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 the State of Washington by: John Patrick McGinn, Jr. Earned Freedom Investments Respondents	SDO - 090 - 01 ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW AND FINAL ORDER TO CEASE AND DESIST Case No. 99-08-0246

THE STATE OF WASHINGTON TO: John P. McGinn, Jr.
Earned Freedom Investments

On July 12, 2000, the Securities Administrator of the State of Washington issued Summary Order to Cease and Desist SDO-73-00 (hereinafter referred to as "Summary Order") to John P. McGinn, Jr. and Earned Freedom Investments.

The Summary Order, 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 personally served on John P. McGinn, Jr., individually and as president of Earned Freedom Investments, on October 3, 2001. The Notice of Opportunity for Hearing advised John P. McGinn, Jr. and Earned Freedom Investments that each had twenty days from the date of receiving the notice to file a written application for an administrative hearing on the Summary Order.

On October 23, 2001, John P. McGinn, Jr. faxed a letter dated October 22, 2001 to the Securities Division. In the letter, Mr. McGinn claimed that he was not an investment advisor and that he did not offer or sell securities or provide investment services in any manner. He asked the Securities Division to vacate its action for lack of jurisdiction.

However, Mr. McGinn and Earned Freedom Investments did not request an administrative hearing and did not return the Application for Hearing. Therefore, because there was no hearing request submitted by Respondents, the Securities Administrator will adopt as final the findings of fact and conclusions of law as set forth in the Summary Order.

The Securities Administrator makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

I.

Earned Freedom Investments ("EFI") is a business entity with offices located in Bellevue, Washington. EFI describes itself as a "full-service investment agency company."

II.

John P. McGinn, Jr. ("McGinn") is president of EFI. McGinn also functions as account executive and agent with limited power of attorney on behalf of EFI's clients.

III.

In 1999, McGinn and representatives of EFI conducted public seminars to promote their investment services. McGinn represented to those attending the seminars that he had special knowledge and experience in selecting investments and that they could utilize his services by establishing an account with EFI. Respondents also advertised their services on the Internet.

IV.

At the seminars, McGinn claimed that approximately 90% of his trades were profitable and that he had made large sums of money for his investment clients. McGinn offered examples of trades that he claimed to have made in which investors earned a 35%

return on their money in short periods of time. He also stated that EFI was committed to generating at least a 10% monthly return on investor deposits.

V.

Investors were told that consistently high rates of return were possible because of the kinds of trading activity that McGinn engaged in and the strategies he employed. McGinn represented to investors that he traded stock options and could make money regardless of prevailing market conditions. He also emphasized the near infallibility of his strategies, such as trading in anticipation of favorable earnings announcements and inferring a stock split when a company scheduled a meeting of its shareholders. McGinn told investors that they could "turn the stock market into a business" by opening an account with EFI.

VI.

More than one hundred investors may have opened accounts with EFI. McGinn required each person to sign a document entitled "Contract of Agency" which set out the terms of their relationship. Under this agreement, investors appoint McGinn as their agent for purposes of investing their money and agree to pay him a commission on any profits earned. The amount of the commission varies with the value of the investor's account — relatively small accounts are charged a 50% commission and this figure gradually declines to 25% for accounts with balances of $1,000,000 or more.

VII.

After establishing an account, investors receive monthly statements from EFI. These statements show opening balance, trading activity, closing balance, and the percentage gain or loss on their money. All trades are executed by McGinn without input from investors.

VIII.

Because of the way McGinn and EFI manage their accounts, investors are unable to determine exactly what securities (if any) they own at any given time. McGinn claims to pool investor money, purchase securities, and then allocate them to individual accounts. He has not, however, disclosed these allocation criteria to investors.

IX.

EFI does not provide investors with information about their gains and losses for purposes of preparing a federal income tax return. Some investors have been lead to believe that the gains and losses which may result from McGinn's trading activities are not taxable because their money is being held in a special trust account. McGinn and EFI have also asserted that their investment advisory agreement is not subject to federal or state statutes or regulations. These statements are false and misleading.

X.

McGinn and EFI failed to disclose material information about themselves and their services to investors. They did not tell investors that they are unlicensed and cannot legally act as investment advisers or broker-dealers. They did not explain that options trading carries a high degree of risk or that, unlike many other investments, options expire and lose their value after a fixed period of time. Instead, Respondents maintained that everything carries some amount of risk but, with EFI, the risk is greatly reduced by McGinn's trading expertise. Respondents stressed that investors would profit regardless of market conditions and promoted the idea that McGinn could generate a 10% monthly return on their money. Neither McGinn nor EFI took any steps to ensure that their program of options trading was a suitable investment for the individuals to whom it was offered.

XI.

John P. McGinn, Jr. is not licensed as a broker-dealer, securities salesperson, or investment adviser in the state of Washington.

XII.

Earned Freedom Investments is not licensed as a broker-dealer or investment adviser in the state of Washington.

XIII.

By failing to become properly licensed, Respondents have avoided requirements designed to protect investors from harm. These include: testing to ensure a minimum level of competence in providing investment advisory services, capitalization requirements to promote financial stability, bookkeeping rules to ensure accurate records are kept, and a prohibition against unethical practices.

XIV.

The Securities Administrator finds that Respondents are currently engaged in unlicensed investment activities and that this conduct presents a threat to the investing public.

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

CONCLUSIONS OF LAW

I.

John P. McGinn, Jr. has violated RCW 21.20.040 by offering and/or selling securities and by providing investment services while not registered as a securities salesperson, broker-dealer, or investment advisor in the state of Washington.

II.

Earned Freedom Investments has violated RCW 21.20.040 by offering and/or selling securities and by providing investment services while not registered as a broker-dealer or investment adviser in the state of Washington.

III.

John P McGinn, Jr. has violated RCW 21.20.030, as described above, by entering into investment advisory contracts in which his compensation was based upon a portion of the capital gains generated with investor funds.

IV.

John P. McGinn, Jr. has violated RCW 21.20.020, as described above, by failing to properly segregate and identify to individual investors money and securities in his possession and by omitting material information about the past performance of his investments.

Based upon the above Findings of Fact and Conclusions of Law

NOW, THEREFORE, IT IS HEREBY ORDERED that Respondents, their agents, and employees shall cease and desist from offering and/or selling securities and providing investment services in any manner in violation of RCW 21.20.040, the licensing section of the Securities Act of Washington.

It is further ORDERED that John P. McGinn, Jr. shall cease and desist from violation of RCW 21.20.020, the section of the Securities Act that prohibits fraudulent conduct in connection with investment services.

It is further ORDERED that John P. McGinn, Jr. shall cease and desist from violation of RCW 21.20.030, the section of the Securities Act that prohibits certain acts and practices by investment advisers.

This Order is entered pursuant to RCW 21.20.390 and is subject to the provisions of ch. 34.05 RCW.

WILLFUL VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.

DATED this 31st day of October, 2001.

DEBORAH R. BORTNER
Securities Administrator

Approved By:

Michael E. Stevenson
Chief of Enforcement

Presented By:

Janet So
Senior Enforcement Attorney