4 agrees to sponsor Respondent Craig Berkman for these examinations and shall
5 tender an issuer salesperson license to Mr. Berkman upon his submission of all
6 necessary application documents, passage of the above described examinations, and
7 the payment of any amounts due under the terms of this Order.

8 3. Respondent Craig Berkman, Craig Berkman & Associates, Inc. , any
9 entity that Craig Berkman controls (defined, for the purposes of this Order, as the
10 possession, directly or indirectly, of the power to direct or cause the direction of the
11 management and policies of a person, whether through the ownership of voting
12 securities, by contract, or otherwise) or provides management or advisory services
13 to, and any entity in which Craig Berkman owns at least fifteen percent (15%) of
14 outstanding shares, is hereby **DENIED** the use of any exemptions authorized by ORS
15 59.025 and ORS 59.035, with the sole exception of ORS 59.035 (5), until further order
16 of the Director. The use of ORS 59.035(5) is expressly conditioned as described
17 below.

18 4. For the purposes of this Order, an "Accredited Investor" is one that meets
19 the qualifications stated in OAR 441-035-0010, while an "unaccredited investor" is one
20 that does not meet the qualifications described in OAR 441-035-0010.

21 5. Respondent Craig Berkman's use of the exemption in ORS 59.035 (5)
22 is expressly conditioned by a requirement that for a period of five (5) years from the
23 date of the entry of this Amended Order Respondent Craig Berkman provide specified
24 written disclosure to all accredited investors. As such, OAR 441-065-0100 shall not
25 be applicable to disclosures issued in anticipation of a sale (whether titled "private
26 placement memoranda" or otherwise) during this period of time. Instead, said

1 disclosure must contain explicit information about risk factors, regulatory matters,
2 investor suitability standards, historical performance, investment philosophy and
3 strategy, management team, federal income tax considerations, and any material
4 potential or actual conflicts of interest which Respondent Craig Berkman, or any entity
5 he controls or provides management or advisory services to, and any entity in which
6 Craig Berkman owns at least fifteen percent (15%) of outstanding shares, may have.
7 Furthermore, for a period of five (5) years from the date of the entry of this Amended
8 Order, Respondent Craig Berkman's use of the exemption contained in ORS 59.035
9 (5) is expressly conditioned by the requirement that Respondent Craig Berkman
10 provide a copy of any such document to the Division of Finance and Corporate
11 Securities within ten (10) days of its first issuance to any potential investor.

12 6. Respondent Craig Berkman shall be prohibited from effecting sales to
13 any unaccredited investor in or from Oregon or to Oregon residents for a period of five
14 (5) years from the date of the entry of this Amended Order unless the issuer has
15 registered an offering with the Oregon Division of Finance and Corporate Securities,
16 provided that CB (Berkman) Capital LLC, CB (Berkman) Capital II LLC , CB
17 (Berkman) Capital II-A LLC, and CB (Berkman) Capital III LLC will not be required to
18 register with the Division unless Respondent Craig Berkman offers or makes sales on
19 behalf of these entities to unaccredited investors after the date of the entry of this
20 Amended Order.

21 7. Respondent Craig Berkman shall be granted a waiver of the constraints
22 contained in OAR 441-175-120 (10) (a) so long as the Division is notified in writing of
23 the names, addresses, and telephone numbers of any entity he is representing not less
24 than ten business days before his first anticipated sale for that issuer.

25 8. Respondent Craig Berkman, Craig Berkman & Associates, Inc. , any
26 entity that Craig Berkman controls (defined, for the purposes of this Amended Order,

1 as the possession, directly or indirectly, of the power to direct or cause the direction
2 of the management and policies of a person, whether through the ownership of voting
3 securities, by contract, or otherwise) or provides management or advisory services
4 to, and any entity in which Craig Berkman owns at least fifteen percent (15%) of
5 outstanding shares, may not directly employ or retain any individual to sell to
6 unaccredited investors in or from Oregon or to Oregon residents on behalf of any
7 issuer without that individual being licensed as an issuer salesperson by the Division
8 of Finance and Corporate Securities.

9 9. Respondent Craig Berkman is **ASSESSED** a **CIVIL PENALTY** in the
10 sum of fifty thousand dollars (\$50,000.00), with credit for Ten Thousand Dollars
11 (\$10,000.00) paid in November, 1998. The remaining Forty Thousand Dollars
12 (\$40,000.00) shall be permanently suspended should the Respondent fulfill this Order's
13 licensing obligations within the noted six month time frame, this Order's disclosure
14 obligations, this Order's registration obligations, and this Order's requirement that he
15 not violate ORS Chapter 59, Oregon Administrative Rules Chapter 441, or Oregon
16 Securities Law.

17 10. Respondent Craig Berkman's securities related activities shall be
18 subject to audit pursuant to the authority vested in the Director under ORS 59.235 and
19 the Oregon Administrative Rules promulgated thereunder and Respondent shall
20 cooperate fully with the requirements of any such audit.

21 11. Entry of this Order in no way limits or prevents further remedies,
22 sanctions, or actions which may be available to the Director under Oregon law to

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DIVISION OF FINANCE AND CORPORATE SECURITIES
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
STATE OF OREGON
350 Winter Street, NE, Suite 410
Salem OR 97310

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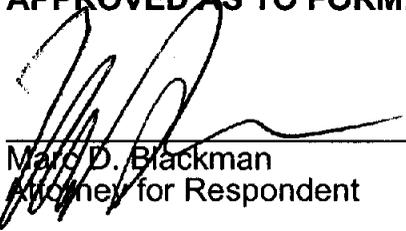
enforce this Order, for violations of this Order, for conduct or actions of Respondent which are not covered by this Order, or against any party not covered by this Order.

Dated this 3rd day of May, 2001 at Salem, Oregon.



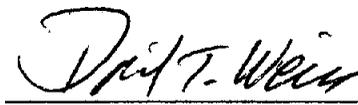
MARY NEIDIG, DIRECTOR
DEPARTMENT OF CONSUMER & BUSINESS SERVICES
STATE OF OREGON

APPROVED AS TO FORM:



Marc D. Blackman
Attorney for Respondent

Dated: 05-01-01



David T. Weiss
Securities Compliance Officer
Division of Finance and Corporate Securities

Dated: 5-03-01

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1 **STIPULATION AND CONSENT TO ENTRY OF AMENDED ORDER**
2 **BY RESPONDENT CRAIG BERKMAN**

3 I, **CRAIG BERKMAN**, having been duly sworn, hereby state the following:

4 1. I **CONSENT** to the jurisdiction of the Director of the Department of
5 Consumer and Business Services, State of Oregon for the purpose of the issuance
6 and entry by the Director of the foregoing **STIPULATED AMENDED ORDER TO**
7 **CEASE AND DESIST, DENYING EXEMPTIONS, AND ASSESSING CIVIL**
8 **PENALTIES** (hereafter referred to as the "Amended Order").

9 2. I **HAVE FULLY READ AND UNDERSTOOD** the contents of the
10 Amended Order and hereby **CONSENT**, voluntarily and without any force or duress,
11 to the issuance and entry of the Amended Order without admitting or denying the
12 Findings of Fact and Conclusions of Law stated therein.

13 3. I **ACKNOWLEDGE** having been fully advised of the right to a hearing
14 and hereby **WAIVE** any such right and all rights to challenge or appeal the Amended
15 Order.

16 4. I **REPRESENT** and **WARRANT** that I will fully comply with the terms of
17 the Amended Order and that I will not effect securities transactions in or from Oregon
18 or with Oregon residents unless and until such activities are in full compliance with the
19 Amended Order, ORS Chapter 59, Chapter 441 of Oregon Administrative Rules
20 (hereafter cited as "OAR Chapter 441"), and every other applicable provision of
21 Oregon Securities Law.

22 5. I further **ACKNOWLEDGE** and **UNDERSTAND** that issuance of the
23 Amended Order in no way limits or prevents the Director from taking action or seeking
24 sanctions or remedies which may be available to the Director under Oregon law
25 against any other party or against me for conduct or actions not covered by the
26 Amended Order or to enforce the Amended Order.

 6. I further **ACKNOWLEDGE** and **UNDERSTAND** that this Amended
 Order and Stipulation and Consent to Entry of Order is a public document.

Craig Berkman
 CRAIG BERKMAN, Individual

Dated: 5/1/01

State of Oregon) ss.
County of Multnomah)

SUBSCRIBED AND SWORN TO voluntarily before me this 1st day of
 May, 2001, by Craig Berkman, an individual.



Patricia H. Gassner
PATRICIA H. GASSNER (Print)
Notary Public for the State of Oregon
My commission expires: 3/3/2005

DIVISION OF FINANCE AND CORPORATE SECURITIES
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
STATE OF OREGON
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