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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:

John P. McGinn, Jr.
Earned Freedom Investments

Respondents

SDO - 73 - 00

SUMMARY ORDER TO CEASE AND DESIST AND
REVOKING EXEMPTIONS

Case No. 99-08-0246

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

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STATEMENT OF CHARGES

Please take notice that the Securities Administrator of the State of Washington has reason to believe that Respondents have each violated the Securities Act of Washington and that their violations justify the entry of an order of the Securities Administrator under RCW 21.20.390 to cease and desist from such violations. The Securities Administrator finds that delay in ordering Respondents to cease and desist from such violations would be hazardous to the investors and to the public and that a Summary Order to Cease and Desist should be entered immediately. The Securities Administrator finds as follows:

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TENTATIVE 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".

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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

1 agreement, investors appoint McGinn as their agent for purposes of investing their money and agree to pay him
2 a commission on any profits earned. The amount of the commission varies with the value of the investor's
3 account — relatively small accounts are charged a 50% commission and this figure gradually declines to 25%
4 for accounts with balances of \$1,000,000 or more.

5 VII.

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

9 VIII.

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

14 IX.

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

20 X.

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

7 XI.

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

10 XII.

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

13 XIII.

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

18 XIV.

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

21 XV.

22 The Securities Administrator further finds that an emergency exists and that Respondents should be
23 summarily ordered to cease and desist from violations of the Securities Act.

1 Based upon the above Tentative Findings of Fact, the following Conclusions of Law are made:
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3 CONCLUSIONS OF LAW

4 I.

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

8 II.

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

12 III.

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

16 IV.

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

20 V.

21 The Securities Administrator concludes that an emergency exists, that continued violations of RCW
22 21.20.020, RCW 21.20.030, and RCW 21.20.040 constitute a threat to the investing public, and that a Summary
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1 Order to Cease and Desist from those violations is in the public interest and necessary for the protection of the
2 investing public.

3 **SUMMARY**

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

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

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

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16 **AUTHORITY AND PROCEDURE**

17 This Order is entered pursuant to the provisions of RCW 21.20.390 and is subject to the provisions of
18 Chapter 34.05 RCW. Respondents may each may make a written request for a hearing as set forth in the
19 NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING accompanying this
20 order.

21 If a respondent does not request a hearing, the Securities Administrator intends to adopt the above
22 Tentative Findings of Fact and Conclusions of Law as final and make the Summary Order to Cease and Desist
23 permanent as to that respondent.

1 WILLFUL VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.

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3 DATED this 7th day of July, 2000.

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6 DEBORAH R. BORTNER
7 Securities Administrator

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9 Presented by:

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13 Steven Raney
14 Securities Examiner

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16 Approved by:

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18 Michael E. Stevenson
19 Chief of Compliance

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