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

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IN THE MATTER OF DETERMINING  
whether there has been a violation  
of the Securities Act of Washington by:

Order No. S-03-009-04-CO01

CONSENT ORDER

DAN D. DYER, JR,

Respondent.

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**INTRODUCTION**

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On December 8, 2004, the Securities Administrator of the State of Washington issued STATEMENT OF CHARGES AND NOTICE OF INTENT TO ENTER AN ORDER TO CEASE AND DESIST, REVOKE REGISTRATION, IMPOSE FINES, AND CHARGE COSTS S-03-009-03-SC01 (hereinafter referred to as the "Statement of Charges") against the Respondent Dan D. Dyer, Jr. The Securities Division and Respondent Dan D. Dyer, Jr. do hereby agree to this Consent Order in settlement of the above captioned matter. Respondent Dan D. Dyer, Jr. neither admits nor denies the Findings of Fact and Conclusions of Law as set forth below:

**FINDINGS OF FACT**

**RESPONDENT**

1. At all times material to this action, Dan D. "Duff" Dyer, Jr. ("Duff Dyer") was a registered securities salesperson with C.J.M. Planning Corp. ("CJM Planning"), a registered broker-dealer headquartered in Pompton Lakes, NJ. Duff Dyer was employed by CJM Planning from August 18, 1998 through December 9, 2002. At all times material to this action, Duff Dyer shared an office in Tacoma, WA with his father, Daniel D. Dyer, and his father's company, Oxbow Capital Partners LLC. From

1 December 20, 2002 to December 31, 2003, Duff Dyer was employed by KMS Financial Services, Inc. a  
2 registered broker-dealer headquartered in Seattle, WA. Duff Dyer was registered as a securities  
3 salesperson with the Washington State Securities Division from December 10, 1998 through December  
4 31, 2003. Duff Dyer is not currently registered as a securities salesperson with the State of Washington.  
5 Duff Dyer resides in University Place, WA.

#### 6 **RELATED ENTITIES AND INDIVIDUALS**

7 2. Oxbow Capital Partners, LLC (“Oxbow Capital”) is a Washington limited liability  
8 company with its principal place of business in Tacoma, WA. Oxbow Capital was formed in June 1998  
9 as an investment banking and venture capital firm. Oxbow Capital is wholly owned and controlled by  
10 Daniel D. Dyer. Oxbow Capital is not currently registered under the Securities Act of Washington, RCW  
11 chapter 21.20, as an investment adviser or securities broker-dealer in the State of Washington and has not  
12 been previously so registered.

13 3. Daniel D. Dyer (“Dan Dyer”), Duff Dyer’s father, is a resident of University Place, WA.  
14 Dan Dyer is the manager and sole owner of Oxbow Capital. Dan Dyer is not currently registered under  
15 the Securities Act of Washington, RCW chapter 21.20, as a securities salesperson, investment adviser or  
16 investment adviser representative in the State of Washington and has not been previously so registered.

17 4. Capital Consultants, LLC (“CCL”) was a federally registered investment adviser with its  
18 principal place of business in Portland, OR until August 2001 when the U.S. Securities and Exchange  
19 Commission (“Commission”) revoked its license. On September 21, 2000, the Commission filed a  
20 complaint in the District Court of Oregon against CCL and its principals alleging they were “operating an  
21 undisclosed Ponzi scheme using client funds to make interest payments to clients invested in a failed and  
22 bankrupt \$160 million loan that Capital Consultants made to Wilshire Credit Corp. (U.S. Securities and

1 Exchange Commission, Lit. Rel. 16720, Sept. 21, 2000).”

2 5. C.J.M. Planning Corp. (“CJM Planning”) is a registered broker-dealer headquartered in  
3 Pompton Lakes, NJ. CJM Planning is a broker-dealer specializing in the sale of mutual funds through a  
4 network of independent salespersons. In July 1998, Oxbow Capital acquired sole ownership of CJM  
5 Planning. CCL loaned Oxbow Capital the \$10,000,000 purchase price of CJM Planning.

6 6. Washington Motorcycle Partners LLC (“WMP”) is a Washington limited liability company  
7 (“LLC”) that was formed on September 24, 1999 by Dan Dyer. Pursuant to the LLC agreement, WMP is  
8 a member-managed LLC with Dan Dyer serving as the sole manager and member. From at least August  
9 1999 through September 2000, Dan Dyer, primarily through two CJM Planning registered  
10 representatives, offered and sold unregistered interests in WMP. Dan Dyer raised over \$4,000,000 from  
11 more than 200 investors across the country. Representatives sold WMP interests, telling investors they  
12 were purchasing pre-initial public offering (“pre-IPO”) shares of Indian Motorcycle Company. WMP is  
13 not currently registered to sell securities in the State of Washington and has not been previously so  
14 registered.

15 7. Indian Motorcycle Company (“IMC”) is a Delaware corporation headquartered in Gilroy,  
16 CA. IMC was originally formed in 1901 in Springfield, MA. IMC ceased production of motorcycles in  
17 1953. In 1998, IMC was revived and resumed production of its motorcycles in 1999. On September 19,  
18 2003, IMC closed its factory in Gilroy, CA due to lack of investment capital. IMC is not currently  
19 registered to sell securities in the State of Washington and has not been previously so registered.

20 **NATURE OF RESPONDENT’S CONDUCT**

21 **Securities and Exchange Commission Civil Action**



1 conduct an IPO “within a month or two.” He represented that the offering price of IMC would be  
2 between \$12 and \$15 per share, an immediate return of at least four times their initial investment.

3 11. Duff Dyer did not provide investors with a prospectus, memorandum or any other  
4 document disclosing the details of the investment opportunity. In many cases, investors did not  
5 understand until after they made their investment that they had not purchased IMC shares, but had  
6 instead purchased units of WMP (the “membership interests”). Dan Dyer created a subscription booklet  
7 for WMP investors by duplicating a booklet created for the March 1999 offering of Fund I. Duff Dyer  
8 provided these subscription booklets to WMP investors. The subscription booklet provided to investors  
9 references the “Operating Agreement dated March 5, 1999 and the Confidential Private Placement  
10 Memorandum dated March 5, 1999.” When one Washington investor asked to receive these documents,  
11 Duff Dyer told him that they were not available. In fact, no such documents existed for WMP. Dan  
12 Dyer created a “Confidential Information Memorandum” for WMP by duplicating three pages of  
13 standard legal disclosure from an IMC offering prospectus. Duff Dyer provided the Confidential  
14 Information Memorandum to WMP investors.

15 12. Duff Dyer failed to disclose what investors would receive for their investment in WMP. It  
16 was not until after they invested that they received a letter from Dan Dyer stating that each \$3 unit of  
17 WMP would convert to IMC stock at \$3 per share. The letter represented that the conversion would take  
18 place if IMC was sold or conducted an IPO (the “IMC liquidity event”).

19 13. Duff Dyer failed to disclose to investors that WMP did not own a single asset, nor did it  
20 have title to any shares of IMC. Although Dan Dyer and Oxbow Capital owned shares of IMC, those  
21 shares were not transferred to WMP. In addition, some of those shares were encumbered by CCL. The  
22 total shares of IMC owned by Dan Dyer and Oxbow Capital were insufficient to satisfy the obligations to

1 WMP and Fund I investors in the event of an IMC liquidity event. In addition, Duff Dyer failed to  
2 disclose that Dan Dyer purchased the IMC shares for \$1 per share, while they were selling WMP  
3 membership interests for \$3 per share.

4 14. Duff Dyer instructed investors to make their checks payable to Oxbow Capital, rather than  
5 WMP. The checks were deposited into the general business checking account for Oxbow Capital. Duff  
6 Dyer failed to disclose to investors the planned or actual use of investment proceeds from the sale of  
7 WMP membership interests. Specifically, he failed to disclose that the investment proceeds were used to  
8 make payments to Dan Dyer and his personal creditors, to CCL, to Oxbow Capital's creditors and to  
9 Duff Dyer himself.

10 15. The WMP subscription agreement represented that after \$500,000 in subscriptions were  
11 received by the managing member, a closing would be held at which time the investors would be  
12 admitted as members of the fund. Investors also were asked to sign a purported counterpart signature  
13 page to the WMP "Operating Agreement." Despite these representations, no evidence exists that a  
14 closing was ever held, despite the fact that over \$4,000,000 was invested in WMP. There is also no  
15 evidence that investors were admitted as members of the WMP limited liability company. In October  
16 2000, investors received a "membership unit certificate" that showed the total number of WMP units  
17 owned.

18 16. The WMP subscription agreement included an investor questionnaire to determine if an  
19 investor was an "accredited investor" as defined by federal law. An individual is deemed "accredited" if  
20 he or she has a net worth of at least \$1 million, personal income of more than \$200,000 for the previous  
21 two years or joint annual income of more than \$300,000. Duff Dyer failed to inquire into the financial  
22 situation, ability to bear the loss of the investment principal or the financial sophistication of the WMP

1 investors. Some investors told Duff Dyer that they did not meet the accredited investor definition. He  
2 instructed those investors to complete the form to falsely represent themselves as accredited investors.

3 17. No IPO of IMC stock was conducted. In response to investor inquiries in 2000 and 2001,  
4 Duff Dyer represented that IMC was doing well, but that the market for IPOs was not favorable.  
5 Periodically, investors received form letters from Dan Dyer with enclosed copies of newspaper articles  
6 on IMC. In a letter dated October 17, 2000, Dan Dyer reassured investors saying, "IMC is doing very  
7 well" and "all signals are positive for the outlook of the company and a forth coming IPO." Dan Dyer  
8 and Duff Dyer failed to disclose that WMP investor funds had not been utilized to purchase additional  
9 shares of IMC stock and WMP did not have title to a single share of IMC stock.

10 18. The sale of WMP membership interests was not recorded on the regular books and records  
11 of Duff Dyer's employer, CJM Planning. CJM Planning's written supervisory procedures required  
12 written notice by an associated person detailing participation in any private securities transactions. No  
13 evidence exists that Duff Dyer received written authorization from CJM Planning approving the sale of  
14 WMP membership interests. In addition, on February 7, 2001, Duff Dyer completed an annual review  
15 questionnaire for CJM Planning. Question 23 asked, "Have you sold or offered for sale any securities or  
16 investment products that had not received the prior approval by C.J.M.?" Duff Dyer answered in the  
17 negative, despite the fact that he sold WMP membership interests through at least July 2000.

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

19 **CONCLUSIONS OF LAW**

20 1. The offer or sale of WMP membership interests, as described above, by Respondent Dan D.  
21 Dyer, Jr. constitutes the offer or sale of securities as defined in RCW 21.20.005(10) and (12).



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IT IS FURTHER AGREED AND ORDERED that Dan D. Dyer, Jr. shall pay a fine in the amount of Ten Thousand Dollars (\$10,000). Said payment is to be made to the Securities Division prior to the entry of this Consent Order.

IT IS FURTHER AGREED that the Securities Division has jurisdiction to enter this Consent Order.

IT IS FURTHER AGREED that the Respondent Dan D. Dyer, Jr. enters into this Consent Order freely and voluntarily and with a full understanding of its terms and significance.

IT IS FURTHER AGREED that in consideration of the foregoing, Dan D. Dyer, Jr. withdraws his request for a hearing, waives his right to a hearing on this matter and waives his right to judicial review of this matter pursuant to RCW 21.20.440.

DATED this 11th day of May, 2004.

Signed by:

/s/  
Dan D. Dyer, Jr.

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**THIS ORDER ENTERED THIS 25<sup>th</sup> DAY OF May, 2004 BY:**

Michael E. Stevenson  
MICHAEL E. STEVENSON  
Securities Administrator

Approved for entry by:

Martin Cordell  
Martin Cordell  
Chief of Enforcement

Presented by:

Andrea Y. Sato  
Andrea Y. Sato  
Enforcement Attorney