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

BEFORE THE DIRECTOR OF THE DEPARTMENT OF CONSUMER AND BUSINESS SERVICES

In the Matter of: **PRESIDENTS TRUST COMPANY, LLC, JON PATRICK PIERCE, DAVID D. KLASNA and HERBERT L. PERILLOUX,** **Respondents.**	**S-04-0005** **FINAL ORDER TO CEASE AND DESIST ENTERED BY DEFAULT**

On March 29, 2004, the Director of the Department of Consumer and Business Services for the State of Oregon (hereafter "the Director"), acting by and pursuant to the authority of the Oregon Securities Law, Oregon Revised Statutes ("ORS") Chapter 59, and other applicable authority, issued Administrative Order No. S-04-0005 to **CEASE AND DESIST, DENYING EXEMPTIONS, AND NOTICE OF RIGHT TO HEARING** ("the Proposed Order") against Respondents **PRESIDENTS TRUST COMPANY, LLC; JON PATRICK PIERCE; DAVID D. KLASNA and HERBERT L. PERILLOUX.**

On April 6, 2004, Respondents **PRESIDENTS TRUST COMPANY, LLC; JON PATRICK PIERCE; and DAVID D. KLASNA** were duly served with a true copy of the Proposed Order by United States Mail (Item #70001670001042899323, and Item #70001670001042899316), postage prepaid, and addressed to 17500 Blondo Street, Omaha, NE 68116, the last known address of Respondents. In addition, a copy of the Proposed Order was duly served on April 2, 2004 by United States Mail (Item #70001670001042899286), postage prepaid and addressed to Catherine M. Brandner, Interim Director of Banking, South Dakota Department of Revenue and Regulation, 217½: West Missouri Avenue, Pierre, SD 57501-4590. A copy of the

Division of Finance and Corporate Securities
Labor and Industries Building
350 Winter Street NE, Suite 410
Salem, OR 97301-3881
Telephone: (503) 378-4387

Proposed Order was also duly served on April 3, 2004 by United States Mail (Item # 70001670001042899309), postage prepaid and addressed to Thomas D. Stalnaker, Esq., Stalnaker, Becker & Buresh, P.C., PO Box 24268, Omaha, NE 68124-0268.

On April 3, 2004, Respondent **HERBERT L. PERILLOUX** was duly served with a true copy of the Proposed Order by certified United States Mail (Item #70001670001042899293), postage prepaid, and addressed to Respondents last known address of 3760 Market Street NE, Salem, OR 97301.

Respondents **PRESIDENTS TRUST COMPANY, LLC; JON PATRICK PIERCE; DAVID D. KLASNA or HERBERT L. PERILLOUX** have not made a written request for a contested case hearing in this matter and time to do so has expired.

NOW THEREFORE, after consideration of the Investigation Report and accompanying exhibits submitted in this matter by Patrick A. Fitzgerald, Securities Enforcement Officer, the Director hereby issues the following Findings of Fact, Conclusions of Law, and Final Order.

FINDINGS OF FACT

The Director **FINDS** that:

1. Presidents Trust Company, LLC ("Presidents Trust") is a South Dakota-chartered trust company whose principal place of business is 17500 Blondo Street, Omaha, Nebraska 68116.

2. Jon Patrick Pierce (Pierce") is an owner and control person of Presidents Trust. Pierce, a resident of Omaha, Nebraska, is the president and chief executive officer of Freedom Financial Group, a holding company that owns Presidents Trust. Pierce can be served at Presidents Trust Company, LLC, 17500 Blondo Street, Omaha, NE 68116.

3. David D. Klasna ("Klasna"), also a resident of Omaha, Nebraska, was until recently the president of Presidents Trust. Klasna can be served at Presidents

Division of Finance and Corporate Securities
Labor and Industries Building
350 Winter Street NE, Suite 410
Salem, OR 97301-3881
Telephone: (503) 378-4387

Trust Company, LLC, 17500 Blondo Street, Omaha, NE 68116.

4. Herbert L. Perilloux ("Perilloux") is an Oregon-licensed insurance agent operating a business named Asset Protection Services located at 3760 Market Street NE, Salem, Oregon 97301.

5. U.S. Equity, Inc. ("U.S. Equity") is a South Dakota corporation headquartered in Omaha, Nebraska. U.S. Equity has a contract to provide portfolio management services to Presidents Trust. Pierce is a director of U.S. Equity.

6. Collins Financial Services, Inc. ("Collins Financial") is a Texas corporation based in Austin. It specializes in purchasing and reselling distressed consumer receivables from financial institutions such as banks and credit card companies. Collins Financial uses third-party funds to purchase the debt and share the proceeds of the re-sales or collections with the third-party that financed the purchase of the debt. U.S. Equity contracted with Collins Financial to use funds raised in the sale of the Presidents Trust instruments for the purchase of this debt.

7. On or about September 12, 2003, Perilloux, acting as an agent for Presidents Trust, caused to be placed an Oregon newspaper, an advertisement offering to sell "Fixed Income Trust" instruments issued by Presidents Trust to the general public. The offering was targeted to investors who were seeking low-risk investments with high returns. They were offered with fixed rates of return depending upon the length of time that the investor agreed to invest. Three-year Trusts offered a return of 5 percent annually; five-year Trusts offered 7 percent; and seven-year Trusts offered 9 percent.

8. Despite their denomination as "trust" instruments, the investment offered by Perilloux were more like promissory notes.

9. Between August 1, 2003 and September 26, 2003, Presidents Trust, Pierce and Klasna raised approximately $14 million through the offer and sale of the

Division of Finance and Corporate Securities
Labor and Industries Building
350 Winter Street NE, Suite 410
Salem, OR 97301-3881
Telephone: (503) 378-4387

Trusts. Presidents Trust used approximately $4.8 million in Trust offering proceeds, which purportedly constituted the "Secured Repayment Trust", to invest in Collins Financial. Presidents Trust used approximately $500,000 in investor proceeds, which were denominated the "Income Trust" portion of the investment, to purchase notes issued by PTC. It also used at least $862,463 in investor money to pay sales commission and other fees in connection with the offer and sale of the Trust. Remaining funds raised in the offering were held in various money market or bank accounts.

10. Presidents Trust retained U.S. Equity, an affiliated entity, to manage the investment of Trust proceeds. Prior to the commencement of the Trust offering, on July 23, 2003, U.S. Equity signed an agreement with Collins Financial providing Collins Financial with authority to use Trust proceeds to purchase charged-off debt. The contract between U.S. Equity and Collins Financial is for a three-year term. Under the terms of the arrangement with Collins Financial, PTC and U.S. Equity are passive investors in that they have no involvement whatsoever in the purchase, collection or sale of the debt that Collins Financial buys with the funds they invest. Pierce and Klasna negotiated the agreement on behalf of U.S. Equity.

11. The main thrust of the offering literature for the Trusts was the false depiction of the instruments as a conservative investment, offering the safety of a financial institution but a higher rate of return than a CD. The sales materials falsely described the Trusts as "secured" when in fact they are uncollateralized notes.

12. Presidents Trust also deceived investors as to the qualifications of U.S. Equity, a purported "servicer" to the Trusts selected by Presidents Trust, Pierce and Klasna to ostensibly select investments for the Trusts. Although Presidents Trust disclosed U.S. Equity's status as an affiliate of Presidents Trust, the company falsely described U.S. Equity as "an institutional portfolio manager" which "utilizes some of

Division of Finance and Corporate Securities
Labor and Industries Building
350 Winter Street NE, Suite 410
Salem, OR 97301-3881
Telephone: (503) 378-4387

the top international managers available" to "construct, maintain and manage the [trusts] portfolio to optimize return within specific risk parameters". In fact, U.S. Equity consisted of two employees, neither of who have investment advisory training, credentials or SEC registration, who reported to Pierce.

13. Offering materials for the Trusts represented that the annual income to investors (escalating from 5 percent to 9 percent annually, depending on the term of the Trust) was guaranteed by Presidents Trust. This ostensible guarantee was buttressed by the representation in the offering documents that the "income" portion of the Trust proceeds would be invested only in "highly liquid, income-producing assets." This representation was fraudulent. As mentioned above, the money for this portion of the scheme was immediately invested in Capital Notes issued by Presidents Trust. The Capital Notes, which are issued for a 30 year term and purportedly pay a 7 percent rate of return, are unsecured, general promissory obligations of Presidents Trust that are illiquid and cannot be resold in a public market.

14. And while investor funds were used to purchase approximately $486,069 worth of Capital Notes, no financial statements of PTC were disclosed to investors. Presidents Trust financial statements during the period of the offering demonstrate that the company lacked the ability to repay the Capital Notes. Presidents Trust failed to disclose these financial statements or other financial information about Presidents Trust to Trust investors.

Division of Finance and Corporate Securities
Labor and Industries Building
350 Winter Street NE, Suite 410
Salem, OR 97301-3881
Telephone: (503) 378-4387

15. At the time of Trust offerings, Presidents Trust was in a cash crisis, with little prospect of repaying the notes with any measure of "liquidity" as promised to investors. Presidents Trust quickly became insolvent once the revenue stream from sales of the Trusts had been shut down by South Dakota's cease and desist order. Presidents Trust actively misrepresented the financial condition of the company. In

offering materials, Presidents Trust described Presidents Trust as having "sustained steady and rapid growth" since its acquisition by Pierce and his affiliated entities in July 2001. Offering brochures also set out false "unaudited financial results" that overstated the assets of the company.

16. Presidents Trust also fraudulently promised investors that their principal would be preserved. The "Secured Repayment" portion of the Trust offering proceeds was invested by U.S. Equity in Collins Financial, which, as referenced above, received approximately $4.8 million of Trust proceeds to purchase charged-off debt.

17. Offering the investment in guise of a trust instrument was deceptive because it inherently represented that Presidents Trust would comply with basic fiduciary duties imposed by state law upon trustees, with concomitant benefits and protections to investors. The sales literature stressed as an additional "safeguard" the fact that Presidents Trust was regulated by state trust law. However, while Presidents Trust was chartered under and governed by South Dakota state trust law, the claim that this offered additional protection to investors was misleading because Presidents Trust, Pierce and Klasna failed to comply with fiduciary duties imposed on Trustees by state law in connection with their operation of Trusts.

18. One such violation of fiduciary duty arose in connection with an "Institutional Portfolio Management Agreement" Presidents Trust entered into with U.S. Equity for the management of the Trusts. Under that agreement, U.S. Equity was authorized to retain for its management fee any profits that were earned from the investment of Trusts proceeds over and above the "agreed Rate of Return" due to investors. Presidents Trust thereby set up the management of the Trusts such that, while investors bore all of the risk of the Trust investments, U.S. Equity (and derivatively its affiliates Presidents Trust and Pierce) would reap any rewards in the event the investments performed well. This arrangement enables Presidents Trust

Division of Finance and Corporate Securities
Labor and Industries Building
350 Winter Street NE, Suite 410
Salem, OR 97301-3881
Telephone: (503) 378-4387

and Pierce to profit at the expense of the Trust investors, in violation of their fiduciary duty.

19. On November 14, 2003, Catherine M. Brandner, the Interim Director of the South Dakota Division of Banking, assumed control of the operations and assets of Presidents Trust based on the company's submission on November 3, 2003 of financial statements indicating that the company was insolvent. As part of this action, the South Dakota Division of Banking froze various bank accounts held by Presidents Trust.

20. On December 31, 2003, the U.S. Securities and Exchanges Commission filed a civil case against Presidents Trust, Pierce and Klasna, alleging violations of the antifraud provisions of the federal securities laws. The federal district court in Nebraska appointed Thomas D. Stalnaker, Esq., of the law firm of Stalnaker, Becker & Buresh, P.C., of Omaha, Nebraska, as receiver to take possession and control of the assets derived from the offering of the Trusts. At the same time, Presidents Trust and Pierce, without admitting or denying liability, consented to entry of permanent injunctions prohibiting future violations of federal securities laws. Presidents Trust also consented to an asset freeze and to the appointment of the receiver. Litigation against Klasna and with respect to the SEC's claims of disgorgement and penalties against Pierce is continuing.

Division of Finance and Corporate Securities
Labor and Industries Building
350 Winter Street NE, Suite 410
Salem, OR 97301-3881
Telephone: (503) 378-4387

CONCLUSIONS OF LAW

The Director **CONCLUDES** that:

1. The Presidents Trust "Fixed Income Trust" instruments constitute securities as defined in ORS 59.015.

2. Respondents Presidents Trust, Pierce and Klasna, through Perilloux, offered or sold unregistered securities in Oregon in violation of ORS 59.055.

3. Respondent Perilloux, offered or sold securities in Oregon without a valid

securities license in violation of ORS 59.165.

4. Respondents Presidents Trust, Pierce and Klasna, through Perilloux, offered or sold securities in Oregon without a valid securities license in violation of ORS 59.165 (3).

5. Respondents Presidents Trust, Pierce, Klasna and Perilloux engaged in fraud in connection with the sale of securities in Oregon in violation of ORS 59.135.

FINAL ORDER

NOW, THEREFORE, THE DIRECTOR ORDERS:

That Respondents **PRESIDENTS TRUST COMPANY, LLC;** ("Presidents Trust") **JON PATRICK PIERCE** ("Pierce"), **DAVID D. KLASNA** ("Klasna") and **HERBERT L. PERILLOUX** ("Perilloux"), and any successor business entity owned, operated or under the control of Respondents Pierce or Klasna, shall **CEASE AND DESIST** from:

1. Selling securities without a license in violation of Oregon Securities Laws;

2. Selling unregistered securities in the State of Oregon in violation of Oregon Securities Laws; and

3. Violating any provision of the Oregon Securities Laws, including ORS Chapter 59 and OAR Chapter 441.

4. The Director, pursuant to ORS 59.995, **HEREBY ORDERS** that Respondents Presidents Trust, Pierce, Klasna and Perilloux, and any successor business entity owned, operated or under the control of Respondents Pierce or Klasna, are **DENIED** the use of any registration or licensing exemptions that would

////

////

////

////

Division of Finance and Corporate Securities
Labor and Industries Building
350 Winter Street NE, Suite 410
Salem, OR 97301-3881
Telephone: (503) 378-4387

otherwise be available to them under the Oregon Securities Law, ORS Chapter 59, or administrative rules adopted thereunder.

ORDERED in Salem, Oregon on June 1, 2004.

CORY STREISINGER, DIRECTOR
DEPARTMENT OF CONSUMER & BUSINESS SERVICES

////

////

////

////

Division of Finance and Corporate Securities
Labor and Industries Building
350 Winter Street NE, Suite 410
Salem, OR 97301-3881
Telephone: (503) 378-4387