

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

STATE OF IDAHO, Department of Finance,  
Securities Bureau,

Complainant,

vs.

JASON NIGHTINGALE,

Respondent.

Docket No. 2019-7-05-G

**AGREEMENT AND ORDER**

The Director of the Department of Finance, State of Idaho ("Director") has instituted an investigation into the conduct of Jason Nightingale. Pursuant to said investigation, it appears that violations of the *Idaho Uniform Securities Act (2004)* ("Act"), *Idaho Code §30-14-101 et seq.* have occurred. The Director and Jason Nightingale have agreed to resolve this matter without a public hearing. Therefore, the Director deems it appropriate and in the public interest that this Agreement and Order ("Order") be entered and the Respondent consents to the entry of this Order.

**RESPONDENT**

1. **Jason Nightingale** ("Nightingale") is a 50-year-old male residing at 193 Beaverslide, Kamiah, Idaho. Nightingale has owned Jason Nightingale Agency (previously Aerofresh Industries) since 2000, has been a sale representative for American Alternative Investments since 2017, an agent for Wealth Sage since 2018, and holds various other position with financial companies. Nightingale has been licensed with the Idaho Department of Insurance since 2012. Nightingale has never been registered to sell securities or provide investment advice.

**BACKGROUND**

2. 1 Global Capital, LLC dba 1<sup>st</sup> Global Capital LLC ("1<sup>st</sup> Global") was incorporated in June 2013 in Florida and founded by Carl Ruderman. The entity was a commercial lender that offered short-term loans to small and medium sized businesses. 1<sup>st</sup> Global obtained the funds for these loans through the sales of securities in the form of notes entitled Memorandum of Indebtedness ("MOI").

3. 1<sup>st</sup> Global claimed the investor proceeds from the MOI notes would be used for funding Merchant Cash Advance Transactions (“MCATs”) which is an alternative funding source for businesses outside of the banking industry.
4. The investment in MOI notes were advertised as being short-term loans yielding double-digit returns with a diversified risk profile. 1<sup>st</sup> Global claimed that investors historically received a return on investment in excess of 15%.
5. The MOI notes stated that the investor would receive 3% interest on their investment and the investor could receive additional interest based on the allocation to each MCAT and at 1<sup>st</sup> Global’s discretion. Investments would automatically roll into a new nine-month MOI note unless 1<sup>st</sup> Global received a written termination agreement from the investor no less than 30 days prior to the MOI note maturity.
6. If an investor elected to terminate their MOI at nine-months, the investor was required to wait for each of the MCATs in their account to unwind to receive repayment of their investment.
7. Investment funds received by 1<sup>st</sup> Global were commingled or pooled together and subsequently lent to MCAT borrowers. Investor would get a small fractionalized interest in hundreds of MCAT.
8. 1<sup>st</sup> Global, and their sister company 1<sup>st</sup> West Capital LLC, filed for chapter 11 bankruptcy on July 27, 2018.
9. On August 23, 2018, the Securities and Exchange Commission (“SEC”) filed a complaint against 1<sup>st</sup> Global and its affiliates alleging that Carl Ruderman, owner of 1<sup>st</sup> Global, conducted a nationwide fraud scheme that raised over \$287 million from over 3,400 investors. The SEC’s complaint alleged that 1<sup>st</sup> Global’s financial records were missing approximately \$50 million dollars of investor funds due to the misappropriation and improper use of the funds.
10. The SEC contends that 1<sup>st</sup> Global issued unregistered securities in the form of notes, paid unregistered agents to sell the investments, used investor funds for purposes other than cash advances, and made numerous material misrepresentations and omissions to investors.

11. At no time were 1<sup>st</sup> Global's MOI notes registered as securities in Idaho nor did they qualify for an exemption.
12. Nightingale failed to conduct any meaningful due diligence on the 1st Global product, nor did he make any independent inquiry regarding the applicability of state and federal securities laws to the 1st Global product. Rather, Nightingale relied solely upon the representations made by 1st Global and American Alternative Investments ("AAI") that the 1st Global products were not securities.
13. Nightingale solicited and sold MOI notes, as an agent of 1<sup>st</sup> Global, through American Alternative Investments to Idaho resident DS. DS invested \$50,000, in approximately February 2018, and Nightingale received a commission of \$562.50 from this sale.
14. At the time of the above transaction, Nightingale was not registered to sell securities in Idaho, nor did he qualify for an exemption.

### FINDINGS OF VIOLATIONS

#### OFFER & SALE OF UNREGISTERED SECURITIES

15. Investments in notes are "securities" as defined by *Idaho Code §30-14-102(28)*.
16. Pursuant to *Idaho Code §30-14-301*, it is unlawful for a person to offer or sell a security in this state unless: (a) The security is a federal covered security; (b) The security, transaction or offer is exempted from registration under sections 30-14-201 through 30-14-203, Idaho Code; or (c) The security is registered under this chapter.
17. Nightingale sold securities in the form of notes. The securities were not registered, nor did they qualify for a registration exemption at the time they were sold, in violation of *Idaho Code §30-14-301*.

#### OFFER & SALE OF SECURITIES BY AN UNREGISTERED AGENT

18. *Idaho Code §30-14-102(2)* defines an "agent" as an individual, other than a broker-dealer, who represents a broker-dealer in effecting or attempting to effect purchases or sales of securities or

who represents an issuer in effecting or attempting to effect purchases or sales of the issuer's securities.

19. Pursuant to *Idaho Code §30-14-402*, it is unlawful for an individual to transact business in this state as an agent unless the individual is registered under this chapter as an agent or is exempt from registration as an agent under subsection (b) of this section.
20. Nightingale offered and sold 1<sup>st</sup> Capital MOI notes to an Idaho resident. Nightingale was not registered to sell securities, nor did he qualify for a registration exemption at the time the securities were sold, in violation of *Idaho Code §30-14-402*.

#### FRAUD PROVISIONS

21. Pursuant to *Idaho Code §30-14-501*, it is unlawful for any person, in connection with the offer, sale, or purchase of a security, directly or indirectly: (2) To make an untrue statement of 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 were made, not misleading.
22. Omissions:
  - a. Nightingale failed to disclose that he was not registered as an agent to sell the securities being offered as required by the Act.
  - b. Nightingale failed to disclose that the security being offered was not registered as required under the Act.
23. Nightingale violated *Idaho Code §30-14-501(2)* by omitting material facts in connection with the sale of a security.

#### ACKNOWLEDGMENT AND REMEDIES

24. To economically and efficiently resolve the pending dispute; the parties agree to entry of this Agreement and Order in lieu of other proceedings.
25. Respondent neither admits nor denies the Complainant's findings of facts and conclusions of law set forth in this Order.

26. Respondent hereby waives any rights he may have to notice and opportunity for hearing on this matter.
27. Respondent agrees to pay a civil penalty of the commissions paid in the amount of five hundred sixty-two dollars and fifty cents (\$562.50). Said penalty is to be paid not later than thirty (30) days from the date the Director executes this Order. Payment shall be made to the "Idaho Department of Finance."
28. Respondent agrees to pay an additional civil penalty of one thousand dollars (\$1,000) for the violations of the Act, pursuant to *Idaho Code §30-14-604(d)*. Said civil penalty is to be paid not later than thirty (30) days from the date the Director executes this Order. Payment shall be made to the "Idaho Department of Finance."
29. Respondent agrees to not now, nor in the future, offer or sell securities in, into, or from Idaho without complying with the requirements of the Act and its rules.
30. Respondent agrees to not claim the availability of, use, or offer or sell securities under any exemptions under the Act without giving written notice to the Director. Said written notice shall be provided at least ten (10) day in advance of the proposed activities in Idaho.
31. In the event that the Nightingale commits future violations of the Act or fail to adhere to the terms of this Order, respondent acknowledges that the Idaho Department of Finance can incorporate the allegations giving rise to this Order in any future proceeding.

AGREED TO and ACKNOWLEDGED this 23<sup>rd</sup> day of September, 2019.

Jason P. Nightingale  
 JASON NIGHTINGALE

IT IS SO ORDERED

DATED this 23<sup>rd</sup> day of September, 2019.

STATE OF IDAHO  
 DEPARTMENT OF FINANCE

Mary Hughes  
 MARY HUGHES, Acting Director of Finance

