

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

IN THE MATTER OF DETERMINING ) Order No.: S-11-0654-12-FO01  
Whether there has been a violation of the )  
Securities Act of Washington by: ) ENTRY OF FINDINGS OF FACT AND CONCLUSIONS  
 ) OF LAW AND FINAL ORDER TO CEASE AND DESIST,  
TBOC, LLC; Andrew T. Miller; Michelle M. ) TO CHARGE COSTS, AND TO IMPOSE FINES  
Nelson; )  
 )  
Respondents.

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On March 9, 2012, the Securities Administrator of the State of Washington issued Statement of Charges and Notice of Intent to Enter Order to Cease and Desist, to Charge Costs, and to Impose Fines number S-11-0654-12-SC01, hereinafter referred to as the "Statement of Charges." The Statement of Charges, together with a Notice of Opportunity to Defend and Opportunity for Hearing, hereinafter referred to as "Notice of Opportunity for Hearing" and an Application for Adjudicative Hearing, hereinafter referred to as "Application for Hearing," were served on Respondents, TBOC, LLC, Andrew T. Miller and Michelle M. Nelson on March 14, 2012. The Notice of Opportunity for Hearing advised that a written application for an administrative hearing on the Statement of Charges must be received within twenty days from the date of receipt of the notice. Respondents each failed to request an administrative hearing within twenty days of receipt of the Statement of Charges and Notice of Opportunity for Hearing, either on the Application for Hearing provided, or otherwise.

The Securities Administrator therefore will adopt as final the following Findings of Fact and Conclusions of Law as set forth in the Statement of Charges and enter a Final Order against the Respondents to cease and desist from violations of the Securities Act.

The Securities Administrator makes the following Findings of Fact and Conclusions of Law:

1  
2 **FINDINGS OF FACT**

3 Respondents

4 1. TBOC, LLC (“TBOC”) is a Washington limited liability company organized on June 22,  
5 2006. During the period relevant to this Statement of Charges, TBOC maintained a principal place of  
6 business in Milton, Washington.

7 2. Andrew T. Miller (“Miller”) is a Washington resident and TBOC’s manager.

8 3. Michelle M. Nelson (“Nelson”) is a Washington resident and TBOC’s business manager.  
9

10 Nature of the Offering

11 *Background*

12 4. In approximately 1990, Miller began composing a cantata about the Nativity story entitled  
13 *The Birth of Christ* that debuted publicly in December, 2004.

14 5. Shortly after this debut, Miller and several associates, including Nelson, whom Miller had  
15 met through his involvement in musical productions throughout the Puget Sound area and beyond, began  
16 planning an international production of *The Birth of Christ*.

17 6. This group ultimately planned a performance of *The Birth of Christ* in Dublin, Ireland to be  
18 professionally filmed and recorded, that would include an orchestra, soloists and a choir, and a celebrity  
19 narrator for August, 2006. The group also contemplated the sale of CDs and DVDs of the production.  
20 TBOC was organized to facilitate this production and its interests were sold to fund the production.  
21

22 7. Prior to the offering, Miller intended to assign the intellectual property rights to *The Birth of*  
23 *Christ* to TBOC. Miller and Nelson claim that they told potential investors that this assignment would not  
24 occur until a certain amount of revenue generated by *The Birth of Christ* had been collected by the trustee  
25 administering Miller’s bankruptcy case that had been discharged approximately six months prior to the

1 beginning of TBOC's offering. Miller and Nelson also claim that they disclosed that the bankruptcy trustee  
2 had not determined the amount of revenue to be claimed when the offering began. With respect to at least  
3 some investors, however, neither Miller nor Nelson disclosed that the bankruptcy trustee had a claim to the  
4 intellectual property rights of *The Birth of Christ* or that the trustee had not determined the amount of  
5 revenue to be claimed.

6 *Scope of the Offer and Sale of Limited Liability Company Interests by TBOC, LLC*

7 8. Between approximately June and December 2006, Respondents offered investments in  
8 TBOC's interests. As part of this offering, TBOC invited approximately thirty prospective investors to  
9 attend meetings at which Miller and Nelson gave a presentation on "The Birth of Christ—Ireland" project  
10 and the related investment opportunity. Respondents separately offered additional interests in TBOC to at  
11 least four individuals that had already invested once or to such investors' immediate relatives. In addition to  
12 the foregoing offers for monetary investments, TBOC also offered in-kind investments in TBOC's interests  
13 to at least three soloists involved with the production in exchange for fees owed them by TBOC, to a  
14 creditor owed for producing embroidered shirts for TBOC, and to a creditor owed expenses resulting from a  
15 series of performances.  
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17 9. Consequently, Respondents sold at least \$50,000 worth of TBOC interests to five  
18 Washington investors invited to attend TBOC's meetings either at or shortly after those meetings, at least  
19 five additional investments worth \$438,000 to four of those investors or to their immediate relatives, and  
20 made in-kind sales of interests totaling in excess of \$16,000. Miller and Nelson purchased approximately  
21 \$412,000 worth of TBOC's interests. Miller purchased approximately \$300,000 worth of TBOC interests by  
22 issuing a promissory note for approximately \$300,000 in his individual capacity in order to pay certain  
23 TBOC expenses as described in paragraph thirty three of the Findings of Fact. Nelson made a cash  
24 investment of approximately \$108,000.  
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1  
2 *Invitation and Presentation on Investment Opportunity Given to Prospective Investors*

3 10. TBOC invited a total of approximately thirty people to attend meetings at Thornewood  
4 Castle in Lakewood, Washington on or around June 17 and August 1, 2006. Invitees received postcards  
5 requesting their presence for “complimentary wine, hors d’oeuvres and an investor presentation opportunity  
6 in *The Birth of Christ-Ireland*.”

7 11. At each of these meetings, at least twenty-five potential investors heard a presentation by  
8 Miller and Nelson about the production’s status at that point and about the next steps TBOC intended to  
9 take. Many invitees attended both meetings. Nelson delivered the majority of this presentation and used a  
10 PowerPoint slideshow to summarize her presentation.

11 12. Several individuals with purported experience in the entertainment industry also spoke at  
12 these meetings. These people shared their opinions about the potential profits of a production like that  
13 planned by TBOC, at least one claiming that the project would likely be very successful financially. One of  
14 these individuals represented that he was seeking a distribution agreement for the sale of CDs and DVDs of  
15 the production that would provide royalties to TBOC.  
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17 13. One of Nelson’s PowerPoint slides was headed “Disclaimer,” and stated “[t]his is an  
18 investment opportunity. As such there is a possibility of risk to your principal investment.” This was the  
19 only disclosure concerning risks arising from investment in TBOC made at these meetings.

20 14. Nelson represented that TBOC’s purpose was to present *The Birth of Christ* in Ireland, to  
21 film it, and to present it for broadcast to the Public Broadcasting System (“PBS”), with the hope that such an  
22 airing on PBS would result in broad exposure for the project and in interest in a musical score, CDs, and  
23 DVDs that Nelson stated would be created and “presented for sale.” When the meetings with prospective  
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1 investors took place, no agreement between TBOC and PBS was in place. Nelson also discussed plans to  
2 market these products through a TBOC website, and through sales by Amazon.com, Costco, and Wal-Mart.

3 15. Nelson discussed the steps TBOC would need to complete to ensure that the production  
4 could take place, telling the attendees that the following personnel would need to be secured: a narrator,  
5 soloists, a chorus, an orchestra, a conductor, a director and an assistant director, producers, and film,  
6 marketing, and distribution professionals. In addition, TBOC needed to book a venue in Dublin.

7 16. Nelson then identified Miller and two other individuals as producers, two individuals as  
8 “assistant choral directors,” an individual as film director, Liam Neeson (“Neeson”) as the narrator, and  
9 herself as business manager and “orchestra contractor” for TBOC. Neeson was the only individual with  
10 whom TBOC had entered into a contract at the time of the meetings with potential investors.

11 17. A planned timeframe for the project was also presented. The schedule projected that revenue  
12 distribution stemming from sales of CDs and DVDs, musical scores, royalties, and airing on a “major  
13 network” would begin in December, 2006.

14 18. Nelson presented a slide headed “Gross Revenues.” This slide featured a pie chart comprised  
15 of various anticipated sources of revenue. Percentages of the total anticipated gross revenues were attributed  
16 to each portion, though neither dollar amounts to correspond to those percentages or a total amount of  
17 forecasted revenues was presented. The two largest portions were labeled “pledge vehicle” and “on air,” and  
18 accounted for over sixty-seven percent of TBOC’s projected revenues.

19 19. A slide headed “Expenses” was also shown. Like the “Gross Revenues” slide, the  
20 “Expenses” slide featured a pie chart with various percentages attributed to various types of expenditures,  
21 but without dollar amounts to correspond to those percentages or a total amount from which the percentages  
22 were derived.  
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1           20.     Nelson told the potential investors that TBOC had estimated that the production would cost  
2 \$1 million. Because TBOC had not established a firm budget, the ratio of investment dollars to limited  
3 liability company interests purchased was not set when these meetings occurred.

4           21.     Potential investors were further told that they would be buying a “percentage of the  
5 profitability” of the production in Ireland and that their funds would be used for “whatever expenses...were  
6 necessary to make the product.”

7           22.     Potential investors received hard copies of the PowerPoint slideshow discussed above. These  
8 copies were the only documents investors received prior to investing.

9           23.     Investors did not receive TBOC’s operating agreement until November, 2007. This operating  
10 agreement stated that TBOC was a manager-managed limited liability company, and that Miller had been  
11 appointed manager. The agreement also provided that Miller could make all decisions “affecting or arising  
12 out of the conduct of” TBOC’s business and that Miller had “exclusive right and full authority to manage”  
13 TBOC outside of changing managers, and incurring debt on TBOC’s behalf for which the other investors  
14 would be personally liable.

15           24.     Investors signed documents entitled “Commitment Letter” when they invested, indicating  
16 intent to commit the amount of their investment to “The Birth of Christ, Ireland.” These letters stated:  
17 “[c]ontract to be submitted upon and funds to be collected upon mutual acceptance.” The contracts  
18 referenced in these Commitment Letters were never created.

19           25.     Most of the five investors purchasing interests at or shortly after these meetings paid by  
20 check payable to TBOC. At least one check was deposited in an account in Miller’s name after “TBOC,  
21 LLC” as payee was crossed out and replaced by Miller’s name.

22           26.     No one acting on behalf of TBOC inquired into either the investment sophistication or  
23 experience of the investors prior to receiving their investment funds.  
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*Additional Offers and Sales to Investors or to their Immediate Relatives*

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2 27. Miller or TBOC entered into additional transactions with at least four TBOC investors who  
3 had bought TBOC interests at or shortly after the meetings discussed above or with their immediate relatives  
4 to address TBOC's financial obligations as they became due. TBOC raised at least \$438,000 through these  
5 transactions.

6 28. In the latter half of July, 2006, Miller contacted two other TBOC investors to seek additional  
7 funds. Miller reiterated the key points of the presentation given at the Thornewood Castle meetings to at  
8 least one of these investors. As a result of Miller's efforts, one investor gave TBOC an additional \$50,000,  
9 while the other provided an additional \$13,000.

10 29. These investors received identical letters from Miller. Miller intended these letters to confirm  
11 conversations concerning "additional investment in The Birth of Christ—Dublin, Ireland," and to serve as a  
12 written guarantee against such investments. The letters further stated that Miller was offering his earnings  
13 for September through December, 2006 "as collateral against" these additional funds. The letters also stated  
14 that the additional investments would not affect the investors' stakes in TBOC. These two investors later  
15 received additional interests in TBOC for having provided these funds.

16 30. On August 8, 2006, approximately one week after the second meeting of potential investors  
17 at Thornewood Castle, Miller sent an email to a TBOC investor to ask for more money. Miller wrote that he  
18 had "another offer" for the investor, and that Miller needed "substantial additional funding." Miller asked  
19 the investor and his wife for a "secured loan until January," and represented that he could pay an "enticing  
20 interest rate."  
21

22 31. The investor rejected Miller's offer of interest. Miller, TBOC, and the investor entered into  
23 an agreement entitled "TBOC, LLC Loan Agreement." Under this agreement, the investor gave TBOC and  
24 Miller \$50,000 which was "secured against an equivalent value of TBOC, LLC and Andrew T. Miller's  
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1 personal/professional income over the next four months in TBOC's production of 'The Birth of Christ.'"  
2 The agreement gave the investor the right to accept "an ownership position" in TBOC in lieu of payment.  
3 The investor later exercised this right.

4 32. Shortly after this transaction, Miller contacted the same investor by phone while Miller was  
5 in New York City finalizing TBOC's contract with Neeson. Miller told the investor that the person who had  
6 "committed" to paying the final \$25,000 of Neeson's fee had reneged, and that Neeson's agent was  
7 threatening to terminate the agreement unless Miller immediately paid \$25,000. The investor wired \$25,000  
8 to pay the balance of Neeson's fee. Miller, Nelson, and the investor considered this payment to be an  
9 investment in the production at the time, and the investor later received additional interests in TBOC for  
10 having made this payment.

11 33. In the first half of August, 2006, shortly before leaving for Ireland, Miller approached a  
12 TBOC investor's son to seek money for the substantial costs of filming the performance in Ireland. The son  
13 and Miller, in his individual capacity, signed a promissory note, pursuant to which the son provided  
14 approximately \$300,000 for the production. While negotiating this transaction, Miller offered the son the  
15 right to convert the debt to interests in TBOC.  
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17 *In-Kind Offers and Sales*

18 34. At least three soloists who would have charged TBOC for their services agreed to accept  
19 interests in TBOC in lieu of such fees. At least one such investor signed a document entitled "TBOC LLC:  
20 Artist Agreement." The Artist Agreement provided, in part, that the investor agreed that "as  
21 compensation...he will retain a percentage of ownership in TBOC LLC, commensurate to 1%."

22 35. Miller engaged a TBOC investor's spouse to produce one hundred machine-embroidered  
23 shirts for the production in Ireland. Shortly before leaving for Ireland, Nelson attempted to reduce the order,  
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1 citing a shortage of cash. Instead, the spouse agreed to accept interests in TBOC in lieu of payment of the  
2 \$1,000 due for the shirts.

3 36. In December, 2006, a series of performances of *The Birth of Christ* took place at a church in  
4 Seattle affiliated with the church at which one of TBOC's investors served as pastor. These performances  
5 resulted in expenses of approximately \$15,000, which the investor paid. TBOC and the investor later agreed  
6 to assign additional interests in TBOC to this investor to compensate him for covering these costs.

7 *Production in Ireland and Aftermath*

8 37. The production of *The Birth of Christ* took place in Dublin in August, 2006 as represented to  
9 investors.

10 38. Revenue was not distributed in late 2006 or early 2007 as forecasted. At a meeting in  
11 December, 2007, investors learned that Miller signed a distribution agreement with Sony in October, 2007  
12 on TBOC's behalf. This agreement granted full authority over marketing the product to Sony. Investors also  
13 learned that TBOC had incurred expenses in excess of \$1.6 million, was more than \$500,000 in debt, and  
14 that Miller and Nelson had charged TBOC nearly \$200,000 for their time spent organizing the production in  
15 Ireland.  
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17 39. In 2008, Sony decided not to increase its stock of CDs and DVDs of the production in Ireland  
18 or to advertise the product further. As of January, 2011, TBOC was more than \$500,000 in debt and was  
19 insolvent. To date, TBOC has received less than \$20,000 in revenue from the production.

20 Misrepresentations and Omissions

21 40. The authority conferred upon Miller by TBOC's operating agreement was not disclosed to  
22 investors prior to their purchase of investments.

23 41. Respondents failed to provide information concerning TBOC's financial condition to at least  
24 one investor prior to his purchase of investments.  
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1 42. The risks arising from TBOC not having a firm offering amount (including, but not limited  
2 to, the risk of substantial dilution) was not disclosed to investors prior to their purchase of investments.

3 43. Respondents failed to disclose the bankruptcy trustee's claim to the intellectual property  
4 rights of *The Birth of Christ* to at least one investor prior to his purchase of investments.

5 44. The risks arising from the bankruptcy trustee's claim to the intellectual property rights of *The*  
6 *Birth of Christ* (including, but not limited to, the risk that the claim might substantially dilute the investors'  
7 stakes in TBOC) was not disclosed to investors prior to their purchase of investments.

8 45. The revenue forecast described in paragraph eighteen of the Findings of Fact was misleading.  
9 Respondents failed to provide the total amount of revenue upon which the pie chart, also described in  
10 paragraph eighteen of the Findings of Fact, was based. Moreover, Respondents failed to disclose the risk  
11 that TBOC might not be able to enter into agreements with any of the parties whom TBOC had identified as  
12 potential marketing outlets for its products.

13 46. Miller and Nelson did not disclose the rate at which they would bill TBOC for time spent  
14 organizing the production in Ireland to investors prior to their purchase of investments.

15 47. Respondents did not disclose that TBOC was dependent on a small number of key personnel,  
16 the loss of which could have endangered TBOC's profitability prior to investors' purchase of limited  
17 liability company interests.

18 48. Prior to their purchase of investments, Miller and Nelson did not disclose that investors'  
19 funds might be commingled with Miller's personal funds.

20 49. Miller and Nelson did not disclose to investors prior to their purchase of investments the  
21 risks arising from entering into a distribution agreement for TBOC's product, including, but not limited to, a  
22 complete lack of control over how the product would be marketed.  
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1 50. Miller did not disclose to investors prior to their purchase of investments the possibility that  
2 Miller would increase his ownership percentage in TBOC by becoming personally liable on promissory  
3 notes issued to pay TBOC expenses.

4 51. Miller and Nelson did not disclose their qualifications to fulfill their respective roles in  
5 TBOC to investors prior to their purchase of investments.

6 52. Miller declared bankruptcy in 1991, and in 2000. These bankruptcies were not disclosed to at  
7 least one investor prior to his purchase of investments.

8 53. Miller was convicted of one count of first degree theft pursuant to RCW 9A.56.030(1)(a) in  
9 1994, one count of second degree theft pursuant to RCW 9A.56.040(1)(a) in 1995, and one count of  
10 unlawful issuance of checks or drafts pursuant to RCW 9A.56.060(1) in 1998. Miller's criminal history was  
11 not disclosed to at least one investor prior to his purchase of investments.

#### 12 Registration Status

13 54. TBOC and Miller are not currently registered to sell their securities in the State of  
14 Washington, have not previously been so registered, and have not filed a claim of exemption from  
15 registration.  
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17 55. Miller is not currently registered as a securities salesperson or broker-dealer in the State of  
18 Washington and has not previously been so registered.

19 56. Nelson is not currently registered as a securities salesperson or broker-dealer in the State of  
20 Washington and has not previously been so registered.  
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#### 22 **CONCLUSIONS OF LAW**

23 Based upon the above Findings of Fact, the following Conclusions of Law are made:  
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1 IT IS FURTHER ORDERED that Respondents, TBOC, LLC and Andrew T. Miller; shall each be liable for,  
2 and each shall pay a separate fine of \$5,000, and that Respondent Michelle M. Nelson shall be liable for and shall pay  
3 a fine of \$2,000.

4 IT IS FURTHER ORDERED that Respondents, TBOC, LLC, Andrew T. Miller, and Michelle M. Nelson  
5 shall be jointly and severally liable for and shall pay investigative costs of at least \$3,500.  
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9 **AUTHORITY AND PROCEDURE**

10 This FINAL ORDER is entered pursuant to the provisions of RCW 21.20.390, and is subject to the provisions  
11 of Chapter 34.05 RCW. Respondents have the right to petition the superior court for judicial review of this agency  
12 action under the provisions of RCW 34.05. For the requirements for Judicial Review, see RCW 34.05.510 and  
13 sections following. Pursuant to RCW 21.20.395, a certified copy of this Order may be filed in Superior Court. If so  
14 filed, the clerk shall treat the Order in the same manner as a Superior Court judgment as to the fine, and the fine may  
15 be recorded, enforced, or satisfied in like manner.  
16

17 **WILLFUL VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.**

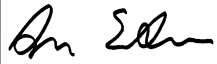
18  
19 SIGNED and ENTERED this 16th day of April 2012.

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22 William M. Beatty  
23 Securities Administrator  
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Approved by:



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Suzanne Sarason  
Chief of Enforcement

Presented by:



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Edward R. Thunen  
Enforcement Attorney

Reviewed by:



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Charles E. Clark  
Financial Legal Examiner Supervisor