



Securities Act of 1933. Harden formed the RLLPs and sold the units to investors ostensibly to provide them with an opportunity to share in the profits of planned Internet casinos, which were to be formed and operated by Lowery. Harden and Lowery solicited more than eighty investors to purchase partnership units in ten RLLPs. Harden and Lowery targeted uneducated and financially unsophisticated, elderly investors using high-pressure sales tactics. In connection with their selling efforts, Harden and Lowery made false and misleading statements to investors. Specifically, some investors were provided with unrealistic profit projections, and others were falsely told that their investments were guaranteed. Investors were also led to believe that their money would be used for partnership and casino business expenses, but most of it was actually used to pay for personal expenses and to support Lowery's extravagant lifestyle. Many of the investors liquidated retirement accounts and other conservative investments to invest in the RLLPs. Eventually, investors lost all of their money after the casinos were shut down due to operational problems.

2. By engaging in the aforementioned conduct, Harden and Lowery violated certain registration and antifraud provisions of the federal securities laws. Accordingly, the Commission seeks injunctive relief, disgorgement, and civil penalties to address the conduct and to prevent Harden and Lowery from engaging in similar fraud in the future. The Commission also seeks disgorgement from Erma Lowery, as well as several entities through which Harden and Lowery managed the RLLPs and casinos because a substantial portion of the money that was wrongfully obtained from investors was subsequently transferred directly or indirectly to them by Harden and Lowery.

### **JURISDICTION**

3. This Court has jurisdiction over this action pursuant to Section 20(b) and 22(a) of the Securities Act [15 U.S.C. § 77t(b) and 77v(a)] and Sections 21(e) and 27 of the Exchange Act [15 U.S.C. §§ 78u(e) and 78aa]. The Defendants have, directly or indirectly, made use of the means or instrumentalities of interstate commerce and/or of the mails in connection with the transactions, acts, practices, and courses of business alleged within this complaint.

### **DEFENDANTS**

4. **Gary L. Harden, Sr.** (“Harden”), age 62, resides in Ironwood, Michigan. Harden is the President, Secretary, and Treasurer of Cyberspace, Inc. and Development Investments & Associates, Inc. Harden solicited investors to purchase the casino RLLP units and served as the managing partner for all ten partnerships. From 1990 through 1995, he was a registered representative at a broker-dealer. In May 1999, as part of a consent order, the state of Michigan imposed sanctions on Harden for selling \$172,000 worth of fractionalized viatical settlement contracts. The consent order revoked Harden’s registration as an insurance agent, imposed a censure, and prohibited him from selling unregistered securities.

5. **Philip E. Lowery** (“Lowery”), age 72, is a lawyer and a resident of Denver, Colorado. He solicited investors to purchase the casino RLLP units, and developed and operated the online casinos.

### **RELIEF DEFENDANTS**

6. **Erma J. Lowery**, age 74, is the wife of Lowery. She owns 50% of Princeton Holdings and directly or indirectly received a substantial portion of the money that was wrongfully obtained from investors.

7. **Cyberspace, Ltd.** is a Nevada corporation with its headquarters in Michigan. Cyberspace purchased rights to receive profits from the online casinos operated by Lowery and resold a portion of the rights to the casino RLLPs. Harden owns 100% of Cyberspace and directs its operations. Cyberspace also did business as Cyberspace, Inc., Cyber Space, Inc. and Cyberspace, LLC.

8. **Development Investments & Associates, Inc.** (“DIA”) is a Nevada corporation based in Michigan. Harden used DIA to administer the casino RLLPs. Harden owns 100% of DIA and directs its operations.

9. **Princeton Holdings, LLC** is a Colorado company owned 50% by Lowery and 50% by Erma Lowery. Lowery managed the online casinos using Princeton Holdings as the operating entity.

10. **Palancar, LLC** is incorporated in the British Virgin Islands and is a wholly-owned subsidiary of Princeton Holdings. Palancar owned the online casinos, developed the relevant software, and was in charge of all casino management activities. Palancar also did business as Palancar, Ltd.

## **FACTS**

### **\$5.8 Million Raised in Unregistered Offering of RLLP Units**

11. Between January 1999 and March 2001, Harden and Lowery raised \$5.8 million by selling RLLP units to over eighty investors nationwide. None of the offers or sales was registered with the Commission or any state securities agency. The RLLPs were formed to profit from startup Internet casinos, which were supposed to offer a variety of gaming options, including blackjack, slots, roulette and video poker. In each transaction, Palancar sold Cyberspace the right to share in 33% of a particular casino’s net profits. Through Cyberspace, Harden then immediately resold up to 25% of these rights to a particular RLLP, keeping the difference for himself. Overall, Harden established ten RLLPs (one for each casino) and raised between \$550,000 and \$750,000 per RLLP. However, due to a variety of software glitches and other operational problems, the casinos were shut down shortly after they began operating. None of the casinos have generated any profits and none of the partnerships have made any payments to investors.

12. All of the RLLP units were sold using the same techniques. Harden obtained the initial sales leads by sending mass mailings advertising seminars on how to make money from the Internet, soliciting investors on Cyberspace's website and contacting his former insurance clients. Harden and Lowery then personally solicited investors in the RLLPs by speaking at these seminars and in follow-up meetings and telephone conversations with potential investors. Harden also made many door-to-door sales calls, soliciting investors at their homes. Harden provided potential investors with an information packet that included an offering memorandum, a sample registration form, a partnership agreement, and a ballot to elect Harden as managing partner. Many investors were also provided with a sales brochure. Harden closed the transactions by obtaining investors' signatures on the RLLP documents and collecting their money.

13. Although Harden was primarily responsible for procuring sales leads, conducting door-to-door sales calls and obtaining investors' completed paperwork, Lowery also actively solicited investors by appearing as the featured speaker during certain seminars, including ones in Michigan and Iowa. At these seminars, Lowery gave presentations to potential investors describing the online casinos' business prospects and proposed operations. Numerous individuals invested after hearing his presentations. Lowery also met with potential investors, spoke on the telephone to prospective investors who had questions about the online casinos (referred to him by Harden), and personally solicited one of his doctors to invest. (The doctor invested a total of \$150,000 in three different RLLPs.) Lowery spoke particularly frequently to the managing partner of several partnerships that, with Lowery's encouragement, invested \$2.74 million in the casino RLLPs over a thirteen month period. In addition, Lowery contributed to the

content of the casino RLLPs' offering documents and the Cyberspace website, and reviewed and edited all of the offering documents' and website's content.

14. Harden mainly approached elderly, financially unsophisticated individuals with little education and limited net worth to purchase the RLLP units (about 60% of the investors were age 60 or above, and 43% were age 70 or above, at the time of their initial investment). Based upon Harden's recommendations, many investors liquidated retirement funds and relatively conservative investments (e.g., annuities and certificates of deposit) to invest in the casino RLLPs.

### **The Offering Documents**

15. The RLLP transactions were structured in a manner designed to avoid application of the federal securities laws. For example, in the partnership agreement, each investor was required to represent that he or she had "sufficient experience and knowledge of business affairs to allow him/her to intelligently exercise his/her powers as a partner." There was also boilerplate language in the agreement stating that investors were expected to be active participants in the business. For example, the agreement indicated that partners would be asked to participate in one or more committees to help oversee and conduct partnership business. Finally, the subscription agreement signed by each investor provides that:

I specifically acknowledge and understand that I am a limited liability partner of this partnership and therefore my interest herein is not to be considered a security. This interest has not been registered with the Securities and Exchange Commission nor any state securities department and I am afforded no protection under the Securities Act of 1933, or any similar state act relating to the offer and sale of securities.

16. Despite these statements, the RLLPs were marketed and operated as passive investments. For example, the RLLP offering memorandum prominently states that "[t]his is a completely turnkey business." In soliciting investors, Harden and Lowery emphasized Lowery's

alleged business acumen and explained that he would run the casinos. Lowery and his entities (Palancar and Princeton Holdings) were also prominently mentioned in the sales brochure that was distributed to investors, further indicating that the success or failure of the ventures depended on Lowery's efforts. The offering materials also state that Harden, as managing partner, would perform all significant duties for the RLLPs. In practice, investors were not kept informed about the progress of the casinos or otherwise involved in the underlying business. The only partnership business conducted by the investors was their "vote" on two perfunctory matters (to elect Harden as managing partner of the RLLP and to close the partnership to additional investors).

17. Harden never held any partnership meetings for the RLLPs or established any committees. In fact, investors typically were not even given the names of the other partners. Moreover, due to their lack of sophistication, the majority of the investors in the casino RLLPs could not intelligently exercise any partnership powers they theoretically might have had. Finally, Lowery (rather than Harden or the partnerships) controlled the casinos. The agreements between the RLLPs and Lowery did not bestow *any* power to control the casinos on individual partners, or on the partners acting collectively. Thus, even before Lowery stopped operating the casinos, there was no business for the investors to manage.

### **Misrepresentations and Omissions**

18. During the initial sales seminars, Harden and Lowery told investors that they expected each RLLP would generate roughly \$300,000 to \$600,000 within six months. In addition, the offering memoranda provided to prospective investors in connection with certain RLLPs included a one-page table setting forth "Internet Casino License Projections." The table shows that an Internet casino would generate a "net drop" of approximately \$22 million over

four years, with the “owner’s share” totaling roughly \$11 million. Harden and Lowery lacked a reasonable basis for making these projections. Neither individual had any experience in the gaming industry. Given that they were creating a start-up business, they had no historical results on which to base the projections.

19. Moreover, while they were selling units of some of the later RLLPs, Harden and Lowery knew or were reckless in not knowing that the casinos had already encountered significant operational problems that made it highly unlikely that such projections would be achieved. Due to software problems, the casinos did not begin online operations until the first half of 2000, more than two years after Harden and Lowery began soliciting investors. The casinos then operated sporadically for approximately one year, remaining offline for all but three to four months due to technical difficulties. However, even when the casinos were operational, they failed to generate any profits. Although they knew or were reckless in not knowing about these problems, Harden and Lowery continued to raise money without informing prospective investors about them. In fact, they continued to represent that the RLLPs would generate monthly profits for investors. Harden continued to encourage many investors to liquidate relatively conservative investments and retirement accounts to invest in the RLLPs, without disclosing the casinos’ ongoing troubles.

20. The sales brochure provided to investors was virtually identical to the content of the Cyberspace website. Both stated that “[t]he potential returns of an RLLP casino are enormous” and “[t]he partners will share a percent of the monthly casino net drop [p]aid monthly.” The brochure and the website also stated that “at the end of thirty-six (36) monthly payments, monthly payment will terminate and the net revenue interest will be bought-out per a contractual agreement for the original purchase price of five hundred ten thousand dollars.”

Neither Harden nor Lowery altered the website or brochure, even when it was evident that the casinos were experiencing the major difficulties explained above.

21. Additional materially false and misleading statements and omissions were made during personal visits with prospective investors. Harden, who previously sold other partnership interests and insurance to seniors, frequently arrived unannounced at former customers' homes to solicit investments in the casino RLLPs. Harden misled them about the earnings potential of the RLLPs, by comparing the investments to bonds and explaining that investors would get monthly payouts based on the underlying casinos' profits. Harden also told certain investors that the RLLPs were already making money and generating monthly income for investors. In actuality, however, the casinos never paid any money to the partnerships and none of the investors ever received any return on their investments.

22. During certain sales presentations, Harden also made false and misleading statements about the safety of the casino RLLP investments. For example, Harden told certain investors that their investment would be insured by the U.S. government. Harden also told certain purchasers of the RLLP units that they could get their money back any time they wanted. In an apparent attempt to provide investors with additional assurances about the safety of their investments, the sales brochure and the website stated that "[a]ll Internet gaming proceeds are guaranteed by Lloyds [sic] of London," even though no contractual relationship with Lloyd's of London existed.

23. In addition, Harden misled certain investors about the type of partnership in which they were investing. Harden never informed them--either before or after they invested--that the RLLP was connected to online gambling. Some investors in these ventures believed that

they were investing in debt RLLPs (that Harden previously sold to them) but later discovered that their money had been put into a casino RLLP.

24. Lowery also made numerous materially false and misleading statements when soliciting the managing partner of several partnerships that invested \$2.74 million in the casino RLLPs over a thirteen month period. (The managing partner and his wife personally invested at least \$125,000 in the casino RLLPs.) Lowery participated in the initial meeting that resulted in the managing partner investing and Lowery had regular contact with him thereafter. Lowery made oral misrepresentations to the managing partner, indicating that: (1) Lowery was already operating profitable casinos; (2) Lowery was purchasing up to three casinos per month with his own money and had set aside \$16 million to purchase additional casinos; (3) Lowery was contributing not less than \$600,000 for advertising for each casino; and (4) Lowery expected to lose money on the casinos due to all of his personal expenditures, but planned to buy back the casinos from the investors after three years and sell them or take the business public at a large profit. Lowery also told the managing partner that the “President of Budweiser” had offered to buy his casino business for \$1 billion, but Lowery was not ready to sell.

25. Other investors were misled about how their money would be spent. The sales brochure distributed to investors stated that “Funds are being sought to create and lease internet casino sites, customized graphics and advertising,” which falsely suggested that their money would be used to provide capital for the online casinos. Of the \$5.8 million collected from investors, approximately \$4.5 million was paid to Lowery’s Palancar accounts (much of the money was then transferred to Lowery’s Princeton Holdings account) and the remaining \$1.3 million was paid to entities that Harden controlled (including several accounts in the name of DIA). Although some of the money was used to pay for partnership and casino business

expenses, most of it was used by Harden and Lowery to pay for personal expenses and to fund Lowery's extravagant lifestyle. For example, \$1.5 million was transferred into a joint account owned by Lowery and his wife and then used to pay for the couple's personal expenses, including (i) maintenance of a horse and a llama, fish, and various lakes and waterfalls at the Lowerys' three-acre residential property, (ii) regular appointments with personal fitness trainers and a masseuse, (iii) a down-payment for a new condominium in Denver, and (iv) approximately \$500,000 for taxes owed by the couple. Lowery also used money that he received from the RLLPs to pay for a BMW and a Mercedes for himself and his wife, and to travel extensively (during the relevant time, he stayed at premiere hotels in the Bahamas, Curacao, Costa Rica, Belize, Viet Nam, the Philippines, London, the Isle of Jersey, San Francisco and Las Vegas).

**FIRST CLAIM**  
**(for Violations of Sections 5(a) and 5(c) of the Securities Act)**

26. Plaintiff SEC hereby incorporates ¶¶ 1 through 25 with the same force and effect as if set out here.

27. The units of casino RLLPs that Harden and Lowery sold are securities within the meaning of Securities Act, Section 2(1) [15 U.S.C. § 77b(1)].

28. In the manner described in ¶¶ 1 through 25, defendants Harden and Lowery, directly or indirectly (a) without a registration statement in effect as to the securities, (i) made use of the means or instruments of transportation or communication or the mails to sell such securities through the use or medium of a prospectus or otherwise, or (ii) carried or caused to be carried through the mails, or in interstate commerce, by any means or instruments of transportation, such securities for the purpose of sale or for delivery after sale, and (b) made use of the means or instruments of transportation or communication in interstate commerce or of the

mails to offer to sell or offer to sell through the use or medium of a prospectus or otherwise securities for which a registration statement had not been filed as to such securities, in violation of Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)].

**SECOND CLAIM**  
**(for Violations of Section 17(a) of the Securities Act)**

29. Plaintiff SEC hereby incorporates ¶¶ 1 through 25 with the same force and effect as if set out here.

30. In the manner described in ¶¶ 1 through 25, defendants Harden and Lowery, in the offer or sale of securities, by the use of means or instruments of interstate commerce or by the mails, directly or indirectly (a) employed devices, schemes or artifices to defraud; (b) obtained money or property by means of untrue statements of material facts or omissions of material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or (c) engaged in transactions, practices or courses of business which operated or would operate as a fraud or deceit upon purchasers of securities, in violation of Section 17(a) of the Exchange Act [15 U.S.C. § 77q(a)].

**THIRD CLAIM**  
**(for Violations of Section 10(b) of the Exchange Act  
and Rule 10b-5 thereunder)**

31. Plaintiff SEC hereby incorporates ¶¶ 1 through 25 with the same force and effect as if set out here.

32. In the manner described in ¶¶ 1 through 25, defendants Harden and Lowery, in connection with the purchase or sale of securities, by the use of means or instrumentalities of interstate commerce or of the mails, directly or indirectly (a) employed devices, schemes or artifices to defraud; (b) made untrue statements of material facts or omissions of material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or (c) engaged in transactions, practices or courses of business

which operated or would operate as a fraud or deceit upon persons, in violation of Section 10(b) of the Exchange Act [15 U.S.C § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff SEC respectfully requests that this Court enter a judgment:

(i) permanently enjoining defendants Harden and Lowery from violating Sections 5(a), 5(c) and 17(a) of the Securities Act [15 U.S.C. § 77e(a), 77e(c) and 77(q)(a)] and Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. §§ 240.10b-5];

(ii) ordering defendants Harden and Lowery and relief defendants Erma Lowery, Cyberspace, DIA, Princeton Holdings and Palancar to provide an accounting and disgorge all ill-gotten gains received directly or indirectly from the conduct alleged herein, plus prejudgment interest on that amount;

(iii) ordering defendants Harden and Lowery to pay civil money penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)]; and

(iv) granting such other relief as this Court deems just and proper.

Dated: May 19, 2005

Respectfully submitted,

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