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: Charles Richard Burgess, a/k/a Dick Burgess, Respondent.	Order No. S-20-2861-21-SC01 STATEMENT OF CHARGES AND NOTICE OF INTENT TO ENTER ORDER TO CEASE AND DESIST, TO IMPOSE A FINE, AND TO CHARGE COSTS

THE STATE OF WASHINGTON TO: Charles Richard Burgess, a/k/a Dick Burgess

STATEMENT OF CHARGES

Please take notice that the Securities Administrator of the state of Washington has reason to believe that Respondent Charles Richard Burgess, a/k/a Dick Burgess violated the Securities Act of Washington. The Securities Administrator believes these violations justify the entry of an order against Respondent Charles Richard Burgess, a/k/a Dick Burgess to cease and desist from such violations, to impose a fine, and to charge costs pursuant to RCW 21.20.390 and RCW 21.20.395. The Securities Administrator finds as follows:

TENTATIVE FINDINGS OF FACT

Respondent

1. Charles Richard Burgess, a/k/a Dick Burgess (Burgess), is a resident of Vancouver, Washington.

Nature of the Conduct

Overview

2. Burgess has been offering and selling participation in a pooled investment vehicle since the mid-1990s. Burgess calls this pooled investment vehicle "the pool," and it has a total of about 50 investors.

The offering has never been registered. Between October 2013 and April 2021, Burgess offered and sold approximately $6.3 million of investments in the pool to 40 investors.[1]

3. After their initial investment, several pool participants invest additional principal into the pool. Some investors do not take any distributions from the pool, keeping all of their principal and purported profit in the pool. Other investors take out their purported profit or receive regular or occasional distributions from the pool. As of March 2021, the pool has about 43 investors, 39 of whom are Washington investors.

4. In his management of the pool, Burgess uses funds from the pool to make Ponzi payments to investors, to pay himself excessive fees, and to pay his own personal expenses. Burgess also sends monthly statements to investors that falsely represent that the pool is successful, and that the investor is making a consistent profit.

5. Burgess offers and sells participation in the pool to friends, family, and to friends or family of existing pool participants. Burgess does not always have a preexisting, substantive relationship with investors before offering them an investment in the pool.

6. Burgess has offered investments in the pool to new and existing investors as recently as May or June 2021. Burgess does not screen prospective investors for their wealth or investment experience. At least seventeen investors were not accredited at the time that Burgess offered and sold them an investment in the pool.

7. When offering and selling participation in the pool, Burgess provides only limited information about the investment to prospective investors. Burgess fails to disclose material information related to the pool, including but not limited to the specific risks of investing in a pooled investment vehicle, the investment

[1] The Securities Division received records from Burgess and investors indicating that Burgess has been selling participation in the pool since about 1994. Due to bank retention policies, the Securities Division could only collect bank records evidencing Burgess's receipt and use of pool funds beginning in late 2013.

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strategy of the pool, the number of pool participants, and the amount of funds in the pool. Burgess also fails to disclose to investors that his strategy of investing pool funds in stock and options is high risk.

8. In addition, despite managing a pooled investment vehicle in which he has custody of client funds, Burgess is not registered as an investment adviser, and he is not complying with applicable investment adviser laws and rules. These laws and rules were established to help safeguard client funds by, among other things, requiring that Burgess regularly provide certain information about the pool to investors, restricting the receipt of fees by Burgess, requiring third-party approval to withdraw funds from the pool, and requiring an independent audit of the pool's financial statements.

The Pool

9. Burgess is known among pool participants, friends, and family as someone who is very successful at trading in stocks. Generally, participants in the pool invest with Burgess because they believe that the pool is consistently profitable, and because they trust Burgess or an existing pool participant.

10. In some instances, investors ask Burgess if they can invest in the pool after hearing from Burgess or existing investors about how successful the pool is. In other instances, Burgess asks existing investors for additional funds or referrals to prospective investors. In either instance, Burgess meets with the prospective investor in person or over the phone to talk about the investment. Burgess tells prospective investors that he pays himself a fee of 50% of the pool's profit, and that he does not make money unless the investor makes money.

11. Burgess often shows prospective investors a chart that represents that the pool consistently beats market indexes over the years. In addition, some existing investors will show prospective investors the monthly statements that Burgess sends to existing pool participants each month. The monthly statements show the pool participant's investment purportedly growing month after month.

Burgess Fails to Disclose Material Information

12. Burgess provides limited information about the pool to prospective investors. Burgess tells investors that he trades in stocks, and that he does a great deal of research related to stock trades. Burgess does not provide prospective investors with a private placement memorandum or other disclosure documents related to the investment. Burgess does not disclose his investment strategy, the specific products that Burgess buys and sells, whether or not the pool is diversified, the number of investors in the pool, the amount of investment funds in the pool, or the total value of the pool.

13. Burgess tells some investors that he takes all of the trading losses while the pool keeps all of the gains. Burgess does not disclose how he separates gains from losses when funds are combined in a pooled investment vehicle. Burgess does not disclose whether or not he has the funds to personally cover any losses in the pool, and he does not provide investors with any personal financial statements. Burgess also fails to disclose that he has contributed very few funds, if any, to the pool since 2014, and that any contributions by Burgess are insufficient to cover the losses realized by the pool.

14. Burgess fails to disclose the specific risks of investing in the pool, and he does not provide written risk disclosures to investors. Generally, Burgess tells investors that they should not invest funds that they cannot afford to lose, and that the stocks traded by Burgess will not be in the investor's name. Burgess does not disclose the specific risks of investing in a pooled investment vehicle, including but not limited to that pool funds could be traded on margin, which increases the risk of loss, that conflicts of interest could result in some investors receiving distributions while others do not, and that investors could be subject to substantial or misallocated fees.

15. Burgess tells some investors that he has a $1 million life insurance policy that will cover the pool if something happens to him. Burgess fails to disclose that $1 million is insufficient to cover all of the

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principal invested in the pool, and he fails to provide any documents related to the policy, including records evidencing the beneficiary of the policy and the circumstance under which funds will be paid out.

16. Burgess represents to some investors that his trading strategy is low risk because he does a great deal of market research. In reality, Burgess's trading strategy involves a high degree of risk because his strategy involves trading in stocks and options.

Burgess's Use of Promissory Notes

17. Once an investor decides to invest in the pool, they deposit their funds into the pool's Bank of America (BofA) account. This account is a joint account on which both Burgess and his wife have signatory authority. Some investors give their investment check to Burgess to deposit into the account, while others deposit their check or wire funds directly into the pool's BofA account at Burgess's direction.

18. When an investor invests their retirement funds, Burgess instructs them to open an account at a self-directed individual retirement account (IRA). To evidence the investment for the self-directed IRA, Burgess sometimes provides the investor with a promissory note. Burgess has also provided a promissory note to at least one investor who needed to evidence his investment for a business opportunity. Generally, the promissory notes have an interest rate of 4% or 5%, and a term of either on demand or two to five years. At least seventeen of the approximately 50 pool participants have received a promissory note from Burgess.

19. While the promissory notes have an interest rate, the pool participants who receive a note obtain a return based on the pool's purported performance, not the note's interest rate. For investors who do not receive promissory notes, Burgess does not provide them with any evidence of their investment beyond the monthly statements.

Burgess's Use of Funds

20. Once Burgess receives investment funds into the pool's BofA account, he generally transfers the funds to one or more brokerage accounts. Burgess maintains several brokerage accounts at a number of

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different broker-dealers and spreads pool funds throughout these accounts. Burgess then transfers funds back to the pool's BofA account to transfer funds to his personal account or make distributions to investors.

21. Burgess misrepresents his use of investment funds to investors. Burgess tells investors that their funds will be pooled with funds from other investors, and that he uses the pooled funds to trade in stocks. In reality, while Burgess transfers some investment funds to brokerage accounts to trade in stocks, he uses some new investment funds to make Ponzi payments to existing investors, and he transfers some investment funds directly to his personal account before making any transfers to a brokerage account. Burgess uses his personal account to pay personal items such as insurance, student loans, mortgage, utilities, and credit card payments. Occasionally, Burgess pays personal expenses directly from the pool's account.

22. Burgess also misrepresents to investors that he pays himself 50% of the profits that the pool makes. In reality, Burgess pays himself more than 50% of the pool's profit, and he pays himself a fee even when the pool does not make a profit.

23. Since no later than the end of 2015, Burgess has been unable to repay all of the principal that he raised from the pool's investors. In December 2015, Burgess owed about $960,000[2] in principal to investors, while the pool had a value of about $368,000. At the end of 2017, Burgess owed about $1.9 million in principal to investors, while the pool had a value of about $475,000. At the end of 2020, Burgess owed about $3.3 million in principal to investors, while the pool had a value of about $119,000.

Ponzi Payments

24. Burgess makes Ponzi payments to investors. For instance, over about five days in April 2016, Burgess received a total of about $210,000 of new investment funds from three investors. When Burgess

[2] Based on additional records provided by Burgess and investors, the principal that Burgess owed to investors at the end of 2015 was likely higher than $960,000. For instance, between January 2012 and July 2013, Burgess raised about $724,500 in principal from investors. The Securities Division established the $960,000 of principal owed by analyzing the records for the pool's BofA account, which evidenced both principal invested and distributions made to investors. Due to bank retention schedules, the pool's BofA records were available beginning July 2013.

received the funds into the pool's BofA account, the account balance was about $1,800. Within just a few days of receiving the investor funds, Burgess transferred a total of $126,000 from the pool's BofA account to Burgess's personal account. The balance of Burgess's personal account at the time was about $2,000, and, during the applicable time period, it received about $200 in an additional funds from other sources. Within four days of receiving the $126,000 into his personal account, Burgess transferred a total of $120,000 to an existing investor.

25. More recently, in March 2021, Burgess received $300,000 of new investment funds into the pool's BofA account. Before Burgess received the funds, the balance of the pool's account was about $13,500. Within about one week of receiving the funds, Burgess used the new investment funds to make payments to three existing investors totaling about $133,000.

26. The chart below illustrates several additional Ponzi payments that Burgess made throughout the years. It specifies the date or dates that Burgess received the new funds, any additional funds that were received into the account during the relevant time period, and the date or dates that Burgess made payments to existing pool participants. As with the two examples above, Burgess only had enough funds available in the pool's bank account to make payments to the existing investors because he received new investment funds.

Beginning Balance (Approx.)	New Investment Funds	Investment Dates	Add'l Funds into Account (Approx.)	Funds to Existing Investors (Approx.)	Repayment Dates
$970	$75,000	7/12/16	$0	$22,000	7/13/16 to 7/28/16
$3,900	$204,000	8/9/16 to 8/16/16	$18,600	$43,200	9/1/16 to 9/26/16
$29,875	$50,000	1/5/17	$0	$79,300	1/16/17 to 1/9/17
-$2,038	$74,500	1/12/17	$10,000	$65,500	1/17/17
$1,300	$51,000	11/6/17 to 11/7/17	$0	$30,000	11/8/17
$18,250	$100,000	1/29/18	$0	$84,790	1/30/18

$27,000	$150,000	4/3/18	$45,000	$166,000	4/3/18 to 4/20/18
$2,200	$400,000	12/14/18	$5	$275,000	12/27/18 to 1/16/19
$30,850	$120,000	2/14/19	$0	$137,000	2/14/19 to 2/19/19
$13.50	$52,618	8/22/19	$18,000	$54,000	8/22/19 to 9/30/19
$1,600	$130,000	10/7/19 to 10/15/19	$26,000	$104,000	10/15/19 to 11/27/19
$70	$25,000	10/5/20	$8,500	$15,000	10/8/20
$670	$105,000	12/17/20 to 1/21/21	$30,000	$92,000	12/18/20 to 1/28/21

Burgess Pays Himself Excessive Fees

27. Burgess does not disclose to investors material information related to the fees he pays himself. While Burgess tells pool participants that his fee is 50% of the pool's profit, he does not disclose whether the "profit" is defined as realized gains and losses for a certain time period, or if it also includes unrealized gains and losses. Burgess also fails to disclose to investors that he does not pay himself a fee on any particular schedule. Instead, it appears that Burgess pays himself a fee when the balance in his personal account is getting low, or when he has a payment due on a personal expense.

28. In addition, Burgess does not disclose how he calculates his fee, how often he calculates the fee, when he pays himself a fee, and whether he uses a high-water mark to prevent charging a fee more than once on the same gains. Burgess also misrepresents to investors that he only pays himself a fee when investors make a profit. In reality, Burgess pays himself a fee even when the pool does not experience a profit.

29. Further, Burgess misrepresents to investors the amount of fees that he pays himself. As demonstrated by the charts below, whether Burgess's fee calculation is based only on realized gains and losses or includes unrealized gains and losses, Burgess pays himself more than 50% of the pool's profits.

30. The chart below illustrates the realized gains or losses that the pool experienced each year from 2016 to mid-2021, rounded to the nearest dollar. It also compares 50% of the realized gains to what Burgess

paid himself for each year. These numbers do not take into account a high-water mark, which would establish a value or profit percentage that the pool must meet before Burgess could pay himself a fee.

	2016	2017	2018	2019	2020	Jan-Jun 2021	Total
Realized Gains/Losses	-$374,118	$52,435	-$457,410	$73,766	$69,984	-$73,210	-$708,553
50% of Net Realized Gains	$0	$26,218	$0	$36,883	$34,992	$0	$98,093
Amount Burgess Transferred to Personal Acct (Approx.)	$255,000[3]	$219,675	$250,700	$190,000	$161,539	$59,700	$1,136,614

Between January 2016 and June 2021, Burgess's trading of pool funds resulted in an overall realized loss of about $708,000. While Burgess's trading resulted in realized gains in 2017, 2019, and 2020, Burgess took substantially more than 50% of the pool's realized gains for these years. In total, 50% of the profit would have been about $98,000 for the three profitable years. Burgess took a total of about $570,000 in these profitable years, about five times more than 50% of profits. Further, between 2016 and mid-2021, Burgess transferred approximately $1.1 million from the pool's BofA account to his personal account, more than ten times the fee that Burgess represents to investors.

31. The chart below illustrates the value of the pool at the end of each year from 2016 to 2020, which takes into account unrealized gains and losses. It also illustrates the increase or decrease in the pool's value as compared to the year before. The numbers are rounded to the nearest dollar. Between 2016 and 2020, the value of the pool increased and decreased due to Burgess's trading, fees Burgess paid to himself, investor deposits, and investor withdrawals.

[3] In 2016, Burgess received about $15,000 of investment funds into his personal account and made payments totaling about $122,200 to investors. In 2017 and 2018, Burgess made payments to investors totaling about $800 and $10,269, respectively, from his personal account.

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	2016	2017	2018	2019	2020	Total
Value of the Pool at End of Year	$140,417	$475,187	$602,157	$262,459	$118,767	-
Increase/Decrease in Pool's Value	-$227,535[4]	$334,770	$126,970	-$339,697	-$143,692	-
50% of Increase in Pool's Value	$0	$167,385	$63,485	$0	$0	$230,870
Amount Burgess Transferred to Personal Acct	$255,000	$219,675	$250,700	$190,000	$161,539	$1,076,914

While the value of the pool increased in 2017 and 2018, Burgess paid himself substantially more than 50% of these increases. In total, 50% of the increases would have been about $230,870 for the two years. But Burgess took a total of about $470,000 in these two years, about twice the fee that Burgess represents to investors. Further, Burgess paid himself fees even in years where the pool's value decreased from the year before. Between 2016 and 2020, Burgess transferred a total approximately $1 million to his personal account, more than four times the fee that Burgess represents to investors.

32. In addition, Burgess fails to disclose that he sometimes pays himself a fee directly from new investment funds. For example, in July 2017, Burgess received $100,000 of new investment funds into the pool's BofA account. At the time, the balance in the account was less than $3,600. Over the next six weeks, Burgess received about $13,300 of additional funds into the pool's account, and he transferred a total of $32,000 to his personal account.

33. In December 2018, Burgess received $400,000 of new investment funds into the pool's BofA account. At the time, the account had a balance of about $2,200. Over the next eight weeks, the account received about $5 of additional funds, and Burgess transferred a total of $42,000 to his personal account.

[4] At the end of 2015, the pool had a value of $367,952 rounded to the nearest dollar.

34. In March 2021, Burgess received $300,000 of new investment funds into the pool's BofA account. At the time, the account had a balance of about $13,500. Over the next two weeks, the account received additional funds of about $2, and Burgess transferred a total of $18,000 to his personal account. In each of these examples, the pool's bank account had enough funds for Burgess to pay himself only because the account received new investment funds.

Burgess Misrepresents the Success of the Pool

35. Burgess misrepresents the success of his trading and the success of the pool to investors. Burgess provides monthly statements to investors that, among other things, report the profit and annualized rate of return that Burgess has purportedly earned for the investor during the covered time period. The statements also include the value of the pool participant's investment in the pool, which is the participant's invested principal plus the investor's purported profit. Throughout the year, each new monthly statement includes the information from the month before, so the final statement of the year includes information for the entire year. The monthly statements are specific to each investor and do not provide investors with the entire pool's profits, annualized return, or value.

36. The statements that Burgess sends to investors consistently misrepresent that the investor is making a profit through Burgess's management of the pool. Multiple pool participants keep their principal and purported profit in the pool because Burgess represents that the pool is consistently profitable. Multiple pool participants have invested additional principal with Burgess because Burgess represents to them that the pool is consistently profitable.

37. Contrary to Burgess's representations, his trading does not consistently make a profit for the pool. When Burgess does make a profit for the pool, he misrepresents to investors how much profit he has made.

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38. For instance, the Securities Division reviewed year-end statements that Burgess sent to eleven investors for 2017. Burgess represented to these investors that they each made a profit of about 11% for the year. In addition, the annual profits that Burgess represented to these eleven investors totaled about $335,000, and the value of their investment that Burgess represented to these investors totaled almost $3.4 million. In reality, Burgess's trading in 2017 resulted in realized gains for the entire pool of about $52,000, and the value of the entire pool at the end of 2017 was about $475,000.

39. The Securities Division reviewed year-end statements that Burgess sent to all of the pool participants for 2019. The trading profits that Burgess represented to each investor for the year totaled about $913,000, and the value of their investment that Burgess represented to each investor totaled about $9.4 million. In reality, Burgess's trading resulted in realized gains for the entire pool of about $73,000, and the value of the entire pool at the end of 2019 was about $263,000.

40. Burgess misrepresents the success of the pool to investors in years when Burgess's trading results in net losses. For instance, in 2016 year-end statements reviewed by the Securities Division for nine investors, Burgess represented to these investors that they each made a profit of about 10% for the year. In addition, the annual profits that Burgess represented to each of these nine investors totaled about $240,000, and the value of their investment that Burgess represented to each of these investors totaled about $2.6 million. In the statements, Burgess represented to each investor that they "ended up having a pretty good year." In truth, Burgess's trading lost money, with the pool realizing a loss of about $370,000 for the year. In addition, the value of the entire pool at the end of 2016 was about $141,000.

Unlawful Rescission Offer

41. In or around mid-July 2021, Burgess notified some investors that the pool no longer had any funds. During the same time period, Burgess presented at least seventeen investors with a Settlement

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Agreement and Release, a written explanation of Burgess's proposal to repay principal to investors while avoiding bankruptcy, and a balance sheet appearing to show the principal that Burgess owed to the investor.

42. The Settlement Agreement and Release is a rescission offer, in which Burgess offers to repay any outstanding principal to the investor at some later date. To earn funds to make these repayments, Burgess will place $100,000 of "personal funds" into an account, which he will "operate" when his health permits. Any earnings from Burgess's operation of the account will be apportioned between pool participants quarterly until the outstanding principal is paid, or the $100,000 is gone. The rescission offer does not include any additional methods to repay the investor's principal. In return, the investor will release Burgess from all liability related to the investor's investment in the pool and Burgess's repayment of the investment.

43. At least two investors signed the Settlement Agreement and Release, although one of these investors revoked his signature a short time later. Burgess stopped presenting the Settlement Agreement and Release to investors after the Securities Division raised concerns that the rescission offer appeared to contain misrepresentations and omissions.

44. In the rescission offer, Burgess fails to disclose material information to investors, including but not limited to the number of pool participants who are owed funds, the total amount of principal that Burgess owes to pool participants, and that the pool has not had sufficient funds to fully repay the investors' principal since at least 2015. In addition, Burgess fails to disclose to investors that, since at least 2016, Burgess's trading has resulted in realized losses overall, Burgess sometimes uses new investment funds to pay existing investors, and Burgess pays himself substantially higher fees than what he represents to investors.

45. In addition, Burgess fails to disclose that, under the Securities Act of Washington, a rescission offer cannot release Burgess from liability unless the rescission offer is passed upon by the Securities Division, which is unlikely to occur in this case. In addition, Burgess fails to disclose that, under the Act, Burgess cannot be released from liability unless the rescission offer includes an offer to refund each investor's outstanding

principal plus eight percent interest. In this case, Burgess does not offer to pay any interest, and he only offers to pay back as much principal as he can from his operation of an account with $100,000 in it.

Investment Adviser Requirements

46. Burgess receives compensation for advising the pool on what stocks to buy and sell, and he has custody of the pool participants' funds. As a result, Burgess must comply with a number of investment adviser requirements that were established to protect investors. Burgess does not comply with these requirements, which include but are not limited to sending accurate account statements to pool participants, sending fee invoices to pool participants, charging reasonable fees for Burgess's management of the pool, and engaging a certified public accountant to audit the pool.

Inaccurate, Incomplete Account Statements

47. Burgess does not provide pool participants with accurate, complete account statements. As noted above, Burgess does not report the entire pool's profits or value in the statements that he sends to investors, and he misrepresents the profits earned and the value of the investment to investors. Burgess also fails to report the funds and securities that the pool holds at the end of each time period. In addition, Burgess does not accurately report the transactions that have occurred during the statement's time period.

48. Until 2020, the statements listed trades that Burgess purportedly made in his management of the pool, and the realized profit that the investor earned for each of the trades. Burgess included a note at the bottom of the statements, which represented that the statement showed how Burgess generated the pool participant's return and stated that the pool participant did not directly own any stock.

49. Burgess's pre-2020 statements failed to include all of the transactions that occurred in the covered time period. The statements only included profitable trades for the time period; they did not include any losing trades. In addition, the Securities Division was unable to confirm the trades that Burgess reported in the monthly statements. The Securities Division received and reviewed 2019 year-end statements for each

of the pool participants. The Division then compared the trades listed in the statements to trades reported in relevant brokerage account statements for a limited time, January to March 2019. When comparing Burgess's statements to brokerage account statements, the Division was unable to confirm the majority of the trades that Burgess reported to investors. Burgess made many more trades than he reported in the statements, including hundreds of options trades, and he reported many trades on the statements that the Securities Division could not locate in the brokerage statements.

50. The pre-2020 statements included a comparison of the pool's performance to the performance of the NASDAQ, DOW, and S&P 500 from particular dates. In each comparison, the pool performed favorably to the indexes. For example, at the end of 2019, Burgess represented in statements that the pool had a return of 413.6% since January 1, 2000, while the NASDAQ had a return of 114.3%, the DOW had a return of 148.2%, and the S&P 500 had a return of 119.8%. Burgess did not disclose how he calculated the returns for the indexes or the pool.

51. In January 2020, Burgess changed the format of the statements. The statements no longer list the trades that Burgess makes with pool funds, and he notes on the statement that the rate of gain is calculated on a separate worksheet, "the same way as last year." The statements still include the investor's purported profit and annualized rate of return for each month. These newly formatted statements fail to meet requirements because they do not include a list of the transactions made on behalf of the pool, and they do not disclose the funds and securities that the pool holds at the end of the time period covered by the statements.

Improper Deduction of Unreasonable Fees

52. Burgess does not comply with safeguards related to deducting fees from the pool or charging a performance fee. Burgess does not receive written authorization from pool participants to deduct fees from the pool, and he has never notified the Securities Division that he is managing a pooled investment vehicle and deducting fees from the pool. In addition, when deducting fees from the pool, Burgess does not send

itemized invoices to pool participants that, among other things, disclose the formula used to calculate the fee, the fee calculation itself, the amount of assets under management that the fee is based upon, and the time period covered by the fee.

53. Burgess represents that he charges a fee of 50% of profits for his management of the pool, which is a performance fee. A performance fee cannot be charged unless all of the pool participants are qualified investors. Generally, a pool participant would be qualified if they had at least $1 million invested with Burgess, or if they had a net worth of $2.1 million. Burgess does not manage $1 million or more for any of the pool participants, and at least seventeen of the pool participants do not have assets of $2.1 million or more. As a result, Burgess is not entitled to charge a performance fee for his management of the pool.

54. Any fee charged by Burgess for managing the pool must be reasonable. Burgess represents to investors that he charges a 50% fee on profits, which is unreasonably high. The industry standard for a performance fee is 20% and requires that a high-water mark be used to prevent charging a fee more than once for the same profits. In addition, Burgess's fee is unreasonable because, as noted above, Burgess does not meet the requirements for charging a performance fee.

Failure to Audit the Pool

55. Burgess does not comply with audit requirements for managing a pooled investment vehicle. To comply with these audit requirements, Burgess must either engage an independent third party to authorize withdrawals from the pool, or engage an independent certified public accountant to audit the pool at least annually. The audited financial statements must then be provided to the pool participants. Burgess does not engage a third party to approve withdrawals from the pool, and he does not have the pool audited. As a result of Burgess failing to meet these audit requirements, pool participants are denied safeguards meant to protect their funds.

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Registration Status

56. Charles Richard Burgess, a/k/a Dick Burgess, is not currently registered to offer or sell his securities in the state of Washington, and he has not previously been so registered.

57. Charles Richard Burgess, a/k/a Dick Burgess, is not currently registered as an investment adviser or investment adviser representative in the state of Washington, and he has not previously been so registered.

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

CONCLUSIONS OF LAW

1. The offer or sale of participation in a pooled investment vehicle as described above constitutes the offer or sale of a security as defined in RCW 21.20.005(14) and RCW 21.20.005(17).

2. Respondent Charles Richard Burgess, a/k/a Dick Burgess, is violating RCW 21.20.140 because, as set forth in the Tentative Findings of Fact, he is offering and selling securities for which no registration is on file with the Securities Administrator.

3. Respondent Charles Richard Burgess, a/k/a Dick Burgess, is violating RCW 21.20.040 because, as set forth in the Tentative Findings of Fact, he is acting as an investment adviser to a pooled investment vehicle without being registered in the state of Washington.

4. Respondent Charles Richard Burgess, a/k/a Dick Burgess, is violating RCW 21.20.010(1) because he is employing a device, scheme, or artifice to defraud by, as set forth in the Tentative Findings of Fact, managing a pooled investment vehicle in the manner of a Ponzi scheme and misrepresenting the success of the pooled investment vehicle to investors.

5. Respondent Charles Richard Burgess, a/k/a Dick Burgess, is violating RCW 21.20.010(2) because, in connection with the offer of securities, he is making untrue statements of material fact or omitting to state material facts necessary to make the statements made, in light of the circumstances in which they were

made, not misleading by, as set forth in the Tentative Findings of Fact, failing to disclose material information related to investment in the pooled investment vehicle and to the rescission offer.

6. Respondent Charles Richard Burgess, a/k/a Dick Burgess, is violating RCW 21.20.010(3) because he is engaging in an act, practice or course of business which operates or would operate as a fraud or deceit upon another person by, as set forth in the Tentative Findings of Fact, paying himself excessive fees to manage a pooled investment vehicle.

7. Respondent Charles Richard Burgess, a/k/a Dick Burgess, is violating RCW 21.20.020(1)(a) because he is employing a device, scheme, or artifice to defraud others by, as set forth in the Tentative Findings of Fact, managing a pooled investment vehicle while failing to disclose material information, misrepresenting the success of the pool, and paying himself excessive fees.

8. Respondent Charles Richard Burgess, a/k/a Dick Burgess, is violating RCW 21.20.020(1)(b) because he is engaging in acts, practices, or courses of business that are operating or would operate as a fraud or deceit upon others by, as set forth in the Tentative Findings of Fact, having custody of client funds and sending inaccurate and incomplete account statements in violation of WAC 460-24A-105(4) and WAC 460-24A-107(2).

9. Respondent Charles Richard Burgess, a/k/a Dick Burgess, is violating RCW 21.20.020(1)(c) because he is engaging in dishonest and unethical practices by, as set forth in the Tentative Findings of Fact, charging unreasonable fees for his management of a pooled investment vehicle in violation of WAC 460-24A-220(10).

10. Respondent Charles Richard Burgess, a/k/a Dick Burgess, is violating WAC 460-24A-106(1) by, as set forth in the Tentative Findings of Fact, deducting fees from a pooled investment vehicle without written authorization and without sending pool participants itemized invoices.

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Securities Division
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11. Respondent Charles Richard Burgess, a/k/a Dick Burgess, is violating WAC 460-24A-107(1) by, as set forth in the Tentative Findings of Fact, having custody of client funds and managing a pooled investment vehicle without engaging an independent party to approve withdrawals from the pooled investment vehicle or sending audited financial statements to pool participants.

NOTICE OF INTENT TO ORDER THE RESPONDENT TO CEASE AND DESIST

Pursuant to RCW 21.20.390(1), and based upon the Tentative Findings of Fact and Conclusions of Law, the Securities Administrator intends to order that Respondent Charles Richard Burgess, a/k/a Dick Burgess, his agents and employees, shall each cease and desist from violating RCW 21.20.140, RCW 21.20.040, RCW 21.20.010, RCW 21.20.020, WAC 460-24A-106, and WAC 460-24A-107.

NOTICE OF INTENT TO IMPOSE FINES

Pursuant to RCW 21.20.395, and based upon the above Tentative Findings of Fact and Conclusions of Law, the Securities Administrator intends to order that Respondent Charles Richard Burgess, a/k/a Dick Burgess, shall be liable for and shall pay a fine of $100,000.

NOTICE OF INTENT TO CHARGE COSTS

Pursuant to RCW 21.20.390, and based upon the above Tentative Findings of Fact and Conclusions of Law, the Securities Administrator intends to order that Respondent Charles Richard Burgess, a/k/a Dick Burgess, shall be liable for and shall pay the costs, fees, and other expenses incurred in the administrative investigation and hearing of this matter, in an amount no less than $25,000.

AUTHORITY AND PROCEDURE

This Statement of Charges is entered pursuant to the provisions of Chapter 21.20 RCW and is subject to the provisions of Chapter 34.05 RCW. Respondent Charles Richard Burgess, a/k/a Dick Burgess may make a written request for a hearing as set forth in the Notice of Opportunity for Hearing accompanying this Order. If a respondent does not make a hearing request in the time allowed, the Securities Administrator intends to adopt the above Tentative Findings of Fact and Conclusions of Law as final, to enter a permanent order to cease and desist, and to impose the fine and charge the costs sought against the respondent.

SIGNED and ENTERED this 17th day of December, 2021.

William M. Beatty
Securities Administrator

Approved by:

Suzanne Sarason
Chief of Enforcement

Presented by:

Holly Mack-Kretzler
Financial Legal Examiner Supervisor