1 STATE OF WASHINGTON DEPARTMENT OF FINANCIAL INSTITUTIONS 2 SECURITIES DIVISION 3 IN THE MATTER OF DETERMINING) Order Number S-08-375-08-SO01 4 Whether there has been a violation of the Securities Act of the State of Washington by: STOP ORDER DENYING EFFECTIVENESS 5 OF APPLICATION FOR REGISTRATION 6 35, LLC; 7 Respondent 8 9 10 35, LLC THE STATE OF WASHINGTON TO: 11 12 13 STOP ORDER DENYING EFFECTIVENESS OF APPLICATION FOR 14 REGISTRATION 15 Please take notice that the Securities Administrator of the State of Washington enters an 16 order against 35, LLC under RCW 21.20.280 denying effectiveness of the application for 17 registration filed by 35, LLC. The Securities Administrator finds as follows: 18 TENTATIVE FINDINGS OF FACT 19 1. On October 27, 2008, an application for registration was filed with the Securities 20 Division under RCW 21.20.180 for an offering of \$3,500,000 worth of Class A Limited 21 Liability Units in 35, LLC. The stated purpose of 35, LLC is to "engage in the business of 22 developing, financing, producing, marketing, and selling the full length motion picture, 35." 35 23 is described as a film about "three intersecting stories of high school friends having trouble 24 25 DEPARTMENT OF FINANCIAL INSTITUTIONS STOP ORDER DENYING EFFECTIVENESS OF 1 Securities Division

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APPLICATION FOR REGISTRATION

turning 35." 35 was one of three films selected from a pool of movie scripts that were submitted to and reviewed by IndieShares, LLC.

- 2. The Operating Agreement of 35, LLC provides that IndieShares Management, LLC is the manager and does not provide for removal or replacement of the manager. Rather, upon the termination of IndieShares Management, LLC as the manager, 35, LLC shall be dissolved. As the manager, IndieShares Management, LLC is vested with full, exclusive and complete authority and discretion in the management and control of the business of 35, LLC and shall have the right to make any and all decisions affecting the business of 35, LLC.
- 3. The Operating Agreement of 35, LLC further provides that it has a Board of Directors consisting of Jay T. Schwartz, Julie Chase, and George Brumder, who collectively own all of the outstanding interests in IndieShares Management, LLC. The powers conferred on the Board of Directors are to form an audit committee, a corporate governance committee, and a compensation committee and to adopt charters (approved by the Manager) relative to these committees. The Operating Agreement does not provide for an election of members of the board of directors or any other mechanism for their removal and replacement.
- 4. The Operating Agreement indicates that IndieShares Management, LLC owns the one and only common share in 35, LLC, for which it contributed \$10, and that it is entitled to 50% of the net profits of 35, LLC after payment to the class A shareholders of 105% of their capital contributions.
- 5. The prospectus, included in the registration statement, intended for delivery to prospective investors does not disclose that various conflicts of interest and the lack of investor oversight may negatively affect any return on their investment.

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- 6. The prospectus does not disclose that investors have no ability to remove the manager and that 35, LLC shall be dissolved if IndieShares Management, LLC ceases to be the manager.
- 7. The prospectus does not disclose the risks to investors created by the payment of the production management fee of \$300,000 at the time the offering amount is raised as opposed to payments made as services are performed and the fact that this fee was not an arm's length transaction or approved by any independent directors.
- 8. The prospectus does not disclose the need or failure of IndieShares Management, LLC to register as a securities salesperson or broker-dealer.
- 9. The prospectus does not disclose the existence and nature of the Securities Division's investigation of the unregistered offer of securities through the website of IndieShares, LLC. Neither does it disclose the potential liability arising from the general solicitation conducted prior to the filing of an application for registration.
- 10. The prospectus does not disclose a prior offering conducted by Detour, LLC or the results of that offering. In June 2006, Jay T. Schwartz, George Brumder, and Julie Chase were involved with a similar film project by Detour, LLC. Although Detour, LLC was issued a permit to solicit indications of interest in the offering from investors, Detour, LLC did not respond to comments made by the Securities Division concerning its application for registration and the application was withdrawn on March 19, 2008.
- 11. The prospectus does not disclose the terms of the agreement with the author of the script for the film 35 or the intellectual property risks or disputes that may arise between the author and 35, LLC.

1	12. The prospectus does not disclose whether any of the films directed and produced
2	by Schwartz generated any revenues or were successful by any other measure.
3	13. The prospectus fails to make other material disclosures necessary to make the
4	prospectus complete.
5	Based upon the Tentative Findings of Fact, the following Conclusions of Law are made:
6 7	CONCLUSIONS OF LAW
8	1. The registration statement filed on behalf of 35, LLC is incomplete in a material
9	respect or contains statements which are, in the light of the circumstances under which they are
10	made, false or misleading with respect to any material fact as set forth above in violation of
11	RCW 21.20.280(1).
12	2. The promoters of 35, LLC have contributed an insufficient amount of equity to
13	35, LLC in violation of RCW 21.20.280(8) and WAC 460-16A-205(1)(r) adopting the NASAA
14	Statement of Policy Regarding Promoters' Equity Investment as amended April 27, 1997.
15	3. The offering by 35, LLC would be made with unreasonable amounts of
16	promoters' profits or participation in violation of RCW 21.20.280(8).
17	STOP ORDER DENYING EFFECTIVENESS
18 19	Pursuant to RCW 21.20.280 and based on the above Tentative Findings of Fact and
20	Conclusions of Law, the Securities Administrator enters this stop order denying the
21	effectiveness of the application for registration filed on October 27, 2008 by 35, LLC. This
22	order may be modified or vacated at the discretion of the Securities Administrator upon the
23	amendment of the terms of the offering and the registration statement to comply with the
24	Securities Act of Washington, chapter 21.20 RCW, and the rules adopted thereunder.
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	STOP ORDER DENYING EFFECTIVENESS OF 4 DEPARTMENT OF FINANCIAL INSTITUTION APPLICATION FOR REGISTRATION Securities Division PO Box 900

1 **AUTHORITY AND PROCEDURE** 2 This ORDER SUSPENDING EFFECTIVENESS is entered pursuant to the provisions of 3 RCW 21.20.280 and RCW 21.20.300 and is subject to the provisions of Chapter 34.05 RCW. 4 The Respondent, 35, LLC, may make a written request for a hearing as set forth in the NOTICE 5 OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING accompanying this 6 Order. 7 If the respondent does not request a hearing, the Securities Administrator intends to 8 adopt the above Tentative Findings of Fact, Conclusions of Law, and STOP ORDER DENYING 9 EFFECTIVENESS OF APPLICATION FOR REGISTRATION of 35, LLC as final. 10 11 DATED AND ENTERED this 19th day of November, 2008. 12 Onidal & Stevenson 13 14 MICHAEL E. STEVENSON 15 Securities Administrator 16 Approved by: Presented by: 17 An Elle 18 Suzanne Sarason Jack McClellan 19 Chief of Compliance **Enforcement Attorney** 20 21 22 23

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