

State of Missouri
Office of Secretary of State

Case No. AP-06-06

IN THE MATTER OF:

PORTERFIELD INVESTMENTS, INC;
DOVE ENTERPRISES, INC;
SOUTHWEST CELLULAR, INC;
TELE-AMERICA, LLC;
JIM R. PORTERFIELD; and
LINDA K. PORTERFIELD

Serve all at:

Route 2, Box 324-11
Clever, Missouri 65631

Respondents.

**FINAL ORDER TO CEASE AND DESIST AND
ORDER IMPOSING CIVIL PENALTIES AND COSTS**

On the 12th day of June 2006, the Enforcement Section of the Securities Division, by and through Mary H. Hosmer, Assistant Commissioner, submitted a Petition for Final Order to Cease and Desist and Payment of Civil Penalties and Costs. After reviewing the petition, the Commissioner issues the following findings of fact, conclusions of law and order:

I. FINDINGS OF FACT

A. The Respondents

1. Porterfield Investments, Inc. ("Porterfield Investments") was a corporation incorporated in the State of Arkansas. On December 21, 2004, Porterfield Investments' corporate registration was revoked by the State of Arkansas. At all times pertinent to this investigation, Porterfield Investments was operating as an unregistered business entity with a mailing address of P.O. Box 593, Pocahontas, Arkansas 72455. Porterfield Investments was registered to do business in the State of Missouri as a foreign corporation. However, on February 19, 2004, the Missouri Secretary of State, Corporations Division, administratively dissolved Porterfield Investments for failure to file a correct and current annual report. Porterfield Investments purportedly engaged in the business of cellular phone sales in the State of Missouri.
2. Dove Enterprises, Inc. ("Dove Enterprises") is a company incorporated in the State of Arkansas with a mailing address of P.O. Box 593, Pocahontas, Arkansas 72455. Dove Enterprises is a company that transacts business in the State of Missouri and an alleged subsidiary of Porterfield Investments. Dove Enterprises purportedly engages in the business of marketing cellular communications, sales and cellular related services.
3. Southwest Cellular, Inc. ("Southwest Cellular") is an alleged subsidiary of Porterfield Investments. Southwest Cellular was a Missouri corporation that purportedly engaged in cellular phone sales and services and has a last known business address of Route 2, Box 324-11, Clever, Missouri 65631. On February 17, 2004, Southwest Cellular's corporate registration was dissolved by the Missouri Secretary of State, Corporations Division.
4. Tele-America, LLC ("Tele-America") is an alleged subsidiary of Porterfield Investments. Tele-America is a Missouri limited liability company that purportedly engages in cellular communications, sales and cellular related services and has a last known business address of Route 2, Box 324-11, Clever, Missouri 65631.
5. Jim R. Porterfield ("J. Porterfield") is the President of Porterfield Investments, Dove Enterprises, Southwest Cellular and Tele-America and maintains an address of Route 2, Box 324-11, Clever, Missouri 65631.
6. Linda K. Porterfield ("L. Porterfield") is the Secretary of Porterfield Investments, Vice President of Dove Enterprises and Secretary of Southwest Cellular and maintains an address of Route 2 Box 324, Clever, Missouri 65631. L. Porterfield is also the spouse of J. Porterfield.
7. As used in this Order, the term "Respondents" refers to Porterfield Investments, Dove Enterprises, Southwest Cellular, Tele-America, J. Porterfield and L. Porterfield.

B. Missouri Resident

8. L. Porterfield worked with a Missouri Resident ("MR") at a hospital in Springfield, Missouri. Through this working

relationship, MR learned that L. Porterfield and J. Porterfield owned several businesses pertaining to the sale and service of cellular phones.

9. In August 2004, MR expressed to J. Porterfield that MR wanted to establish an investment account to save for MR's retirement. J. Porterfield informed MR, among other things, that:
 - a. He owned and operated an investment company, Porterfield Investments, and he could assist MR in setting up a retirement account through this business.
 - b. MR could invest in Porterfield Investments and would receive dividends.
 - c. An investment of \$5,000 would net MR a two percent (2%) per month return and if MR invested more money, the return would be much greater.
10. After their initial discussions in August 2004, J. Porterfield called MR on numerous occasions to encourage MR to invest in J. Porterfield's businesses. During one of these calls, J. Porterfield stated he would lower the investment minimum from \$5,000 to \$4,000.
11. On October 19, 2004, MR gave L. Porterfield, a personal check in the amount of \$5,000, paid to the order of Dove Enterprises. J. Porterfield came by the hospital to pick up MR's investment check and told MR that the funds would be used for business purposes only and that an account would be set-up for MR under Dove Enterprises.
12. MR was given a written agreement, dated October 20, 2004, representing that MR had made an investment with Respondents. The agreement stated in part:

"This agreement is entered into on the date stated herein by and between Dove Enterprises, Inc. (herein referred to as the Company) and [MR] (herein referred to as Investor). Investor deposits with the Company the amount of Five Thousand Dollars and no cents (\$5000.00), in the form of a personal check. Said funds to be used by the company at the discretion of the company and its management."
13. In November 2004, MR received an "Account Statement"¹ that documented the accrued principal and interest in MR's account.
14. On numerous occasions, J. Porterfield insisted that MR invest more funds in J. Porterfield's businesses. J. Porterfield visited MR at the hospital and at MR's home and told MR that the more MR invested, the higher the return. J. Porterfield informed MR that once MR's Dove Enterprises account reached an account balance of \$100,000 the funds would be transferred into a Porterfield Investments account where they would have the ability to accrue interest at 6% per month and MR would own stock in Porterfield Investments.
15. When MR stated that he was unable to obtain any additional funds, J. Porterfield stated that MR could get these funds from a new or existing credit card account. J. Porterfield told MR, "let the interest you make in your investment make the credit card payments for you."
16. In January and June 2005, MR applied and was approved for credit with two credit card companies. Between October 2004 and June 2005, MR invested more funds with J. Porterfield. MR signed the credit card check(s) and per J. Porterfield's instructions, left the payee line blank. J. Porterfield informed MR that MR's money would be invested in one (1) of four (4) businesses.
17. MR, after investing in excess of over \$65,000, exhausted all of his financial resources and obtainable credit. MR informed J. Porterfield that MR was unable to obtain any more funds to reach the \$100,000 investment goal.
18. As of June 30, 2005, MR's monthly account statement documented an account balance of \$76,804, of which \$14,051.16 was "interest year to date."
19. On or about late June 2005, at the home of J. Porterfield, J. Porterfield agreed to loan MR \$25,000 so that MR could have \$100,000 investment in Dove Enterprises. J. Porterfield told MR that he would deposit \$25,000 into MR's Dove Enterprises Account and record it as a deposit on MR's monthly account register.²
20. On July 1, 2005, J. Porterfield and MR entered into a written agreement at the home of J. Porterfield. J. Porterfield gave MR a document titled "**PROMISSORY NOTE**". The body of the note stated:

FOR VALUE RECEIVED, in the form of a cash loan, the undersigned person hereby does severally promise to pay to the order of Jim Porterfield, P.O. Box 4, Clever, Mo. 65631, the sum of Twenty Five Thousand Dollars (\$25,000.00) in variable installments [sic] at variable points in time as so chosen by borrower over a period of twelve months from the date of this contract. Total amount will be paid in full by or before July 1, 2006. The purpose of this loan is for business investment and the amount will be credited into the account of the borrower in his Dove Enterprises account #5977 on this first day of July in the year of 2005. Borrower will not be charged interest charges or finance fees during the term of this agreement. It is understood that it [sic] the

intention of the borrower to repay said funds with income received from investment interest and bonus amounts received from said investments, so as to explain the variable terms stated herein. This agreement will be governed by the laws of the state of Missouri.”

21. Once MR obtained the presumed \$100,000 goal in MR’s Dove Enterprises account, J. Porterfield transferred MR’s investment into Porterfield Investments. MR and J. Porterfield executed one document dually titled, “Statement of Issuance of Stock Porterfield Investment, Inc.” and “Declaration of Receipt of Stock Issue.” dated July 1, 2005. The body of the document stated:

In consideration of the credit of funds in the amount of \$100,000.00 into account of this corporation or one of its subsidiaries; certificate #7 in the amount of 100 shares in this corporation is hereby issued to [MR] to hold as his own from this day herein stated forward.

I, [MR], do hereby state and declare that I have been issued and have received stock certificate #7 in the amount of 100 shares of common stock in Porterfield Investments, Inc., an Arkansas corporation on the date stated herein.

22. J. Porterfield also provided MR with a document titled, “*Declaration of Investor*” signed by MR and J. Porterfield, dated July 1, 2005, that stated, in part:

I, [MR], do hereby declare that I have been credited the total sum of \$100,000.00 into my Dove Enterprises, Inc. account # 5977. Said sum is to be applied to the issuance of 100 shares of common stock in Porterfield Investments, Inc. of Arkansas to me at this time. I understand that all past investment agreements are not altered or cancelled and will continue into the future.

23. On July 5, 2005, MR signed and dated his Dove Enterprises account register as being closed out. The language as written on the Dove Enterprises monthly account register stated:

\$100,004.00 transferred to Porterfield Investments, Inc. (an Arkansas corporation) into account # DS-5977-PI, at the request of Investor for the purpose of purchase of 100 shares of common stock in Porterfield Investments, Inc. Investor hereby acknowledges and states that this action has been completed to Investor’s completed satisfaction and this account with Dove Enterprises is hereby closed.

24. On July 7, 2005, MR was informed that he had been appointed to the Board of Directors of Porterfield Investments. MR stated that, to his knowledge, the corporation never scheduled any board meetings and MR never met any of the other alleged board members.

25. J. Porterfield agreed to make payments on MR’s outstanding credit card balances. In the months of March 2005 through June 2005, J. Porterfield made several monthly payments for MR’s credit card accounts that totaled \$4,800. MR’s monthly register statement reflected these payments.

26. Shortly after July 2005, J. Porterfield ceased making payments on MR’s credit card accounts and MR stopped receiving monthly register statements for Porterfield Investments. J. Porterfield told MR that J. Porterfield was going to sell Porterfield Investments.

27. On or about August 16, 2005, J. Porterfield met MR at MR’s workplace and presented MR with a letter that stated among other things, that MR was agreeing to place MR’s shares for sale for a total sum of \$150,000.

28. On September 9, 2005, J. Porterfield asked MR to sign a document titled, “*Declaration of Board of Directors Individual Declaration*.” The document stated in part, that:

I, [MR], as owner, stockholder, and member of the Board of Directors of Porterfield Investments, Inc. do hereby agree to the following:

1. Sale of said corporation and all current assets and subsidiary businesses (Southwest Cellular, Inc. and Tele-America, LLC). All assets and all obligations of the corporation to be assumed by the purchaser at time of transfer of ownership to purchaser. Value determined.
2. Purchaser to purchase all common stock issued at this time at cost of One Thousand Five Hundred Dollars (\$1,500.00) per share in addition to agreed price of the corporation.
3. Said sale of the corporation to be completed on or before the 14th day of September in the year 2005. All proceeds from said agreement to be distributed to corporate stockholders and owners on or before the 15th day of September in the year 2005, according to percentages and dollar amounts due each person. Funds/Proceeds from said sale to be in the form of a direct wire transfer into the bank account of our corporations choosing at the time of final signing of sale agreement and transfer of ownership of said corporation and all stock issued. Ownership will not be final until funds are verified by our corporate accountant. Failure of purchaser to perfectly adhere to any term will immediately void the sale and this

corporation will immediately resume normal operations.

29. On or about September 15, 2005, MR questioned J. Porterfield about the sale. J. Porterfield stated the sale of the business had not occurred because buyer had “backed off from purchasing the business” and that the buyer’s check had “bounced.”
30. On October 24, 2005, MR sent a letter to J. Porterfield in which he stated, in part:

... the purpose of this letter is to provide written notice of my desire to cancel the contract I entered into with Dove Enterprises on October 20, 2004. The contract states that I may cancel it “by notifying the company in writing 60 days prior to the date of the desired cancellation date.” Please designate December 31, 2005, as the date of the desired cancellation ... Please send a check for the account balance to me at 403 Deanna, Nixa, Missouri 65714, on the designated date of cancellation of December 31, 2005. I also request a full accounting statement through the designated date of cancellation for my tax records.
31. To date, MR has not had his money returned to him.
32. On or about October 14, 2005, the Missouri Securities Division received information that indicated that Respondents allegedly offered and sold nonexempt and unregistered securities in Missouri.

C. MR’s Investment Contributions

33. The Division’s investigation revealed that credit card checks, with the payee line initially left blank by MR, were made payable to: 1) Dove Enterprises, Inc.; 2) Linda Porterfield; 3) Chrysler Financial and 4) Jim Porterfield.
34. Bank records from three (3) different bank accounts (two (2) of the accounts are located at the Bank of Billings³ and one (1) account is located at People’s Bank⁴) confirm that MR paid Respondents a total \$64,101.30 between October 19, 2004 and June 30, 2005.
35. The copies of MR’s credit card checks also indicated that Respondents used some of the checks to make payments to Chrysler Financial.⁵ The total amount paid to Chrysler Financial with MR’s credit card checks was \$2,103.73. MR never authorized any funds to be deposited into any account other than the Dove Enterprises account.

D. The Bank Records

Bank of Billings – Account Number 083763

36. According to bank records obtained from Bank of Billings, the records indicate that J. Porterfield, on behalf of Dove Enterprises, opened account number 083763, on October 19, 2004, with MR’s initial investment of \$5,000.
37. Records obtained by the Division indicate that at least six (6) of MR’s credit card checks were deposited into account number 083763 by Respondents that totaled \$23,166.30.
38. Bank records contained the following amounts taken by Respondents from the Dove Enterprises 083763 account from October 19, 2004 through October 31, 2005.
 - a. Checks made payable to “Jim Porterfield” totaled \$2,730.
 - b. Checks made payable to “Linda Porterfield” totaled \$2,400.
 - c. Checks made payable to “Chrysler Financial” totaled \$1,331.51.
 - d. Thirty-seven (37) ATM withdrawals that totaled \$3,315.
 - e. Six (6) equal payments of \$600 each made payable to MR’s outstanding credit card accounts.
 - f. Two (2) checks made payable to MR in the amount of \$1,800 and \$2,400.

Bank of Billings – Account Number 61751

39. According to bank records obtained from Bank of Billings, J. Porterfield opened a checking account in his name on February 28, 2005 with MR’s February 28, 2005 investment of \$5,000. Since this transaction, bank records revealed that J. Porterfield made four (4) additional deposits from March 25, 2005 through June 30, 2005, from funds obtained from MR.
40. J. Porterfield deposited at least five (5) of MR’s checks into this account for a total deposit of \$27,635.
41. Within twenty (20) days of opening the account on February 28, 2005, J. Porterfield withdrew the following amounts:
 - a. Two (2) checks made payable to “Greg Gibson-Attorney” for \$500 and \$100;

- b. Two (2) checks made payable to “Linda Porterfield” for \$350 and \$500;
 - c. Two (2) checks made payable to “Cash” for \$400 and \$500;
 - d. One (1) check made payable to “Chrysler Financial” for \$385.20; and
 - e. Six (6) ATM withdrawals that totaled \$1,113.
42. J. Porterfield also withdrew the following from the account between March 30, 2005 and September 27, 2005:
- a. Eighty-seven (87) ATM withdrawals that totaled \$14,359.35; and
 - b. Three (3) equal payments of \$600 each made payable to MR’s outstanding credit card accounts.

Peoples Bank of the Ozarks – Account Number 0100238686

43. Records obtained by the Division indicate that at least seven (7) of MR’s checks were deposited into Peoples Bank of the Ozarks, account number 0100238686, by the Porterfield’s that totaled \$13,300. This account was originally opened by L. Porterfield on June 26, 2003 as the sole signatory. On August 19, 2005, J. Porterfield was added as a signatory. This account also held L. Porterfield’s payroll deposits from St. John’s Regional Hospital.
44. On January 3, 2005, this bank account reflected one of MR’s deposits of \$2,550. Before this deposit, the account’s balance was \$132.58. On January 5, 2005, MR submitted another investment in the amount of \$5,000.
45. Within fifteen (15) days after the above deposits, the following transactions occurred:
- a. One (1) check made payable to “Stone County National Bank” for \$500.00. The memo line of the check indicated, “Home rent- 114 Southern Cross Dr. Clever, MO.”;⁶
 - b. Seven (7) ATM withdrawals that totaled \$1,506.00;
 - c. Three (3) checks made payable to “Jim Porterfield” totaling \$1,275.00; and
 - d. One (1) check made payable to “Chrysler Financial” for \$4,680.08. The memo line of the check indicated, “pay off acct # 1006558941.”

E. The Respondents’ Response

46. On October 27, 2005, the Division sent a letter of inquiry to Porterfield Investments, attention J. Porterfield. The letter asked Respondents to provide the definitional or registration exemption upon which Respondents had relied in offering unregistered securities. The letter also requested additional information about the alleged offers and advised J. Porterfield that failure to respond within a reasonable time as set by the Commissioner could result in proceedings to prohibit Respondents from offering or selling securities in this State.
47. On November 4, 2005, J. Porterfield responded to the Division’s October 27 letter. Among other things, J. Porterfield stated:
- a. That Porterfield Investments, Inc. “has not done business in the state of Missouri since 1993.”
 - b. That “Porterfield Investments, Inc. and Dove Enterprises, Inc. have no business objectives in the state of Missouri.”
 - c. That neither J. Porterfield nor anyone else in the corporation, had solicited the sale of stock in the state of Missouri.
 - d. That J. Porterfield had, “personally borrowed money and made credit card payments for MR because MR did not have the money and MR’s payments were late.”
 - e. That “no actual funds have been deposited into any bank account of this corporation, in reference to this subject, to this date; as all plans were cancelled or could not be completed as everyone had hoped for.”
48. On November 15, 2005 and December 2, 2005, the Division sent additional correspondence to the Respondents requesting additional information.
49. On or about December 9, 2005 and December 27, 2005, J. Porterfield responded to the Division’s November 15, 2005 and December 2, 2005 letters by stating that:
- a. Porterfield Investments; Dove Enterprises; Southwest Cellular; and Tele-America, LLC have been closed.
 - b. That “no one mis-appropriated anyones [sic] funds.”
 - c. That J. Porterfield and L. Porterfield were not receiving any payroll or compensation from the company.

- d. That J. Porterfield had to borrow money to make payments for MR;
 - e. That all operations have been shut down due to the problems caused by MR.
50. A representative of the Enforcement Section of the Securities Division left a telephone message with J. Porterfield on December 19, 2005, requesting additional information.
51. To date, the Division has not received any response from the Respondent with regard to the Division's telephone message of December 19, 2005.

Additional Statement of Facts

52. A check of the records maintained by the Missouri Commissioner of Securities revealed no registration, granted exemption or notice filing indicating status as a "federal covered security" for any of the alleged securities offered by Respondents in Missouri.
53. Respondents were not registered to offer and sell securities in the State of Missouri.
54. Respondents offered and sold unregistered, nonexempt securities to a Missouri resident.
55. The securities offered and sold by the Respondents were not federal covered securities.
56. In connection with the offer, sale or purchase of a security to Missouri residents, the Respondents omitted to state the material fact that the Respondents were not registered to sell securities in the State of Missouri.
57. In connection with the offer or sale of a security, Respondents made untrue statements of material fact, including, but not limited to:
- a. J. Porterfield would assist MR in setting up a retirement account;
 - b. Investors would receive a rate of return on their investment funds of 2% to 6% a month;
 - c. Investors' funds would be used for business purposes only in Porterfield Investments or related entities;
 - d. The more funds invested the greater return;
 - e. The interest on MR's investment would be used to pay-off the borrowed funds from credit cards;
 - f. When MR's account balance reached \$100,000, the funds would be transferred into Porterfield Investments and MR would earn a 6% rate of return per month and receive stock in Porterfield Investments;
 - g. Porterfield would loan MR \$25,000 for the purpose of allowing MR to receive a greater return on MR's money;
58. In connection with the offer or sale of a security, Respondents omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, including, but not limited to:
- a. information regarding the financial condition of Porterfield Investments and Dove Enterprises and the other related entities;
 - b. the operating history of Porterfield Investments and Dove Enterprises and the other related entities;
 - c. information regarding J. Porterfield and L. Porterfield's investment and business experience and background;
 - d. the use of investors' funds, including, but not limited to, using the money for personal expenses and debts;
 - e. information regarding Respondents' payment history to investors; and/or
 - f. the risk factors associated with an investment in Porterfield Investments and/or Dove Enterprises.
59. The Division has information that J. Porterfield offered and solicited unregistered, non-exempt securities to at least one additional Missouri resident ("MR2"). MR2 was also a co-worker of MR and L. Porterfield at St. John's Regional Hospital. On or about September 2005, while at the hospital, L. Porterfield informed MR2 of a vehicle that the Porterfields were trying to sell.
60. On or about late September 2005, MR2 arranged to meet J. Porterfield at J. Porterfield's home to purchase the vehicle. After the purchase of the vehicle, J. Porterfield informed MR2 that J. Porterfield was seeking investors in Dove Enterprises and asked if MR2 would be interested in investing with J. Porterfield.
61. MR2 was told that J. Porterfield would pay 2% per month on a \$5,000 investment and up to 6% per month on a \$100,000

investment. J. Porterfield also informed MR2 that he was “juggling 6 different businesses dealing with cell phones.” Additionally, MR2 recalled receiving a card from J. Porterfield indicating a payout schedule if MR2 was to invest with him. MR2 did not invest.

Post-Cease & Desist Order Activities

62. On February 7, 2006, after the Enforcement Section filed a Petition for Order to Cease and Desist and Other Administrative Remedies, the Commissioner issued an Order to Cease and Desist and Order to Show Cause Why Civil Penalties and Costs Should not be Imposed (the “C&D Order”).
63. The C&D Order was served upon the Respondents on February 9, 2006.
64. On February 28, 2006, Respondent Jim Porterfield submitted a letter requesting a hearing in the matter and stating “I will need some time before any hearing date in order to raise money for attorney consultation”
65. On March 2, 2006, the Commissioner issued a Hearing Order/Notice of Filing/Notice of Hearing (the “Hearing Order”). The Hearing Order set a pre-hearing conference for April 18, 2006, and a hearing for May 24, 2006.
66. On April 17, 2006, the Commissioner received pleadings from Respondent Jim Porterfield titled “Answer to allegations.” In such pleadings Respondent Jim Porterfield requested “an extension of time before the first scheduled pre-hearing conference” and stated “I have not been able to obtain an attorney at this time. I will be able to obtain one before the 5th day of May, 2006.”
67. On April 18, 2006, the Commissioner issued an Order of Continuance which continued the pre-hearing conference to April 24, 2006.
68. On April 24, 2006, the Commissioner received letters from all Respondents and in which each Respondent stated that, on the advice of an attorney, it did “decline to participate” in the “pre-conference hearing [sic].” Each letter also stated that each Respondent did not have the funds needed to pay an attorney and would not have the funds available until May 5, 2006.
69. On April 24, 2006, the Commissioner issued an Order of Continuance reciting that a pre-hearing conference was held and noting the Respondents’ declination to participate. The April 24 order denied the Respondents’ request for a continuance to the extent that the Respondents’ requests for an extension were with regard to the scheduled pre-hearing conference, and recited that the hearing on the matter remained scheduled for May 24, 2006, and established a discovery schedule.
70. On May 24, 2006, Mary Hosmer received a letter from Respondent Jim Porterfield stating that he was “again requesting an extension of time of at least 10 days in order to obtain legal counsel.”
71. At the time schedule for the start of the May 24 hearing, the Commissioner and Mary Hosmer, on behalf of the Division, attempted to contact Respondent Jim Porterfield. Upon reaching him by telephone, Mr. Porterfield indicated that he had discovered a pre-paid legal services contract which would provide him with legal representation.
72. During the May 24 teleconference with Mr. Porterfield, the Commissioner contacted the law firm identified by Mr. Porterfield, Dubail Judge, and facilitated communications between Mr. Porterfield and the firm. The Commissioner then instructed Mr. Porterfield to contact Ms. Hosmer and to have his attorney enter an appearance by the close of business on May 25, 2006.
73. As of the date of this Order, which is 20 days since Mr. Porterfield was instructed to contact the Division, over one month since the date on which Mr. Porterfield claimed he would have counsel, and over four months since the Respondent first learned of this action, neither the Division nor the Commissioner have been contacted by the Respondents following the May 24 teleconference.
74. This Order is in the public interest.

II. CONCLUSIONS OF LAW

A. Statutes

75. Section 409.3-301, RSMo Supp. 2005, reads as follows:

It is unlawful for a person to offer or sell a security in this state unless:

1. The security is a federal covered security;
2. The security, transaction, or offer is exempted from registration under sections 409.2-201 to 409.2-203;
or
3. The security is registered under this act.

76. Section 409.1-102(26), RSMo Supp. 2005, defines “sale” to include “every contract of sale, contract to sell, or disposition

of, a security or interest in a security for value.” That same section defines “offer to sell” as “every attempt or offer to dispose of, or solicitation of an offer to purchase, a security or interest in a security for value.”

77. Section 409.1-102(28), RSMo Supp. 2005, includes, in part, “stock”, “certificate of interest or participation in a profit-sharing agreement”, and “investment contract” within the definition of a security.

78. Section 409.5-501, RSMo Supp. 2005, reads as follows:

It is unlawful for a person, in connection with the offer, sale, or purchase of a security, directly or indirectly:

1. To employ a device, scheme, or artifice to defraud;
2. To make an untrue statement of a material fact or to omit state a material fact necessary in order to make the statement made, in the light of the circumstances under which it is made, not misleading; or
3. To engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

79. Section 409.4-403(a) RSMo Supp. 2005 provides that it is unlawful for a person to transact business in this state as an investment adviser unless the person is registered as an investment adviser or is exempt from registration.

80. Section 409.6-604(a) RSMo Supp. 2005, reads as follows:

If the commissioner determines that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this act or a rule adopted or order issued under this act . . . the commissioner may: (1) Issue an order directing the person to cease and desist from engaging in the act, practice, or course of business or to take other action necessary or appropriate to comply with this act

81. Section 409.6-604(d) RSMo Supp. 2005, reads as follows: “In a final order under subsection (c), the commissioner may impose a civil penalty up to one thousand dollars for a single violation or up to ten thousand dollars for more than one violation.”

82. Section 409.6-604(e) RSMo Supp. 2005, reads as follows: “In a final order, the commissioner may charge the actual cost of an investigation or proceeding for a violation of this act These funds may be paid into the investor education and protection fund.”

83. §409.5-505, RSMo Supp. 2005, provides that it is unlawful for a person to make or cause to be made, in a record that is used in an action or proceeding or filed under this act, a statement that, at the time and in the light of the circumstances under which it was made, is false or misleading in a material respect, or, in connection with the statement, to omit to state a material fact necessary to make the statement made, in the light of the circumstances under which it was made, not false or misleading.

84. Omitting to state a material fact necessary to make the statement made not misleading, in connection with the offer, sale or purchase of a security, constitutes an illegal act, practice, or course of business under §409.6-604(a), RSMo Supp. 2005.

85. Making an untrue statement of material fact, in connection with the offer, sale or purchase of a security, constitutes an illegal act, practice, or course of business under §409.6-604(a), RSMo Supp. 2005.

86. The offer or sale of unregistered securities as described in the above allegations of fact constitutes an illegal act, practice, or course of business under §409.6-604(a), RSMo Supp. 2005.

87. The Missouri Commissioner of Securities is empowered to issue such orders as he may deem just. §409.6-604(a), RSMo Supp. 2005.

B. Statutory Violations

Count I:

Offering or Selling Nonexempt, Unregistered Securities

88. The Commissioner incorporates by reference paragraphs 1 through 87 as though fully set forth herein.

89. Respondents violated § 409.3-301 when they offered or sold securities in Missouri without the securities being (1) a federal-covered security, (2) exempt from registration under §§ 409.2-201 or 409.2-202, or (3) registered under the Missouri Securities Act of 2003.

90. The “stock” and investment in Dove Enterprises and Porterfield Investments qualify as “securities” under § 409.1-102(28), RSMo Supp. 2005.

91. Respondents actions for offering securities to Missouri Residents is an “attempt or offer to dispose of, or solicitation of an offer to purchase, a security or interest in a security for value,” which satisfies the definition of “offer to sell” under § 409.1-

92. At all times relevant, records maintained by the Missouri Commissioner of Securities contained no registration, granted exemption or notice filing indicating status as a "federal covered security" for any of the securities allegedly issued, offered or sold by Respondents in Missouri.

Count II:

Omitting to State Material Facts in Connection with the Sale of a Security

93. The Commissioner incorporates by reference paragraphs 1 through 87 as though fully set forth herein.
94. Respondents violated § 409.5-501(2) when, in connection with the offer and sale of securities, they omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, including, but not limited to:
- a. information regarding Porterfield Investments and Dove Enterprises and other related entities' financial condition;
 - b. the operating history of Porterfield Investments and Dove Enterprises and other related entities;
 - c. information regarding J. Porterfield and L. Porterfield's investment and business experience and background;
 - d. the true nature of Respondents' intended and actual use of investors' funds, including, but not limited to, using the money for personal expenses and debts;
 - e. information regarding Respondents' payment history to investors; and/or
 - f. the risk factors of the investment.

Count III:

Making an Untrue Statement of a Material Fact in Connection with the Sale of a Security

95. The Commissioner incorporates by reference paragraphs 1 through 87 as though fully set forth herein.
96. Respondents violated § 409.5-501(2) when, in connection with the offer and sale of securities, they made untrue statements of material fact, including, but not limited to, the following:
- a. Porterfield would assist MR in setting up a retirement account.
 - b. Porterfield Investments was able to pay dividends;
 - c. Investors would receive a rate of return on their investment funds of 2% to 6% a month;
 - d. Investors' funds would be used for business purposes only in Porterfield Investments or related entities;
 - e. The more funds one invested the greater return one would receive on his or her money;
 - f. MR should apply for credit and the interest on MR's investment would be used to pay-off the borrowed funds;
 - g. Once MR's account balance reached \$100,000, the funds would be transferred into Porterfield Investments and MR would earn 6% per month and receive stock in Porterfield Investments;
 - h. J. Porterfield would loan him \$25,000 for the purpose of allowing MR to receive a greater return on MR's money;
 - i. Porterfield Investments maintained a Board of Directors and MR was made a member; and/or
 - j. MR's stock in Porterfield would be sold for \$150,000 and Porterfield Investments was going to be sold on September 14, 2005.

COUNT IV:

Filing a False or Misleading Statement with the Securities Division in Connection with an Ongoing Investigation of Respondents in Violation of Section 409.5-505 of the Missouri Securities Act of 2003

97. The Commissioner incorporates by reference paragraphs 1 through 87 as though fully set forth herein.
98. On October 27, 2005, November 15, 2005 and December 2, 2005, the Securities Division sent a letter of inquiry to Respondents that requested a claim of exemption from registration or exception from definition upon which Respondents relied in offering unregistered securities or any claim that the securities were federal covered securities. The letter also

requested additional information about the offers to Missouri residents and advised Respondents that failure to respond within a reasonable time as set by the Commissioner constituted proper grounds for the entry of an order suspending the right to offer and sell securities in the State of Missouri.

99. On November 4, 2005 and December 9, 2005, the Division received a response from Respondents stating, in part, the following representations:

- a. That Porterfield Investments, Inc. "has not done business in the state of Missouri since 1993";
- b. That J. Porterfield, nor anyone else in the corporation, has been soliciting the sale of stock in the state of Missouri;
- c. That J. Porterfield had, "personally borrowed money and made credit card payments for MR because MR did not have the money and MR's payments were late";
- d. That "no actual funds have been deposited into any bank account of this corporation, in reference to this subject, to this date; as all plans were cancelled or could not be completed as everyone had hoped for";
- e. That "no one mis-appropriated anyones [sic] funds"; and
- f. That J. Porterfield and L. Porterfield were not receiving any payroll or compensation from the company.

100. The above representations made to the Division pursuant to a request for information made by the Division, at the time and in the light of the circumstances under which they were made, were false or misleading in a material respect or omitted other material facts necessary to make the statement made, in the light of the circumstances under which it was made, not false or misleading.

ORDER

NOW, THEREFORE, it is hereby ordered that the C&D Order is made FINAL as to all Respondents and that these Respondents, their agents, employees and servants, and all other persons participating in or about to participate in the above-described violations with knowledge of this order are prohibited from:

- A. offering or selling securities, including stock in any of the Respondent corporations or interests in the Respondent limited liability company, or any other securities as defined by § 400.9-102(28), RSMo., in the State of Missouri unless those securities are registered with the Securities Division of the Office of the Secretary of State in accordance with the provisions of § 409.3-304, RSMo.; and
- B. violating or materially aiding in any violation of § 409.5-501, RSMo., by, in connection with the offer or sale of securities, including stock in any of the Respondent corporations or interests in the Respondent limited liability company, or any other securities as defined by § 400.9-102(28), RSMo., making an untrue statement of a material fact or omitting to state a material fact necessary in order to make the statement made, in the light of the circumstances under which it is made, not misleading.

IT IS FURTHER ORDERED that Respondents, their agents, employees and servants, and all other persons participating in or about to participate in the above-described violations with knowledge of this order are prohibited from engaging in the acts, practices and courses of business described in paragraphs 9-12, 14-15, 19-22, 24-29, 37-38, 40-42, and 44-45, above.

IT IS FURTHER ORDERED that, pursuant to § 409.6-604(d), RSMo., Respondent Jim Porterfield shall pay a total sum of five thousand dollars (\$5,000) to the State of Missouri as civil penalties for more than one violation of each of Sections 409.3-301 and 409.5-501(2), RSMo. This amount shall be sent to the Secretary of State on or before July 14, 2006, and made payable to the State of Missouri, and the Secretary of State shall forward these funds to the state treasury for the benefit of county and township school funds as provided in Article IX, Section 7 of the Constitution of Missouri.

IT IS FURTHER ORDERED that, pursuant to § 409.6-604(d), RSMo., Respondents Porterfield Investments, Inc., Dove Enterprises, Inc., Southwest Cellular, Inc., and Tele-America, LLC, shall pay a combined, total sum of five thousand dollars (\$5,000) to the State of Missouri as civil penalties for more than one violation of each of Sections 409.3-301 and 409.5-501(2), RSMo. Respondents Porterfield Investments, Inc., Dove Enterprises, Inc., Southwest Cellular, Inc., and Tele-America, LLC, shall be jointly and severally liable for this civil penalty. This amount shall be sent to the Secretary of State on or before July 14, 2006, and made payable to the State of Missouri, and the Secretary of State shall forward these funds to the state treasury for the benefit of county and township school funds as provided in Article IX, Section 7 of the Constitution of Missouri.

IT IS FURTHER ORDERED that pursuant to § 409.6-604(e), RSMo., Respondents Jim Porterfield, Linda Porterfield, Porterfield Investments, Inc., Dove Enterprises, Inc., Southwest Cellular, Inc., and Tele-America, LLC, shall pay the additional, total sum of four thousand and twenty dollars (\$4,020) as reimbursement for the costs of the investigation and administration of this matter. This amount shall be sent to the Secretary of State on or before July 14, 2006, and made payable to the Missouri Secretary of State's Investor Education and Protection Fund. Respondents Jim Porterfield, Linda Porterfield, Porterfield Investments, Inc., Dove Enterprises, Inc., Southwest Cellular, Inc., and Tele-America, LLC, shall be jointly and severally liable for this amount.

IT IS FURTHER ORDERED that pursuant Section 409.6-604(f), RSMo., this matter shall be referred to the Attorney General's

Office to collect the fines and costs described in this Final Order.

SO ORDERED:

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY, MISSOURI THIS 19TH DAY OF JUNE, 2006

ROBIN CARNAHAN
SECRETARY OF STATE

(Signed/Sealed)
MATTHEW D. KITZI
COMMISSIONER OF SECURITIES

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- 1 The "Account Statement" titled Dove Enterprises, Inc. dated November 18, 2004, possessed a balance of \$25,001.85. The statement also referenced investor account number 5977. The statement indicated that MR's account would accrue interest at 4% per month beginning on 1/01/05.
 - 2 MR never received a check for the \$25,000 loan, but MR agreed in signing a promissory note with J. Porterfield indicating such loan.
 - 3 Bank of Billings is located in the State of Missouri with an address of 202 N.E. Washington, Billings, Missouri 65610.
 - 4 Peoples Bank of the Ozarks is located in the State of Missouri with an address of P.O. Box 728, Nixa, Missouri 65714.
 - 5 On January 4, 2005, one check was made payable to Chrysler Financial in the amount of \$1,223.33 and had "Linda Porterfield 3 Payments Account # 1006558941" written on the check's memo line. The second check, dated January 2, 2005, was also made payable to Chrysler Financial in the amount of \$880.40 and had "Linda Porterfield Account # 1006655706 Jan. & Feb. 05 Pmts." written on the check's memo line.
 - 6 Records indicate that Respondents residential address is 114 Southern Cross Drive, Clever, Missouri.