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**BEFORE THE DIRECTOR OF THE DEPARTMENT OF FINANCE  
OF THE STATE OF IDAHO**

STATE OF IDAHO, DEPARTMENT OF )  
FINANCE, SECURITIES BUREAU, )  
 )  
Complainant, )  
 )  
vs. )  
 )  
JACK LEE SMILEY, )  
 )  
Respondent. )  
\_\_\_\_\_ )

Docket No. 2005-7-15  
**SUMMARY  
CEASE AND DESIST ORDER  
AND NOTICE**

Gavin M. Gee, Director of the Idaho Department of Finance (Director), being authorized and directed to administer and enforce the Idaho Commodity Code, Idaho Code § 30-1501 *et seq.* (the Code), hereby alleges the following facts that constitute the basis for the issuance of a Summary Cease and Desist Order, requiring Jack Lee Smiley, Respondent herein, to cease and desist from violating the Code.

**RESPONDENT**

(1) At all times pertinent hereto, Jack Lee Smiley (Smiley) was an Idaho resident. Smiley’s last known address is 403 S. 11<sup>th</sup> Street, Coeur d’Alene, Idaho 83814. Smiley is approximately seventy (70) years old and is a retired school teacher.

(2) In 2001, the Department of Finance, State of Idaho, Securities Bureau (Department) received information that Smiley was soliciting investors to invest approximately \$100,000 in a book he was planning to write, entitled "How to Build New American Family Traditions." Smiley offered investors a return of 50% of the proceeds of such book. A Department securities investigator contacted Smiley and informed him that his actions in soliciting investor funds appeared to be in violation of the requirements of Idaho's securities statutes and rules. At that time, Smiley represented that he had received no investor funds, and agreed to cease all solicitation of investor funds in such program.

(3) On or about July 6, 2000, Smiley represented to a Department investigator that he had been the victim of an illegal investment scheme wherein he asserted he had lost investment funds of approximately \$300,000.

#### **FACTUAL ALLEGATIONS**

(4) Beginning approximately January 1, 2005 and continuing to the present date, Smiley has offered or sold to Idaho residents and residents of other states a commodity under a commodity contract in the form of a "Joint Venture Agreement" to invest in Iraqi currency. Smiley referred to this investment program as the "Iraq Currency Investment," and represented to investors that they would receive a return of 33 times the amount of their investment in such investment program. Documents used by Smiley to solicit investment in the "Iraq Currency Investment" represented that a \$5,000 investment would result in a return of \$165,000 and a \$100,000 investment would result in a return of \$3,300,000.

(5) Smiley represented to investors and prospective investors in the "Iraq Currency Investment" program that he would administer "all aspects and details of the investment." Smiley also personally guaranteed that investors would not lose any money if they invested in

the “Iraq Currency Investment” program. Smiley further represented that he would not use “a nickel [of investors’] money until we succeed.” Smiley offered no factual basis to prospective investors to support such statements.

(6) Smiley offered a finder’s fee of 10% for each \$5,000 of funds invested in the “Iraq Currency Investment” program.

(7) Smiley solicited investors and prospective investors to invest in the “Iraq Currency Investment” program both through seminars where he made presentations about the investment program, and through his direct contact with individuals for that purpose. Smiley did not inform investors or prospective investors that he was not qualified under the Idaho Commodity Code to offer or sell any commodity under any commodity contract or under any commodity option, or to offer to enter into or enter into as seller or purchaser any commodity contract or any commodity option.

(8) In Smiley’s offers and sales of investments in the “Iraq Currency Investment” program, he provided no financial information concerning the program, nor his own personal financial information as guarantor of the program.

(9) In or about April of 2005, Smiley contacted one prospective investor, J. M, an Idaho resident, at J.M.’s place of business in Coeur d’Alene, Idaho, for the purpose of soliciting J.M. to invest in the “Iraq Currency Investment” program. Smiley gave J.M. copies of several documents to explain the “Iraq Currency Investment” program. Attached hereto as Exhibits A through D are copies of documents Smiley gave to J. M. concerning such investment program. J. M. decided not to invest in such program. However, at least two other Idaho residents have invested in the “Iraq Currency Investment” program.

(10) Smiley has never been registered with the Commodity Futures Trading Commission as a futures commission merchant or as a leverage transaction merchant. Further, Smiley has never been registered with the Securities and Exchange Commission (SEC) or with the Department under the Idaho Securities Act, Idaho Code § 30-1401 *et seq.*, or its successor act, the Uniform Securities Act (2004) (effective September 1, 2004), as a securities broker-dealer.

### **CONCLUSIONS OF LAW AND VIOLATIONS**

#### **COUNT ONE**

#### **(Violation of Idaho Code § 30-1502)**

(11) The allegations of paragraphs (1) through (10) are realleged and incorporated herein.

(12) The definition of “commodity” in Idaho Code § 30-1501(3) includes “foreign currency.” Iraqi currency constitutes a commodity pursuant to that definition.

(13) Idaho Code § 30-1501(4)(a) defines “commodity contract” to include “[a]ny account, agreement or contract for the purchase or sale, primarily for speculation or investment purposes and not for use or consumption of the offeree or purchaser, of one or more commodities, whether for immediate or subsequent delivery or whether delivery is intended by the parties, and whether characterized as a cash contract, deferred shipment or deferred delivery contract, forward contract, futures contract, installment or margin contract, leverage contract or otherwise.” Idaho Code § 30-1501(4)(a) further provides that “[a]ny commodity contract offered or sold shall, in the absence of evidence to the contrary, be presumed to be offered or sold for speculation or investment purposes ...”

(14) The “Joint Venture Agreement” to invest in Iraqi currency offered and sold by Smiley for investment purposes constitutes a “commodity contract” within the meaning of Idaho Code § 30-1501(4)(a).

(15) Idaho Code § 30-1502 provides that no person shall sell or purchase or offer to sell or purchase any commodity under any commodity contract or under any commodity option or offer to enter into or enter into as seller or purchase any commodity contract or any commodity option, except as provided in Idaho Code §§ 30-1503 or 30-1504.

(16) Idaho Code §§ 30-1503 and 30-1504 set forth exemptions from the requirements of § 30-1502 for certain persons and transactions. Based on the information before the Department, neither Smiley nor the “Iraq Currency Investment” program qualify for such exemptions.

(17) Smiley’s offer and sale of investments to Idaho residents in the “Iraq Currency Investment” program, constituting a commodity contract within the meaning of Idaho Code § 30-1501(4)(a), without qualifying for an exemption pursuant to Idaho Code §§ 30-1503 or 30-1504, constitutes a violation of Idaho Code § 30-1502.

**COUNT TWO**  
**(Fraudulent Conduct)**

(18) The allegations of paragraphs (1) through (17) above are realleged and incorporated herein.

(18) Idaho Code § 30-1506(1)(b) provides that it is unlawful for any person, directly or indirectly, in connection with a commodity contract or commodity option, to make any false report, enter any false record or make any untrue statement of material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

(19) Smiley's representation to prospective investors in the "Iraq Currency Investment" program that they would receive a return of 33 times the amount of their investment had no basis in fact, and therefore was an untrue statement of material fact, constituting a violation of Idaho Code § 30-1506(1)(b).

(20) Smiley's representation to prospective investors in the "Iraq Currency Investment" program that he personally guaranteed that investors in such investment program would lose no money through such investment had no basis in fact, and therefore was an untrue statement of material fact, constituting a violation of Idaho Code § 30-1506(1)(b).

(21) Smiley's failure to provide investors or prospective investors with financial information concerning the program, and his own personal financial information as guarantor of such program, constitutes an omission to state a material fact in connection with the offer or sale of a commodity contract or commodity option, constituting a violation of Idaho Code § 30-1506(1)(b).

**COUNT THREE**  
**(Fraudulent Conduct)**

(22) The allegations of paragraphs (1) through (21) above are realleged and incorporated herein.

(23) Idaho Code § 30-1506(1)(a) provides that it is unlawful for any person, directly or indirectly, in connection with a commodity contract or commodity option, to employ any device, scheme or artifice to defraud.

(24) Smiley's conduct giving rise to the violations of the Idaho Commodity Code alleged in Counts One and Two above, constitutes a device, scheme or artifice to defraud investors or prospective investors in the "Iraq Currency Investment" program, in violation of Idaho Code § 30-1506(1)(a).

**COUNT FOUR**  
**(Fraudulent Conduct)**

(25) The allegations of paragraphs (1) through (24) above are realleged and incorporated herein.

(26) Idaho Code § 30-1506(1)(c) provides that it is unlawful for any person, directly or indirectly, in connection with a commodity contract or commodity option, to engage in any transaction, act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

(27) Smiley's conduct giving rise to the violations of the Idaho Commodity Code alleged in Counts One and Two above, constitutes engaging in transactions, acts, practices, or courses of business which operate or would operate as a fraud or deceit upon investors or prospective investors in the "Iraq Currency Investment" program, in violation of Idaho Code § 30-1506(1)(c).

**REQUESTED RELIEF**

(28) Idaho Code § 30-1508 provides that the Idaho Commodity Code may be construed and implemented to effectuate the general purpose to protect investors, and to prevent and prosecute illegal and fraudulent schemes involving commodity contracts.

(29) Idaho Code § 30-1510(1)(a) provides that if the Director believes that any person has engaged or is about to engage in any act or practice constituting a violation of the Idaho Commodity Code or any rule or order thereunder, the Director may issue a Cease and Desist Order.

**FINDINGS AND SUMMARY ORDER**

The Director, having reviewed the foregoing, and in the interest of protecting investors and preventing illegal and fraudulent schemes involving commodity contracts,

THE DIRECTOR HEREBY FINDS that Jack Lee Smiley, Respondent herein, has violated the Idaho Commodity Code, as alleged in paragraphs (1) through (27) above.

NOW, THEREFORE, IT IS HEREBY ORDERED that Jack Lee Smiley shall Cease and Desist from violations of the Idaho Commodity Code or any rule or order thereunder EFFECTIVE IMMEDIATELY.

**NOTICE**

THE RESPONDENT SHALL TAKE NOTICE that if the Respondent wishes to contest the foregoing SUMMARY CEASE AND DESIST ORDER, the Respondent shall file a written request for a hearing pursuant to Idaho Code § 30-1517 within thirty (30) business days from the date of this ORDER, and the Director will schedule the matter for hearing within thirty (30) business days after the receipt of the written request. Whether or not a written request for a hearing is received, the Director may schedule the matter for hearing on his own motion. The hearing shall be public unless the Director grants a request joined in by the Respondent that the hearing be conducted privately.

Any such hearing must be requested in writing addressed to:

Marilyn T. Chastain  
Securities Bureau Chief  
Idaho Department of Finance  
P.O. Box 83720  
Boise, Idaho 83720-0031

A copy of such request for a hearing must also be served on the Department's counsel, A. René Martin, Deputy Attorney General, at the same address.



If the Respondent requires any assistance of any kind the Department provides under the Americans with Disabilities Act (e.g. sign language interpreters, Braille copies of documents) in order to participate in or understand these proceedings, the Department will supply such assistance upon an advance request.

If no hearing is requested and none is ordered by the Director, this SUMMARY CEASE AND DESIST ORDER will automatically become a FINAL ORDER after thirty (30) business days from the date of this ORDER.

Pursuant to Idaho Code § 30-1518, any person aggrieved by a final order of the Director may obtain judicial review of the order pursuant to the provisions of Chapter 52, Title 67, Idaho Code.

**IT IS SO ORDERED.**

DATED this 2<sup>d</sup> day of June, 2005.



Gavin M. GEE  
GAVIN M. GEE, Director  
Idaho Department of Finance *by GME*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of June, 2005, I served a true and correct copy of the foregoing SUMMARY CEASE AND DESIST ORDER AND NOTICE upon the following by the designated means:

Jack Lee Smiley  
403 S. 11<sup>th</sup> Street  
Coeur d'Alene, ID 83814

U.S. Mail, postage prepaid  
 Certified mail  
 Facsimile

A. René Martin