

**STATE OF ARKANSAS**  
**SECURITIES DEPARTMENT**

**IN THE MATTER OF**

**CONSENT ORDER**

**INVESTMENT ADVISORY GROUP, LLC  
AND BRETT J. HOLIMAN**

**RESPONDENTS**

**ORDER NO. S-03-028-03-CO01**

**CONSENT ORDER**

This Consent Order is entered pursuant to the Arkansas Securities Act, codified at ARK. CODE ANN. §§ 23-42-101 *et seq.* (the "Act"), the Rules of the Arkansas Securities Commissioner (the "Rules") which were promulgated under the Act and the Arkansas Administrative Procedures Act; codified at ARK. CODE ANN. §§ 25-15-201 *et seq.* Pursuant to Rule 601.07(i), this Consent Order is entered in lieu of a hearing on matters raised against Investment Advisory Group LLC ("IAG") and Brett J. Holiman ("Holiman"). This Consent Order is entered in full settlement of all claims against IAG and Holiman, who waive their right to a formal hearing and, without admitting or denying any of the findings herein, consent to the entry of this order and agree to abide by its terms.

**FINDINGS OF FACT**

1. The Commissioner of Securities (the "Commissioner") has jurisdiction over this matter pursuant to the Act.
2. IAG is a registered investment adviser in Arkansas and Holiman is an investment adviser representative registered in Arkansas.
3. IAG and Holiman have cooperated with officers of the Arkansas Securities Department (the "Department") who are conducting an investigation of Mace David Howell, Jr. ("Howell") as set forth in Order No. S-O2-026-02-0RO 1 (the "Investigation") by, among other things, providing documentary evidence and other materials requested by the Department and providing the Department access to relevant facts relating to the activities of Howell and IAG's and Holiman's association with Howell.
4. From May 1998 through September 2002, Howell entered into unsecured promissory notes (the "Notes") issued to multiple individuals, trusts and business entities who were introduced to Howell by or through Holiman (the "Note Holders"). The total number of persons who loaned funds to Howell directly or indirectly through Holiman during the above period was thirty-three (33).

5. **The funds received from the Notes were purportedly used by Howell for the purpose of pooling the proceeds thereof to invest in public securities and financial markets. General loans were accounted for through a general pooling and special six-month loans for arbitrage purposes were accounted for separately. Together funds received via the general loans and arbitrage loans were administered by Howell as an investment program (the "Program").**
6. **The amounts of the loans made to Howell through Holiman ranged from \$600,000 to approximately \$6,000,000.**
7. **The Notes provided for above market interest and were of terms from six (6) to twelve (12) months.**
8. **Holiman participated with Howell in the purported trading profits after payment of the interest on the Notes. Based upon the ratio of funds contributed by all Note Holders to the total funds available, the monthly "profit" was apportioned between the Note Holders and Howell. After payment of interest to the Note Holders from the portion of the "profit" allocated to them, Howell and Holiman divided the remaining balance in a ratio that was unilaterally determined by Howell. Howell retained his portion of the "profits" allocated to him based upon the ratio of funds contributed and also received a majority of the excess "profits" divided with Holiman or Holiman's designee.**
9. **During the period of the Program, Holiman personally received substantial sums for his participation in directly or indirectly providing funds from the Note Holders to Howell for use in the Program.**
10. **In October 2002 Howell failed to make his September monthly interest payment to the Note Holders.**
11. **On October 17, 2002 the Commissioner issued a Cease and Desist Order No. 8-02-026- 02-CDOI against Howell ordering Howell to immediately cease the Program or any other practice constituting a violation of the Act or Rules.**
12. **After an investigation following Howell's death it appears that the Program was a fraud and deception practiced on the Note Holders and others and that there exists a substantial likelihood that the funds loaned to Howell will not be fully recovered by the Note Holders.**
13. **IAG and Holiman have agreed with the Department to resolve various concerns of the Department with respect to IAG's and Holiman's association with Howell through the entry of this Consent Order.**

14. The Commissioner has inquired into this matter and considered the relevant information provided to the Department by IAG and Holiman in aid of the Investigation.
15. IAG and Holiman have, without admitting or denying the matters set forth therein, voluntarily withdrawn their registrations as investment advisers by letter to the Department dated August 15, 2003.
16. This Consent Order is in the public interest.

#### CONCLUSIONS OF LAW

17. The Commissioner has jurisdiction over this matter pursuant to the Act.
18. Rule 308.02(R) governing investment advisers provides that the fraudulent, deceptive, dishonest or unethical practices set out in Rule 308.02(A) through (Q) are not all inclusive and that any "device, scheme or artifice to defraud or engaging in any act, practice or course of business which operates or would operate as a fraud or deceit shall constitute grounds for denial, suspension or revocation under Section 23-42-308 of the Act, or for the institution of a cease and desist order or other action under Section 23-42-209 of the Act."

#### OPINIONS

19. Howell's operation of the Program constituted a device, scheme or artifice to defraud and Holiman's association with Howell via the Notes facilitated Howell's operation of the fraud or deceit upon the Note Holders.
20. This Consent Order is in the public interest.

#### ORDER

**THEREFORE**, on the basis of the foregoing, and IAG's and Holiman's waiver of their rights to a hearing and appeal under the Act with respect to this Consent Order, and IAG's and Holiman's admission of jurisdiction of the Commissioner, the Commissioner finds that IAG and Holiman, for the sole purpose of settling this proceeding and without admitting or denying the matters set forth herein, have consented to the entry of this Consent Order and that this Consent Order is appropriate, in the public interest and necessary for the protection of investors.

**IT IS ORDERED**, that the withdrawal of registration by IAG and Holiman by letter to the Department dated August 15, 2003 is accepted.

**IT IS ORDERED**, that the registration of IAG and Holiman are terminated immediately as set forth in said letter.

**IT IS ORDERED** that this Consent Order is an order of the Commissioner within the meaning of ARK. CODE ANN. § 23-42-308(a)(2)(E).

**IT IS ORDERED**, that Holiman send a letter to the Note Holders in the form attached hereto as Exhibit 1 upon the entry of this Consent Order.

**IT IS ORDERED** that neither IAG nor Holiman will apply for registration in Arkansas pursuant to the Act to do securities business in Arkansas in any capacity.

**IT IS ORDERED**, that this Consent Order represents the complete and final resolution of, and discharge of any basis for any civil or administrative proceeding by the Commissioner against IAG, its officers, directors, members, predecessors and subsidiaries, past and present and Holiman for violations arising as a result of or in connection with any actions or omissions by IAG, its officers, directors, members, predecessors, subsidiaries and Holiman and/or any of its or his associated or affiliated entities, past and present arising from the Howell Program; provided, however, this release does not apply to facts not known by the Commissioner or staff or not otherwise provided by IAG or Holiman to the Commissioner or staff as of the date of this Consent Order.

**IT IS ORDERED** that this Consent Order, except as to the parties hereto, does not limit or create any person's private remedies against IAG and/or Holiman or others, or IAG's and/or Holiman's or others' defenses thereto.

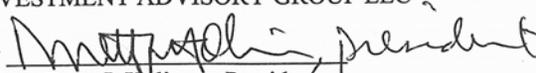
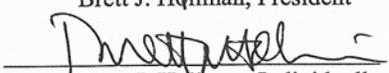
**IT IS ORDERED** that, except as expressly provided in this Consent Order, nothing herein is intended to or shall be construed to have created, compromised, settled, or adjudicated any claim, cause of action, or right of any person, other than as between the Commissioner on the one hand and IAG and Holiman on the other in accordance with this Consent Order.

**BY ORDER OF THE COMMISSIONER.**

EXECUTED the 15<sup>th</sup> day of August 2003.

  
MICHAEL B. JOHNSON  
SECURITIES COMMISSIONER

The undersigned hereby consent to the entry of the foregoing order.

INVESTMENT ADVISORY GROUP LLC  
By , president  
Brett J. Holiman, President  
  
Brett J. Holiman, Individually

**EXHIBIT 1**

[note holder name]  
[note holder address]

**Re: Promissory Notes of M. David Howell, Jr.**

**Dear [note holder]:**

**As the unfortunate facts regarding your loaning funds to Mr. Howell have unfolded, various theories regarding the program operated by him have been advanced by different parties. Included in the civil litigation pleadings are alternative theories of my involvement either as a partner of Mr. Howell in the investment program or as a seller of unregistered and nonexempt securities. As you may also be aware the Arkansas Securities Department issued an order against Mr. Howell to cease what it believed to be the sale of unregistered and nonexempt securities and has an open investigation regarding this matter. With David's death, the opening of his estate and the filing of claims, suits and counter suits, the situation regarding your loan is very uncertain.**

**As part of my dealings with the Securities Department in this matter the fact and amount of compensation received by me or my affiliate for my involvement with David has arisen. I explained to the Department that each person who loaned Mr. Howell funds directly or indirectly through me was told that I would receive economic benefits from that loan to David. I wanted each lender to understand that fact before making a loan. While I disclosed the fact of receipt of income from these transactions, I did not disclose the amount of such compensation.**

**The Securities Department has taken the position that the amount of the compensation is important information that should be made known to each lender. Thus, in the interests of complete and full disclosure, I wish to let you know how much I received during the periods you and others loaned funds to Mr. Howell. The amounts are as follows:**

<u>Calendar Year</u>	<u>Amounts Received:</u>	
	<u>Regular Notes</u>	<u>Arbitrage Notes</u>
1998		
1999		
2000		
2001		
2002		

**The amount I received was a percentage of the monthly trading "profit" that was reported to me by David and represented funds available after payment of interest on all loans. The percentage was unilaterally set by David and I understood that what I received did not reduce the payments to note holders.**

**The amount I received increased over the years. Two factors contributed to this increase: The amount of funds loaned to David grew each year and he started the arbitrage program in 2001. During these times, the amount of loans made to David by persons whose relationship with him came directly or indirectly through me reached a total of over \$30 million.**

**In light of these numbers you may be asking where that money went. A substantial portion has been paid in federal and state income taxes through 2002. My 2002 return has not yet been filed and there could be additional income taxes on the 2002 amounts noted above. Another portion was tithed to my church and \$350,000 was loaned to David on a note the same as yours. Remaining amounts were used for living expenses, children's education, business expenses and the like. I have not built up a large cash reserve as my net worth has been reduced to my residence, retirement accounts and a partially improved home site.**

**In addition to this disclosure, I wish to express to you my personal regret involving the loans made to David. I believed in him and his integrity. I had known him almost 20 years, had worked for and with him and had the highest regard for him and his character. The consequences of David's actions have been devastating on me and my family as I know they have been on you. Most of the persons who made loans to him through me were family and friends and I am truly sorry for any financial loss that you may experience as well as the emotional cost of this situation..**

**If you have any questions regarding this letter, please contact me. I will be glad to discuss any and all issues with you. In addition, I will stay involved in this matter to assist in any way possible.**

**Sincerely,**

**Brett J. Holiman.**