



1 Office, SWX listed its office address as 2370 Corporate Circle, Suite 160, Henderson, Nevada
2 89074; its president as Donald K. McGhan; and its corporate secretary as Nikki Pomeroy. In
3 a subsequent filing with the Nevada Secretary of State's Office, Albert Conton Jr. was listed
4 as president and Dean Koch was listed as treasurer. The company did not make a corporation
5 filing in Oregon.

6 2. Arrow 1031 Exchange, Inc. was incorporated in Idaho in 2002. In filings with
7 the Idaho Secretary of State's Office, Arrow 1031 Exchange, Inc. listed its president as Kim
8 Trent, its vice president as Christy McMilliren, and its business address as 1755 Westgate
9 Drive #130, Boise, Idaho 83704. Arrow 1031 Exchange, Inc. was administratively dissolved
10 by the Idaho Secretary of State on December 9, 2005. The company did not make a
11 corporation filing in Oregon.

12 3. At all times material to this matter, SWX was engaged in the business of acting
13 as a "qualified intermediary" as part of tax-deferred exchanges conducted pursuant to section
14 1031 of the Internal Revenue Code. Under the Code requirements, SWX's activities entailed
15 holding in escrow a taxpayer's monies received from the sale of investment property sold by
16 the taxpayer prior to entering into the exchange. The company charged a fee for such
17 services.

18 4. On or about September 12, 2002, Arrow 1031 Exchange, Inc. filed articles of
19 incorporation with the Idaho Secretary of State's office representing that its corporate
20 activities would include acting as an escrow agent and escrow holder, and acting as a
21 qualified intermediary "for the purpose of facilitating exchanges of real and/or personal
22 property within and without Idaho."

23 5. On September 23, 2005, SWX filed documents with the Idaho Secretary of
24 State's Office for the purpose of qualifying to do business in Idaho as an out-of-state
25 corporation. The documents represented that SWX would do business in Idaho as "Arrow
26 1031 Exchange." The company listed its business address in Idaho as 1755 Westgate Drive,

1 #310, Boise, Idaho 83704. It appears from these documents that SWX had acquired Arrow
2 1031 Exchange, Inc.

3 6. On or about July 2005, Respondent SWX, dba Arrow 1031 Exchange,
4 transferred securities with a value of \$37,217,939 from its then broker-dealer Morgan Stanley
5 Dean Witter to UBS Financial Services, Inc. Both Morgan Stanley Dean Witter and UBS
6 Financial Services, Inc. are licensed broker-dealers in Oregon.

7 7. At the times relevant to this matter, UBS Financial Services, Inc. held one or
8 more securities accounts for SWX.

9 8. In February 2007, SWX advertised via the Internet that it engaged in providing
10 escrow services, including services as a qualified intermediary.

11 9. SWX obtained funds from its customers under the auspices, and for the
12 purpose of, making tax-deferred real property exchanges under Internal Revenue Code section
13 1031. A section 1031 exchange operates as follows:

14 A. An exchanger sells real property and the title company sends the profit of the
15 sale to a qualified intermediary. If the exchanger personally receives the money, the 1031
16 exchange will be disallowed by the IRS and capital gains tax will be owed on the proceeds of
17 the sale.

18 B. The exchanger has up to 45 days after the closing on the property sale to
19 provide a list of up to three replacement properties to the qualified intermediary.

20 C. The exchanger has a maximum of up to 180 days after the close of the sale to
21 close on the purchase of one to three replacement properties.

22 D. Closing on replacement properties may occur at any time with the required
23 time limits and this mandates that the qualified intermediary keep sufficient liquid funds on
24 hand to wire to the closing title company.

25 E. If the sale fails to close for any reason within the allotted time, the exchanger
26 will be subject to capital gains tax on the proceeds.





1 10. At least part, if not all, of the funds collected by Respondent SWX were
2 invested in one or more broker dealer accounts where the funds were used to trade securities
3 in the following manner:

- 4 A. Respondent SWX purchased common stock;
- 5 B. Respondent SWX wrote in the money covered calls on the common stock; and
- 6 C. Respondent SWX had the profits from the securities trades swept into one or
7 more money market accounts.

8 11. Exchangers using Respondent SWX as a qualified intermediary were promised
9 interest rates on deposited funds as follows:

- 10 A. Zero percent on funds under \$500,000;
- 11 B. Four percent on funds between \$500,000 and \$999,000; and
- 12 C. Five percent on funds of \$1,000,000 or more.

13 12. Respondent SWX kept the spread on what money that was earned and the
14 amount promised to the exchangers. According to advertising placed by Respondent SWX, all
15 exchangers who deposited more than \$500,000 expected returns based on the expertise of
16 Respondent SWX, its officers, and/or Donald K. McGhan.

17 13. The section 1031 exchanges require liquid funds to be available for the
18 repurchase of real property. Beginning in or around December 2006, Respondent SWX failed
19 to provide funds to clients to close on replacement properties.

20 14. DGK is a retired Oregon resident living in Baker City, Oregon.

21 15. On or about June 28, 2006, DGK sold residential investment property that he
22 owned located at 402 7th Avenue in Wendell, Idaho. At the suggestion of his accountant,
23 DGK looked to employ a 1031 qualified intermediary to hold the proceeds of the sale in order
24 to defer the paying of the capital gains tax on the sale. DGK had never previously done a
25 1031 exchange. The real estate agent with whom DGK dealt in the sale of the property
26 suggested that he use Respondent SWX to hold the sale proceeds. On the strength of her



1 recommendation, DGK became a client on Respondent SWX.

2 16. In June 2006, the proceeds of the sale of DGK's Wendell, Idaho property in
3 the amount of approximately \$141,000 were transferred to Respondent SWX to be held on
4 account until DGK could locate another investment property.

5 17. On December 15, 2006, DGK purchased an investment property located at
6 1602 Baker Street in Baker City, Oregon. Because the sale price of the Idaho property was
7 greater than the purchase price of the Oregon property, DGK had a balance in his account
8 with Respondent SWX equaling approximately \$78,209.

9 18. DGK understood that he had until February 2, 2007 to identify and close on
10 another investment property in order to defer capital gains tax on those sale proceeds. DGK
11 found another investment property for sale located at 1354 Elm Street, Baker City, Oregon,
12 and made an offer on the property accompanied by a \$500 earnest money payment. The offer
13 was accepted and DGK authorized the title company, Amerititle, to contact Respondent SWX
14 to release \$21,000 of the remaining funds in his account. Repeated attempts were made by
15 DGK and staff at Amerititle to contact anyone at Respondent SWX to have the funds
16 transferred. DGK was unable to locate anyone with the company and was ultimately unable
17 to transfer the funds held on deposit in his name. To date, DGK has been unable to transfer or
18 obtain the remaining funds in his account. In addition, DGK's funds on deposit with
19 Respondent SWX are now subject to capital gains tax because the funds were not used to
20 purchase another investment property by the February 2, 2007 deadline.

21 19. At least one other Oregon property, owned by residents from out-of-state, is
22 involved in the failure of Respondent SWX to release client funds.

23 20. Respondent SWX was not licensed to engage in securities sales under the
24 Oregon Securities Law, ORS chapter 59.

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1 violation of Oregon Securities Laws;

2 28. Offering or selling unregistered securities in the State of Oregon in violation of
3 Oregon Securities laws; and

4 29. Violating any provision of the Oregon Securities Laws, including ORS chapter
5 59 and Oregon Administrative Rules ("OAR") chapter 441.

6 The Director, pursuant to ORS 59.995, **HEREBY ORDERS** the following **DENIAL**
7 **OF FUTURE USE OF EXEMPTIONS:**

8 30. Respondent SWX shall be denied the use of any securities licensing or
9 registration exemptions contained in the Oregon Securities Laws, ORS chapter 59 and OAR
10 chapter 441.

11 The entry of this Order in no way limits further remedies, including civil penalties,
12 which may be available to the Director under Oregon law.

13 Dated this 27th day of August, 2007 at Salem, Oregon, nunc pro
14 tunc, July 17, 2007.

15 IT IS SO ORDERED.

16 CORY STREISINGER, Director
17 Department of Consumer and Business Services

18 
19 David C. Tatman, Administrator
20 Division of Finance and Corporate Securities

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