### 1 STATE OF WASHINGTON DEPARTMENT OF FINANCIAL INSTITUTIONS 2 SECURITIES DIVISION 3 IN THE MATTER OF DETERMINING Order Number S-09-280-09-SC01 4 Whether there has been a violation of the Securities Act of Washington by: STATEMENT OF CHARGES AND NOTICE 5 OF INTENT TO ENTER ORDER TO CEASE 6 AND DESIST, IMPOSE FINES, AND Iris Data Communications CHARGE COSTS 7 Corporation; David Kilpatrick; 8 Respondents 9 THE STATE OF WASHINGTON TO: Iris Data Communications Corporation David Kilpatrick 10 11 STATEMENT OF CHARGES 12 Please take notice that the Securities Administrator of the State of Washington has reason 13 to believe that Respondents, Iris Data Communications Corporation and David Kilpatrick, have 14 each violated the Securities Act of Washington and that their violations justify the entry of an 15 order of the Securities Administrator under RCW 21.20.390(1) against each to cease and desist 16 from such violations, imposing fines pursuant to RCW 21.20.395, and charging costs pursuant to 17 RCW 21.20.390(5). The Securities Administrator finds as follows: 18 19 TENTATIVE FINDINGS OF FACT 20 Respondents 21 1. Iris Data Communications Corporation ("Iris Data") is a Washington Corporation 22 incorporated on October 11, 2005. Iris Data's principal place of business was located at 910 NE 23 Minnehaha Street, Suite 3 in Vancouver, Washington. Iris Data dissolved on or about August 24 19, 2009. 25

STATEMENT OF CHARGES AND NOTICE OF INTENT TO ENTER ORDER TO CEASE AND DESIST, IMPOSE FINES. AND CHARGE COSTS

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

2. resident of Battle Ground, Washington.

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STATEMENT OF CHARGES AND NOTICE OF INTENT TO ENTER ORDER TO CEASE AND DESIST. IMPOSE FINES, AND CHARGE COSTS

Corporation from its inception until approximately April 2009. Kilpatrick is believed to be a

# Nature of the Offering

David Kilpatrick ("Kilpatrick") was president of Iris Data Communications

- 3. Iris Data purportedly provided Voice over Internet Protocol (VoIP) services to the Filipino community located in Portland, Oregon and Vancouver, Washington area. According to Kilpatrick, the services would help members of the community to communicate affordably with their relatives in the Philippines.
- 4. Beginning by at least 2006 Kilpatrick raised funds for Iris Data through the sale of Iris Data common stock. Kilpatrick met most of the investors through meetings of the Filipino community in the Portland area. On more than one occasion Kilpatrick gave a presentation at these meetings on becoming a distributor to sell Iris Data services. At those meetings or while setting up the service in the home, Kilpatrick asked people if they would be interested in purchasing stock.
- 5. Kilpatrick told potential investors that Iris Data needed funds to buy minutes from its service provider and to purchase products and video machines. Between October 2006 and September 2008, Kilpatrick sold Iris Data stock to at least 16 investors. Iris Data and Kilpatrick collected at least \$76,000 from investors.
- 6. By early 2009 Kilpatrick and some Iris Data shareholders disagreed on operations of the company. In April 2009 Kilpatrick formed a new company, White Line Communications, Incorporated ("White Line"). Soon after, when Iris Data failed to pay its vendors, White Line paid those vendors so that White Line could assume Iris Data's accounts.

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# Misrepresentations and Omissions

- 7. Respondents failed to provide investors with material information about the investment opportunity described above, including but not limited to: financial statements, specific use of proceeds, general and specific risks of investing in VoIP services, and the business background and experience of David Kilpatrick.
- 8. When offering and selling Iris Data stock, Iris Data and Kilpatrick failed to disclose that Kilpatrick had filed for Chapter 7 bankruptcy in 2004 in which he was discharged.
- 9. Kilpatrick told potential investors that if the company sold 1 billion minutes per month at \$.005 profit per minute, Iris Data would have \$5 million in profits per month.

  Kilpatrick said that 50% of profits would be returned to investors as a dividend. Iris Data and Kilpatrick failed to provide any reasonable basis for the financial projections and any limitations on those projections.
- 10. Iris Data and Kilpatrick failed to disclose that the price for Iris Data shares varied although there was no market for the shares. Iris Data and Kilpatrick sold some stock at \$200/share, some investors may have paid \$10/share, and still others received shares in exchange for services.
- 11. Kilpatrick failed to disclose that he would have access to Iris Data funds to pay personal expenses and could take \$3,000 per month from Iris Data for personal expenses.
- 12. Iris Data failed to disclose that it did not have its president, Kilpatrick, sign a covenant not to compete with the company. Kilpatrick formed White Line, which offers the same services as Iris Data, two months after he said he was fired. Soon after its creation White Line assumed Iris Data's accounts.

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# **Registration Status**

- 13. Iris Data Communications Corporation is not currently registered to sell its securities in the state of Washington and has not previously been so registered.
- 14. Respondent David Kilpatrick is not currently registered as a securities salesperson or broker-dealer in the state of Washington and has not previously been so registered.

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

#### CONCLUSIONS OF LAW

- 1. The offer or sale of Iris Data stock described above constitutes the offer or sale of a security as defined in RCW 21.20.005(10) and (12).
- 2. The offer and sale of said securities is in violation of RCW 21.20.140 because no registration for such offer or sale is on file with the Securities Administrator.
- 3. Respondent David Kilpatrick violated RCW 21.20.040 by offering or selling said securities while not registered as a securities salesperson or broker-dealer in the state of Washington.
- 4. The offer or sale of Iris Data Communications Corporation stock was made in violation of RCW 21.20.010 because, as set forth in the Tentative Findings of Fact, Respondents made misstatements of material fact or 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.

#### NOTICE OF INTENT TO ORDER THE RESPONDENT TO CEASE AND DESIST

Pursuant to RCW 21.20.390(1), and based on the above Tentative Findings of Fact and Conclusions of Law, the Securities Administrator intends to order that Respondents, Iris Data Communications Corporation and David Kilpatrick; their agents and employees, each cease and desist from violations of RCW 21.20.010, RCW 21.20.040, and RCW 21.20.140.

STATEMENT OF CHARGES AND NOTICE OF INTENT TO ENTER ORDER TO CEASE AND DESIST, IMPOSE FINES, AND CHARGE COSTS

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### NOTICE OF INTENT TO IMPOSE FINES

Pursuant to RCW 21.20.395, and based upon the Tentative Findings of Fact and Conclusions of Law, the Securities Administrator intends to order that Respondent David Kilpatrick shall be liable for and pay a fine of \$20,000.

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NOTICE OF INTENT TO CHARGE COSTS

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Pursuant to RCW 21.20.390(5), and based upon the Tentative Findings of Fact and Conclusions of Law, the Securities Administrator intends to order that Respondent David Kilpatrick shall be liable for and pay the Securities Division the costs, fees and other expenses incurred in the conduct of the administrative investigation and hearing of this matter.

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AUTHORITY AND PROCEDURE

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This Statement of Charges is entered pursuant to the provisions of RCW 21.20.390 and is subject to the provisions of RCW 34.05. Each of the Respondents may make a written request for a hearing as set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND

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OPPORTUNITY FOR HEARING accompanying this Statement of Charges.

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If a respondent does not request a hearing, the Securities Administrator intends to adopt the above Tentative Findings of Fact and Conclusions of Law as final, enter a final cease and

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desist order against that Respondent, and impose the fines and costs sought.

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Dated and Entered this 23rd day of December, 2009

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MICHAEL E. STEVENSON Securities Administrator

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

Approved by: Presented by: An Elm Suzanne Sarason Jack McClellan Chief of Enforcement **Enforcement Attorney** STATEMENT OF CHARGES AND NOTICE OF DEPARTMENT OF FINANCIAL INSTITUTIONS