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

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

Mark Thomas McCloskey,

Respondent

Order No.: S-14-1409-14-CO01

CONSENT ORDER

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**INTRODUCTION**

10 Pursuant to the Securities Act of Washington, chapter 21.20 RCW, the Securities Division of the  
11 Department of Financial Institutions (“Securities Division”) and Respondent Mark Thomas McCloskey do  
12 hereby enter into this Consent Order in settlement of the matters alleged herein. Respondent Mark  
13 Thomas McCloskey neither admits nor denies the Findings of Fact and Conclusions of Law stated below.

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**FINDINGS OF FACT**

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Respondent

16 1. Mark Thomas McCloskey (“McCloskey”) is an individual residing on Bainbridge Island,  
17 Washington. He was first registered in the securities industry in 1973 and has been employed by several  
18 broker-dealers. McCloskey was employed by Pacific West Securities, Inc. (“Pacific West Securities”)  
19 from September 2002 until June 2012. McCloskey is currently a registered representative with FSIC, a  
20 securities broker-dealer and a federally registered investment adviser that is located in Seattle, Washington.  
21 McCloskey has a CRD number of 325596.  
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Introduction

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2 2. From July 2003 until June 2012, McCloskey was the Chief Compliance Officer of Pacific West  
3 Securities, a broker-dealer firm that specialized in real estate investments. In approximately 2002, when  
4 tenant-in-common (“TIC”) investments began to be broadly marketed for the benefit of tax deferral,  
5 Pacific West Securities focused its efforts on becoming a leading firm offering these investments.

Special Risks of TIC Investments

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7 3. Tenant-in-common interests are a form of real property ownership where each investor owns an  
8 undivided share of the real property. Generally, TIC investments were sold to finance the purchase of a  
9 commercial or income-producing property. TIC investments had high up-front transaction fees to pay for  
10 the securities issuance and the real estate acquisition costs. Transaction fees generally represented more  
11 than 20% of the total TIC investment. A TIC investment was highly speculative and could result in a  
12 complete loss of the investment. TIC investments were illiquid and there was no market for reselling the  
13 investments.

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15 4. To qualify for a deferral of capital gains tax on the sale of real property, 1031 exchange TIC  
16 investments were structured to comply with the detailed requirements of Section 1031 of the Internal  
17 Revenue Code, thereby creating additional potential risks for investors. Besides the normal risks of real  
18 estate investments, 1031 exchange TIC investments had third party management risks, possible conflicts of  
19 interest between the property manager and its affiliates, and other tax risks. TIC investors had to resell or  
20 refinance the real property within a fixed time period and with the unanimous approval of the investors.  
21 1031 exchange TIC investments were often more highly leveraged than the real estate that was being  
22 exchanged by the investor. Also, for TIC investments that were financed with nonrecourse debt financing,  
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1 the investor might have a significant additional tax liability upon foreclosure, without having any cash  
2 available from the investment to pay the tax.

### 3 Failure to Enforce Concentration Guidelines

4 5. According to Pacific West Securities' Written Supervisory Procedures Manual, the Chief  
5 Compliance Officer was responsible for ensuring that there was appropriate training about TIC  
6 investments. Pacific West Securities created training materials for its registered representatives about the  
7 offer and sale of TIC investments. These materials, dated 2004 and 2006, stated that not more than 25% of  
8 a customer's net worth should be invested in a single TIC or Non-Conventional Investment, and not more  
9 than 40% of a customer's overall net worth should be invested in DPPs or Non-Conventional Investments.  
10 If this limit was exceeded, the policy stated that additional steps must be taken, including having the  
11 customer acknowledge in writing that they were aware of the high concentration and/or having the firm  
12 document in writing the reasons for the high concentration. Although the guidelines were developed and  
13 approved by McCloskey, he failed to enforce the guidelines for the offer and sale of TIC investments.  
14

15 6. Although not stated in its written policies, Pacific West Securities distinguished between TICs  
16 purchased in a 1031 exchange and TICs that were not purchased for tax deferral. Pacific West Securities  
17 treated a 1031 TIC exchange as if there was no change in a customer's overall concentration level when a  
18 customer sold rental real estate and re-invested the funds in a TIC, although the risks of the TIC investment  
19 were potentially much higher.

### 20 Unsuitable Sales of TIC Investments

21 7. According to Pacific West Securities' Written Supervisory Procedures Manual, the Chief  
22 Compliance Officer was responsible for maintaining and enforcing written supervisory policies and  
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1 procedures regarding the offer and sale of TIC investments. Respondent McCloskey helped create a  
2 supervisory system for the offer and sale of TIC investments by Pacific West Securities, but he failed to  
3 enforce a supervisory system that was in compliance with NASD Notice to Members 05-18 and NASD  
4 Notice to Members 03-71 for the offer and sale of 1031 exchange TIC investments.

5 8. Registered Principals in the Compliance Department, who reported to Respondent McCloskey as  
6 the Chief Compliance Officer, would review all proposed TIC investments for suitability before an order  
7 was processed. As set forth more fully in Consent Order No. S-10-249-14-CO02, on four occasions, the  
8 Registered Principals approved unsuitable TIC sales that were recommended by two Pacific West  
9 Securities registered representatives. These sales were approved even when the customer had minimal  
10 liquid fund reserves, the customer was over-concentrated in DPP investments, the Registered Principal had  
11 not reviewed the tax benefit to the customer, and/or when the customer's risk tolerance was lower than the  
12 speculative risk level of the TIC investment.

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

14 **CONCLUSIONS OF LAW**

15 1. The offer and sale of the tenant-in-common investments described above constitute the offer and  
16 sale of a security, as defined in RCW 21.20.005(14) and RCW 21.20.005(17), in the form of an investment  
17 contract.

18 2. Respondent Mark Thomas McCloskey failed to enforce an adequate supervisory system for the  
19 sale of TIC investments and for the review and approval of TIC transactions. Such conduct is a violation  
20 of RCW 21.20.110(1)(j). Such conduct is also grounds to recover investigative costs pursuant to RCW  
21 21.20.390.  
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**CONSENT ORDER**

Based upon the foregoing and finding it in the public interest:

IT IS AGREED AND ORDERED that Respondent Mark Thomas McCloskey shall be liable for and shall pay investigative costs in the amount of \$5,000 on or before the date of entry of this Consent Order.

IT IS FURTHER AGREED that Respondent Mark Thomas McCloskey enters into this Consent Order freely and voluntarily and with a full understanding of its terms and significance.

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

IT IS FURTHER AGREED that in consideration of the foregoing, Respondent Mark Thomas McCloskey hereby waives his right to a hearing in this matter and to judicial review of this order.

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

SIGNED this 16th day of June, 2014

Signed by:

/s/  
Mark Thomas McCloskey

Approved for entry by:

/s/  
John Bender, Attorney for Respondent  
Washington State Bar No. 19540

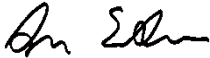
1 DATED AND ENTERED this 11th day of August, 2014

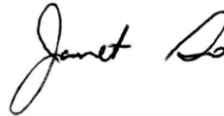
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William M. Beatty  
Securities Administrator

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8 Approved by:

Presented by:

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Suzanne E. Sarason  
Chief of Enforcement

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Janet So  
Financial Legal Examiner

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15 Reviewed by:

16 \_\_\_\_\_  
Robert Kondrat  
Financial Legal Examiner Supervisor