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

In the Matter of:  
Jack Phillips and  
Elliott James,  
Respondents.

Case No. S-11-0046-B  
Final Order to Cease and Desist; Order  
Denying Exemptions to the Securities  
Registration Requirements; and  
Order Assessing Civil Penalties  
Entered by Default  
AGAINST ELLIOTT JAMES ONLY

On February 11, 2013, the Director of the Department of Consumer and Business Services (the “Director”), acting under the authority of ORS 59.005 to 59.451, 59.991 and 59.995 (the “Oregon Securities Law”), entered certain Findings of Fact, Conclusions of Law, Orders, and Proposed Orders (the “Notice Order”)<sup>1</sup> against Jack Phillips and Elliott James (“James”) for alleged violations of the Oregon Securities Law.

The Notice Order, among other things, 1) informed James of his right to an administrative hearing, 2) described the procedures and timelines he must follow to request a hearing, and 3) stated the circumstances under which the Director could enter a final order by default.

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350 Winter Street NE, Suite 410  
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Telephone: (503) 378-4387



<sup>1</sup> On September 6, 2012, the Director initially served a notice order on Jack Phillips only. That order was amended to include Elliott James as a respondent. On June 17, 2013, Jack Phillips consented to the entry of an order against him by the Director (Case No. S-11-0046-A).



1 The Notice Order also designated the Division of Finance and Corporate  
2 Securities' file as the record for purposes of proving its prima facie case in the event that  
3 the Director issues a final order by default.

4 On February 12, 2013, the Director served the Notice Order on Elliott James at  
5 his correct address by certified and regular U.S. mail. James did not request a hearing.

6 NOW THEREFORE, after considering the relevant portion of the Division's file  
7 relating to this matter, the Director enters the following Order against Elliott James by  
8 default:

9

10 I. FINDINGS OF FACT

11 The Director FINDS that:

12 A. The Respondent

13 1. Elliott James (a.k.a. Donald James Elliott and James D. Elliott) ("James")  
14 was, at all times material herein, a Tennessee resident with a last known address of 5131  
15 Prince Phillip Cove; Brentwood, Tennessee 37027.

16 2. James is not and, at all times material herein, was not licensed by the  
17 Director to sell securities in Oregon.

18 B. The "Precious Few" Scheme

19 3. On or between 2006 and 2007, James either directly or indirectly through  
20 others presented at least 22 investors with the opportunity to participate in an investment  
21 scheme, which was developed and managed by James, that was supposed to have  
22 involved the purchase and resale of emeralds at a profit (the "Scheme"). The Scheme was  
23 not registered as a security in Oregon and the persons selling interests in the Scheme  
24 were not licensed as "salespersons" by the Director to sell those interests.

25 4. In total, James – either directly or indirectly through others – sold  
26 \$1,217,500 in investments in the Scheme to at least 22 investors. Investors invested in the



1 Scheme by sending the funds directly to James, or to Marrical Music, LLC, which was  
2 controlled James.<sup>2</sup>

3 5. Six Oregon investors invested a total of \$165,000 in the Scheme. One of  
4 the six Oregon investors was a 67-year-old Corvallis, Oregon resident who invested  
5 \$20,000 and \$50,000 in the Scheme on March 1, 2007 and March 2, 2007, respectively.  
6 That investor had no experience buying and selling emeralds at a profit and relied on the  
7 purported expertise of James and others for her expected profits.

8 6. In connection with the offer or sale of interests in the Scheme, James and  
9 others told most, if not all, of the investors that the:

- 10 • investment opportunity was only being offered to a “precious few” investors  
11 and they needed to invest quickly;
- 12 • investors’ funds would be pooled and used to purchase “high quality  
13 emeralds” that were located in Brazil;
- 14 • emeralds would then be resold in the United States for three times the  
15 purchase price and that the investor would receive a profit of three times their  
16 initial investment within 90 – 120 days, or possibly sooner;
- 17 • buyer of the emeralds (the “Buyer”) was highly experienced in identifying  
18 and locating emeralds in South America because she was a former  
19 missionary who had made previous trips to South America and had  
20 developed a relationship with a mine owner in Brazil;
- 21 • Buyer had 12 -15 years experience engaging in transactions that were similar  
22 to the ones contemplated by the Scheme;
- 23 • investment was risk-free because, among other things, the emeralds were  
24 insured and a buyer in the United States had already been located. (At least  
25 one investor was told prior to their investment in the Scheme that the

26 \_\_\_\_\_  
<sup>2</sup> Marrical Music, LLC does not appear to be licensed as a business entity in any jurisdiction.



1 emeralds were already en route to the United States and that he was merely  
2 looking for investors to buy the emeralds, get them through customs, and  
3 resell them in the United States); and

- 4 • investors’ potential profits were unlimited and the investors would make  
5 millions of dollars because the Buyer could buy emeralds whenever she  
6 wanted to.

7 7. Based upon information and belief, none of the investors’ funds was used  
8 to purchase emeralds. Instead, most, if not all, of the investors’ funds were used to pay  
9 the personal expenses of James and others.

10 8. Also based upon information and belief, the investors did not receive a  
11 return of three times their initial investment 120 days after their initial investment was  
12 made, nor have they received any return on their investment as of the date of this Order.

13 9. In connection with the offer or sale of investments in the Scheme, James  
14 and others did not disclose to most, if not all, of the Oregon investors that the Scheme  
15 was not registered as a security in Oregon, or that he or other persons selling interests in  
16 the Scheme were not licensed as “salespersons” to sell interests in the Scheme.

## 17 II. CONCLUSIONS OF LAW

18 The Director CONCLUDES as a matter of law that:

### 19 A. Definitions under ORS 59.015

20 10. The Scheme is a “security” as that term is defined under ORS 59.015(19)  
21 (a) because it is an “investment contract.” Specifically, the Scheme involved the  
22 investment of money in a common enterprise with an expectation of profit to be made  
23 from the efforts of others.  
24

25 11. James acted as a “salesperson” as that term is defined under ORS  
26 59.015(18) because he effected or attempted to effect transactions in securities.



1           B.       Violations of ORS 59.055 (Sale of Unregistered Securities)

2           12. James directly violated ORS 59.055 when he offered or sold unregistered  
3 securities to at least one person in Oregon.

4           13. James also aided and abetted others who offered or sold unregistered  
5 interests in the Scheme in Oregon in violation of ORS 59.055 because he 1) knew, should  
6 have known, or was reckless in not knowing that the securities sold by them were not  
7 registered, and 2) assisted them in those sales by a) developing the Scheme, b) promoting  
8 the Scheme to some of those investors, c) managing the Scheme, and d) accepting the  
9 investors' funds.

10          C.       Violations of ORS 59.165 (Sale of Securities without a License)

11          14. James directly violated ORS 59.165 when he transacted business as an  
12 unlicensed salesperson in Oregon by selling interest in the Scheme to at least one Oregon  
13 resident.

14          15. James also aided and abetted others who sold interests in the Scheme as  
15 unlicensed salespersons in violation of ORS 59.165 because he 1) knew, should have  
16 known, or was reckless in not knowing that they transacted business as an unlicensed  
17 salesperson in Oregon, and 2) assisted them in that violation by a) developing the  
18 Scheme, b) promoting the Scheme to some of those investors, c) managing the Scheme,  
19 and d) accepting the investors' funds.

20          D.       Violations of ORS 59.135(2) (Securities Fraud)

21          16. James also violated ORS 59.135(2) when he directly or indirectly in  
22 connection with the purchase or sale of interests in the Scheme made untrue statements of  
23 material fact or omitted to state material facts necessary in order to make the statements  
24 made, in the light of the circumstances under which they are made, not misleading.

25          17. In particular, in connection with the sale of interests in the Scheme, James  
26 did not disclose to at least one investor that 1) the securities were not registered under



1 Oregon Securities Law, and 2) he was not licensed to sell the securities in Oregon. In  
2 addition, James told at least one investor untruthfully that 1) the investment was risk free,  
3 2) the investor would receive a profit of three times their investment within 90 – 120  
4 days, and 3) a buyer of the emeralds had already been located.

5 18. James also aided and abetted others who directly or indirectly in  
6 connection with the purchase or sale of interests in the Scheme made untrue statements of  
7 material fact or omitted to state material facts necessary in order to make the statements  
8 made, in the light of the circumstances under which they are made, not misleading in  
9 violation of ORS 59.135(2) because James 1) knew, should have known, or was reckless  
10 in not knowing that they made materially untrue or misleading statements to investors;  
11 and 2) assisted them in that violation by a) developing the Scheme, b) promoting the  
12 Scheme to some of those investors, c) managing the Scheme, and d) accepting the  
13 investors' funds.

### 15 III. ORDERS

16 NOW, THEREFORE, THE DIRECTOR ISSUES THE FOLLOWING ORDERS:

#### 17 A. Order to Cease and Desist

18 19. The Director, pursuant to the authority under ORS 59.245(4), ORDERS  
19 James and any affiliated and/or successor business or corporation, to CEASE and  
20 DESIST from violating any provision of the Oregon Securities Law and Administrative  
21 Rules promulgated thereunder.

#### 22 B. Order Denying Exemptions to the Securities Registration Requirements

23 20. The Director, pursuant to the authority under ORS 59.045, DENIES James  
24 and any affiliated and/or successor business or corporation the use of the exemptions to  
25 the securities registration requirements allowed by ORS 59.025 and ORS 59.035.

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1 C. Order Assessing Civil Penalties

2 21. The Director, pursuant to the authority under ORS 59.995 ASSESSES the  
3 following CIVIL PENALTIES against James: 1) \$96,000 for the violations of ORS  
4 59.055; 2) \$96,000 for the violations of ORS 59.165; and, 3) \$288,000 for the violations  
5 of ORS 59.135(2). In total, the Director assesses \$480,000 in Civil Penalties against  
6 James.<sup>3</sup>

7  
8 IV. AUTHORITY OF THE DIRECTOR TO SEEK OTHER REMEDIES UNDER  
9 OREGON LAW

10 22. This Order is a "Final Order" under ORS 183.310(6)(b). Subject to that  
11 provision, the entry of this Order does not limit other remedies that are available to the  
12 Director under Oregon law.

13  
14 IT IS SO ORDERED.

15 Dated this 15th day of July, 2013 at Salem, Oregon, NUNC PRO TUNC  
16 February 11, 2013.

17 PATRICK M. ALLEN, Director  
18 Department of Consumer and Business Services

19  
20 /s/ David Tatman  
21 David Tatman, Administrator  
22 Division of Finance and Corporate Securities

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25 \_\_\_\_\_  
26 <sup>3</sup> The assessed civil penalties have been reduced from those previously proposed in the Notice Order because Jack Phillips consented to the assessment of \$70,000 in civil penalties against him. (See Case No. 11-0046-A).