BEFORE THE
DIVISION OF SECURITIES
DEPARTMENT OF FINANCIAL INSTITUTIONS
STATE OF WISCONSIN

In the Matter of
MICHAEL J. KONKEL

Respondent.

STATEMENT OF STAFF
ALLEGATIONS AND
PETITION FOR ORDER

File No. S-99288(EX)

WHEREAS the staff of the Enforcement Unit of the Division of Securities of the Department of Financial Institutions, State of Wisconsin, has conducted an investigation in the above-captioned matter pursuant to sections 15.02(4) and 551.56, Wis. Stats., and as a result thereof alleges as follows:

1. Michael J. Konkel (DOB 2/16/59) ("Konkel") is an adult male whose current residence address is 3255 County Highway F, Barneveld, WI 53507, and who at all times material hereto lived in and did business from Wisconsin.

2. Upon information and belief, Konkel is a co-founder of Lexus International, Inc. ("Lexus"), a business entity incorporated in the State of Florida.

3. Upon information and belief, during the period of 1992 through 1994, Konkel offered and sold to at least four persons in Wisconsin securities of Lexus in the aggregate amount of at least $58,000.

4. The securities referred to in Paragraph 3 above were not registered for such offers and sales pursuant to Ch. 551, Wis. Stats., which constituted a violation of sec. 551.21(1), Wis. Stats.

5. On July 1, 1986, the president of Lexus, Jimmie E/ Maher (DOB 4/9/45) ("Maher"), was adjudicated guilty of one count of first degree felony racketeering, three counts of sales of unregistered securities, and one count of third degree felony fraudulent transactions in securities, as well as four first degree felony counts having to do with the operation of a lottery in Florida.

6. Konkel admitted in an interview with Staff of the Division of Securities in 1993 that he had been a friend of Maher’s for at least four years, had all along been aware of the criminal record of Maher in Florida, and knew that Maher was charged and convicted.

7. During the offer and sale of the securities referred to in Paragraph 3 above, Konkel omitted to inform the investors of Maher's criminal conviction.

8. During the offer and sale of the securities referred to in Paragraph 2 above, Konkel omitted material facts necessary, to make the statements made in such offers and sales, in the light of the
circumstances in which such statements were made, not misleading, which constituted a violation of sec. 551.41(2), Wis. Stats.

9. The Division of Securities of the Department of Commerce and Regulation of the State of South Dakota issued an Order to Cease and Desist and Refrain on January 26, 1994, against Lexus.

10. The Division of Securities and Investor Protection of the Department of Banking and Finance of the State of Florida issued an Immediate Final Order to Cease and Desist on July 8, 1994 against Lexus.

11. The then-Commissioner of Securities of the State of Wisconsin issued an Order of Prohibition and Revocation against Lexus on February 20, 1995, for the offer and sale of the securities referred to in Paragraph 3 above.

12. On February 23, 1995 the staff sent a copy of the order referred to in Paragraph 11 to Konkel, along with a cover letter explicitly pointing out that it covered him, even if he was not explicitly named, and that any future violations of the Wisconsin Uniform Securities law might result in administrative action against him.

13. Upon information and belief, during the time period of 1995 and 1996, Konkel while in Wisconsin, entered into agreements ("the Texas Agreements") with at least 10 persons located in Texas ("the Texas investors"), in the aggregate amount of $500,000, in which Konkel agreed to invest their money in certain investments on their behalf for the purpose of generating return on investment, and Konkel was to return the principal to the investors at a later date.

14. The Texas investors invested in a common enterprise with the expectation of profit to be derived through the essential managerial efforts of someone other than themselves;

15. The Texas Agreements are investment contracts as defined by DFI-Sec. 1.02(6)(a), Wis. Adm. Code - and are therefore securities pursuant to sec. 551.02(13), Wis. Stats.

16. At least some of the Texas investors have not received some or all of the principal invested with Konkel.

17. Upon information and belief, during the time period of 1997 to 1999, Konkel while in Wisconsin, entered into agreements ("the Alabama Agreements") with at least 16 persons located in Alabama ("the Alabama investors"), in the aggregate amount of at least $640,000, in which Konkel agreed to invest their money in certain investments on their behalf for the purpose of generating return on investment, and Konkel was to return the principal to the investors at a later date.

18. The Alabama investors invested in a common enterprise with the expectation of profit to be derived through the essential managerial efforts of someone other than themselves;

19. The Agreements are investment contracts as defined by DFI-Sec. 1.02(6)(a), Wis. Adm. Code and are therefore securities pursuant to sec. 551.02(13), Wis. Stats.
20. Upon information and belief, Konkel failed to inform the Alabama investors of Konkel’s failure to repay the principal of some of the Texas investors.

21. Upon information and belief, Konkel failed to invest the principal of the Alabama investors in the investments represented to them in the offer and sale of the Alabama Agreements.

22. Konkel failed to inform later investors that he did not invest the money of the Texas and Alabama investors as represented to them during his offers and sales of the investment contracts to them.

23. Konkel has violated sec. 551.41(2), Wis. Stats., by omitting material facts necessary, in order to make the statements made, in the light of the circumstances in which such statements were made, not misleading.

24. Konkel’s actions, as described above constitute effecting transactions in securities for the account of others.

25. At no time has Konkel been licensed as a broker-dealer pursuant to Ch. 551, Wis. Stats.

26. Konkel has violated sec. 551.31, Wis. Stats., by transacting business in Wisconsin as a broker-dealer without a license.

27. Upon information and belief, Konkel, while located in Wisconsin, has accepted money for the purpose of investment from the Texas investors totaling at least $500,000 and from the Alabama investors totaling at least $640,000.

28. Upon information and belief, Konkel does not have sufficient funds to repay such investors;

29. Staff of the Enforcement Unit have requested of Konkel, through his legal counsel, information and documents of Konkel’s securities-related activities referred to in Paragraphs 13 and 17 above, but the legal counsel have responded on behalf of Konkel that they will not provide such information and documents without the State of Wisconsin providing immunity from prosecution for Konkel.

THEREFORE, the Staff of the Enforcement Unit petitions the Administrator of the Division of Securities of the Department of Financial Institutions or her designee for the issuance of the attached Order of Prohibition and Revocation pursuant to Ch. 551, Wis. Stats.

Mark E. Dorman 7-5-00
Examiner
Enforcement Unit

David A. Cohen 7-5-00
Supervising Attorney
Enforcement Unit