

1  
2  
3  
4  
5  
6  
7  
8

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

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

IN THE MATTER OF DETERMINING Whether there has been a violation of the Securities Act of Washington by:	)	Order No.: S-17-2224-18-FO01
	)	
	)	ENTRY OF FINDINGS OF FACT AND
	)	CONCLUSIONS OF LAW AND
Kerry L. SimsHauser;	)	FINAL ORDER TO CEASE AND DESIST,
Aardvark Organics Inc.;	)	TO IMPOSE A FINE, AND TO CHARGE COSTS
Aqua Vita, LLC;	)	AS TO KERRY L. SIMSHAUSER, AARDVARK
Jerry A. Scholten;	)	ORGANICS INC., AND AQUA VITA, LLC
ICON Organics Inc.;	)	
	)	
Respondents	)	

THE STATE OF WASHINGTON TO: Kerry Lane SimsHauser  
Aardvark Organics Inc.  
Aqua Vita, LLC

**INTRODUCTION**

On October 2, 2018, the Securities Administrator of the state of Washington issued Statement of Charges and Notice of Intent to Enter Order to Cease and Desist, to Impose a Fine, and to Charge Costs, Order No. S-17-2224-18-SC01 (hereinafter referred to as "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 Kerry L. SimsHauser, Aardvark Organics Inc., and Aqua Vita, LLC, on October 15, 2018. The Notice of Opportunity for Hearing advised Respondents Kerry L. SimsHauser, Aardvark Organics Inc., and Aqua Vita, LLC, 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.

Respondent Kerry L. SimsHauser filed an Application for Hearing dated October 31, 2018. The Application indicated that Kerry L. SimsHauser did not request a hearing in this matter. Aardvark Organics Inc. and Aqua Vita, LLC 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.

1 The Securities Administrator therefore will adopt as final the following Findings of Fact and  
2 Conclusions of Law as set forth in the Statement of Charges and enter a final order against the Respondents  
3 to cease and desist from violations of the Securities Act, and to impose the fines and costs sought in the  
4 Statement of Charges.

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

## 6 **FINDINGS OF FACT**

### 7 **Respondents**

8 1. Kerry L. SimsHauser (“SimsHauser”) resides in Lynden, Washington. From 2009 to 2011,  
9 SimsHauser was the President of Aardvark Organics Inc. From 2009 to 2011, SimsHauser was a managing  
10 member of Aqua Vita, LLC. In 2011, SimsHauser was the Secretary of ICON Organics Inc. SimsHauser  
11 has represented to investors that he was the inventor of two organic products: a natural antibiotic named  
12 GEO (or GeoCeutical) and an organic fungicide and fertilizer named pHix.

13 2. Aardvark Organics Inc. (“Aardvark”) is a Washington corporation formed on November 29,  
14 1994 under the name Reel to Reel, Inc. On March 21, 2001, the company name was changed to Aardvark  
15 Organics Inc. Aardvark was administratively dissolved on April 3, 2018. Aardvark had its principal place  
16 of business in Lynden, Washington. Aardvark offered and sold investments and raised funds to promote the  
17 production and marketing of GEO and pHix.

18 3. Aqua Vita, LLC (“Aqua Vita”) was a Wyoming limited liability company formed on June 6,  
19 2003 under the name Glacier Pond LLC. On August 13, 2004, the company name was changed to Aqua  
20 Vita, LLC. On August 9, 2016, Aqua Vita was administratively dissolved. Aqua Vita had its principal  
21 place of business in Lynden, Washington. Aqua Vita’s stated primary business purpose was to market  
22 GEO, a natural antibiotic.  
23  
24  
25



*Aardvark and Aqua Vita*

1  
2 9. From 2009 to 2011, SimsHauser and Aardvark offered and sold a total of \$95,000 worth of  
3 Aqua Vita stock to three investors and a \$60,000 Aardvark promissory note to one investor. SimsHauser  
4 gave the investors misleading financial projections and misleading offering materials. SimsHauser  
5 represented that Aardvark and Aqua Vita were involved in the sale of GEO, a natural antibiotic, and pHix, an  
6 organic fungicide and fertilizer. SimsHauser failed to disclose that Aardvark and Aqua Vita did not own any  
7 interest in GEO or pHix. SimsHauser failed to disclose that GEO was rejected during its initial product  
8 launch in Vietnam and there were never any commercial sales of GEO or pHix.

9  
10 *ICON*

11 10. In 2011, SimsHauser and Scholten offered and sold a total of \$240,000 worth of ICON stock  
12 to two investors. SimsHauser and Scholten gave the investors misleading financial projections and  
13 misleading offering materials. SimsHauser and Scholten represented that ICON would manufacture pHix,  
14 but failed to disclose that ICON investors did not own any interest in pHix.

15  
16 *AgraTek*

17 11. In 2011 and 2012, Scholten offered and sold two investors a total of \$175,000 worth of stock  
18 in AgraTek, a Belize corporation that was supposed to benefit from the development of new agricultural  
19 technologies. Scholten failed to provide financial statements for AgraTek. Scholten also failed to disclose to  
20 the investors that AgraTek had no significant assets or business operations.

21  
22 *EU Capital*

23 12. In 2013 and 2014, SimsHauser offered and sold three investors a total of approximately  
24 \$580,000 worth of investments issued by EU Capital, a company that was supposed to finance agricultural  
25 technologies with funds from European financiers. SimsHauser represented that investors would earn  
returns of six times or fourteen times the amount they invested. SimsHauser failed to provide financial

1 statements for EU Capital or to disclose how the investor funds would be repaid. SimsHauser also failed to  
2 disclose that the Chief Executive Officer of EU Capital, Michael Slamaj, had a prior criminal conviction for  
3 fraudulently issuing United States Treasury bonds.

#### 4 **Aardvark and Aqua Vita Stock Offering**

5 13. From approximately May 2009 through May 2011, in at least nine separate transactions,  
6 SimsHauser offered and sold more than \$95,000 worth of stock to at least three Washington investors who  
7 were nearing retirement. SimsHauser directed the investors to make their investment checks payable to  
8 Aardvark. However, weeks later, SimsHauser provided the investors with stock certificates issued by a  
9 limited liability company, Aqua Vita. SimsHauser represented to the investors that Aqua Vita was the  
10 marketing company for GEO and that Aardvark was only a research and development company.

11 14. When soliciting the investments, SimsHauser distributed product literature and provided test  
12 results for GEO and pHix. SimsHauser represented that the investors would need to invest quickly because  
13 the “H-Fund,” a humanitarian fund, was going to provide funding, and thereafter the investment opportunity  
14 would be closed.

15 15. SimsHauser failed to disclose to the investors that he was the sole owner of the GEO and  
16 pHix product formulas, and that he had never licensed the product for use by any other person or company.  
17 Consequently, the investors had no ownership of the GEO or pHix product formulas. SimsHauser,  
18 Aardvark, and Aqua Vita each failed to provide financial statements or disclose any information about the  
19 assets and liabilities and the revenues and expenses of Aardvark and Aqua Vita.

20 16. SimsHauser failed to disclose the operating history of his companies. For example,  
21 SimsHauser failed to disclose that sometime around the end of 2008, GEO was demonstrated at a product  
22 launch in Vietnam. The manufacturer had added Stevia as a product flavoring without SimsHauser’s  
23  
24  
25

1 authorization. The unexpected difference in taste caused potential Vietnamese customers to reject the  
2 product. SimsHauser also failed to disclose that there were never any commercial sales of GEO in Vietnam.

3 17. SimsHauser provided misleading sales forecasts for pHix. In a May 28, 2009 email to a co-  
4 worker who was providing information to the investors, SimsHauser stated that “The Company expects in  
5 the first 12 months that demand will be somewhere around 200,000 gallons just from ‘Nam [Vietnam].”  
6 Less than a week later, in a June 3, 2009 email message, SimsHauser predicted that 200,000 to 300,000  
7 gallons of pHix would be sold within the first 12 months of operation in Vietnam. SimsHauser failed to  
8 provide any reasonable basis for the pHix sales estimates. In fact, there were never any commercial sales of  
9 pHix in Vietnam.

10 18. When soliciting at least one of the stock purchases, SimsHauser provided misleading profit  
11 projections. Around December 2009, SimsHauser provided the investor with a booklet regarding pHix.  
12 The booklet included projections that indicated the demand for pHix would be 192,000 gallons per month,  
13 which would result in a profit of \$960,000 per month. The booklet did not include any costs associated with  
14 the product, and SimsHauser failed to provide any reasonable basis for the projected sales and profit figures.

15 19. SimsHauser sold stock to the investors for a price of 70 cents per share. SimsHauser failed to  
16 disclose that the offering price was arbitrary and did not reflect the underlying book value of the issuing  
17 company. In some cases, SimsHauser failed to identify the issuer of the stock.

18 20. SimsHauser, Aardvark, and Aqua Vita each failed to disclose other material risks of the  
19 investments. SimsHauser, Aardvark, and Aqua Vita failed to disclose the risk of inadequate capitalization.  
20 SimsHauser, Aardvark, and Aqua Vita failed to disclose the minimum required capital for completing  
21 specific projects. SimsHauser, Aardvark, and Aqua Vita failed to disclose that there was no patent  
22 protection for GEO or pHix. SimsHauser, Aardvark, and Aqua Vita failed to disclose that the GEO and  
23 pHix product formulas were known by outside manufacturers who were not subject to any confidentiality  
24  
25

1 agreements. SimsHauser, Aardvark, and Aqua Vita failed to disclose the risk that GEO and pHix were  
2 made for human consumption and there could be adverse product reactions that could result in product  
3 liability claims against the sellers. SimsHauser, Aardvark, and Aqua Vita failed to disclose the risks of  
4 doing business in a foreign country, including a lack of onsite supervision, communication barriers,  
5 transportation issues, currency fluctuations, and governmental regulations.

### 6 **Aardvark Promissory Note Investment**

7 21. In October 2011, SimsHauser personally solicited a Washington investor to make a \$60,000  
8 loan to Aardvark for working capital. The investor was a passive investor who was relying on SimsHauser  
9 and Aardvark to generate the return on the investment. To evidence the investment, Aardvark gave the  
10 investor a promissory note dated October 20, 2011 that was signed by SimsHauser and the investor. The  
11 \$60,000 loan was due in full on May 1, 2012, plus \$12,000 interest (for a 20% return, or approximately 38%  
12 annual interest). After the loan came due, the investor was never repaid.

13 22. As described in paragraphs 17, 18, and 22 above, SimsHauser and Aardvark failed to  
14 disclose material information regarding Aardvark. SimsHauser failed to provide any financial statements  
15 for Aardvark. SimsHauser and Aardvark failed to disclose any specific risks of the investment, and  
16 SimsHauser and Aardvark failed to disclose the source of repayment for the Aardvark promissory note.

### 17 **ICON Organics Stock Offering**

18 23. From March 2011 to July 2011, SimsHauser, Scholten, and ICON offered and sold a total of  
19 at least \$240,000 worth of ICON stock at \$1.20 per share to at least two Washington investors through in-  
20 person solicitations.

21 24. When offering and selling the ICON stock, SimsHauser, Scholten, and ICON failed to  
22 disclose financial information about ICON. SimsHauser, Scholten, and ICON failed to disclose that the  
23 ICON stock price was arbitrary and did not represent the underlying book value of the company.  
24  
25

1 SimsHauser, Scholten, and ICON failed to disclose that ICON stock was being sold at varying prices per  
2 share and that some of the stock had been issued with no consideration paid. SimsHauser, Scholten, and  
3 ICON failed to provide the investors with any financial statements or financial information regarding the  
4 assets and liabilities and the revenues and expenses of ICON.

5 25. Scholten sent an ICON investor letter with a misleading estimate of the demand for pHix. As  
6 President of ICON, Scholten issued a letter dated March 23, 2011. The letter indicated that sales of pHix  
7 should begin in the next month, April 2011. The letter stated that there would be 37,000 available acres and  
8 every 10 days, 1 quart of pHix would be used for each acre. Scholten failed to provide any reasonable basis  
9 for the pHix sales estimate. In fact, no commercial sales of pHix were ever made.

10 26. SimsHauser, Scholten, and ICON provided the investors with a misleading offering  
11 document. The offering document projected pHix sales of 150,000 gallons in 2011, 250,000 gallons in  
12 2012, 400,000 gallons in 2013, and 650,000 gallons in 2014, with a profit of \$5 per gallon. SimsHauser,  
13 Scholten, and ICON failed to provide any reasonable basis for the sales or profit projections and no  
14 commercial pHix sales were ever made. The offering document misleadingly indicated that there was a \$1  
15 billion annual market for Mai Vang (a floral tree) and bonsai trees in Vietnam, without disclosing that there  
16 were no sales contracts for pHix with any Mai Vang or bonsai tree growers. The offering document  
17 misleadingly stated that there was an immediate demand for 710,000 gallons of pHix per year, including  
18 90,000 gallons per year for Washington and Oregon cherries. SimsHauser, Scholten, and ICON failed to  
19 disclose that tests by Washington State University for using pHix on cherries did not indicate any significant  
20 benefits.  
21

22 27. SimsHauser, Scholten, and ICON failed to disclose other material risks of the ICON stock  
23 investments. SimsHauser, Scholten, and ICON failed to disclose the risk of inadequate capitalization.  
24 SimsHauser, Scholten, and ICON failed to disclose the minimum required capital for completing specific  
25



1 projects. SimsHauser, Scholten, and ICON failed to disclose that SimsHauser was the sole owner of pHix  
2 and that SimsHauser had never licensed pHix to ICON. SimsHauser, Scholten, and ICON failed to disclose  
3 that there was no patent protection for pHix. SimsHauser, Scholten, and ICON failed to disclose the need to  
4 obtain required government approvals for the domestic use of pHix. SimsHauser, Scholten, and ICON  
5 failed to disclose ICON's reliance on a Vietnamese sales company that had never sold any GEO or pHix.  
6 SimsHauser, Scholten, and ICON failed to disclose the risks of doing business in foreign countries,  
7 including a lack of onsite supervision, communication barriers, transportation issues, currency fluctuations,  
8 and governmental regulations.

### 9 **Agra Tek Stock Offering**

10 28. From November 2011 to February 2012, Scholten offered and sold a total of more than  
11 \$153,000 worth of stock in Agra Tek Humanitar Ltd. to at least three Washington investors for a price of \$1  
12 per share. In face-to-face meetings with investors, Scholten represented that Agra Tek would receive funds  
13 from newly developed agricultural technologies that would use inflatable domes to grow plants. Scholten  
14 represented that the technologies would produce food, dispose of waste, and convert waste into energy.  
15 Scholten also represented that because Agra Tek was a Belize corporation, it would pay lower income taxes  
16 than a domestic corporation.  
17

18 29. Scholten and Agra Tek failed to disclose that the \$1 per share offering price was arbitrary  
19 and did not reflect the underlying book value of Agra Tek. Scholten and Agra Tek failed to provide any  
20 financial statements and failed to disclose Agra Tek's assets and liabilities or revenues and expenses.  
21 Scholten and Agra Tek failed to disclose the equity holdings in Agra Tek and failed to disclose that Scholten  
22 and his wife owned a controlling interest in Agra Tek, but had only contributed \$8,000.

23 30. Scholten and Agra Tek failed to disclose other material risks of the Agra Tek stock  
24 investment. They failed to disclose the risk of inadequate capitalization. They failed to disclose the  
25

1 minimum required capital for completing specific projects. They failed to identify the developers of the  
2 proposed technology and their prior business history. They failed to disclose the intended use of the  
3 investors' funds.

#### 4 **EU Capital Investments Sales**

5 31. From at least August 2013 to October 2014, SimsHauser sold a total of more than \$580,000  
6 worth of investments in EU Capital Investments Inc. to at least three Washington investors. Approximately  
7 half of the invested funds were deposited into an ICON bank account that was controlled by Scholten and  
8 SimsHauser. SimsHauser personally solicited the investors. SimsHauser claimed that the investments were  
9 supposed to return either six times the amount invested or fourteen times the amount invested within a one-  
10 year period. The investors were passive investors who were relying on EU Capital to generate the return on  
11 their investment.

12 32. SimsHauser provided the investors with written Investment Agreements that were signed by  
13 EU Capital and its President, Cheryl Ann Archibald. The agreements stated that EU possessed specific  
14 assets and financial contacts in Europe that would handle a "transaction process" that would generate a  
15 profit. Some agreements recited that investor funds would be budgeted for travel expenses, without  
16 providing any more specific information. According to the Investment Agreements, profits were supposed  
17 to be paid to the investors in twelve monthly installments, beginning 42 days after the funds were  
18 transferred from the United States to the EU Capital account in Canada.

19 33. When offering and selling the EU Capital investments, SimsHauser failed to disclose to the  
20 investors that Michael Slamaj, who was Cheryl Ann Archibald's husband and a corporate officer and  
21 director of EU Capital, had a 2003 criminal fraud conviction.

22 34. SimsHauser also failed to disclose other material information relating to the EU Capital  
23 investments. SimsHauser failed to disclose the specific intended use of investor funds. SimsHauser failed  
24  
25

1 to disclose the source of repayment for the investments. SimsHauser failed to provide any financial  
2 statements for EU Capital or provide any financial information about the assets and liabilities and the  
3 revenues and expenses for EU Capital.

#### 4 **Registration Status**

5 35. Aardvark Organics Inc. and Aqua Vita, LLC are not currently registered to sell their  
6 securities in the state of Washington and have not previously been so registered.

7 36. Kerry L. SimsHauser is not currently registered as a securities salesperson or broker-dealer in  
8 the state of Washington and has not previously been so registered.

9  
10 Based upon the above Findings of Fact, the following Conclusions of Law are made:

#### 11 **CONCLUSIONS OF LAW**

12 1. The offer and/or sale of the investments, LLC membership interests, promissory note  
13 investment, and stock described above constitute the offer and/or sale of a security as defined in RCW  
14 21.20.005(14) and (17).

15 2. Kerry L. SimsHauser, Aardvark Organics Inc., and Aqua Vita, LLC have each violated RCW  
16 21.20.140, because, as set forth in the Findings of Fact, the Respondents offered and/or sold securities for  
17 which no registration is on file with the Securities Administrator.

18 3. Kerry L. SimsHauser has violated RCW 21.20.040 by offering and/or selling said securities  
19 while not being registered as a securities salesperson or broker-dealer in the state of Washington.

20 4. Kerry L. SimsHauser; Aardvark Organics Inc.; Aqua Vita, LLC; Jerry A. Scholten; and  
21 ICON Organics Inc. have each violated RCW 21.20.010, because, as set forth in the Findings of Fact, the  
22 Respondents each made untrue statements of material fact or omitted to state material facts necessary to  
23 make the statements made, in light of the circumstances in which they were made, not misleading.  
24  
25

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

2 **FINAL ORDER**

3 IT IS HEREBY ORDERED that the Respondents Kerry L. SimsHauser, Aardvark Organics Inc., and  
4 Aqua Vita, LLC, their agents and employees each shall cease and desist from offering and/or selling  
5 securities in any manner in violation of RCW 21.20.140, the section of the Securities Act of Washington  
6 requiring registration.

7 IT IS HEREBY ORDERED that the Respondent Kerry L. SimsHauser, his agents and employees  
8 each shall cease and desist from offering and/or selling securities in any manner in violation of RCW  
9 21.20.040, the section of the Securities Act of Washington requiring registration.

10 IT IS FURTHER ORDERED that the Respondents Kerry L. SimsHauser, Aardvark Organics Inc.,  
11 and Aqua Vita, LLC, their agents and employees each shall cease and desist from violating RCW 21.20.010,  
12 the anti-fraud section of the Securities Act of Washington.

13 IT IS FURTHER ORDERED that the Respondent Kerry L. SimsHauser shall be liable for and pay a  
14 fine in the amount of \$50,000.

15 IT IS FURTHER ORDERED that the Respondent Kerry L. SimsHauser, shall be liable for and pay  
16 costs in the amount of \$10,000.

17 **AUTHORITY AND PROCEDURE**

18 This FINAL ORDER is entered pursuant to the provisions of RCW 21.20.390, and is subject to the  
19 provisions of Chapter 34.05 RCW. Respondents have the right to petition the superior court for judicial  
20 review of this agency action under the provisions of RCW 34.05. For the requirements for Judicial Review,  
21 see RCW 34.05.510 and sections following. Pursuant to RCW 21.20.395, a certified copy of this Order may  
22 be filed in Superior Court. If so filed, the clerk shall treat the Order in the same manner as a Superior Court  
23 judgment as to the fine, and the fine may be recorded, enforced, or satisfied in like manner.  
24  
25

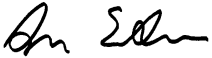
1 **WILLFUL VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.**

2  
3 SIGNED and ENTERED this 9<sup>th</sup> day of November, 2018

4  
5  
6 

7  
8 \_\_\_\_\_  
9 William M. Beatty  
10 Securities Administrator

11 Approved by:

12 

13 \_\_\_\_\_  
14 Suzanne Sarason  
15 Chief of Enforcement

16 Presented by:

17 

18 \_\_\_\_\_  
19 Janet So  
20 Financial Legal Examiner

21 Reviewed by:

22 

23 \_\_\_\_\_  
24 Robert Kondrat  
25 Financial Legal Examiner Supervisor