

1 STATE OF WASHINGTON
2 DEPARTMENT OF FINANCIAL INSTITUTIONS
3 SECURITIES DIVISION

4 IN THE MATTER OF DETERMINING) Order Number S-04-013-04-TO01
5 Whether there has been a violation of the)
6 Securities Act of Washington by:) SUMMARY ORDER TO CEASE AND
7 The Mainstream Fund Inc. and Lamar) DESIST and NOTICE OF INTENT TO
8 Thomas,) IMPOSE FINES AND RECOVER COSTS
9 Respondents.)

10 THE STATE OF WASHINGTON TO: The Mainstream Fund Inc., Lamar Thomas

11 **STATEMENT OF CHARGES**

12 Please take notice that the Securities Administrator of the State of Washington has reason
13 to believe that the Respondents, the Mainstream Fund Inc. and Lamar Thomas, have each
14 violated the Securities Act of Washington and that their violations justify the entry of an order of
15 the Securities Administrator under RCW 21.20.390 against each to cease and desist from such
16 violations. The Securities Administrator finds that delay in ordering the Respondents to cease
17 and desist from such violations would be hazardous to the investors and to the public and that a
18 Summary Order to Cease and Desist should be entered immediately. The Securities
19 Administrator finds as follows:

20 **TENTATIVE FINDINGS OF FACT**

21 **PARTIES**

22
23 1. The Mainstream Fund Inc. ("Mainstream Fund") is a Washington corporation with its
24 principal place of business in Seattle, Washington. The activities of the Mainstream Fund
25 include offering or selling interests in an investment fund.

SUMMARY ORDER TO CEASE AND DESIST and 1
NOTICE OF INTENT TO IMPOSE FINES AND
RECOVER COSTS

DEPARTMENT OF FINANCIAL INSTITUTIONS
Securities Division
PO Box 9033
Olympia, WA 98507-9033
360-902-8760

1 6. Thomas gave the Residents a “StockScouter” report on Starbucks.¹ The report rated
2 Starbucks on a variety of grounds at the time and gave it an overall rating of 4 out of 10.

3 7. Thomas also gave the Residents a Qualified Purchaser Questionnaire, Representation
4 Agreement and Subscription Agreement, and a Confidential Offering Memorandum. These
5 documents offered equity interests in an unregistered hedge fund. Among other things, the
6 documents indicated that the offering is exempt from securities registration under the federal
7 Securities Act § 4(2), Regulation D, and similar state laws; cross-referenced an Operating
8 Agreement that was not included; referred to Thomas as a General Partner and potential
9 investors as Partners; restricted the transferability of securities sold under the agreement;
10 described the allocation of positions the Mainstream Fund would acquire to meet its investment
11 objectives; and described Thomas’s fee structure.
12

13 8. Thomas encouraged one of the Residents to transfer IRA funds to the Mainstream
14 Fund. The Resident declined to do so.

15 9. The Residents did decide to invest approximately \$5,700 with Thomas. They gave
16 Thomas a check for \$5,700 made payable to the Mainstream Fund. On the memo line of the
17 check they wrote, “for ½ Block of Starbuck.”
18

19 10. Thomas cashed the check at the MoneyTree, a check cashing business. Thomas
20 never purchased for or provided to the Residents any shares in Starbucks.

21 11. Thomas subsequently told the Residents that Starbucks was unable to honor their
22 stock order because Starbucks had acquired Tully’s and needed to protect current investors. He
23 told the Residents that Starbucks would refund their money. When the refund never came,
24

25 ¹ MSN Money offers a free online service also known as StockScouter. The information Thomas gave the Residents appears to use a very similar format.

1 Thomas later told the Residents that he would return their money. To date, Thomas has not
2 refunded the Residents their money.

3 MISREPRESENTATIONS AND OMISSIONS

4 12. Thomas stated that he was a licensed stockbroker with license number 602 197 0645.
5 This statement was false or materially misleading. Thomas is not now and never has been
6 licensed to sell stock or any other security. 602 197 065 is the Uniform Business Identifier for
7 the Mainstream Fund.
8

9 13. Thomas failed to provide the Residents with material information concerning their
10 investment such as financial statements or information for the Mainstream Fund or himself in
11 view of the “guarantee” he made to the Residents of their money.

12 14. Thomas provided documents indicating that the securities he was offering were
13 exempt from registration under the federal Securities Act § 4(2) and Regulation D, and similar
14 state laws. This statement was false or materially misleading as Thomas had simply copied the
15 language, did not file a notice of claim of exemption, and did not otherwise comply with the
16 Regulation D and similar Washington State legal requirements.

17 REGISTRATION STATUS

18 15. Respondents are not currently registered to sell securities as a securities broker-dealer
19 or salesperson in the state of Washington and have not previously been so registered.

20 16. The Mainstream Fund is not currently registered to sell its securities in the state of
21 Washington and has not previously been so registered.

22 FAILURE TO COMPLY WITH SUBPOENA

23 17. In March 2004, the Securities Administrator issued a letter warning to Thomas and
24 the Mainstream Fund that they may be violating the Securities Act and served a subpoena on
25

1 them. The subpoena required Thomas to testify before, and the Respondents to produce
2 documents to, the Securities Division. On or around April 1, 2004, Thomas met with the
3 Securities Division. He admitted repeatedly contacting the Residents, meeting with them,
4 providing them with the above-identified documents, telling them he could assist them in
5 acquiring Starbucks stock, accepting a check from them to acquire Starbucks, cashing the check,
6 and not providing them with Starbucks stock. Thomas brought no documents to the meeting, but
7 he said he would immediately provide certain documents. Thomas has never produced any
8 documents to the Division.
9

10 EMERGENCY AND PUBLIC INTEREST

11 18. The Securities Administrator finds that the continued offering of securities as
12 described in these Tentative Findings of Fact and the failure to comply with a Securities Division
13 subpoena presents a threat to the investing public and that and it is in the public interest to enter a
14 summary order against the Respondents.

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

16 CONCLUSIONS OF LAW

17 1. The conduct described in the Tentative Findings of Fact constitutes the offer or
18 sale of a security as defined in RCW 21.20.005(10) and (12).

19 2. The conduct described in the Tentative Findings of Fact constitutes engaging in
20 business as a securities broker-dealer or salesperson, as defined in RCW 21.20.005(3) and (2).

21 3. The conduct described in the Tentative Findings of Fact constitutes a violation of
22 RCW 21.20.010 because Thomas and/or the Mainstream Fund each, in connection with the offer
23 or sale of a security, employed a device, scheme, or artifice to defraud, relating to the offer to
24
25

1 acquire Starbucks stock for the Residents, the acceptance of money from Residents, and the
2 failure to the acquire Starbucks for the Residents.

3 4. The conduct described in the Tentative Findings of Fact is in violation of RCW
4 21.20.010 because Thomas and/or the Mainstream Fund each, in connection with the offer or
5 sale of a security, made untrue statements of material fact or omitted to state material facts
6 necessary in order to make the statements made, in the light of the circumstances under which
7 they are made, not misleading, including but not limited to statements or omissions regarding (A)
8 Thomas being licensed as a stockbroker and (B) failing to provide financial statements or
9 information to the Residents.
10

11 5. The conduct described in the Tentative Findings of Fact constitutes a violation of
12 RCW 21.20.040 because Thomas transacted business in Washington as a broker-dealer or
13 salesperson without being registered as such.

14 6. The offer or sale of Mainstream Fund securities is in violation of RCW 21.20.140
15 because there was no registration for such offer or sale on file with the Securities Administrator.
16

17 **SUMMARY ORDER**

18 Based on the foregoing:

19 NOW, THEREFORE, IT IS HEREBY SUMMARILY ORDERED that The Mainstream
20 Fund Inc., Lamar Thomas, and their agents and employees each cease and desist from violation
21 of RCW 21.20.010, the anti-fraud section of the Securities Act of Washington.
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23 It is further SUMMARILY ORDERED that The Mainstream Fund Inc., Lamar Thomas,
24 and their agents and employees each cease and desist from offering or selling securities in any
25 manner in violation of RCW 21.20.040, the section of the Securities Act of Washington

1 requiring registration of securities broker-dealers, salespersons, investment advisors, and
2 investment advisor representatives.

3 It is further SUMMARILY ORDERED that The Mainstream Fund Inc., Lamar Thomas,
4 and their agents and employees each cease and desist from offering or selling securities in any
5 manner in violation of RCW 21.20.140, the section of the Securities Act of Washington
6 requiring registration of securities.
7

8 **NOTICE OF INTENT TO IMPOSE FINES AND ASSESS COSTS**

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10 Based on the above Tentative Findings of Fact and Conclusions of Law, the Securities
11 Administrator, pursuant to RCW 21.20.390 and RCW 21.20.395, intends to order that Lamar
12 Thomas and the Mainstream Fund be jointly and severally liable for and pay to the Securities
13 Division (1) a fine of \$10,000, and (2) the costs, fees, and other expenses incurred in the
14 conduct of the investigation on this matter, in an amount not less than \$1,000.
15

16 **AUTHORITY AND PROCEDURE**

17 This Summary Order to Cease and Desist and Notice of Intent to Impose Fines and
18 Recover Costs is entered pursuant to the provisions of RCW 21.20.390 and is subject to the
19 provisions of chapter 34.05 RCW. The Respondents, The Mainstream Fund Inc. and Lamar
20 Thomas, may each make a written request for a hearing as set forth in the NOTICE OF
21 OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING accompanying this
22 order.
23

24 If a Respondent does not request a hearing, the Securities Administrator intends to adopt
25 the above Tentative Findings of Fact and Conclusions of Law as final, make the summary order

1 to cease and desist permanent, and to impose a \$10,000 fine against and to assess \$5,000 from that
2 Respondent.

3
4 WILLFUL VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.
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7

8 Dated this 12th day of October, 2004
9
10

11 
12 MICHAEL STEVENSON
13 Securities Administrator

14 Approved by:

15 
16

17 Martin Cordell
18 Chief of Enforcement

Presented by:

19 
20

21 Andrew Ledbetter
22 Financial Legal Examiner
23
24
25