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**STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
SECURITIES DIVISION**

IN THE MATTER OF DETERMINING) Order No.: S-11-0654-12-SC01
Whether there has been a violation of the)
Securities Act of Washington by:) STATEMENT OF CHARGES AND NOTICE OF INTENT
) TO ENTER ORDER TO CEASE AND DESIST, TO
TBOC, LLC; Andrew T. Miller; Michelle M.) CHARGE COSTS, AND TO IMPOSE FINES
Nelson;)
)
Respondents.

THE STATE OF WASHINGTON TO: TBOC, LLC
Andrew T. Miller
Michelle M. Nelson

STATEMENT OF CHARGES

Please take notice that the Securities Administrator of the State of Washington has reason to believe that Respondents, TBOC, LLC, Andrew T. Miller, and Michelle M. Nelson, have each violated the Securities Act of Washington and that their violations justify the entry of an order of the Securities Administrator under RCW 21.20.390 against each to cease and desist from such violations and to charge costs, and, under RCW 21.20.395, to impose a fine. The Securities Administrator finds as follows:

TENTATIVE FINDINGS OF FACT

Respondents

1. TBOC, LLC (“TBOC”) is a Washington limited liability company organized on June 22, 2006. During the period relevant to this Statement of Charges, TBOC maintained a principal place of business in Milton, Washington.
2. Andrew T. Miller (“Miller”) is a Washington resident and TBOC’s manager.
3. Michelle M. Nelson (“Nelson”) is a Washington resident and TBOC’s business manager.

Nature of the Offering

Background

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3 4. In approximately 1990, Miller began composing a cantata about the Nativity story entitled
4 *The Birth of Christ* that debuted publicly in December, 2004.

5 5. Shortly after this debut, Miller and several associates, including Nelson, whom Miller had met
6 through his involvement in musical productions throughout the Puget Sound area and beyond, began
7 planning an international production of *The Birth of Christ*.

8 6. This group ultimately planned a performance of *The Birth of Christ* in Dublin, Ireland to be
9 professionally filmed and recorded, that would include an orchestra, soloists and a choir, and a celebrity
10 narrator for August, 2006. The group also contemplated the sale of CDs and DVDs of the production. TBOC
11 was organized to facilitate this production and its interests were sold to fund the production.

12 7. Prior to the offering, Miller intended to assign the intellectual property rights to *The Birth of*
13 *Christ* to TBOC. Miller and Nelson claim that they told potential investors that this assignment would not
14 occur until a certain amount of revenue generated by *The Birth of Christ* had been collected by the trustee
15 administering Miller's bankruptcy case that had been discharged approximately six months prior to the
16 beginning of TBOC's offering. Miller and Nelson also claim that they disclosed that the bankruptcy trustee
17 had not determined the amount of revenue to be claimed when the offering began. With respect to at least
18 some investors, however, neither Miller nor Nelson disclosed that the bankruptcy trustee had a claim to the
19 intellectual property rights of *The Birth of Christ* or that the trustee had not determined the amount of
20 revenue to be claimed.
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Scope of the Offer and Sale of Limited Liability Company Interests by TBOC, LLC

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23 8. Between approximately June and December 2006, Respondents offered investments in
24 TBOC's interests. As part of this offering, TBOC invited approximately thirty prospective investors to attend
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1 meetings at which Miller and Nelson gave a presentation on “The Birth of Christ—Ireland” project and the
2 related investment opportunity. Respondents separately offered additional interests in TBOC to at least four
3 individuals that had already invested once or to such investors’ immediate relatives. In addition to the
4 foregoing offers for monetary investments, TBOC also offered in-kind investments in TBOC’s interests to at
5 least three soloists involved with the production in exchange for fees owed them by TBOC, to a creditor
6 owed for producing embroidered shirts for TBOC, and to a creditor owed expenses resulting from a series of
7 performances.

8 9. Consequently, Respondents sold at least \$50,000 worth of TBOC interests to five Washington
9 investors invited to attend TBOC’s meetings either at or shortly after those meetings, at least five additional
10 investments worth \$438,000 to four of those investors or to their immediate relatives, and made in-kind sales
11 of interests totaling in excess of \$16,000. Miller and Nelson purchased approximately \$412,000 worth of
12 TBOC’s interests. Miller purchased approximately \$300,000 worth of TBOC interests by issuing a
13 promissory note for approximately \$300,000 in his individual capacity in order to pay certain TBOC
14 expenses as described in paragraph thirty three of the Tentative Findings of Fact. Nelson made a cash
15 investment of approximately \$108,000.
16

17 *Invitation and Presentation on Investment Opportunity Given to Prospective Investors*

18 10. TBOC invited a total of approximately thirty people to attend meetings at Thornewood Castle
19 in Lakewood, Washington on or around June 17 and August 1, 2006. Invitees received postcards requesting
20 their presence for “complimentary wine, hors d’oeuvres and an investor presentation opportunity in The
21 Birth of Christ-Ireland.”

22 11. At each of these meetings, at least twenty-five potential investors heard a presentation by
23 Miller and Nelson about the production’s status at that point and about the next steps TBOC intended to take.
24

1 Many invitees attended both meetings. Nelson delivered the majority of this presentation and used a
2 PowerPoint slideshow to summarize her presentation.

3 12. Several individuals with purported experience in the entertainment industry also spoke at
4 these meetings. These people shared their opinions about the potential profits of a production like that
5 planned by TBOC, at least one claiming that the project would likely be very successful financially. One of
6 these individuals represented that he was seeking a distribution agreement for the sale of CDs and DVDs of
7 the production that would provide royalties to TBOC.

8 13. One of Nelson's PowerPoint slides was headed "Disclaimer," and stated "[t]his is an
9 investment opportunity. As such there is a possibility of risk to your principal investment." This was the only
10 disclosure concerning risks arising from investment in TBOC made at these meetings.

11 14. Nelson represented that TBOC's purpose was to present *The Birth of Christ* in Ireland, to film
12 it, and to present it for broadcast to the Public Broadcasting System ("PBS"), with the hope that such an
13 airing on PBS would result in broad exposure for the project and in interest in a musical score, CDs, and
14 DVDs that Nelson stated would be created and "presented for sale." When the meetings with prospective
15 investors took place, no agreement between TBOC and PBS was in place. Nelson also discussed plans to
16 market these products through a TBOC website, and through sales by Amazon.com, Costco, and Wal-Mart.
17

18 15. Nelson discussed the steps TBOC would need to complete to ensure that the production could
19 take place, telling the attendees that the following personnel would need to be secured: a narrator, soloists, a
20 chorus, an orchestra, a conductor, a director and an assistant director, producers, and film, marketing, and
21 distribution professionals. In addition, TBOC needed to book a venue in Dublin.

22 16. Nelson then identified Miller and two other individuals as producers, two individuals as
23 "assistant choral directors," an individual as film director, Liam Neeson ("Neeson") as the narrator, and
24

1 herself as business manager and “orchestra contractor” for TBOC. Neeson was the only individual with
2 whom TBOC had entered into a contract at the time of the meetings with potential investors.

3 17. A planned timeframe for the project was also presented. The schedule projected that revenue
4 distribution stemming from sales of CDs and DVDs, musical scores, royalties, and airing on a “major
5 network” would begin in December, 2006.

6 18. Nelson presented a slide headed “Gross Revenues.” This slide featured a pie chart comprised
7 of various anticipated sources of revenue. Percentages of the total anticipated gross revenues were attributed
8 to each portion, though neither dollar amounts to correspond to those percentages or a total amount of
9 forecasted revenues was presented. The two largest portions were labeled “pledge vehicle” and “on air,” and
10 accounted for over sixty-seven percent of TBOC’s projected revenues.

11 19. A slide headed “Expenses” was also shown. Like the “Gross Revenues” slide, the “Expenses”
12 slide featured a pie chart with various percentages attributed to various types of expenditures, but without
13 dollar amounts to correspond to those percentages or a total amount from which the percentages were
14 derived.

15 20. Nelson told the potential investors that TBOC had estimated that the production would cost
16 \$1 million. Because TBOC had not established a firm budget, the ratio of investment dollars to limited
17 liability company interests purchased was not set when these meetings occurred.

18 21. Potential investors were further told that they would be buying a “percentage of the
19 profitability” of the production in Ireland and that their funds would be used for “whatever expenses...were
20 necessary to make the product.”

21 22. Potential investors received hard copies of the PowerPoint slideshow discussed above. These
22 copies were the only documents investors received prior to investing.
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1 23. Investors did not receive TBOC's operating agreement until November, 2007. This operating
2 agreement stated that TBOC was a manager-managed limited liability company, and that Miller had been
3 appointed manager. The agreement also provided that Miller could make all decisions "affecting or arising
4 out of the conduct of" TBOC's business and that Miller had "exclusive right and full authority to manage"
5 TBOC outside of changing managers, and incurring debt on TBOC's behalf for which the other investors
6 would be personally liable.

7 24. Investors signed documents entitled "Commitment Letter" when they invested, indicating
8 intent to commit the amount of their investment to "The Birth of Christ, Ireland." These letters stated:
9 "[c]ontract to be submitted upon and funds to be collected upon mutual acceptance." The contracts
10 referenced in these Commitment Letters were never created.

11 25. Most of the five investors purchasing interests at or shortly after these meetings paid by check
12 payable to TBOC. At least one check was deposited in an account in Miller's name after "TBOC, LLC" as
13 payee was crossed out and replaced by Miller's name.

14 26. No one acting on behalf of TBOC inquired into either the investment sophistication or
15 experience of the investors prior to receiving their investment funds.

16
17 *Additional Offers and Sales to Investors or to their Immediate Relatives*

18 27. Miller or TBOC entered into additional transactions with at least four TBOC investors who
19 had bought TBOC interests at or shortly after the meetings discussed above or with their immediate relatives
20 to address TBOC's financial obligations as they became due. TBOC raised at least \$438,000 through these
21 transactions.

22 28. In the latter half of July, 2006, Miller contacted two other TBOC investors to seek additional
23 funds. Miller reiterated the key points of the presentation given at the Thornewood Castle meetings to at least
24

1 one of these investors. As a result of Miller's efforts, one investor gave TBOC an additional \$50,000, while
2 the other provided an additional \$13,000.

3 29. These investors received identical letters from Miller. Miller intended these letters to confirm
4 conversations concerning "additional investment in The Birth of Christ—Dublin, Ireland," and to serve as a
5 written guarantee against such investments. The letters further stated that Miller was offering his earnings for
6 September through December, 2006 "as collateral against" these additional funds. The letters also stated that
7 the additional investments would not affect the investors' stakes in TBOC. These two investors later received
8 additional interests in TBOC for having provided these funds.

9 30. On August 8, 2006, approximately one week after the second meeting of potential investors at
10 Thornewood Castle, Miller sent an email to a TBOC investor to ask for more money. Miller wrote that he
11 had "another offer" for the investor, and that Miller needed "substantial additional funding." Miller asked the
12 investor and his wife for a "secured loan until January," and represented that he could pay an "enticing
13 interest rate."

14 31. The investor rejected Miller's offer of interest. Miller, TBOC, and the investor entered into an
15 agreement entitled "TBOC, LLC Loan Agreement." Under this agreement, the investor gave TBOC and
16 Miller \$50,000 which was "secured against an equivalent value of TBOC, LLC and Andrew T. Miller's
17 personal/professional income over the next four months in TBOC's production of 'The Birth of Christ.'" The
18 agreement gave the investor the right to accept "an ownership position" in TBOC in lieu of payment. The
19 investor later exercised this right.
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21 32. Shortly after this transaction, Miller contacted the same investor by phone while Miller was in
22 New York City finalizing TBOC's contract with Neeson. Miller told the investor that the person who had
23 "committed" to paying the final \$25,000 of Neeson's fee had reneged, and that Neeson's agent was
24 threatening to terminate the agreement unless Miller immediately paid \$25,000. The investor wired \$25,000
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1 to pay the balance of Neeson's fee. Miller, Nelson, and the investor considered this payment to be an
2 investment in the production at the time, and the investor later received additional interests in TBOC for
3 having made this payment.

4 33. In the first half of August, 2006, shortly before leaving for Ireland, Miller approached a
5 TBOC investor's son to seek money for the substantial costs of filming the performance in Ireland. The son
6 and Miller, in his individual capacity, signed a promissory note, pursuant to which the son provided
7 approximately \$300,000 for the production. While negotiating this transaction, Miller offered the son the
8 right to convert the debt to interests in TBOC.

9 *In-Kind Offers and Sales*

10 34. At least three soloists who would have charged TBOC for their services agreed to accept
11 interests in TBOC in lieu of such fees. At least one such investor signed a document entitled "TBOC LLC:
12 Artist Agreement." The Artist Agreement provided, in part, that the investor agreed that "as
13 compensation...he will retain a percentage of ownership in TBOC LLC, commensurate to 1%."

14 35. Miller engaged a TBOC investor's spouse to produce one hundred machine-embroidered
15 shirts for the production in Ireland. Shortly before leaving for Ireland, Nelson attempted to reduce the order,
16 citing a shortage of cash. Instead, the spouse agreed to accept interests in TBOC in lieu of payment of the
17 \$1,000 due for the shirts.

18 36. In December, 2006, a series of performances of *The Birth of Christ* took place at a church in
19 Seattle affiliated with the church at which one of TBOC's investors served as pastor. These performances
20 resulted in expenses of approximately \$15,000, which the investor paid. TBOC and the investor later agreed
21 to assign additional interests in TBOC to this investor to compensate him for covering these costs.
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Production in Ireland and Aftermath

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2 37. The production of *The Birth of Christ* took place in Dublin in August, 2006 as represented to
3 investors.

4 38. Revenue was not distributed in late 2006 or early 2007 as forecasted. At a meeting in
5 December, 2007, investors learned that Miller signed a distribution agreement with Sony in October, 2007
6 on TBOC's behalf. This agreement granted full authority over marketing the product to Sony. Investors also
7 learned that TBOC had incurred expenses in excess of \$1.6 million, was more than \$500,000 in debt, and
8 that Miller and Nelson had charged TBOC nearly \$200,000 for their time spent organizing the production in
9 Ireland.

10 39. In 2008, Sony decided not to increase its stock of CDs and DVDs of the production in Ireland
11 or to advertise the product further. As of January, 2011, TBOC was more than \$500,000 in debt and was
12 insolvent. To date, TBOC has received less than \$20,000 in revenue from the production.
13

Misrepresentations and Omissions

14 40. The authority conferred upon Miller by TBOC's operating agreement was not disclosed to
15 investors prior to their purchase of investments.
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17 41. Respondents failed to provide information concerning TBOC's financial condition to at least
18 one investor prior to his purchase of investments.

19 42. The risks arising from TBOC not having a firm offering amount (including, but not limited to,
20 the risk of substantial dilution) was not disclosed to investors prior to their purchase of investments.

21 43. Respondents failed to disclose the bankruptcy trustee's claim to the intellectual property
22 rights of *The Birth of Christ* to at least one investor prior to his purchase of investments.
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1 44. The risks arising from the bankruptcy trustee's claim to the intellectual property rights of *The*
2 *Birth of Christ* (including, but not limited to, the risk that the claim might substantially dilute the investors'
3 stakes in TBOC) was not disclosed to investors prior to their purchase of investments.

4 45. The revenue forecast described in paragraph eighteen of the Tentative Findings of Fact was
5 misleading. Respondents failed to provide the total amount of revenue upon which the pie chart, also
6 described in paragraph eighteen of the Tentative Findings of Fact, was based. Moreover, Respondents failed
7 to disclose the risk that TBOC might not be able to enter into agreements with any of the parties whom
8 TBOC had identified as potential marketing outlets for its products.

9 46. Miller and Nelson did not disclose the rate at which they would bill TBOC for time spent
10 organizing the production in Ireland to investors prior to their purchase of investments.

11 47. Respondents did not disclose that TBOC was dependent on a small number of key personnel,
12 the loss of which could have endangered TBOC's profitability prior to investors' purchase of limited liability
13 company interests.

14 48. Prior to their purchase of investments, Miller and Nelson did not disclose that investors' funds
15 might be commingled with Miller's personal funds.

16 49. Miller and Nelson did not disclose to investors prior to their purchase of investments the risks
17 arising from entering into a distribution agreement for TBOC's product, including, but not limited to, a
18 complete lack of control over how the product would be marketed.

19 50. Miller did not disclose to investors prior to their purchase of investments the possibility that
20 Miller would increase his ownership percentage in TBOC by becoming personally liable on promissory
21 notes issued to pay TBOC expenses.

22 51. Miller and Nelson did not disclose their qualifications to fulfill their respective roles in TBOC
23 to investors prior to their purchase of investments.
24

1 52. Miller declared bankruptcy in 1991, and in 2000. These bankruptcies were not disclosed to at
2 least one investor prior to his purchase of investments.

3 53. Miller was convicted of one count of first degree theft pursuant to RCW 9A.56.030(1)(a) in
4 1994, one count of second degree theft pursuant to RCW 9A.56.040(1)(a) in 1995, and one count of unlawful
5 issuance of checks or drafts pursuant to RCW 9A.56.060(1) in 1998. Miller's criminal history was not
6 disclosed to at least one investor prior to his purchase of investments.

7 Registration Status

8 54. TBOC and Miller are not currently registered to sell their securities in the State of
9 Washington, have not previously been so registered, and have not filed a claim of exemption from
10 registration.

11 55. Miller is not currently registered as a securities salesperson or broker-dealer in the State of
12 Washington and has not previously been so registered.

13 56. Nelson is not currently registered as a securities salesperson or broker-dealer in the State of
14 Washington and has not previously been so registered.

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17 **CONCLUSIONS OF LAW**

18 Based upon the above Tentative Findings of Fact, the following Conclusions of Law are made:

19 1. The offer and/or sale of investments described above constitute the offer and/or sale of a
20 security as defined in RCW 21.20.005(14) and (17), whether in the form of a note, evidence of indebtedness,
21 investment contract, investment in risk capital, option, or otherwise.

22 2. The offer and/or sale of said securities is in violation of RCW 21.20.140 because no
23 registration for such offer and/or sale is on file with the Securities Administrator.
24

1 3. Andrew T. Miller and Michelle M. Nelson have each violated RCW 21.20.040 by offering
2 and/or selling said securities while not being registered as securities salespersons or broker-dealers in the
3 State of Washington.

4 4. The offer and/or sale of said securities was made in violation of RCW 21.20.010 because, as
5 described in paragraphs forty through fifty three of the Tentative Findings of Fact, Respondents made untrue
6 statements of material fact or omitted to state material facts necessary to make the statements made, in light
7 of the circumstances under which they were made, not misleading.

8
9 **NOTICE OF INTENT TO ORDER RESPONDENTS TO CEASE AND DESIST**

10 Based upon the above Tentative Findings of Fact and Conclusions of Law, the Securities
11 Administrator intends to order, pursuant to RCW 21.20.390(1), that TBOC, LLC, Andrew T. Miller, and
12 Michelle M. Nelson, their agents and employees, each shall cease and desist from violations of RCW
13 21.20.140, RCW 21.20.010, and that Andrew T. Miller and Michelle M. Nelson, their agents and employees,
14 each shall cease and desist from violations of RCW 21.20.040.

15
16 **NOTICE OF INTENT TO CHARGE COSTS**

17 Pursuant to RCW 21.20.390, and based upon the Tentative Findings of Fact and Conclusions of Law,
18 the Securities Administrator intends to order that Respondents, TBOC, LLC, Andrew T. Miller, and Michelle
19 M. Nelson shall be jointly and severally liable for and shall pay investigative costs of at least \$3,500.

20 **NOTICE OF INTENT TO IMPOSE FINES**

21 Pursuant to RCW 21.20.395, and based upon the Tentative Findings of Fact and Conclusions of Law,
22 the Securities Administrator intends to order that TBOC, LLC and Andrew T. Miller shall each be liable for,
23 and shall each pay a separate fine of \$5,000, and that Michelle M. Nelson shall be liable for and shall pay a
24 fine of \$2,000.

AUTHORITY AND PROCEDURE

This Statement of Charges is entered pursuant to the provisions of Chapter 21.20 RCW and is subject to the provisions of Chapter 34.05 RCW. The respondents, TBOC, LLC, Andrew T. Miller, and Michelle M. Nelson 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 Order. If a respondent does not make a hearing request in the time allowed, the Securities Administrator intends to adopt the above Tentative Findings of Fact and Conclusions of Law as final and to enter a permanent order to cease and desist as to that respondent, to impose any fines sought against that respondent, and to charge any costs sought against that respondent.

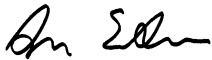
Signed and Entered this 9th day of March 2012.



William M. Beatty
Securities Administrator

Approved by:

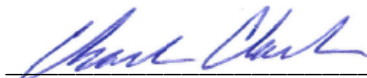
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