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

In the Matter of	Agency Case No. S-14-0011 OAH Case No. 1403822
RANDALL DAVID RUGG, an individual, and **RAPID FUNDING GROUP, INC., A CORPORATION OF NEVADA** Respondents.	FINAL ORDER TO CEASE AND DESIST, DENYING USE OF EXEMPTIONS TO THE SECURITIES REGISTRATION REQUIREMENTS, AND ASSESSING CIVIL PENALTIES **AS TO RESPONDENT RANDALL DAVID RUGG ONLY**

HISTORY OF THE CASE

On April 9, 2014, the Director of the Oregon Department of Consumer and Business Services, Division of Finance and Corporate Securities (Division) issued an Order to Cease and Desist, Order Denying Use of Exemptions to the Securities Registration Requirements, Proposed Order Assessing Civil Penalties and Notice of Right to an Administrative Hearing to Randall David Rugg and Rapid Funding Group, Inc. (RFG). On May 1, 2014, Mr. Rugg requested a hearing. RFG did not request a hearing.

On August 4, 2014, the Division issued an Amended Order to Cease and Desist, Order Denying Use of Exemptions to the Securities Registration Requirements, and Proposed Order Assessing Civil Penalties to Mr. Rugg and RFG.

On August 8, 2014, the Division referred the matter to the Office of Administrative Hearings (OAH). The OAH assigned Administrative Law Judge (ALJ) Samantha Fair to preside at the hearing. On October 8, 2014, ALJ Fair convened a telephone prehearing conference at which both parties appeared. ALJ Fair scheduled the hearing for February 18, 2015, and set deadlines for submission of witness lists and exhibits. Because the Division indicated its intent to file a motion for summary determination during the prehearing conference, ALJ Fair advised Mr. Rugg of the requirements for filing a response to any such motion.

On October 30, 2014, the Division issued a Second Amended Order to Cease and Desist, Order Denying Use of Exemptions to the Securities Registration Requirements, Proposed Order Assessing Civil Penalties and Notice of Right to an Administrative Hearing (Second Amended Order) to Mr. Rugg.

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On October 31, 2014, the Division issued a Final Order to Cease and Desist, Final Order Denying Use of Exemptions to the Securities Registration Requirements, and Final Order Assessing Civil Penalties Entered by Default to RFG.

On December 15, 2014, the Division filed a Motion for Summary Determination (Motion). The record closed on January 5, 2015 without receipt of any response from Mr. Rugg.

On January 8, 2015, ALJ Fair issued a Ruling on Motion for Summary Determination and Proposed Order ("Proposed Order"). ALJ Fair concluded that all of the issues were decided and granted summary determination in favor of the Division.

Mr. Rugg did not file any exceptions to the Proposed Order.

Now, therefore, having reviewed the entire record in this matter, the Director issues the following findings of fact, conclusions of law and final order consistent with that proposed by ALJ Fair.

The Director adopts ALJ Fair's recommended decision and issues this Final Order. The Findings of Fact section has been edited where necessary for grammatical purposes. The Issues and Conclusions of Law sections have been edited to clarify that Mr. Rugg violated ORS 59.135(2) by making both untrue statements of material fact and omissions of material facts in connection with the purchase or sale of securities. The Opinion section has been edited for grammatical purposes.

ISSUES

1. Whether there is a genuine issue as to any material fact and whether the Division is entitled to a favorable ruling as a matter of law. OAR 137-003-0580.

2. Whether Mr. Rugg offered and sold an unregistered security in Oregon. ORS 59.055.

3. Whether Mr. Rugg sold a security in Oregon without a valid securities license. ORS 59.165.

4. Whether Mr. Rugg made untrue statements of material fact or omitted material facts in connection with the purchase or sale of securities. ORS 59.135(2).

5. Whether the Division may issue a cease and desist order to Mr. Rugg, prohibiting him from violating ORS 59.055, ORS 59.165, and all other provisions of the Oregon Securities Law, ORS chapter 59 and OAR chapter 441. ORS 59.245(4).

6. Whether the Division may deny Mr. Rugg the use of exemptions to securities registration requirements. ORS 59.045(2).

7. Whether Mr. Rugg must pay $200,000 in civil penalties. ORS 59.995(1).

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EVIDENTIARY RULING

The Affidavit of CCB[1] (CCB Aff.), Transcription of Interview of Mr. Rugg (Rugg Trans.), and Exhibits 1 through 13, offered by the Division, were admitted into the record.

FINDINGS OF FACT

1. RFG is a Nevada corporation, which registered with Oregon's Secretary of State Corporation Division in 2006. (Ex. 3 at 1-4.) At the time of its registration, Mr. Rugg was RFG's registered agent and sole shareholder. (Ex. 3 at 4; Rugg Trans. at 15.)) In September 2010, RFG amended its registration by changing its registered agent to Edward Dierickx. (Ex. 3 at 5.) On October 15, 2010, RFG became inactive in Oregon after its registration was administratively revoked. (*Id*. at 1-2.)

2. Mr. Rugg has been licensed as a producer with the Oregon Insurance Division since at least May 1997. (Ex. 5 at 1.) He was an agent for State Farm Insurance (State Farm) for approximately 20 years prior to the termination of his agency agreement, which occurred on August 1, 2011. (Rugg Trans. at 2.)

3. RFG has never been licensed as an investment adviser or broker-dealer in Oregon. Mr. Rugg has never been licensed as an investment adviser, investment adviser representative, broker-dealer, issuer, or salesperson in Oregon. (Ex. 1 at 1.)

4. RFG has never registered any securities with the Division and has never filed any notices or registrations for any federal covered securities with the Division. (Ex. 2 at 1.)

5. RFG's business model involved borrowing money from investors and lending the money to borrowers who held real estate or were involved in real estate transactions. RFG was to secure the loans with trust deeds on the real estate. The borrowers made interest payments on the loans. Investors would receive a portion of those interest payments pursuant to their investment agreements and any additional interest amounts paid by the borrowers (the margin) would be retained by RFG. (Rugg Trans. at 9.) RFG would not disclose the amount of its margin to the investors. (*Id*. at 12.) The investors were not a party to the underlying loans to the borrowers, although RFG might identify a specify property transaction for an investor. (*Id*. at 11.) Originally, RFG relied upon Mr. Rugg and family members as investors. Subsequently, RFG solicited and received additional investments directly from private investors and also received referrals to potential investors from mortgage brokers. (*Id*. at 9-10.)

6. In 2007, KB[2] invested $100,000 with RFG based upon Mr. Rugg's promise of an 18 percent interest rate for a six-month loan. RFG paid KB a monthly check in the amount of $1,800 as interest payments. However, RFG did not return KB's initial investment at the conclusion of the six-month period. For approximately a year, KB

[1] CCB's initials are used to protect her privacy in conformance with the Second Amended Order.
[2] KB's initials are used to protect his privacy.

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repeatedly contacted Mr. Rugg and demanded that RFG return his initial investment. (Ex. 13 at 1-2.)

7. In 2008, CCB, an Oregon resident with no experience in investments, was a client of State Farm with Mr. Rugg as her State Farm agent. (Exs. 7 at 1; 8 at 1.) She had known Mr. Rugg for more than 20 years. (CCB Aff. at 1.) CCB's husband died in 2008 with CCB as the beneficiary of his life insurance policy. On June 27, 2008, she received life insurance proceeds of approximately $100,000 in the form of a credit line. Mr. Rugg, as her State Farm agent, handled the distribution of the life insurance proceeds to CCB. In October 2008, CCB received approximately $180,000 from another life insurance policy on her uncle, who had died in 2007. (Ex. 7 at 1.) After receipt of the proceeds from the insurance policies, Mr. Rugg suggested CCB invest the proceeds in RFG. He advised her that RFG lent money to borrowers, who needed immediate cash and had property to secure the loans. He promised that she would receive 10 percent per annum on her investment. He asserted that the investment was guaranteed and she would be able to retrieve her investment at any time with 30-day notice. (Ex. 7 at 1-2; CCB Aff. at 1.) When CCB indicated that she needed a monthly income of $1,500 to meet her monthly expenses, Mr. Rugg told her that an investment of $180,000 would yield that amount of monthly interest income. Mr. Rugg never informed CCB that he had an ownership interest in RFG. (Ex. 7 at 2; Rugg Trans. at 43.)

8. On October 17, 2008, CCB signed an Investor Disclosure and Agreement (First Agreement) with RFG. In the First Agreement, RFG listed its business address as an Oregon address. Mr. Rugg signed the First Agreement on behalf of RFG. (Ex. 6 at 1, 4.) The First Agreement stated that RFG was a private money lender, which provided funds for borrowers for real estate transactions when borrowers were unable to obtain conventional financing. (*Id*. at 1.) It provided that the borrowers' real estate transactions could include the purchase or refinance of real property, the remodeling and sale of real property, or the construction and development of real property. (*Id*.) It further provided that RFG secured the investors' funds with "real estate, verified securities and /or contracts deemed as liquid Collateral." (*Id*.) The First Agreement disclosed a number of risks to investors. These risks included that investors will have no recorded interest in real estate or security documents because all such interests will be recorded in the name of RFG; repayment of the principal and interest on any investment was subject to the borrower's "willingness and ability to make payments or remedy contract;" and that investors bore the economic risk of investment. (*Id*. at 2.) The First Agreement further provided that the investment was "without recourse to Rapid Funding Group and other investments and/or transactions." (*Id*. at 3.) Recourse was limited to the loan borrower and to the real estate or other collateral securing the loan. (*Id*.) The First Agreement included an acknowledgement that CCB was a non-accredited investor. (*Id*. at 2.) It listed the managing investor as "[RFG], Mr. Rugg, his agents and/or successors" and provided that Mr. Rugg was the "key person" for RFG's investments. (*Id*. at 2-3.) In the First Agreement, CCB agreed that she received professional advice in regards to the law and collateral assets and was aware "of economic risks involved in entering into this investment." (*Id*. at 3.) The First Agreement provided that CCB's investment would receive simple interest at the rate of 10 percent per annum to be paid monthly. (*Id*. at 4.)

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9. On October 17, 2008, CCB issued a check in the amount of $180,000 to RFG. (Ex. 9 at 1.) RFG deposited this check in its bank account on that same day. Prior to the deposit, the balance in RFG's bank account was $2,325.39. On October 20, 2008, RFG made two customer withdrawals in the total amount of $160,000. (Ex. 11 at 1-4). One withdrawal was in the form of a $60,000 cashier's check made payable to Mr. Rugg. The other withdrawal was in the form of a $100,000 cashier's check made payable to KB, which reimbursed KB for his initial investment.[3] (Exs. 12 at 1-2; 13 at 1-2.) No other deposits were made into RFG's bank account in October 2008. By the end of October 2008, the balance on RFG's bank account was $3,039.99. (Ex. 11 at 1-4.)

10. Upon executing the First Agreement, CCB began receiving the agreed-upon monthly interest payments of $1,500 from RFG. (Ex. 7 at 2.)

11. In June 2009, CCB lost her health insurance and needed an additional $300 per month for her needs. CCB contacted Mr. Rugg, who advised her that an additional investment of $36,000 would result in her monthly interest payment increasing to $1,800. (Ex. 7 at 2.)

12. On June 24, 2009, CCB signed another Investor Disclosure and Agreement with RFG (Second Agreement), which replaced the October 17, 2008 First Agreement. The Second Agreement included the same language as the First Agreement, but it provided that the total investment was $216,000 and CCB would receive a monthly simple interest payment of $1,800 for the two-year period of the agreement. (Ex. 6 at 6-11.) On June 24, 2009, CCB issued a check in the amount of $36,000 to RFG. (Ex. 10 at 1.)

13. CCB received $1,800 per month from RFG until August 2010, when payments ceased. Subsequently, Mr. Rugg informed her that the loan was in default, there would be no further monthly payments, and her investment was gone. (Ex. 7 at 2; CCB Aff. at 2.) CCB had assumed that her investment was underwritten by State Farm as one of its products. However, when Mr. Rugg informed her of the loss of her investment, he told her that RFG was not affiliated with State Farm and that the investment was not a State Farm product or underwritten by State Farm. (Ex. 7 at 2.)

CONCLUSIONS OF LAW

1. There is no genuine issue as to any material fact and the Division is entitled to a favorable ruling as a matter of law.

2. Mr. Rugg offered and sold an unregistered security in Oregon.

3. Mr. Rugg sold a security in Oregon without a valid securities license.

[3] The borrower of the loan in which KB's money had been invested defaulted on the loan and civil litigation regarding the real property that was the subject of the loan failed to net any proceeds for RFG. (Ex. 13 at 3; Rugg Trans. at 17-21, 26-27.)

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4. Mr. Rugg made untrue statements of material fact or omitted material facts in connection with the purchase or sale of securities.

5. The Division may issue a cease and desist order to Mr. Rugg, prohibiting him from violating ORS 59.055, ORS 59.135, and ORS 59.165.

6. The Division may deny Mr. Rugg the use of exemptions to securities registration requirements.

7. Mr. Rugg must pay $200,000 in civil penalties.

OPINION

Standard of Review for Motion for Summary Determination

OAR 137-003-0580 addresses motions for summary determination. It provides, in relevant part:

> (6) The administrative law judge shall grant the motion for a summary determination if:
>
> (a) The pleadings, affidavits, supporting documents (including any interrogatories and admissions) and the record in the contested case show that there is no genuine issue as to any material fact that is relevant to resolution of the legal issue as to which a decision is sought; and
>
> (b) The agency or party filing the motion is entitled to a favorable ruling as a matter of law.
>
> (7) The administrative law judge shall consider all evidence in a manner most favorable to the non-moving party or non-moving agency.
>
> (8) Each party or the agency has the burden of producing evidence on any issue relevant to the motion as to which that party or the agency would have the burden of persuasion at the contested case hearing.
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> * * * * *
>
> (12) If the administrative law judge's ruling on the motion resolves all issues in the contested case, the administrative law judge shall issue a proposed order in accordance with OAR 137-003-0645 incorporating that ruling * * *.

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Pursuant to OAR 137-003-0580(6)(a), in making her ruling, the ALJ considered the Division's Motion, the Affidavit of CCB, the Transcription of Interview of Mr. Rugg, and Exhibits 1 through 13. Pursuant to OAR 137-003-0580(7), the ALJ reviewed the evidence in the light most favorable to Mr. Rugg, the non-moving party, and determined there is no genuine issue as to the material facts of the Division's allegations that are relevant to resolution of the legal issues. Therefore, the ALJ granted the Division's Motion. Because the ruling on the Motion resolved all issues in this matter, the ALJ issued a proposed order and the hearing was canceled.

Offer and Sale of an Unregistered Security

ORS 59.015(19)(a) defines "security." It provides, in part:

> "Security" means a * * * investment contract, * * *.

The Oregon Supreme Court adopted a four-part test, commonly called a modified *Howey*[4] test, to determine whether an agreement is an investment contract and, therefore, a security under ORS 59.015(19)(a). *Computer Concepts, Inc. v. Brandt*, 310 Or 706, 713-714 (1990). An investment contract must include:

> (1) an investment of money (or money's worth),
>
> (2) in a common enterprise,
>
> (3) with an expectation of profit,
>
> (4) to be made through the management and control of others.

Id. at 714. Both the First and Second Agreements involved the investment of money, originally $180,000 and then an additional $36,000, with an expectation of profit based upon interest payments at the rate of 10 percent per annum. Other than providing the investment funds, CCB had no other control over the use of those funds once paid to RFG. Mr. Rugg, as the managing investor and sole shareholder of RFG, had exclusive control over all investment funds and was the individual who made all decisions regarding the selection of any potential investments in real estate opportunities and the distribution of investment funds. CCB invested money with an expectation of profit that would be made through the management and control of others, in this case Mr. Rugg.

A common enterprise is demonstrated by "horizontal" commonality or, if unable to demonstrate horizontal commonality, "vertical" commonality. *Id*. at 715. Horizontal commonality involves more than one investor and the pooling of investments. *Id*. at 714. RFG's business model involved soliciting multiple investors for financial contributions in order to lend those funds to borrowers, who were involved in real estate transactions, holdings or developments. Because RFG's intent was to pool investors' resources to lend

[4] Originally based upon a test created by the *United States Supreme Court in SEC v. Howey Co.*, 328 US 293 (1946). The Oregon Supreme Court adopted a modified version of that test in *Pratt v. Kross*, 276 Or 483 (1976).

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to borrowers, horizontal commonality exists and the First and Second Agreements involve a common enterprise.

Because the First and Second Agreements meet all four parts of the *Howey* test, those agreements are investment contracts and, therefore, securities as defined by ORS 59.015(19)(a).

ORS 59.055 provides:

> It is unlawful for any person to offer or sell any security in this state, unless:
>
> (1) The security is registered and the offer or sale is not in violation of any rule or order of the Director of the Department of Consumer and Business Services or any condition, limitation or restriction imposed by the director upon such registration;
>
> (2) The security is exempt under ORS 59.025 or the sale is exempt under ORS 59.035; or
>
> (3) The security is a federal covered security for which a notice has been filed and fees have been paid under ORS 59.049.

RFG never registered or filed notices with the Division for any securities. The First and Second Agreements were issued by RFG without being registered with the Division.[5] Because Mr. Rugg negotiated the sale of these agreements to CCB, he sold an unregistered security in Oregon in violation of ORS 59.055.

Sale of a Security Without a License

ORS 59.165(1) provides:

> It is unlawful for any person to transact business in this state as a broker-dealer or salesperson unless the person is licensed under the Oregon Securities Law.

Mr. Rugg has never been licensed as a broker-dealer or salesperson by the Division. Therefore, he sold the First and Second Agreements to CCB in Oregon when he was not licensed to do so, in violation of ORS 59.165(1).

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[5] ORS 59.025 and ORS 59.035 list securities and transactions that are exempt from ORS 59.055's registration requirements, such as securities issued by a government entity, a national bank, or agricultural cooperatives. None of the exemptions are applicable to the RFG transactions.

Untrue Statements of Material Fact or Omissions in Connection with the Purchase or Sale of Securities

ORS 59.135 provides, in part:

> It is unlawful for any person, directly or indirectly, in connection with the purchase or sale of any security or the conduct of a securities business or for any person who receives any consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise:
>
> * * * * *
>
> (2) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading[.]

In the Second Amended Order, the Division alleged that Mr. Rugg made several untrue statements of material fact and omitted several material facts in the course of the RFG transactions with CCB. In *Everts v. Holtmann*, 64 Or App 145, *rev den*, 296 Or 120 (1983), the Oregon Court of Appeals adopted a definition of materiality to be a substantial likelihood that a reasonable person would consider it important and "so obviously important to an investor, that reasonable minds cannot differ on the question of materiality." *Id*. at 151.

The First and Second Agreements contained several warnings of risks associated with the investment and a suggestion that the investor seek professional advice regarding the consequences of any investment. In *Everts*, similar disclaimers were made in the documents for that investment. The Court found that such disclaimers "are insufficient to control the materiality of omissions and misrepresentations." *Id*. at 152. Therefore, the warnings and suggestion contained in the First and Second Agreements do not relieve Mr. Rugg of liability for untrue statements or omissions of material facts.

CCB had a reasonable expectation that Mr. Rugg was engaging in lawful activities when he sold the RFG securities to her. His failure to disclose that the securities were unregistered and that he was not licensed to sell them made his actions misleading. A reasonable investor would consider it important to know that she was investing in securities that were not registered in compliance with Oregon law. Likewise, a reasonable investor would consider it important to know that the seller of the securities was violating the law by conducting such sales. Mr. Rugg's omissions regarding the securities' unregistered status and his unlicensed status were material and misled CCB, in violation of ORS 59.135(2).

Mr. Rugg informed CCB that her investments were guaranteed. A reasonable investor would consider it important that an investment was underwritten, which would provide for the security of the investments. Additionally, Mr. Rugg had an ownership interest in RFG, which he omitted telling CCB. A reasonable investor would consider it

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important to know that the individual recommending an investment opportunity held an ownership interest in that same investment opportunity because such ownership interest could influence the neutrality of the recommendation. Therefore, Mr. Rugg's assertion of the guarantee was an untrue statement of material fact, and his omission of the fact of his ownership interest in RFG were violations of ORS 59.135(2).

When CCB made her initial $180,000 investment in October 2008, Mr. Rugg had received numerous demands from KB for the return of his $100,000 investment. Within three days after depositing CCB's investment, Mr. Rugg used CCB's investment to repay KB. Based upon the immediate disbursal of the funds to KB, the facts establish that Mr. Rugg's intent at the time of CCB's investment was to reimburse KB, not invest the funds in a new transaction. Mr. Rugg omitted informing CCB that he intended to use her investment to repay a prior investment on which RFG had defaulted by its failure to timely refund KB his investment. A reasonable investor would consider it important to know that the investment was being used to pay off a defaulted debt rather than as an investment in a real estate transaction, as stated in the First and Second Agreements. Additionally, Mr. Rugg disbursed another $60,000 of CCB's investment to himself. A reasonable investor would consider it important to know that the investment was simply being paid to the managing investor rather than invested in any project. Both of those omissions contradicted the purpose of the investment, to finance real estate transactions, as outlined in the First and Second Agreements. Therefore, these additional omissions of Mr. Rugg were of material facts that misled CCB into making the investments. Mr. Rugg's omissions were in further violation of ORS 59.135(2).

In addition to the assertion that the investment was guaranteed, Mr. Rugg also assured CCB that she would receive monthly interest payments sufficient for her needs, $1,500 per month for her $180,000 investment and an additional $300 per month for her $36,000 investment, and that the principal of the investment would be refunded to her. A reasonable investor would consider such assertions about the safekeeping and accessibility of the investment principal and the monthly income it would generate important. Because Mr. Rugg was already aware that RFG was in default regarding the reimbursement of KB's investment, his assertion that RFG would readily refund CCB's investment was untrue. Because he intended to use her investment to repay KB's investment and use the bulk of the remainder of her investment to pay himself, Mr. Rugg was also aware that her investment would not be the basis for a monthly income and that his assertion was untrue.[6] Mr. Rugg again violated ORS 59.135(2) with these assertions.

Issuance of a Cease and Desist Order

ORS 59.245(4) provides:

> If the director has reason to believe that any person has engaged, is engaging or is about to engage in any violation of the Oregon Securities Law, may issue an order, subject to ORS 59.295, directed to the person to cease and desist from the violation or

[6] RFG did pay CCB monthly interest income until August 2010. The source of those payments, which were clearly not from her own invested funds, is unknown.

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threatened violation.

In its Second Amended Order, the Division sought an order against Mr. Rugg and any business entity operated, owned or controlled by Mr. Rugg to cease and desist from violating ORS 59.055, ORS 59.165, and any provision of the Oregon Securities Law, including ORS chapter 59 and OAR chapter 441. However, ORS 59.245(4) restricts the order to cease and desist "from the violation or threatened violation." Therefore, the order must be limited to those statutes or rules that a person has violated, is violating or is about to violate.

As previously discussed, the Division alleged and proved that Mr. Rugg sold unregistered securities, sold securities without a license, and made untrue statements of material fact or omitted material facts in connection with the sales of securities in violation of ORS 59.055, ORS 59.135 and ORS 59. 165. The Division did not allege or prove that Mr. Rugg violated any other provisions of the Oregon Securities Law. Therefore, the Division is entitled to issue an order to Mr. Rugg to cease and desist from further violations of ORS 59.055, ORS 59.135 and ORS 59.165, the statutes that Mr. Rugg violated.

Mr. Rugg and any business entity operated, owned or controlled by Mr. Rugg must cease and desist from further violations of ORS 59.055, ORS 59.135 and ORS 59.165.

Denial of Use of Exemptions

ORS 59.045(2) provides:

> The director may by order withdraw, condition or deny the use of any exemption by a person if the director has reason to believe that the person has engaged in or is about to engage in an act or practice constituting a violation of the Oregon Securities Law or that the use of any exemption by that person would work a fraud or imposition on purchasers.

ORS 59.025 exempts certain securities, such as a security guaranteed by the United States, from registration. ORS 59.035 exempts certain transactions, such as a transaction performed by a sheriff, from registration. Because Mr. Rugg has violated several provisions of the Oregon Securities Law, the Division may deny his use of any exemptions contained within ORS 59.025 and ORS 59.035.

Mr. Rugg and any business entity operated, owned or controlled by Mr. Rugg are prohibited from the use of exemptions to the securities registration requirement allowed by ORS 59.025 and ORS 59.035 in any transactions.

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Assessment of Civil Penalties

The Division seeks to assess Mr. Rugg a civil penalty in the amount of $20,000 per violation of ORS 59.055, ORS 59.135 and ORS 59.165 for a total civil penalty of $200,000 with joint and several liability with RFG.

ORS 59.995 provides, in part:

> (1) In addition to all other penalties and enforcement provisions provided by law, any person who violates or who procures, aids or abets in the violation of ORS 59.005 to 59.451, 59.710 to 59.830, 59.991 and 59.995 or any rule or order of the Director of the Department of Consumer and Business Services shall be subject to a penalty of not more than $20,000 for every violation, which shall be paid to the General Fund of the State Treasury.
>
> (2) Every violation is a separate offense and, in the case of a continuing violation, each day's continuance is a separate violation, but the maximum penalty for any continuing violation shall not exceed $100,000.
>
> (3) Civil penalties under this section shall be imposed as provided in ORS 183.745[.]

In October 2008 and again in June 2009, Mr. Rugg sold unregistered securities in violation of ORS 59.055, and he sold them when he was not licensed to do so in violation of ORS 59.165(1). Because two transactions were involved, the Division is entitled to assess $20,000 for each violation of ORS 59.055 and $20,000 for each violation of ORS 59.165(1), for a total maximum civil penalty of $80,000.

During the course of the transactions with CCB, Mr. Rugg made numerous untrue statements of material fact and omissions of material facts in violation of ORS 59.135(2). Each untrue statement and each omission is a separate violation of ORS 59.0135(2). Additionally, many of the untrue statements and omissions occurred during the course of both transactions, the original investment in October 2008 and the subsequent investment in June 2009. Thus, Mr. Rugg's failure to advise CCB that the securities were unregistered occurred twice, once in October 2008 and again in June 2009, resulting in two violations of ORS 59.135(2). Based upon his violations of ORS 59.135(2) outlined above, Mr. Rugg violated ORS 59.135(2) on at least 12 occasions. The Division is entitled to assess $20,000 for each of those violations, for a total maximum civil penalty of $240,000.[7]

The ALJ determined that, because the amount of the proposed civil penalty of $200,000 is within the limits set by ORS 59.995 and there is no evidence that the Division has abused its discretion in assessing such an amount, Mr. Rugg must pay a civil

[7] These maximums are based without consideration of whether any of the violations were continuing violations.

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penalty in the amount of $200,000, which is a liability he holds jointly and severally with RFG. Pursuant to ORS 183.745(2), the civil penalty is due and payable 10 days after the final order imposing the civil penalty becomes final by operation of law or on appeal.

ORDERS

Based on the foregoing, the Director issues the following ORDERS:

Orders to Cease and Desist

Randall David Rugg and any business entity operated, owned or controlled by Mr. Rugg must cease and desist from violations of ORS 59.055, ORS 59.135 and ORS 59.165.

Order Denying Use of Exemptions to the Securities Registration Requirements

Randall David Rugg and any business entity operated, owned or controlled by Mr. Rugg are denied the use of the exemptions to securities registration contained in ORS 59.025 and ORS 59.035 in any transaction.

Order Assessing Civil Penalty

Randall David Rugg, jointly and severally with Rapid Finance Group, Inc., must pay the Division of Finance and Corporate Securities a civil penalty of $200,000. The civil penalty is due and payable 10 days after the final order imposing the civil penalty becomes final by operation of law or on appeal.

AUTHORITY OF THE DIRECTOR TO SEEK OTHER REMEDIES

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

IT IS SO ORDERED.

Dated: February 25, 2015.

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

/s/ David Tatman
David C. Tatman, Administrator
Division of Finance and Corporate Securities

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

NOTICE OF RIGHT TO JUDICIAL REVIEW

You are entitled to judicial review of this order. Judicial review may be obtained by filing a petition for review within 60 days from the service of this order. Judicial review is in accordance with ORS 183.482(1) to the Oregon Court of Appeals.

NOTICE TO ACTIVE DUTY SERVICEMEMBERS

Active duty service members have a right to stay these proceedings under the federal Service members Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 800-452-7500 or the nearest United States Armed Forces Legal Assistance Office through http://legalassistance.law.af.mil.

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