

1 STATE OF WASHINGTON  
2 DEPARTMENT OF FINANCIAL INSTITUTIONS  
3 SECURITIES DIVISION

4 IN THE MATTER OF DETERMINING ) Order Number S-04-006-04-TO01  
5 Whether there has been a violation of the )  
6 Securities Act of Washington by: ) STATEMENT OF CHARGES AND NOTICE  
7 ) OF INTENT TO ENTER ORDER TO CEASE  
8 TeraCrush MonsterSports; Paul Boes; ) AND DESIST, TO IMPOSE FINES, AND TO  
9 Respondents. ) COLLECT COSTS  
10 )  
11 )

12 THE STATE OF WASHINGTON TO: TeraCrush MonsterSports; Paul Boes

13 **STATEMENT OF CHARGES**

14 Please take notice that the Securities Administrator of the State of Washington has reason  
15 to believe that Respondents, TeraCrush MonsterSports and Paul Boes, have each violated the  
16 Securities Act of Washington and that their violations justify the entry of an order of the  
17 Securities Administrator under RCW 21.20.390 against each to cease and desist from such  
18 violations and to pay a \$10,000 fine. The Securities Administrator finds as follows:

19 **TENTATIVE FINDINGS OF FACT**

20 **RESPONDENTS**

21 1. TeraCrush MonsterSports Inc. (TeraCrush) is a Nevada for-profit corporation with a  
22 principal place of business in Bothell, Washington.

23 2. Paul W. Boes (Boes) is President and CEO of TeraCrush.

24 **NATURE OF THE OFFERING**

25 3. TeraCrush promotes Monster Truck racing through demonstrations and on-site  
appearances at county fairs, racetracks, and Jeep dealerships. In February 2004, a Washington  
resident (the Resident) responded to the following Internet investment solicitation: "TeraCrush

1 MonsterSports, Inc. is currently looking for a serious investor. We have a complete business  
2 plan, financial worksheet, and 2 year promforma [sic]. Please call us to find out more  
3 information. Thank you for your time!” Boes emailed the Resident a business plan and pro  
4 forma income statements for TeraCrush. The Resident then called Boes and was told that an  
5 investor either could receive a two-year promissory note carrying an interest rate of five over  
6 prime, compounded quarterly, and convertible to an equity position at the end of the two-year  
7 term; or the investor could be a silent equity partner and receive two percent compounded  
8 quarterly as well as a stock certificate. Boes told the Resident that a minimum investment would  
9 be \$10,000; that Boes was trying to raise \$150,000; and that Boes had already raised \$50,000  
10 from investors.  
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#### 12 MISREPRESENTATIONS AND OMISSIONS

13 4. The business plan (Plan) sent to the Resident describes TeraCrush as being a “Limited  
14 Liability Partnership (LLP).” However, according to its Articles of Incorporation, TeraCrush is a  
15 corporation. TeraCrush and/or Boes did not clarify to the Resident the type of entity, and thus  
16 the corresponding set of rights and obligations, in which the Resident was offered an investment.  
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18 5. The Plan also states, “We expect to realize profits in our 2<sup>nd</sup> month of opening.”  
19 However, the pro forma income statement provided by Boes shows an anticipated loss in the  
20 second month of \$5,004. The Plan provides no foundation or basis for the financial information  
21 in the pro forma. TeraCrush and/or Boes did not otherwise adequately disclose the actual  
22 financial position of the business and did not otherwise explain the basis for the projections in  
23 the pro forma financial statements.

24 6. The Plan also reads, “As we plan to keep this a closely-held company, offers of  
25 investment dollars will be gratefully accepted with anticipated returns in 6 months.” The Plan

1 contains no description of the securities being offered or sold. TeraCrush and/or Boes did not  
2 otherwise adequately describe the securities being offered or sold.

3 7. TeraCrush and/or Boes did not disclose to the Resident the names of any other  
4 company Boes has run. Boes has started several companies in the last 10 years.

5 8. TeraCrush and/or Boes did not disclose to the Resident how they intended to use the  
6 proceeds from the investment and did not disclose the risk factors relating to the investment.  
7 TeraCrush and/or Boes did not disclose that the New York Attorney General and The Microsoft  
8 Corporation have a pending lawsuit against Boes, claiming \$40 million in damages for violations  
9 of “spam” laws and alleging that Boes played a key role in the sending of mass marketing emails  
10 with false headers, identifications, and subject lines. TeraCrush and/or Boes also did not  
11 disclose that Boes filed for personal bankruptcy in 2003.  
12

13 9. In February 2004, the Securities Administrator served a letter warning TeraCrush and  
14 Boes that they may be in violation of the Securities Act of Washington and a served a subpoena  
15 on TeraCrush and Boes. TeraCrush and Boes failed to answer or comply with the subpoena.  
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#### 17 REGISTRATION STATUS

18 10. TeraCrush is not currently registered to offer or sell its securities in the State of  
19 Washington and has not previously been so registered. It has no notification of exemption on  
20 file with the State of Washington.

21 11. Paul Boes is not currently registered as a securities salesperson or broker-dealer in  
22 the State of Washington and has not previously been so registered.  
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24 Based upon the Tentative Findings of Fact, the following Conclusions of Law are made:  
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## CONCLUSIONS OF LAW

1. The conduct described in the Findings of Fact constitutes the offer or sale of a security as defined in RCW 21.20.005(10) and (12).

2. The conduct described in the Findings of Fact is in violation of RCW 21.20.010 because Boes and/or TeraCrush, in connection with the offer or sale of a security, made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading by, including but not limited to, (A) representing investments offered as LLP interests and otherwise failing to adequately describe the securities being offered; (B) failing to provide adequate financial information about the company, including failing to disclose the basis for financial projections made; (C) failing to adequately disclose Boes’s business experience; (D) failing to disclose the risks of the investment; (E) failing to adequately disclose the use of the offering’s proceeds; and (F) failing to disclose material litigation information.

3. The conduct described in the Findings of Fact is in violation of RCW 21.20.140 because Boes and/or TeraCrush offered or sold securities for which there was no registration on file with the Securities Administrator.

4. The conduct described in the Findings of Fact is in violation of RCW 21.20.040 because Paul Boes offered or sold securities while not registered as a securities salesperson or broker-dealer in the Sate of Washington.

1                   **NOTICE OF INTENT TO ENTER ORDER TO CEASE AND DESIST, TO IMPOSE**  
2                                   **FINES, AND TO COLLECT COSTS**

3                   Based upon the Tentative Findings of Fact and Conclusions of Law, the Securities  
4 Administrator pursuant to RCW 21.20.390 intends to order that:

5                   1. TeraCrush MonsterSports and Paul Boes, and their agents and employees, each cease  
6 and desist from violating RCW 21.20.010, the anti-fraud section of the Securities Act.  
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8                   2. TeraCrush MonsterSports and Paul Boes, and their agents and employees, each cease  
9 and desist from offering or selling securities in any manner violating RCW 21.20.140, the  
10 section of the Securities Act of Washington requiring registration.

11                   3. Paul Boes cease and desist from violating RCW 21.20.040, the section of the  
12 Securities Act requiring registration of securities salespersons and broker-dealers.

13                   4. TeraCrush and Paul Boes shall be jointly and severally liable for and shall pay a fine  
14 of \$10,000.

15                   5. TeraCrush and Paul Boes shall be jointly and severally liable for and shall reimburse  
16 the Securities Division \$1,000 in costs.  
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18   **AUTHORITY AND PROCEDURE**

19                   This Order is entered pursuant to the provisions of RCW 21.20.390 and is subject to the  
20 provisions of chapter 34.05 RCW. The respondents, TeraCrush MonsterSports and Paul Boes,  
21 may each make a written request for a hearing as set forth in the NOTICE OF OPPORTUNITY  
22 TO DEFEND AND OPPORTUNITY FOR HEARING accompanying this Order.  
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24                   If a respondent does not request a hearing, the Securities Administrator intends to adopt  
25 the above Tentative Findings of Fact and Conclusions of Law as final, to enter the Order to

1 Cease and Desist, and to impose a \$10,000 fine against and collect \$1,000 in costs from that  
2 respondent.

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5 Dated this 30th day of March, 2004

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8 Deborah Bortner  
9 Securities Administrator

10 Approved by:

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13 Michael E. Stevenson  
14 Chief of Enforcement

15 Presented by:

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18 Andrew Ledbetter  
19 Financial Legal Examiner