

IRVING L. FAUGHT
ADMINISTRATOR



MARY FALLIN
GOVERNOR

STATE OF OKLAHOMA
DEPARTMENT OF SECURITIES

MEMORANDUM

To: *Irving L. Faught, Administrator*

From: *Melanie Hall, Deputy Administrator*

Date: *May 5, 2016*

Re: **ENFORCEMENT REPORT**

Attached is the report of the enforcement activities of the Department for the months of March and April, 2016.

Attachment

h/home/londonb/EnforcementReports/16_Enf-Reports_Mar-Apr_2016.doc

**OKLAHOMA DEPARTMENT OF SECURITIES
ENFORCEMENT ACTIVITIES
MARCH AND APRIL 2016**

		FY-16	FY-15
		YTD	YTD
I.	Enforcement Files		
	a. Enforcement Files Opened	58	63
	1. Securities Act	56	61
	2. Business Opportunity Sales Act	2	1
	3. Other	0	1
	b. Enforcement Files Closed	85	71
	c. Active Enforcement Files	156	180
II.	Actions Taken		
	a. Administrative Subpoenas	55	0
	1. Securities Act	55	0
	2. Business Opportunity Sales Act	0	0
	b. Orders Initiating Investigation	0	0
	1. Securities Act	0	0
	2. Business Opportunity Sales Act	0	0
	c. Summary Orders	0	0
	1. Securities Act	0	0
	2. Business Opportunity Sales Act	0	0
	d. Notices of Opportunity for Hearing Served	5	4
	1. Securities Act-Notices	5	3
	i. Hearing Set	1	1
	ii. Hearings Held	0	0
	2. Business Opportunity Sales Act Notices	0	1
	i. Hearing Set	0	0
	ii. Hearings Held	0	0

		FY-16	FY-15
		YTD	YTD
	2. Business Opportunity Sales Act Notices	0	1
	i. Hearing Set	0	0
	ii. Hearings Held	0	0
	e. Other Orders	19	20
	1. Securities Act	19	19
	2. Business Opportunity Sales Act	0	1
	f. Public Undertakings/Agreements	10	5
	1. Securities Act	10	5
	2. Business Opportunity Sales Act	0	0
	g. Confidential Settlement Agreements	0	0
	1. Securities Act	0	0
	2. Business Opportunity Sales Act	0	0
	h. Letters of Caution	2	5
	1. Securities Act	2	5
	2. Business Opportunity Sales Act	0	0
	i. Appeals from Final Orders	0	1
	1. Securities Act	0	1
	2. Business Opportunity Sales Act	0	0
	j. Civil Penalties - Amounts Collected	\$89,520.17	\$221,690.11
	1. Securities Act	\$89,520.17	\$221,690.11
	2. Business Opportunity Sales Act	\$0	\$0
	k. Administrative Costs - Amounts Collected	\$0	\$0
	1. Securities Act	\$0	\$0
	2. Business Opportunity Sales Act	\$0	\$0

		FY-16	FY-15
		YTD	YTD
I. Civil Enforcement Activities			
1. Securities Act			
i. Subpoenas Issued		0	9
ii. Civil Petitions Filed		2	2
iii. Civil Trials Held		0	0
iv. Criminal Referrals		2	1
v. Civil Appeals Filed		0	1
vi. Administrative or other Court Appearances (including pleadings filed)		50	72
2. Business Opportunity Sales Act			
i. Subpoenas Issued		0	0
ii. Civil Petitions Filed		0	0
iii. Civil Trials Held		0	0
iv. Criminal Referrals		0	0
v. Civil Appeals Filed		0	0
vi. Administrative or other Court Appearances (including pleadings filed)		0	0
m. Miscellaneous Activities			
1. Public Information/Press Releases (copy attached)		0	0
2. Trainings/Seminars Attended		13	8
3. Coordinated Activities		0	0
III. Inquiries and Complaints			
a. Inquiries		31	38
b. Referrals from Other Oklahoma Agencies		3	2
c. Referrals from Out of State Agencies		3	2

Administrative Actions

SUMMARY

In the Matter of: RBC Capital Markets, LLC
ODS File No. 14-078

RBC Capital Markets, LLC (“RBC”) is a broker-dealer registered in the state of Oklahoma. State securities regulators from multiple jurisdictions conducted a coordinated investigation into the registration of RBC client associates and RBC’s supervisory systems with respect thereto. On March 17, 2016, the Administrator of the Department issued a Consent Order wherein RBC agreed to certain changes in its supervisory system with respect to the registration of client associates. RBC also agreed to pay the sum of \$41,520.17 to the Department’s Investor Education Revolving Fund.

In the Matter of: ThinAir Wireless, Inc. and Howard “Trip” Wakefield
ODS File No. 15-017

On March 4, 2016, the Administrator issued an order to cease and desist, and a notice of opportunity for hearing, to ThinAir Wireless, Inc. (“ThinAir”) and Howard “Trip” Wakefield (“Wakefield”) of Houston, Texas. ThinAir and Wakefield violated Sections 1-301, 1-402 and 1-501 of the Oklahoma Uniform Securities Act of 2004 (“Act”) in connection with the offer and sale of a convertible promissory note.

Respondents failed to request a hearing and the order to cease and desist became final by operation of law. On April 4, the Administrator issued a final cease and desist order against both respondents.

In the Matter of: Halcyon Cabot Partners, Ltd.
ODS File No. 16-043

Halcyon Cabot Partners, Ltd. (“HCP”) became registered under the Act as a broker-dealer in July of 2010. On or about October 6, 2015, FINRA entered an order expelling HCP from membership in FINRA on the basis that HCP had willfully violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5(a) and (c) thereunder; NASD Rules 2310, 3010, and 3110(a); and FINRA Rules 2010, 2111, 2020, 3310(a), 3310(d) and 4511, from December 2010 through May 2013. On March 3, 2016, the Administrator issued an order cancelling the registration of HCP.

In the Matter of: Womack Investment Advisers, Inc. and Gregory Kent Womack
ODS File No. 15-053

In connection with a routine examination of the books and records of Womack Investment Advisers, Inc. (“WIA”), Gregory Womack (“Womack”) represented to the Department that two WIA proprietary funds, the Trinity Global Growth & Income Fund, L.P. and

the Trinity Gold Fund, L.P. (“Trinity Funds”), “are no more risky than an open-ended mutual fund that invests in marketable securities.” The Trinity Funds are private, unregistered investment pools that are not subject to the numerous regulations that apply to mutual funds for the protection of investors. The matter was closed on March 15, 2016, with an undertaking to fully comply with all provisions of the Act and the Rules of the Oklahoma Securities Commission and the Administrator of the Department of Securities (“Rules”) and to refrain from making the representation specified above in connection with the offer or sale of securities or the rendering of investment advice. The undertaking was made by WIA and Womack without admitting or denying any violation of the Act or Rules.

Civil Actions

SUMMARY

**Oklahoma Department of Securities *ex rel.* Irving L. Faught, Administrator v.
2001 Trinity Fund, L.L.C. and Robert Arrowood
Civil Case No. CJ-2012-6164**

On October 10, 2012, the Department filed a Petition for Permanent Injunction and Other Equitable Relief in the District Court of Oklahoma County against 2001 Trinity Fund, L.L.C. (2001 Trinity Fund) and Robert Arrowood (Arrowood) (collectively, the “Defendants”) of Norman, Oklahoma, alleging violations of Sections 1-301, 1-402 and 1-501 of the Oklahoma Uniform Securities Act of 2004 (Act), in connection with the offer and sale of promissory notes to investors. Investor proceeds, totaling over \$450,000, were to be used to buy oil and gas leases for eventual resale. The proceeds were not used as represented. On October 23, L. Win Holbrook, bankruptcy trustee, filed his entry of appearance as counsel for 2001 Trinity Fund and requested an extension of time to file an answer. During November 2012, answers to the Department’s petition were filed by the Defendants.

On June 5, 2013, Arrowood filed a motion for summary judgment. On August 6, Judge Roger Stuart entered orders denying Arrowood’s motion.

On September 10, Arrowood filed a notice to take the deposition of the Administrator. On September 17, the Department filed a motion to quash Arrowood’s deposition notice and to request a protective order. On September 20, Arrowood filed a motion for a protective order. On November 13, Judge Stuart granted the Department’s motion to quash the deposition notice and denied Arrowood’s motion for a protective order.

On December 12, Arrowood filed a second motion for summary judgment thereby renewing his request to dismiss the case against him. On January 3, 2014, the Department filed its response to Arrowood’s renewed motion. On May 30, 2014, a hearing was held on Arrowood’s renewed motion for summary judgment. Judge Stuart denied the motion.

On August 5, Arrowood filed a Third Party Petition in this matter against Irving L. Faught and Shaun M. Mullins, in their individual capacities, alleging defamation, invasion of privacy, and intentional interference with business relations. On August 21, the Department filed a motion to strike the Third Party Petition. On September 8, Arrowood filed a notice to withdraw the Third Party Petition.

On November 19, the Department filed a motion to bifurcate the trial issues and to establish a claims procedure.

During the month of December, Arrowood filed his response in opposition to the Department’s motion to bifurcate the trial issues and to establish a claims procedure. The

Department filed its reply. The Department filed an application to expand the length of its motion for a summary judgment. The application was granted.

On January 5, 2015, Arrowood filed his preliminary list of witnesses and exhibits. On January 7, the Department filed its final list of witnesses and exhibits. On January 16, the Department filed its Motion for Partial Summary Judgment requesting the Court to find that the notes at issue are securities; that the securities were not properly registered under the Act; and that Arrowood offered and sold the securities without benefit of registration under the Act.

On February 10, Arrowood filed a request for an extension of time to respond to the Department's motion. Arrowood's request was granted. On February 23, Arrowood filed his response and an objection to the Department's motion for partial summary judgment.

On May 7, the Department filed its reply to Arrowood's response and objection to the Department's motion for partial summary judgment. On May 15, Judge Stuart granted the Department's motion for partial summary judgment finding the notes at issue to be securities.

On September 10, Judge Stuart denied the Department's motion filed on November 19, 2014. On September 14, Judge Stuart entered a Pretrial Conference Order wherein a trial date is set for April 4, 2016.

On March 10, 2016, the Defendants consented to the entry of a *Final Order of Permanent Injunction* and waived any right to appeal the order. The Department agreed to dismiss the case with prejudice. Judge Stuart issued an order permanently enjoining Defendants from, directly or indirectly, offering and/or selling any security, or transacting business as an agent, broker-dealer, investment adviser and/or investment adviser representative, as defined under the Act, in and/or from Oklahoma. Arrowood is also enjoined from serving as an officer, director, manager or control person of an entity offering or selling, in and/or from Oklahoma, any security as defined under the Act.

**Oklahoma Department of Securities *ex rel.* Irving L. Faught, Administrator v. Seabrooke Investments, LLC; Seabrooke Realty, LLC; Oakbrooke Homes, LLC; Bricktown Capital, LLC; KAT Properties, LLC; Cherry Hill, LLC *dba* Cherry Hill Apartments; Tom W. Seabrooke; and Judith Karyn Seabrooke
Civil Case No. CJ-2014-4515**

On August 11, 2014, the Department filed a Petition for Permanent Injunction and Other Equitable Relief in the District Court of Oklahoma County against the above-named Defendants, all of Oklahoma City, Oklahoma, alleging violations of Sections 1-301, 1-402 and 1-501 of the Act. The Department also filed an Application for a Temporary Restraining Order, Order Freezing Assets, Order Appointing Receiver, Order for Accounting and Temporary Injunction. On the same date, Judge Patricia G. Parrish issued a Temporary Restraining Order, Order Appointing Receiver, Order Freezing Assets, and Order for Accounting. Judge Parrish appointed Ryan Leonard as Receiver. On August 18, Robert Edinger filed his entry of appearance as counsel for the Receiver. On August 19, the Defendants filed a motion to vacate the temporary

restraining order. On August 19, a hearing was held on the Department's application for a temporary injunction and Defendants' motion to vacate the temporary restraining order. Judge Parrish ordered the entry of a temporary injunction and ordered that the asset freeze, with the exception of one bank account, and the receivership remain in effect.

On September 9, a hearing was held on the Receiver's emergency motion to release the Bricktown Hotel and Convention Center as an asset of the Receivership. The Receiver believed that the value of the hotel was less than the value of its existing mortgages. The Court ordered that the Bricktown Hotel and Convention Center be released from the asset freeze and receivership. Upon oral motion by the Seabrookes' counsel, the Court considered compensation from the receivership estate for Tom and Karyn Seabrooke. The Court authorized a one-time \$4,000 payment to Tom Seabrooke for his prior services in management of the hotel. The Court further authorized Karyn Seabrooke to receive a monthly payment of \$2,500 for property management services so long as the Receiver continues to utilize her services and one-half of all real estate commissions earned by Seabrooke Realty, LLC so long as she is licensed to sell real estate, employed by Seabrooke Realty, LLC, and utilized by the Receiver in that regard.

After the Court's September compensation ruling, the Department filed a motion to remove Tom and Karyn Seabrooke from employment by the receivership. This motion was heard on October 14. The Court denied the Department's motion and ruled that Karyn Seabrooke would continue to receive monthly compensation in the amount of \$2,500.

During the month of November, 2014, the Court approved the Receiver's fee application for the month of September and the Receiver filed an application for the approval of his October 2014 fees. An agreed order was entered for the sale of the Cherry Hill Apartments located at 4708 S.E. 44th Street, Oklahoma City, Oklahoma ("Cherry Hill Apartments"). The Department filed a motion to retain the commission from the receivership sale of the Cherry Hill Apartments. The Defendants filed an objection to the Department's motion to retain the commission and the Department filed a reply. An agreed order was entered for the sale of property located at 2528 N.W. 12th Street in Oklahoma City, Oklahoma. An order was issued memorializing a September 2014 decision of the Court approving compensation to Tom and Karyn Seabrooke.

During the month of December, 2014, the Receiver filed a motion for contempt and for a declaratory order against First Commercial Bank ("FCB") regarding the release of funds escrowed in connection with the sale of the Cherry Hill Apartments. Judge Parrish ordered the commission from the sale of the Cherry Hill Apartments to be escrowed. The Receiver filed an application for the Court to establish a claims procedure for creditors and/or investors. First National Bank of Weatherford ("FNB-Weatherford") filed a motion for the release of the Oakbrooke Lawton Property from the Receivership estate. The Court approved the Receiver's October fee application and the Receiver filed an application for an order approving fees and expenses for the month of November.

During the month of January 2015, FNB-Weatherford filed a motion for the release of the Oakbrooke College Park Property from the Receivership estate and a supplement to its motion for the release of the Oakbrooke Lawton Property. An agreed order was entered releasing the

property from the Receivership estate. Quail Creek Bank (“QCB”) filed a motion to disburse escrowed funds to QCB. Bricktown Capital LLC (“Bricktown Capital”) filed a motion to disburse escrowed funds to Bricktown Capital and for the payment of expenses of hotel vendors, and an objection to QCB’s motion for disbursement. QCB filed an objection to Bricktown Capital’s motion for disbursement of escrowed funds and for the payment of expenses of hotel vendors. The Department and the Receiver filed responses to QCB’s motion. The Department also filed a response to Bricktown Capital’s motion. QCB filed a response to all parties’ objections to its motion. Wayne Doyle, a non-party, filed a motion for leave to intervene. An agreed protective order was issued relating to certain information requested from Wayne Doyle. The Court approved the Receiver’s November fee application. An agreed order was entered establishing a claims procedure and setting a March 15, 2014 deadline for the filing of claims.

During the month of February, agreed orders were entered authorizing conditional intervention by FCB and Wayne Doyle. FCB filed its response to the Receiver’s contempt motion and the application for an order to disburse escrowed attorney’s fees relating to the Cherry Hill Apartments. Ilana D. Sharpe filed her entry of appearance as counsel for the Defendants. The Receiver filed a response to Bricktown Capital’s motion for payment to hotel vendors. A hearing was held on February 6, wherein the Court granted, in part, QCB’s motion to disburse escrowed funds. The Court ordered the payment of \$6,064.20 to QCB and the payment of the remaining escrowed funds to the Receiver. At the hearing, the Court postponed a decision on the Defendants’ motion to pay hotel vendors. An order was issued memorializing the February 6 rulings. Bricktown Capital filed a motion to strike the order and to substitute a corrected order. Agreed orders were entered releasing the Oakbrooke College Park Property from the Receivership estate and continuing the hearing on the FNB-Weatherford intervention motion. Alicia Holtslander-Petrone filed an emergency application to intervene and a motion for an emergency order for the disposition of assets relating to Receivership properties on 17th Street in Oklahoma City, Oklahoma. The Receiver filed a fee application for December 2014 and January 2015. Defendants filed an objection to this fee application. An agreed order was entered for the sale of property located at 1609 N.W. 15th Street, Oklahoma City, Oklahoma.

During the months of March and April, an agreed order was entered for the sale of properties located on 17th Street in Oklahoma City, Oklahoma. The Receiver’s fee application for December 2014 and January 2015 was granted. The Receiver, Intervenor Wayne Doyle, and Defendant Bricktown Capital filed a Joint Motion for Interpleader requesting that the Court authorize the deposit with the court clerk of the balance of the proceeds from the sale of the Bricktown Hotel (\$187,585.90). The motion was granted. Doyle filed a motion asking for disbursement of the interpled funds plus an additional \$11,733.74 as payment on the secured indebtedness owed him. The Receiver filed a fee application for February 2015. Defendants filed an objection to this fee application. The Receiver’s fee application was granted. The Department and the Receiver filed responses to FCB’s application for an order to disburse escrowed fees. Both parties requested the release of the escrowed funds to the Receiver, while preserving the right of FCB to seek reimbursement of attorney fees in the claims process.

During the months of May and June, the Receiver filed a fee application for March 2015 to which Defendants filed an objection. The Court granted the application, as revised. Agreed

orders were entered for the sale of the Briargate Plaza Apartments and properties located on Indiana Avenue and Northwest 11th, Northwest 17th and Northwest 21st Streets in Oklahoma City, Oklahoma. An application to intervene and a motion for an order to determine the right to proceeds from the sale of real estate were filed by Peggy Johnston and HPJ Family LP. A hearing is set for August 5th. The Department and Receiver filed responses to Doyle's motion asking for disbursement of the interpled funds. Doyle filed a reply to the Department's response. The Receiver filed notice of his *in camera* submission to the Court relating to his objection to Doyle's motion to disburse interpled funds and the Receiver's motion to retain the interpled funds as a receivership asset. Doyle filed a reply to the Receiver's objection and motion. An evidentiary hearing date is set for August 5th on Doyle's motion to disburse. The Receiver filed fee applications for April and May 2015.

During the months of July and August, the Receiver filed an amended fee application for April through May 2015; a fee application for June 2015; and an application for distributions on certain claims relating to Oklahoma City properties located at 1405 N.W. 17th Street, 1409 N.W. 17th Street, 1413 N.W. 17th Street, 1419 N.W. 17th Street, 1507 N.W. 17th Street, 1609 N.W. 15th Street, and 425 N.W. 11th Street. On August 24, James A. Slayton filed his entry of appearance as counsel for Peggy Johnston; HPJ Family LP; and HPJ Family Trust.

During the months of September and October, Terry D. Kordeliski II filed a motion to withdraw as counsel for Peggy Johnston, HPJ Family Trust, and HPJ Family LP. The Court granted the Receiver's fee application for June 2015. The Receiver filed fee applications for July, August and September. The Court granted the applications. An agreed order was entered for intervention by Peggy Johnston, HPJ Family Trust, and HPJ Family LP. An order was entered on the Receiver's application for distributions on certain claims relating to Oklahoma City properties located at 1419 N.W. 17th Street and 1507 N.W. 17th Street. Judge Parrish ordered the interpled funds from the sale of the Bricktown Hotel be disbursed by the District Court Clerk to the Receiver. An agreed order was entered for the sale of eight lots in the Ravenswood Manor Addition in Oklahoma City.

During the months of November and December, Mr. Kordeliski's motion to withdraw as counsel for Peggy Johnston, HPJ Family Trust, and HPJ Family LP was granted. The Receiver filed fee applications for October and November. The Court granted the Receiver's fee applications for September and October. Defendants consented to the entries of permanent injunctions and waived any right to appeal the order. Judge Parrish issued orders against Defendants permanently enjoining them from offering and/or selling securities in and/or from Oklahoma. The Receiver filed his report on claims and requested the Court's authority to make distributions. The judge issued an order requiring notice to claimants of the Receiver's report and their opportunity to respond.

During the months of January and February 2016, entries of appearance were filed by J. Scott Henderson and Kevin Blaney as counsel for a claimant, Advance Restaurant Finance *nka* ARF Financial LLC ("ARF"). Objections and responses to the Receiver's recommendations as to claims were filed by ARF, FNB-Weatherford, and Wayne Doyle. The Department and the Receiver filed their responses to the objections. Wayne Doyle filed a supplement to his

objection. The Court granted the Receiver's fee application for November 2015. The Receiver filed a fee application for December 2015 and January 2016. A hearing on the Receiver's recommendations as to the claims filed was held on February 29, 2016; however, the judge did not make a ruling at the conclusion of the hearing.

During the months of March and April, the Receiver filed fee applications for the months of February and March 2016. The Court granted the Receiver's fee applications for December 2015 through February 2016. The Receiver filed a supplement to his report on claims and filed a report regarding the status of funds available for distribution. On April 27, Judge Parrish entered an order approving all recommendations made by the Receiver and the late-filed claim of James Bradley; denying the claims of Doyle, ARF and FNB-Weatherford; and directing the Receiver to make distributions.

**Oklahoma Department of Securities *ex rel.* Irving L. Faught, Administrator v.
Roland L. Cowperthwaite
Civil Case No. CJ-2016-1678**

On March 31, 2016, the Department filed a Petition for Permanent Injunction and Other Relief ("Petition") in the District Court of Oklahoma County against Roland L. Cowperthwaite, of Edmond, Oklahoma, alleging violations of Sections 1-403 and 1-502 of the Act. The Department alleged that the Defendant transacted business in this state as an unregistered investment adviser and made material omissions in connection therewith. The Department also filed a motion for a temporary injunction.

On April 12, 2016, D. Michael O'Neil filed his entry of appearance as counsel for the Defendant. On April 19, Defendant filed his answer to the Department's petition. On April 25, an Agreed Order of Temporary Injunction was entered by Judge Dixon.