

1 **STATE OF WASHINGTON**
2 **DEPARTMENT OF FINANCIAL INSTITUTIONS**
3 **SECURITIES DIVISION**

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

7 **CHUM CHUM GAME COMPANY;**
8 **CHARLES SMALTZ,**

9 Respondents.

Order Number S-06-243-07-SC01

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

10 THE STATE OF WASHINGTON TO:

Chum Chum Game Company
Charles Smaltz

11 **STATEMENT OF CHARGES**

12 Please take notice that the Securities Administrator of the State of Washington has reason to
13 believe that Respondents, Chum Chum Game Company and Charles Smaltz, have violated the
14 Securities Act of Washington and that their violations justify the entry of an order of the Securities
15 Administrator under RCW 21.20.390 against each to cease and desist from such violations. The Securities
16 Administrator finds as follows:

17 **TENTATIVE FINDINGS OF FACT**

18 Respondents

19 1. Chum Chum Game Company is a Washington corporation established on December 29,
20 2003. Chum Chum Game Company currently conducts business at 515 N. Farr Road, Spokane Valley,
21 Washington. Chum Chum Game Company was created to produce and market original board games.

22 2. Charles Smaltz (“Smaltz”) is a Washington resident. He served as President of Chum Chum
23 Game Company from 2003 to 2006.

1 Nature of the Conduct

2 *Introduction*

3 3. Chum Chum Game Company creates and sells board games. The company was founded
4 to manufacture and market the original board game “Politics,” which was created by former Chum
5 Chum Game Company president Charles Smaltz. Chum Chum Game Company also operates an
6 online retail store on Amazon.com through which it offers and sells Politics and board games created
7 by other companies.

8 *Nature of the Offering*

9 4. Between December 2003 and August 2007, Chum Chum Game Company offered
10 investments to at least 162 investors. At least 121 of these investors were Washington residents. The
11 investment was in the form of common stock in Chum Chum Game Company which was offered for
12 \$1,000 a share. Chum Chum Game Company conducted several offerings of shares:

- 13 a. A \$80,000 offering of 80 shares in 2003–2004 to manufacture the board game;
14 b. A \$250,000 offering of 250 shares in 2004 to market the board game;
15 c. A \$50,000 offering of 50 shares in 2005 to set up an online store;
16 d. A \$50,000 offering of 50 shares in 2005 to pay for general operating expenses; and
17 e. A \$30,000 offering of 30 shares in 2006–2007 to pay for general operating expenses.

18 5. Chum Chum Game Company raised at least \$354,060 from sales of its securities between
19 December 2003 and June 2005. Chum Chum Game Company could not produce financial records to
20 indicate the amount of investor funds raised since June 2005.

21 6. Chum Chum Game Company located investors through personal contacts with Charles
22 Smaltz or other shareholders. Smaltz also conducted a few presentations to small groups of potential

1 investors, at least five of whom purchased shares. For a time, Chum Chum Game Company
2 maintained a website containing information about purchasing shares of the company. Until 2005, the
3 website was accessible by the general public. Chum Chum Game Company officers would send
4 emails to current shareholders alerting them to new offerings, and company officers would promote the
5 latest share offering at the annual shareholders' meeting. Friends and family members of shareholders
6 attended these meetings and approximately 20 purchased shares as a result.

7 7. For each offering, investors received a budget breakdown detailing how Chum Chum
8 Game Company would use the proceeds. For the \$250,000 offering, the breakdown included
9 projections for income from games sales. These projections included that Chum Chum Game
10 Company would sell 55,000 copies of Politics in the fourth quarter of 2004 and pay a dividend of
11 \$1,400 per share. Since 2003, Chum Chum Game Company has sold a total of 2,000 to 3,000 copies
12 of Politics and has paid no dividends.

13 8. Chum Chum Game Company required investors to complete an "Offer to Purchase" form
14 indicating the number of shares they wished to purchase. Investors were then required to submit their
15 contact information on an "Investor Information Sheet," and complete an IRS form for pass-through
16 taxation of dividends. After purchasing, investors were provided with a copy of a Buy/Sell Agreement
17 between the first four shareholders and Chum Chum Game Company. This Agreement states that if
18 one of the shareholder parties to the agreement obtains a firm offer to purchase his shares, Chum Chum
19 Game Company has the right to redeem the shares, and if the company does not elect to redeem the
20 shares, the other shareholder parties may elect to redeem the shares. If neither redeems the shares, the
21 shares can be sold pursuant to the firm offer. The copy of the Buy/Sell Agreement provided to
22

1 investors was not signed or dated. Investors were not directed to sign or return the Buy/Sell
2 Agreement nor was there a blank space in which to add their names.

3 *Public Offering*

4 9. Chum Chum Game Company conducted a public offering of securities. Chum Chum
5 sold its securities to at least 162 unique individuals in five offerings between 2003 and 2007. Investors
6 were not screened for sophistication, suitability, or accredited status. Most of the investors were
7 neither sophisticated nor accredited. Investors did not sign any agreements not to resell or distribute
8 shares, and Chum Chum Game Company did not require them to do so. Chum Chum Game Company
9 did not require letters from investors evidencing investment intent. In addition, Chum Chum Game
10 Company kept company records in a manner precluding access or inspection by public investors.
11 Records, including but not limited to financial statements beyond June 2005, were incompletely
12 maintained or not maintained at all.

13 Misrepresentations and Omissions

14 10. Chum Chum Game Company failed to provide material information regarding the
15 company including but not limited to the management background of company officers, financial
16 statements, the general risk factors related to investing in securities, and the specific risk factors related
17 to the toy and board game industry.

18 11. Chum Chum Game Company failed to provide a reasonable basis for its projections of
19 sales and dividend payments. Chum Chum Game Company was a new company without significant
20 operating history or experience in the toy or board game industry and provided no source or basis for
21 the projections made to investors.

1 4. The offer or sale of the investments described above was made in violation of RCW
2 21.20.010 because, as set forth in the Tentative Findings of Fact, Chum Chum Game Company and
3 Charles Smaltz made misstatements of material facts or omitted to state material facts necessary in
4 order to make the statements made, in light of circumstances under which they were made, not
5 misleading.

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7 **NOTICE OF INTENT TO ORDER THE RESPONDENTS TO CEASE AND DESIST**

8 Based on the above Tentative Findings of Fact and Conclusions of Law, the Securities
9 Administrator intends to order that Respondents, Chum Chum Game Company and Charles Smaltz, and
10 their agents and employees, shall each cease and desist from violations of RCW 21.20.140, RCW
11 21.20.040, and RCW 21.20.010.

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13 **NOTICE OF INTENT TO IMPOSE FINES**

14 Pursuant to RCW 21.20.395, and based upon the Tentative Findings of Fact and Conclusions of
15 Law, the Securities Administrator intends to order that Respondents Chum Chum Game Company and
16 Charles Smaltz, shall each be liable for and pay a fine of \$10,000.

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18 **NOTICE OF INTENT TO RECOVER COSTS**

19 Pursuant to RCW 21.20.390(5), and based upon the Tentative Finds of Fact and Conclusions of
20 Law, the Securities Administrator intends to order that the Respondents Chum Chum Game Company
21 and Charles Smaltz shall be liable for and pay the Securities Division the costs, fees, and other
22 expenses incurred in the conduct of the administrative investigation and hearing of this matter.

1 **AUTHORITY AND PROCEDURE**

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

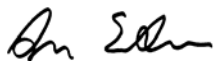
6 If a Respondent does not request a hearing, the Securities Administrator intends to adopt the
7 above Tentative Findings of Fact and Conclusions of Law as final, enter a permanent cease and desist
8 order as to that Respondent, and impose the fines and costs sought.

9 DATED AND ENTERED this 28th day of September, 2007.

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13 MICHAEL E. STEVENSON
14 Securities Administrator

15 Approved by:

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17 _____
18 SUZANNE SARASON
19 Chief of Compliance & Examinations

20 Presented by:

21 

22 _____
23 JILL M. VALLELY
24 Enforcement Attorney