

STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
SECURITIES DIVISION

IN THE MATTER OF DETERMINING) Order Number S-09-163-09-SCO01
Whether there has been a violation of the)
Securities Act of Washington by:) STATEMENT OF CHARGES, NOTICE
) OF INTENT TO ENTER AN ORDER TO
) CEASE AND DESIST AND NOTICE OF
NDG Investment Group, LLC; Jose Nino de) INTENT TO IMPOSE FINES AND
Guzman; Philip Boos; Darin Donaldson;) RECOVER COSTS
Glenn Fulton; Nathan Hoerschelmann; Lucy)
M. Miller; Maxime Albi; Ejercito Residential,)
LLC; Arequipa, LLC; 28th of July, LLC;)
Miraflores-Francia, LLC; Larco-Bolivar)
Investments, LLC; Madrid Residential, LLC;)
Residencial Casuarinas, LLC; El Golf)
Residencial, LLC; Del Solar Residential, LLC;)
Shell La Paz, LLC; NDG-Brycon, LLC; NDG-))
Brycon 2, LLC; Los Alamos Residential,)
LLC; Grau Residential, LLC; Jorge Chavez,)
LLC.)
)
Respondents)

THE STATE OF WASHINGTON TO: NDG Investment Group, LLC; Jose Nino de
Guzman; Philip Boos; Darin Donaldson;
Glenn Fulton; Nathan Hoerschelmann; Lucy
M. Miller; Maxime Albi; Ejercito Residential,
LLC; Arequipa, LLC; 28th of July, LLC;
Miraflores-Francia, LLC; Larco-Bolivar
Investments, LLC; Madrid Residential, LLC;
Residencial Casuarinas, LLC; El Golf
Residencial, LLC; Del Solar Residential, LLC;
Shell La Paz, LLC; NDG-Brycon, LLC;
NDG-Brycon 2, LLC; Los Alamos
Residential, LLC; Grau Residential, LLC; and
Jorge Chavez, LLC

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

DEPARTMENT OF FINANCIAL INSTITUTIONS
Securities Division
PO Box 9033
Olympia, WA 98507-9033
360-902-8760

1 **STATEMENT OF CHARGES**

2 Please take notice that the Securities Administrator of the State of Washington has reason
3 to believe that Respondents, NDG Investment Group, LLC (NDG); Jose Nino de Guzman (Nino
4 de Guzman); Philip Boos; Darin Donaldson; Glenn Fulton; Nathan Hoerschelmann; Lucy M.
5 Miller; Maxime Albi; Ejercito Residential, LLC; Arequipa, LLC; 28th of July, LLC; Miraflores-
6 Francia, LLC; Larco-Bolivar Investments, LLC; Madrid Residential, LLC; Residencial
7 Casuarinas, LLC; El Golf Residential, LLC; Del Solar Residential, LLC; Shell La Paz, LLC;
8 NDG-Brycon, LLC; NDG-Brycon 2; LLC Los Alamos Residential, LLC; Grau Residential,
9 LLC; and Jorge Chavez, LLC have each violated the Securities Act of Washington and that their
10 violations justify the entry of an order of the Securities Administrator under RCW 21.20.390
11 against each to cease and desist from such violations and recover costs, and under RCW
12 21.20.395 against NDG and Nino de Guzman to impose a fine. The Securities Administrator
13 finds as follows:
14

15 **TENTATIVE FINDINGS OF FACT**

16 **PARTIES**

- 17 1. NDG Investment Group, LLC (NDG) is a Washington State limited liability company
18 formed on September 15, 2006 with its principal place of business in Seattle, Washington. NDG
19 sells and manages real estate project investments to be developed in Lima, Peru.
- 20 2. Jose Nino de Guzman (Nino de Guzman) is the Chief Executive Officer and owner of
21 NDG Investment Group, LLC and a Seattle, Washington resident.
- 22 3. Grupo Innova is a Peruvian based real estate construction entity that is the general
23 contractor for NDG sponsored real estate development investments. Nino de Guzman is the
24 majority owner of Grupo Innova along with his uncle Raul Arenas, the CEO of the company.

4. Philip Boos (Boos) is a Washington resident and the former NDG employee who marketed company sponsored investments to investors.

5. Darin Donaldson (Donaldson) is a Washington resident and the former NDG employee/bookkeeper who marketed company sponsored investments to investors.

6. Glenn Fulton (Fulton) is a Washington resident and former NDG Vice President of Business Development who marketed company sponsored limited liability company investments to investors.

7. Nathan Hoerschelmann (Hoerschelmann) is a Washington resident and former NDG employee who marketed company sponsored investments to investors.

8. Lucy M. Miller (Miller) is a Washington resident and former NDG investor relations employee who marketed company sponsored investments to investors.

9. Maxime Albi (Albi) is a Washington resident who was an independent contractor for NDG and an NDG investor who received “finder’s fees” for referring potential investors.

10. Ejercito Residential, LLC is a Delaware limited liability company formed on January 10, 2008 with its principal place of business in Seattle, Washington. It was to develop real estate in Lima, Peru and was managed by Respondents Nino de Guzman and NDG.

11. Arequipa, LLC is a Delaware limited liability company formed on January 28, 2008 with its principal place of business in Seattle, Washington. It was to develop real estate in Lima, Peru and was managed by Respondents Nino de Guzman and NDG.

12. 28th of July, LLC is a Delaware limited liability company formed on February 29, 2008 with its principal place of business in Seattle, Washington. It was to develop real estate in Lima, Peru and was managed by Respondents Nino de Guzman and NDG.

1 13. Miraflores-Francia, LLC is a Delaware limited liability company formed on October 16,
2 2007 with its principal place of business in Seattle, Washington. It was to develop real estate in
3 Lima, Peru and was managed by Respondents Nino de Guzman and NDG.

4 14. Larco Bolivar, LLC is a Delaware limited liability company formed on March 19, 2008
5 with its principal place of business in Seattle, Washington. It was to develop real estate in Lima,
6 Peru and was managed by Respondents Nino de Guzman and NDG.

7 15. Madrid Residential, LLC is a Delaware limited liability company formed on March 25,
8 2008 and was managed by Respondents Nino de Guzman and NDG.

9 16. Residencial Casuarinas, LLC is a purported real estate development entity company with
10 its principal place of business in Seattle, Washington. It was to develop real estate in Lima, Peru
11 and was managed by Respondents Nino de Guzman and NDG.

12 17. El Golf Residential, LLC a Delaware limited liability company formed on May 6, 2008
13 with its principal place of business in Seattle, Washington. It was to develop real estate in Lima,
14 Peru and was managed by Respondents Nino de Guzman and NDG.

15 18. Del Solar Residential, LLC is a Delaware limited liability company formed on May 7,
16 2008 with its principal place of business in Seattle, Washington. It was to develop real estate in
17 Lima, Peru and was managed by Respondents Nino de Guzman and NDG.

18 19. Shell La Paz, LLC is a Delaware limited liability company formed on July 3, 2008 with
19 its principal place of business in Seattle, Washington. It was to develop real estate in Lima, Peru
20 and was managed by Respondents Nino de Guzman and NDG.

21 20. NDG-Brycon, LLC is a Delaware limited liability company formed on July 14, 2008 with
22 its principal place of business in Seattle, Washington. It was to invest with a construction
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1 company that was to build low cost housing developments in Peru and was managed by
2 Respondents Nino de Guzman and NDG.

3 21. NDG-Brycon 2, LLC is a Delaware limited liability company formed on August 18, 2008
4 with its principal place of business in Seattle, Washington. It was to invest with a construction
5 company that was to build low cost housing developments in Peru and was managed by
6 Respondents Nino de Guzman and NDG.

7
8 22. Los Alamos Residential, LLC is a Delaware limited liability company formed on
9 September 2, 2008 with its principal place of business in Seattle, Washington. It was to develop
10 real estate in Lima, Peru and was managed by Respondents Nino de Guzman and NDG.

11 23. Grau Residential, LLC is a Delaware limited liability company formed on November 5,
12 2008 with its principal place of business in Seattle, Washington. It was to develop real estate in
13 Lima, Peru and was managed by Respondents Nino de Guzman and NDG.

14 24. Jorge Chavez, LLC is a Delaware limited liability company formed on December 18,
15 2008 with its principal place of business in Seattle, Washington. It was to develop real estate in
16 Lima, Peru and was managed by Respondents Nino de Guzman and NDG.

17 **NATURE OF THE OFFERING**

18 25. From 2006 to 2009, NDG and Nino de Guzman, personally, and through their employees
19 and/or agents, including, but not limited to Philip Boos; Darin Donaldson; Glenn Fulton; Nathan
20 Hoerschelmann; Lucy M. Miller and Maxime Albi, offered and/or sold investment interests in
21 various forms such as “partnerships,” membership interests in memberships in limited liability
22 companies (LLCs) and/or promissory notes.

23
24 26. Nino de Guzman recruited NDG investors or potential investors Boos, Donaldson,
25 Fulton, Hoerschelmann and Albi to work for the company in various capacities as well as to

1 solicit other potential investors. Donaldson, a co-worker of Nino de Guzman at former employer
2 U.S. Bank, managed NDG's operations and books. Donaldson introduced his friends Fulton and
3 Boos to Nino de Guzman, who hired them to work with the company's investors.

4 Hoerschelmann handled legal matters and Albi was hired as a business consultant. Nino de
5 Guzman also hired Miller, a University of Washington graduate, to do investor relations work.

6
7 27. Nino de Guzman and NDG sold investments to over 100 investors, the majority of whom
8 are Washington State residents, raising over \$15,000,000 to develop residential and commercial
9 real estate development projects in Lima, Peru. Investors typically paid for their investments by
10 delivering a check to Respondents, by wiring funds to an account designated by Respondents or
11 by re-investing or "rolling over" the returns of a maturing investment into a new investment.

12 28. From 2006 to 2009, Nino de Guzman, personally, and NDG through their employees and
13 agents, continuously offered or sold investment interests in the above mentioned real estate
14 development projects in face to face meetings with prospective investors, on the Internet and
15 through group presentations conducted at the NDG offices or Seattle area venues such as hotels
16 and restaurants.

17 29. Nino de Guzman solicited former clients and fellow employees from a prior employer,
18 U.S. Bank, to invest. Several investors were Nino de Guzman's former fraternity brothers and/or
19 college classmates from the University of Washington and their family members or
20 acquaintances.

21
22 30. Nino de Guzman and NDG spent lavishly to entertain and market to prospective and
23 existing investors by holding sales presentations at upscale Seattle venues such as the Edgewater
24 Inn, W Hotel and the NDG suite at Seattle Seahawk football games. Costs for the Seahawk suite
25 and games exceeded \$100,000. Nino de Guzman and NDG also offered investors an all expense

1 paid trip to Lima Peru where they were entertained and toured NDG project sites. On one trip,
2 investors were introduced to prominent Peruvian attorneys and bankers, as well as the First Lady
3 of Peru.

4 31. Existing investors were also encouraged to invite others to attend NDG sponsored meals,
5 parties, presentations or functions held at these venues where information regarding the
6 company's offerings was presented.

7
8 32. Nino de Guzman offered certain employees a sales commission of up to five percent of
9 money invested by those they referred as an incentive to the employees to recruit family
10 members, acquaintances and others to invest through NDG.

11 33. Some offerees and/or investors did not have an existing or prior personal or business
12 relationship with Respondents NDG and Nino de Guzman.

13 34. Respondents generally provided prospective investors with written materials describing
14 the investment and projects, such as partnership agreements, limited liability company
15 agreements, subscription agreements and general information about Peru. This information was
16 typically hand delivered, sent by U.S. Mail or emailed to prospective investors. In some
17 instances, marketing information about the offered investments was made available to investors
18 through the NDG website. Respondents generally told investors that their money would be used
19 to purchase the land for a particular project and/or for operating expenses.

20
21 35. Between 2006 and 2009, Respondents represented to prospective investors that Nino de
22 Guzman, NDG and its Peruvian affiliate Grupo Innova had a history of completing real estate
23 development projects on time and meeting projected profit expectations.

24 36. Respondents NDG and Nino de Guzman pooled the money of investors to develop a
25 particular residential and/or commercial real estate project. In some cases, Respondents NDG

1 and Nino de Guzman did not use investor funds for the intended purposes of a partnership or
2 LLC.

3 37. From 2006 to 2009, Respondents Nino de Guzman, NDG and its affiliate Grupo Innova
4 have not completed a real estate development project in Lima, Peru. In some cases they may
5 have acquired and sold property without completing the intended development of the property.

6 38. In 2009, Nino de Guzman and NDG did not repay many partnership, limited liability or
7 promissory note investors their principal and profit or interest in the promised timeframes,
8 generally twelve to fifteen months from the date of investment.

9 39. In 2009, after confrontations with NDG employees and investors, Nino de Guzman
10 admitted that money designated for the purchase of property of particular projects was diverted
11 for other uses.

12 **Partnership Investments**

13
14 40. From 2006 to 2008, Respondents Nino de Guzman and NDG offered and sold investors
15 an interest in various “partnerships” in which NDG would build and sell condominium real estate
16 development projects in Lima, Peru. Nino de Guzman and NDG told prospective investors that
17 their money was to be used to purchase land and build the projects. They told investors that the
18 projects would be completed within approximately a year’s time or less and that they would
19 receive double digit profits on the investments, as much as a 50% return. “Partnership” investors
20 neither intended to participate or, in fact, participated in the management of these construction
21 projects. They relied solely on the purported expertise and management of Nino de Guzman and
22 NDG. A typical form of a partnership agreement stated: (1) the individual investor entered into a
23 partnership agreement with NDG Investment Group; (2) the purpose of the partnership was
24 “Real Estate Development,” and named a development project to be built in Peru; (3) the amount

1 of capital to be contributed by the investor; (4) the expected completion date of the project; (5)
2 the dollar amount to be returned to the investor on completion; (6) that the Investor/Partner
3 would not be required to make additional capital contributions; (7) that the “return on investment
4 shall be disclosed up front with the projected balance sheet;” and (8) NDG is the “Managing
5 Partner” who will have management and control of the day-to-day business of the Partnership..”

6
7 41. At the term of the most of the pre-2008 agreements, Nino de Guzman and NDG repaid
8 investors the fixed amount of return promised at the time the agreements were entered. This
9 return included the principal plus the promised double digit returns from the purported “profits”
10 of the various construction projects. Some of the “partnership” investors re-invested or “rolled
11 over” their returns into subsequent NDG sponsored investments.

12 **Limited Liability Company Investments**

13 42. From 2007 to 2009, Respondents Nino de Guzman and NDG formed the following
14 limited liability companies: Ejercito Residential, LLC; Arequipa, LLC; 28th of July, LLC;
15 Miraflores-Francia, LLC; Larco-Bolivar Investments, LLC; Madrid Residential, LLC;
16 Residencial Casuarinas, LLC; El Golf Residential, LLC; Del Solar Residential, LLC; Shell La
17 Paz, LLC; NDG-Brycon, LLC; NDG-Brycon 2, LLC; Los Alamos Residential, LLC; Grau
18 Residential, LLC; and Jorge Chavez, LLC and offered and/or sold interests in them to investors.

19 43. Respondents told prospective limited liability company investors that Nino de Guzman
20 and NDG would manage their respective limited liability company and use their money to
21 acquire specified land in Lima, Peru and develop commercial or residential buildings on the
22 property. Construction of the projects would be managed by Grupo Innova, an entity owned and
23 controlled by Nino de Guzman and his uncle Raul Arenas. Most of the projects were multi-
24
25

1 family condominium developments, but did include some single family, commercial and mixed
2 use projects.

3 44. Respondents told investors that, because of Nino de Guzman's business and political
4 connections and market conditions in Peru, projects could be completed in fifteen months or less,
5 often in about a year.

6 45. Respondents promised investors double digit returns, generally between 40% and 50%.
7
8 With respect to several of the early limited liability company offerings, Respondents Nino de
9 Guzman and NDG repaid certain investors their principal and promised double digit profits. Some
10 of the "limited liability company" investors re-invested or "rolled over" their returns into
11 subsequent NDG sponsored investments.

12 **NDG-Brycon, LLC and NDG-Brycon 2, LLC Offerings**

13 46. In contrast with other NDG investment opportunities where investors were told that their
14 money would be used to purchase land and develop the property, Respondents Nino de Guzman
15 and NDG offered and sold membership interests in two limited liability companies, NDG-
16 Brycon, LLC and NDG-Brycon 2, LLC, whose purpose was to acquire an equity interest in or
17 do a joint venture with a foreign company called Brycon International. Brycon International was
18 represented to have a process for a low cost construction method involving pre-formed concrete
19 slabs.

20
21 47. Respondents NDG and Nino de Guzman told prospective investors that Brycon
22 International would enter into contracts in Peru to build low cost concrete modular housing
23 projects using the company's technology.

24 48. Respondents NDG and Nino de Guzman represented to NDG-Brycon, LLC and NDG-
25 Brycon 2, LLC investors that NDG and Grupo Innova had completed 12 prior projects.

1 49. Respondents NDG and Nino de Guzman represented to investors that they could earn as
2 much as a 200% annual return on their investment that would be distributed annually beginning
3 September 15, 2009 and ending in 2014.

4 50. In 2008, Respondents NDG and Nino de Guzman offered and sold to at least two
5 Washington State investors a membership interest in NDG-Brycon, LLC.

6 51. In 2008, Respondents NDG and Nino de Guzman offered and sold to at least five
7 Washington State investors a membership interest in NDG-Brycon 2, LLC.

8 52. NDG-Brycon, LLC was managed by NDG Investment Group.

9 53. NDG-Brycon 2, LLC was managed by NDG Investment Group.

10 54. Respondents NDG and Nino de Guzman have not paid investors either a return of
11 principal or profit for NDG-Brycon, LLC and NDG-Brycon 2, LLC.

12 **Promissory Note Investments**

13
14 55. In May 2008, Respondents NDG and Nino de Guzman offered a promissory note to at
15 least one Washington resident in the amount of \$30,000. Nino de Guzman told the investor that
16 the money raised was to be used for land acquisition and operating expenses. The issuer of the
17 note was NDG Investment Group with a total principal and interest payment of \$34,900 to be
18 repaid at the term of the note which was 90 days. Respondents NDG and Nino de Guzman have
19 subsequently reissued replacement notes to the investor as recently as November 16, 2009.

20
21 56. In April 2009, Respondents NDG and Nino de Guzman offered a promissory note to at
22 least one investor in the amount of \$132,250. Nino de Guzman told the investor that the money
23 raised was to be used for making an earnest money deposit on real property in Lima, Peru. The
24 investor was promised ten per cent for the initial thirty day period of the loan and one third per
25

1 cent per day for each subsequent day of the loan. The loan was to mature in forty five days after
2 the loan funds were delivered to NDG.

3 **Sales Commissions**

4 57. Respondents NDG and Nino de Guzman and/or provided NDG employees Philip Boos,
5 Darin Donaldson, Glenn Fulton, Nathan Hoerschelmann and Lucy M. Miller a sales commission
6 of up to 5% of investors' money brought in by them. Respondents NDG and Nino de Guzman
7 provided a company consultant and investor, Maxime Albi, a sales commission or "finder's fee"
8 of 5% of investors' money referred by him. Boos, Donaldson, Fulton, Hoerschelmann, Miller
9 and Albi, recruited family members, relatives, friends, business and social acquaintances to
10 invest in the company's investment opportunities. They typically recruited potential investors in
11 one on one personal meetings or in small group settings in homes, coffee shops or restaurants. In
12 some instances they received referrals from existing NDG investors. They provided investors
13 with offering materials and/or agreements through a variety of means such as delivery hard copy
14 documents, emails and directing them to the NDG website.
15

16 **MISREPRESENTATIONS AND OMISSIONS**

17 58. In offering partnership, limited liability company interests and/or promissory notes to
18 investors, Respondents Nino de Guzman; NDG; Philip Boos; Darin Donaldson; Glenn Fulton;
19 Lucy M. Miller, Nathan Hoerschelmann; Maxime Albi; Ejercito Residential, LLC; Arequipa,
20 LLC; 28th of July, LLC; Miraflores-Francia, LLC; Larco-Bolivar Investments, LLC; Madrid
21 Residential, LLC; Residencial Casuarinas, LLC; El Golf Residential, LLC; Del Solar
22 Residential, LLC; Shell La Paz, LLC; NDG-Brycon, LLC; NDG-Brycon 2, LLC; Los Alamos
23 Residential, LLC; Grau Residential, LLC; and Jorge Chavez, LLC failed to disclose to investors
24 material information about NDG's and Nino de Guzman's business history and lack of
25

1 experience in successfully completing residential or commercial real estate development
2 projects.

3 59. Respondents Nino de Guzman and NDG misrepresented to certain investors that at least
4 six or more of their prior real estate projects were completed on time and met projected return on
5 investment targets.

6 60. Respondents Nino de Guzman and NDG failed to disclose to certain investors that
7 investor funds might be commingled with funds of NDG and related entities.

8 61. Respondents Nino de Guzman and NDG misrepresented to certain investors that
9 investors' funds would be used to purchase certain real estate and subsequently failed to begin or
10 complete property purchases of said real estate.

11 62. Respondents Nino de Guzman; NDG; Philip Boos; Darin Donaldson; Glenn Fulton;
12 Nathan Hoerschelmann; Lucy M. Miller; Maxime Albi; Ejercito Residential, LLC; Arequipa,
13 LLC; 28th of July, LLC; Miraflores-Francia, LLC; Larco-Bolivar Investments, LLC; Madrid
14 Residential, LLC; Residencial Casuarinas, LLC; El Golf Residential, LLC; Del Solar
15 Residential, LLC; Shell La Paz, LLC; NDG-Brycon, LLC; NDG-Brycon 2, LLC; Los Alamos
16 Residential, LLC; Grau Residential, LLC; and Jorge Chavez, LLC failed to disclose to investors
17 material financial information, including financial statements for NDG, the managing partner for
18 the NDG sponsored LLC investments.

19 63. Respondents Nino de Guzman; NDG; Philip Boos; Darin Donaldson; Glenn Fulton;
20 Nathan Hoerschelmann; Lucy M. Miller; Maxime Albi; Ejercito Residential, LLC; Arequipa,
21 LLC; 28th of July, LLC; Miraflores-Francia, LLC; Larco-Bolivar Investments, LLC; Madrid
22 Residential, LLC; Residencial Casuarinas, LLC; El Golf Residential, LLC; Del Solar
23 Residential, LLC; Shell La Paz, LLC; NDG-Brycon, LLC; NDG-Brycon 2, LLC; Los Alamos
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1 Residential, LLC; Grau Residential, LLC; and Jorge Chavez, LLC represented to certain
2 investors that they would receive a return on investment in the 40% to 60% range or more when
3 they had no reasonable basis for projecting these rates of return.

4 64. Respondents Nino de Guzman; NDG; Philip Boos; Darin Donaldson; Glenn Fulton;
5 Nathan Hoerschelmann; Lucy M. Miller; and Maxime Albi failed to disclose to certain investors
6 that they would receive a sales commission out of the money invested by investors.
7

8 **REGISTRATION STATUS**

9 65. NDG Investment Group, LLC is not currently registered to offer or sell “partnerships,”
10 limited liability company interests, promissory notes or other securities in the state of Washington
11 and has not previously been so registered.

12 66. Ejercito Residential, LLC is not currently registered to offer or sell securities in the state of
13 Washington and has not previously been so registered.

14 67. Arequipa, LLC is not currently registered to offer or sell securities in the state of
15 Washington and has not previously been so registered.

16 68. 28th of July, LLC is not currently registered to offer or sell securities in the state of
17 Washington and has not previously been so registered.

18 69. Miraflores-Francia, LLC is not currently registered to offer or sell securities in the state of
19 Washington and has not previously been so registered.
20

21 70. Larco-Bolivar Investments, LLC is not currently registered to offer or sell securities in the
22 state of Washington and has not previously been so registered.

23 71. Madrid Residential, LLC is not currently registered to offer or sell securities in the state of
24 Washington and has not previously been so registered.
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1 72. Residencial Casuarinas, LLC is not currently registered to offer or sell securities in the state
2 of Washington and has not previously been so registered.

3 73. El Golf Residential, LLC is not currently registered to offer or sell securities in the state of
4 Washington and has not previously been so registered.

5 74. Del Solar Residential, LLC is not currently registered to offer or sell securities in the state
6 of Washington and has not previously been so registered.

7 75. Shell La Paz, LLC is not currently registered to offer or sell securities in the state of
8 Washington and has not previously been so registered.

9 76. NDG-Brycon, LLC is not currently registered to offer or sell securities in the state of
10 Washington and has not previously been so registered.

11 77. NDG-Brycon 2, LLC is not currently registered to offer or sell securities in the state of
12 Washington and has not previously been so registered.

13 78. Los Alamos Residential, LLC is not currently registered to offer or sell securities in the
14 state of Washington and has not previously been so registered.

15 79. Grau Residential, LLC is not currently registered to offer or sell securities in the state of
16 Washington and has not previously been so registered.

17 80. Jorge Chavez, LLC is not currently registered to offer or sell securities in the state of
18 Washington and has not previously been so registered.

19 81. On March 13, 2009, Nino de Guzman, as Chief Executive Officer and Manager of the
20 following entities and through his attorney, filed with the Securities Division a claim of
21 exemption from registration of offer of securities under WAC 460-44A-506 (Regulation D) for
22 Ejercito Residential, LLC; Arequipa, LLC; Larco-Bolivar Investments, LLC; Madrid
23 Residential, LLC; Residencial Casuarinas, LLC; El Golf Residential, LLC; Del Solar
24 Residential, LLC; Residencial Casuarinas, LLC; El Golf Residential, LLC; Del Solar
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1 Residential, LLC; Shell La Paz, LLC; NDG-Brycon 2, LLC; Los Alamos Residential, LLC;
2 Grau Residential, LLC; and Jorge Chavez, LLC. In letters dated March 19, 2009, the Securities
3 Division advised Nino de Guzman through his attorney that the respective LLCs' Regulation D
4 filings had been received and requested that (1) a report of first sale in Washington be submitted
5 to the Securities Division as required by WAC 460-44A-503(1)(a)(ii) and (2) that a Uniform
6 Consent of Service of Process be filed. In letters dated December 18, 2009, the Securities
7 Division advised Nino de Guzman through his attorney that the report of first sale and Uniform
8 Consent to Service for the respective LLCs had not been received; that the submission of this
9 information was necessary in order to complete the notice filing pursuant to WAC 460-44A-503;
10 and that the Securities Division would deem the notice filing to be abandoned if the requested
11 information was not provided in thirty days. In letters issued in early 2010, the Securities
12 Division advised Nino de Guzman that the filings for the respective LLCs were non-compliant
13 because the reports of the dates of the first sales for the offerings were not submitted to the
14 Securities Division as required under WAC 44A-503(1)(a)(i)(A). In addition, WAC 44A-
15 503(1)(a)(i)(A) requires that an issuer file its notice for claim of exemption no later than fifteen
16 days after the first sale of securities in the State of Washington. All of the aforementioned LLCs
17 had made their first sale of an investment to a Washington resident more than fifteen days prior
18 to March 13, 2009. Respondents NDG and Nino de Guzman offered some of the LLC
19 investments to investors in group presentations and through information made available on the
20 NDG website.

23 **SECURITIES BROKER-DEALER AND SALESPERSON REGISTRATION**

24 82. Jose Nino de Guzman; Philip Boos; Darin Donaldson; Glenn Fulton; Nathan
25 Hoerschelmann; Lucy M. Miller and Maxime Albi are not currently registered as a securities

1 salesperson or broker-dealer in the state of Washington and have not previously been so
2 registered.

3 The Securities Administrator finds that the continued offering of partnerships, limited
4 liability company interests and promissory notes in the manner described in the Tentative
5 Findings of Fact above, presents a threat to the investing public.

6 Based upon the Tentative Findings of Fact, the following Conclusions of Law are made:
7

8
9 **CONCLUSIONS OF LAW**

10 **I.**

11 The offer or sale of “partnerships,” limited liability company interests and promissory
12 notes described above constitutes the offer or sale of a security as defined in RCW 21.20.005(10)
13 and (12), to wit: an investment contract, risk capital, a note or evidence of indebtedness.

14 **II.**

15 The offer of limited liability company membership interests in group presentations and
16 through the NDG website violated the prohibition against general solicitation of federal
17 Regulation D, Rule 502. Therefore, Respondents NDG and Nino de Guzman failed to meet the
18 requirements to claim the exemption available under federal Rule 506, adopted pursuant to the
19 Securities Act of 1933, and WAC 460-44A-506.

20 **III.**

21 The offer or sale of said securities is in violation of RCW 21.20.140 because, except as
22 noted in the Tentative Findings of Fact above, no registration or notification of claim of
23 exemption for such offers or sales were on file with the Securities Administrator.
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25

1 IV.

2 Jose Nino de Guzman; Philip Boos; Darin Donaldson; Glenn Fulton; Nathan
3 Hoerschelmann; Lucy M. Miller and Maxime Albi, have each violated RCW 21.20.040 by
4 offering or selling said securities while not registered as a securities salesperson or broker-dealer
5 in the state of Washington.

6 V.

7
8 The offer or sale of said securities was made in violation of RCW 21.20.010 because in
9 connection with the offer and sale of “partnerships,” limited liability company interests, and
10 promissory notes, Respondents made misstatements of material fact and/or omitted to state
11 material facts necessary in order to make the statements made, in light of the circumstances
12 under which they were made, not misleading.

13 **NOTICE OF INTENT TO ORDER RESPONDENTS TO CEASE AND DESIST**

14 Based on the above Tentative Findings of Fact and Conclusions of Law, the Securities
15 Administrator intends to order, pursuant to RCW 21.20.390(1), that Respondents NDG; Jose
16 Nino de Guzman; Philip Boos; Darin Donaldson; Glenn Fulton; Nathan Hoerschelmann; Lucy
17 M. Miller; Maxime Albi, Ejercito Residential, LLC; Arequipa, LLC; 28th of July, LLC;
18 Miraflores-Francia, LLC; Larco-Bolivar Investments, LLC; Madrid Residential, LLC;
19 Residencial Casuarinas, LLC; El Golf Residential, LLC; Del Solar Residential, LLC; Shell La
20 Paz, LLC; NDG-Brycon, LLC; NDG-Brycon 2, LLC; Los Alamos Residential, LLC; Grau
21 Residential, LLC; and Jorge Chavez, LLC and their agents, employees, and representatives, each
22 shall cease and desist from any violation of RCW 21.20.010 and RCW 21.20.140.

23
24 Based on the above Tentative Findings of Fact and Conclusions of Law, the Securities
25 Administrator intends to order, pursuant to RCW 21.20.390(1), that Respondents Jose Nino de

1 Guzman; Philip Boos; Darin Donaldson; Glenn Fulton; Nathan Hoerschelmann, Lucy M. Miller
2 and Maxime Albi each shall cease and desist from any violation of RCW 21.20.040.

3 **NOTICE OF INTENT TO IMPOSE FINES**

4 Pursuant to RCW 21.20.395, and based upon the above Tentative Findings of Fact
5 and Conclusions of Law, the Securities Administrator intends to order that the Respondents NDG
6 and Jose Nino de Guzman shall each be liable for and pay a fine of \$50,000.

7 **NOTICE OF INTENT TO RECOVER COSTS**

8 Pursuant to RCW 21.20.390(5), and based upon the Tentative Findings of Fact and Conclusions
9 of Law, the Securities Administrator intends to order that the Respondents NDG and Jose Nino
10 de Guzman shall be jointly liable for and pay the Securities Division the costs, fees, and other
11 expenses incurred in the conduct of the administrative investigation and hearing of this matter of
12 not less than \$20,000.
13

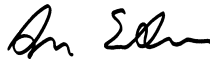
14 **AUTHORITY AND PROCEDURE**

15 This Order is entered pursuant to the provisions of RCW 21.20.390 and 21.20.395 and is
16 subject to the provisions of RCW 34.05. The Respondents, NDG Investment Group, LLC and
17 Jose Nino de Guzman, Philip Boos; Darin Donaldson; Glenn Fulton; Nathan Hoerschelmann;
18 Lucy M. Miller; Maxime Albi; Ejercito Residential, LLC; Arequipa, LLC; 28th of July, LLC;
19 Miraflores-Francia, LLC; Larco-Bolivar Investments, LLC; Madrid Residential, LLC;
20 Residencial Casuarinas, LLC; El Golf Residential, LLC; Del Solar Residential, LLC; Shell La
21 Paz, LLC; NDG-Brycon, LLC; NDG-Brycon 2, LLC; Los Alamos Residential, LLC; Grau
22 Residential, LLC; and Jorge Chavez, LLC may each make a written request for a hearing as set
23 forth in the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR
24 HEARING accompanying this order.
25

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

4 WILLFUL VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.

5 Dated and Entered this 21st day of May, 2010.

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9 _____
10 SUZANNE SARASON
11 Chief of Enforcement

12 Presented by:

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14 MARTIN CORDELL
15 Financial Legal Examiner
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