STATE OF WASHINGTON 1 DEPARTMENT OF FINANCIAL INSTITUTIONS **SECURITIES DIVISION** 2 IN THE MATTER OF DETERMINING Order Number S-08-045-08-SC01 3 whether there has been a violation of the Securities Act of Washington by: STATEMENT OF CHARGES AND NOTICE 4 OF INTENT TO ENTER ORDER TO CEASE 5 AND DESIST, IMPOSE FINES, AND RECOVER COSTS MICHAEL DEVINE: INTERNATIONAL CONSULTING LLC; 6 DOWN UNDER SEAFOODS LLC: KIMBERLEY INVESTMENTS, INC., 7 Respondents. 8 9 THE STATE OF WASHINGTON TO: Michael Devine International Consulting LLC Down Under Seafoods LLC 10 Kimberley Investments, Inc. 11 12 STATEMENT OF CHARGES 13 Please take notice that the Securities Administrator of the State of Washington has reason to 14 believe that Respondents, Michael Devine, International Consulting LLC, Down Under Seafoods LLC, 15 and Kimberly Investments, Inc., have violated the Securities Act of Washington and that their violations 16 justify the entry of an order of the Securities Administrator under RCW 21.20.390 against each to cease 17 and desist from such violations, and to impose fines and recover costs. The Securities Administrator finds 18 as follows: 19 TENTATIVE FINDINGS OF FACT 20 Respondents 21

Washington resident. His last known address is in Kirkland, Washington.

STATEMENT OF CHARGES AND NOTICE OF INTENT TO ENTER

ORDER TO CEASE AND DESIST, IMPOSE FINES, AND RECOVER

1.

22

23

24

COSTS

DEPARTMENT OF FINANCIAL INSTITUTIONS Securities Division PO Box 9033 Olympia, WA 98507-9033 360-902-8760

Michael Devine ("Devine"), also known as Michael J. Devine or Michael John Devine, is a

2. International Consulting LLC ("International Consulting") is a Washington limited liability company that was formed on April 12, 2005. The company was formed to procure iron ore rights. The company was dissolved on August 1, 2006. Devine was manager and member of International Consulting.

- 3. Down Under Seafoods LLC ("Down Under Seafood") is a Montana limited liability company that was formed October 3, 2006. Down Under Seafoods LLC is also known as Down Under Seafood LLC and Down Under Seafood Group. Down Under Seafood was formed to start a seafood store and fish and chips franchise. Down Under Seafood was involuntarily dissolved by the Montana Secretary of State on December 1, 2008 for failing to file an annual report for the current year. Devine was manager and member of Down Under Seafood.
- 4. Kimberley Investments, Inc. ("Kimberley Investments") is a Montana corporation that was formed on January 22, 2008. The company has had several business plans, including investing in foreclosed properties, building senior housing, and building an ethanol plant. Michael Devine is CEO of Kimberley Investments.

Nature of the Conduct

5. Michael Devine, while based out of Kirkland, Washington, offered and sold investments totaling at least \$278,000 between 2005 and 2008. The investments were in various ventures, including an iron ore venture, a seafood store, and a real estate company. Devine offered short-term promissory notes with high interest rates. Devine made personal guarantees of the principal of the investments to at least three investors. In addition, Devine offered investments in equity interests or "points" in his various businesses. To date, none of the known investors has been paid back by Devine.

Pearl Coast Marine Products

- 6. In August 2004, Michael Devine approached a Washington resident about going into business with him brokering seafood. In August 2004, Devine delivered two promissory notes to the resident in return for \$1,500 and \$5,000, with a promise to pay principal plus a \$1,000 bonus for each note on September 1, 2004. Devine offered the resident the opportunity to buy a 49% interest in Pearl Coast Marine Products for \$55,000 in installments. Devine and the resident would operate the partnership together. The Washington resident paid Devine approximately \$15,000.
- 7. Pearl Coast Marine Products represented itself as a partnership in obtaining a business license from the Washington State Department of Licensing on September 7, 2004. The Washington resident established a bank account for Pearl Coast Marine Products because Devine purportedly did not have sufficient credit to open a bank account.
- 8. The Pearl Coast Marine Products partnership fell apart by November 2004. No seafood transactions had been completed. The Washington resident requested return of his money, but did not receive it.
- 9. Michael Divine formed a Washington limited liability company called Pearl Coast Marine Products LLC on April 12, 2005. The company was dissolved on August 1, 2006.

International Consulting

Investor A

- 10. Investor A, a Washington resident, initially met Devine in 2004. In early 2005, Devine approached Investor A with various business deals with which he wanted help. Investor A had never invested in small businesses before. He was not an accredited or sophisticated investor.
- 11. Devine mentioned an iron ore investment as a possible side business venture. Devine was working to have his company International Consulting LLC purchase mining rights from Adelaide

STATEMENT OF CHARGES AND NOTICE OF INTENT TO ENTER ORDER TO CEASE AND DESIST, IMPOSE FINES, AND RECOVER COSTS

supposedly confirmed iron ore deposits. Devine represented that his father owned a generator plant in Beijing and had connections with a Chinese steel company called China Kingdom International. Devine stated that his company International Consulting planned to purchase the mining rights for \$140,000 and sell the rights to the Chinese steel company for \$46 million. International Consulting would retain 51% of the rights and therefore would control logistics.

Resources Ltd. ("Adelaide Resources"), an Australian company that owned land in Australia with

- 12. In January 2005, Investor A gave Devine \$5,000 to put towards this iron ore venture. At Devine's request, Investor A wired the funds to the bank account for Pearl Coast Marine Products. Devine represented that Pearl Coast Marine Products was a seafood shipping company that he owned.
- 13. Around this time, Devine supplied Investor A with a two page document describing an investment opportunity in the "Warramboo Iron Ore Project." The document stated that investors could have a return on their investment in 90 days. The document further stated than on offering document would be available upon request.
- 14. On March 3, 2005, Investor A invested an additional \$30,000 with International Consulting LLC. Devine promised a 6-to-1 return if the deal with the Chinese steel company was completed. Devine signed a Letter of Guarantee in which he personally guaranteed the principal of the investment and agreed to return Investor A's principal by June 1, 2005. Devine again requested that Investor A wire the funds to the Pearl Coast Marine Products bank account though it was understood the investment was with International Consulting.
- 15. Devine did not discuss the risks of the investment or provide offering or disclosure information to Investor A. Because he had Devine's personal guarantee, Investor A did not believe there was any risk to his principal.

8

10

11 12

13

14

15 16

17

18

19

20

21

22

23

24

STATEMENT OF CHARGES AND NOTICE OF INTENT TO ENTER ORDER TO CEASE AND DESIST, IMPOSE FINES, AND RECOVER COSTS

DEPARTMENT OF FINANCIAL INSTITUTIONS Securities Division PO Box 9033

Olympia, WA 98507-9033 360-902-8760

Around this period of time, Devine told Investor A that International Consulting needed to raise the \$140,000 by December 15, 2005 in order to purchase the rights.

17. Investor A contacted an old friend, Investor B, who Investor A knew might be interested in business or investment projects. Devine then contacted Investor B by phone and email.

18. Devine informed Investor A that Investor B would not invest unless Investor A co-signed a guarantee. Devine told Investor A that if he did not sign the guarantee, International Consulting would not be able to raise the required funds in time. Investor A agreed to "co-sign" Investor B's guarantee. The "Guaranty Agreement" recites that Investor A, as guarantor, agrees to guarantee Investor B's \$50,000 principal. The "Guaranty Agreement" was signed by Michael Devine in his individual capacity.

International Consulting did not purchase the iron ore rights. Devine did not make payments under Investor A's promissory note, nor return principal.

Investor B

20. Investor B, a Massachusetts resident, met Devine through Investor A. Investor B was interested in business and investment opportunities but his investing experience was limited to investing in publicly traded companies.

Devine contacted Investor B by telephone and email from his home in Kirkland, 21. Washington to discuss investing in an iron ore venture in Australia. Devine told Investor B that iron ore deposits had been located in Australia on land owned by Adelaide Resources. Devine's company International Consulting planned to the secure mining rights for this iron ore. Once the rights were secured, they could either be sold for profit or developed into a mining operation. Devine sought funds so that International Consulting could purchase the rights.

DEPARTMENT OF FINANCIAL INSTITUTIONS Securities Division PO Box 9033 Olympia, WA 98507-9033

360-902-8760

22. Devine requested funds be wired to the bank account for Pearl Coast Marine Products located at Bank of America in Kirkland, Washington. Devine explained that International Consulting was such a new company he had not had time to set up a bank account for it. He assured Investor B that the funds would be transferred to a bank account for International Consulting as soon as possible.

23. On April 15, 2005, Devine, as sole member of International Consulting LLC, signed a \$50,000 "Non-Negotiable Promissory Note" in Seattle, Washington. Under the terms of the note, Devine promised to pay Investor B his \$50,000 principal plus 50% annual interest, or \$62,500, by October 14, 2005. On the same day, Devine signed a "Guaranty Agreement." The guarantee recites that Investor A, as guarantor, guarantees Investor B's \$50,000 principal. The "Guaranty Agreement" was signed by Michael Devine in his individual capacity. The documents were sent to Investor B. Investor B then wired \$50,000 to the Pearl Coast Marine Products bank account.

24. Later in July or August 2005, Investor B agreed to invest additional money into the iron ore venture in exchange for a membership interest in International Consulting. Devine told Investor B that this would allow Investor B to participate in the profits from the iron ore venture. Investor B wired \$38,000 directly to Adelaide Resources.

25. Devine did not discuss the risk of the investment with Investor B. Because he had the personal guarantees of Devine and Investor A, Investor B did not believe there was any risk to his principal.

26. Investor B did not receive payment on the promissory note. Investor B requested his money back from Devine, but did not receive it. He was also informed by either Adelaide Resources or Devine that Adelaide Resources would keep his \$38,000 as a default because International Consulting had not raised the amount required to purchase the mining rights.

10

11

12

13

14

15

16

17

18

19

20

21

22

Investor C

- 28. Investor C is a mortgage broker and real estate investor living in Massachusetts. He met Devine through his business partner Investor B. Investor C did not have experience investing in small business ventures.
- 29. In approximately June 2005, Devine contacted Investor C by phone and email from Kirkland, Washington. Devine told Investor C that he needed funds for his company International Consulting LLC to pay expenses for an iron ore venture in Australia.
- 30. Devine told Investor C that the investment was a "sure thing" and offered a personal guarantee on the investment. Investor C was not told the risks of the venture or asked about his investing experience or sophistication. Because he had Devine's personal guarantee, Investor C did not believe there was any risk to his principal.
- 31. Devine mailed paperwork to Investor C consisting of a promissory note and personal guarantee. On June 20, 2005, Devine signed a "Non-Negotiable Promissory Note" as sole member of International Consulting LLC. Under the terms of the note, Investor C would receive his \$35,000 principal plus 10% annual interest by August 22, 2005. Devine signed a separate "Guaranty Agreement" on June 26, 2005 in which personally guaranteed the principal of Investor C.
- 32. Devine requested that Investor C wire his \$35,000 to the bank account for Pearl Coast Marine Products because Devine had not yet set up an account for International Consulting. He promised he would set up such an account shortly.

33. After two months passed, Investor C did not receive any payment on the promissory note. He requested payment from Devine, who told Investor C by email and phone that he would pay Investor C back. No payments of principal or interest were made. Investor C sued Devine in King County Superior Court. Investor C received a default judgment for \$43,416 on July 12, 2006.

Down Under Seafood

Investor D

- 34. Investor D met Devine on an airline flight between Seattle and New Jersey in approximately December 2006. At the time, Investor D was a Washington resident. Devine spent the flight telling Investor D about his various businesses.
- 35. Devine stayed in contact with Investor D and soon brought up the possibility of Investor D investing in a seafood business he was starting in Missoula, Montana. The seafood business was called Down Under Seafood and would combine a fresh seafood store with a fish and chips restaurant. Devine talked about franchising the business. He said he had almost a dozen investors in the business.
- 36. Devine initially asked for a short-term investment. On January 22, 2007, Devine signed a "Non-Negotiable Promissory Note" in which "Down Under Seafood, LLC, a Washington limited liability company" agreed to pay principal of \$30,000 plus 50% interest by May 22, 2007. Devine signed this promissory note as the sole member of "Down Under Seafood Group." A "Down Under Seafoods LLC" was formed in Montana on October 3, 2006. However, there is no Washington limited liability company operating under the name Down Under Seafood LLC or Down Under Seafood Group. The promissory note stated that it was secured by a five percent equity interest in Down Under Seafood LLC.

37. At Devine's instruction, Investor D wired \$30,000 on January 23, 2007 to a bank account for Blue Damsel Machinery LLC at Capital One. Blue Damsel Machinery LLC was a ship reclamation company purportedly owned by Devine in Louisiana. However, Investor D's understanding was that the investment was in Down Under Seafood.

38. Prior to the payment date of the promissory note, in or about April 2007, Devine offered to convert Investor D's loan into an ownership interest in Down Under Seafood. This would allow Invest D to receive a share of the profits of the business. Devine told Investor D that there was only a short period of time in which Investor D could convert to an equity interest. This was because Down Under Seafood was selling its first franchise store. Devine spoke of this sale as if it had already been completed.

39. Following their conversation in which Devine offered the loan conversion, Devine sent a document to Investor D which stated:

Down Under Seafood, LLC hereby agrees to convert loan 01 entered into January 15 2007 from [Investor D] into two points of ownership of Down Under Seafood, LLC. Points are fully tradable [sic] as per the guidelines set by the board of directors of the Down Under Seafood Group.

As per our conversation you are elegible [sic] to sell points held at the 40 k level. The current market price of 40 k expires June 5, 2007. As the situation stands today we have more investors than sellers leaving a sellers [sic] market. I would be happy to assist you in the sale of your holding in Down Under Seafood's [sic] if you choose to do so.

The document was signed by Michael Devine as President of Down Under Seafood Group. Investor D understood the document to state that if he converted his loan to two points of ownership interest, there was a ready market for him to sell the points for \$80,000 total until June 5, 2007. Investor D agreed to the loan conversion.

- 40. On April 17, 2007, Devine emailed Investor D to recommend that Investor D hold his position until the sale of the franchise store was completed; this would enable Investor D to receive profits for the company. However, Investor D sent a letter to Devine on April 25, 2007 authorizing Devine to sell two of his points for \$40,000 each. Devine responded by email that he would sell the points immediately.
- 41. On or about May 3, 2007, Investor D wired \$50,000 to a bank account at US Bank specified by Devine. In combination with the ownership points from the loan conversion, Investor D would now have a 6% interest in Down Under Seafood.
- 42. Investor D did not receive the \$80,000 he was promised for sale of the ownership points from the loan conversion. Devine told Investor D that the sale of the franchise store had fallen through.
- 43. On or about June 22, 2007, Devine asked Investor D for a \$20,000 emergency loan to cover short term expenses for the seafood business. Investor D agreed to loan \$20,000. At the time Investor D transferred the funds, Devine gave Investor D a check for \$25,000 post dated July 9, 2007. Investor D cashed the check on July 9, 2007, but the check bounced.
- 44. Investor D did not receive disclosure information or documents evidencing his ownership interest in the seafood business. Investor D did not have previous experiencing investing in small businesses or restaurants.

Investor E

45. Investor E is an architect and resident of Montana. His firm was hired to provide architectural services for the construction of the Down Under Seafood store. Devine failed to pay for

360-902-8760

the architectural services. When Investor E demanded payment from Devine, Devine offered Investor E's firm two ownership points, or a 2% interest, in Down Under Seafood. Devine represented that the points could be sold immediately for \$40,000 each.

- 46. Investor E reluctantly agreed to accept the points because he needed to pay the consultants he had hired for Devine's project. He emailed Devine on June 6, 2007 requesting that Devine sell one of the points. Devine replied on the same day and said Investor E would receive payment from the sale of the point in 30 days.
- 47. Over the next 30 days, Investor E repeatedly requested documentation from Devine, such as an assignment, which would confirm his firm's equity ownership in Down Under Seafood. He also requested the Operating Agreement for the company. Devine told Investor E that he would receive a confirmation from a law firm. Despite repeated requests, Investor E never received confirmation. He also never received any payment from sale of his points.
 - 48. Investor E sued Devine and received a judgment for approximately \$33,000.

Investor F

- 49. Investor F is a Washington resident who owns property in Devine's neighborhood. Investor F is not an accredited investor. Soon after meeting, Devine told Investor F he was looking for investors for his business Down Under Seafood. Devine showed Investor F blueprints for the seafood store. He promised Investor F large returns.
- 50. Devine provided Investor F with a document entitled "Investment Opportunity." The document described Down Under Seafood's plan to create a seafood store and restaurant. The document stated that "Currently 25% of Down Under Seafood company is being offered for purchase to qualified investors." The document further stated that purchasers would be entitled to share in

profits of the business. The document stated that percentage point interests had a value of \$20,000 each, and all owners could sell their interests at the current assessed value.

51. In or about 2007, Investor F invested \$5,000 in Down Under Seafood. In addition, Investor F paid approximately \$15,000 in various expenses for running Down Under Seafood. Investor F was supposed to receive a certificate stating that he owned a 2% interest in Down Under Seafood. However, he never received a certificate. He never received any additional disclosure information concerning the company.

Kimberley Investments

- 52. In 2008, Investor F requested return of his investment in Down Under Seafood. Devine offered to convert Investor F's interest in Down Under Seafood into an equity interest in Devine's new company Kimberley Investments.
- 53. According to Devine, Kimberley Investments was going to raise hundred of millions of dollars in Dubai. It would then purchase foreclosed homes in the United States. The company would sell the properties for profit. Devine stated that Investor F would be a "big time owner."
- 54. Devine offered Investor F a 5% interest in Kimberley Investments because of his previous investments in Down Under Seafood. Devine provided two promissory notes to Investor F issued by Kimberly Investments, Inc. on May 9, 2008. One note promised to pay \$25,297 together with 75% annual interest in 90 days. The other note promised to pay \$12,000 plus 75% annual interest in 30 days. Investor F has received no payments on these notes. Investor F received no disclosure information on Kimberley Investments.

Additional Offerings by Kimberley Investments, Inc.

12

10

12

13

17

19

21

22

23

24

STATEMENT OF CHARGES AND NOTICE OF INTENT TO ENTER ORDER TO CEASE AND DESIST, IMPOSE FINES, AND RECOVER COSTS

Investments. Kimberley Investments had no money or assets. Devine planned to raise \$200,000 through promissory notes that would have 6 to 12 month terms and pay 50% to 75% interest. The notes would be convertible into Kimberley Investments stock. Devine hired an individual in Issaquah, Washington to offer the notes for a \$25,000 commission. The amount of money raised through these promissory notes is unknown. By July 2008, Devine changed the focus of Kimberley Investments from purchasing

In or about April 2008, Devine developed a "loan program" to raise capital for Kimberley

foreclosures to buying land on which to build senior housing. On July 3, 2008, Devine made an offer for Kimberley Investments to buy property in Yakima, Washington for \$4.2 million.

By September 2008, Devine changed the direction of Kimberley Investments again. He now planned to build an ethanol plant on the land in Yakima. Prior to the closing on the Yakima property, Devine offered the property owner a 5% equity interest in Kimberley Investments for \$250,000. Devine said the owner could pay \$25,000 now and the remaining \$225,000 after closing. Devine represented that a \$250,000 investment in Kimberley Investments could provide \$25 million in profits within five years.

The property owner did not invest in Kimberley Investments. The closing on the Yakima property did not occur because Devine had no financing for the purchase.

Additional Offers of Down Under Seafood

59. At least two additional Washington residents were offered the opportunity to invest in Down Under Seafood.

> DEPARTMENT OF FINANCIAL INSTITUTIONS Securities Division PO Box 9033 Olympia, WA 98507-9033 360-902-8760

Child Support

60. As of January 28, 2005, Michael Devine owed \$58,038.13 in past due child support, according to a withholding notice issued by the State of Washington Department of Social and Health Services. It is believed that the child support is still unpaid.

Misrepresentations and Omissions

- 61. Respondents Michael Devine and International Consulting LLC failed to provide material information regarding investing in International Consulting LLC, including but not limited to: financial statements, use of proceeds, the business background and experience of Michael Devine, the general risks of investing, and the specific risks of investing in an iron ore venture located in Australia.
- 62. Respondents Michael Devine and Down Under Seafoods LLC failed to provide material information regarding investing in Down Under Seafoods LLC and/or Down Under Seafood Group, including but not limited to: financial statements, use of proceeds, the business background and experience of Michael Devine, the relationship between Down Under Seafoods LLC and Down Under Seafood Group, the entity status of Down Under Seafood Group, the general risks of investing, and the specific risks of investing in a seafood store and fish and chips restaurant.
- 63. Respondent Michael Devine misrepresented that the sale of the Down Under Seafood franchise store was completed when it was not, and misrepresented that there was a ready market for Down Under Seafood LLC and/or Down Under Seafood Group ownership points until a fixed date, when there was no such market.
- 64. Respondents Michael Devine and Kimberley Investments, Inc. failed to provide material information regarding investing in Kimberley Investments, Inc, including but not limited to: financial

360-902-8760

PO Box 9033

360-902-8760

Olympia, WA 98507-9033

24

COSTS

- 1. The offer or sale by Respondents of each of the investments described above constitutes the offer and/or sale of a security as defined in RCW 21.20.005(10) and (12).
- 2. The offer or sale of said securities violated RCW 21.20.140 because Respondents were not registered to sell securities in the State of Washington.
- 3. Respondent Michael Devine violated RCW 21.20.040 by offering or selling said securities while not registered as a broker-dealer or securities salesperson in the State of Washington.
- 4. The offer or sale of the investments described above was made in violation of RCW 21.20.010 because, as set forth in the Tentative Findings of Fact, Respondents made misstatements of material facts or omitted to state material facts necessary in order to make the statements made, in light of circumstances under which they were made, not misleading.

NOTICE OF INTENT TO ORDER THE RESPONDENT TO CEASE AND DESIST

Pursuant to RCW 21.20.390, and based on the above Tentative Findings of Fact and Conclusions of Law, the Securities Administrator intends to order that Respondents, Michael Devine and International Consulting LLC, and their agents and employees, shall each cease and desist from violations of RCW 21.20.140, RCW 21.20.040, and RCW 21.20.010.

NOTICE OF INTENT TO IMPOSE FINES

Pursuant to RCW 21.20.395, and based upon the Tentative Findings of Fact and Conclusions of Law, the Securities Administrator intends to order that Respondent Michael Devine shall be liable for and pay a fine of \$15,000.

NOTICE OF INTENT TO RECOVER COSTS

16

21

22

Pursuant to RCW 21.20.390(5), and based upon the Tentative Finds of Fact and Conclusions of Law, the Securities Administrator intends to order that the Respondents Michael Devine, International Consulting LLC, Down Under Seafoods LLC, and Kimberley Investments, Inc. shall be liable jointly and severally for and pay the Securities Division the costs, fees, and other expenses incurred in the conduct of the administrative investigation and hearing of this matter of not less than \$1,500.

AUTHORITY AND PROCEDURE

This Statement of Charges is entered pursuant to the provisions of the RCW 21.20.390 and RCW 21.20.395 and is subject to the provisions of RCW 34.05. The Respondents may each make a written request for a hearing as set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING accompanying this Statement of Charges.

If a Respondent does not request a hearing, the Securities Administrator intends to adopt the above Tentative Findings of Fact and Conclusions of Law as final, enter a permanent cease and desist order as to that Respondent, and impose the fines and costs sought.

DATED AND ENTERED this 9th day of December, 2008.

Onideal & Stevenson

MICHAEL E. STEVENSON Securities Administrator

Approved by:

An Elm

SUZANNE SARASON Chief of Compliance & Examinations Presented by:

JILL M. VALLELY **Enforcement Attorney**

MVallele