

STATE OF OKLAHOMA
DEPARTMENT OF SECURITIES
FIRST NATIONAL CENTER, SUITE 860
120 NORTH ROBINSON
OKLAHOMA CITY, OKLAHOMA 73102



In the Matter of:

Merrick Energy Development, LLC,
Merrick Operating Company, now known as GO Energy Corp.,
Bruce J. Scambler, and
Jeff A. Berlin,

Respondents.

ODS File No. 05-055

NOTICE OF SERVICE ON THE ADMINISTRATOR
AND
AFFIDAVIT OF COMPLIANCE

STATE OF OKLAHOMA)
)
) ss.
COUNTY OF OKLAHOMA)

The undersigned affiant, of lawful age, being first duly sworn upon oath deposes and states:

1. That he is the Administrator of the Oklahoma Department of Securities (“Department”).
2. That a copy of the Notice of Opportunity for Hearing (“Notice”) with Enforcement Division Recommendation (“Recommendation”) attached was delivered to Affiant in the office of the Administrator of the Department (“Administrator”) pursuant to Section 1-611 of the Oklahoma Uniform Securities Act (“Act”), Okla. Stat. tit. 71, §§ 1-101 through 1-701 (Supp. 2004).
3. That the Administrator has received service of process on behalf of Respondents pursuant to Section 1-611 of the Act.
4. That a copy of the Notice, with the Recommendation attached, and a copy of this Notice of Service on the Administrator and Affidavit of Compliance are being sent this 20th day of March, 2009, by certified mail, return receipt requested, delivery restricted to addressee, to the last known address of Respondents, in compliance with Section 1-611 of the Act.

5. That this Affidavit of Compliance is declared filed of record as of the date set forth below in compliance with Section 1-611 of the Act.

FURTHER AFFIANT SAYETH NOT.

Dated this 20th day of March, 2009.

(SEAL)


Irving L. Faught, Administrator

Subscribed and sworn to before me this 20th day of March, 2009.

(SEAL)


BRENDALONDON
Notary Public
State of Oklahoma
Commission # 05009046 Expires 09/28/09


Brenda London
Notary Public

STATE OF OKLAHOMA
DEPARTMENT OF SECURITIES
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OKLAHOMA CITY, OKLAHOMA 73102



In the Matter of:

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Merrick Operating Company, now known as GO Energy Corp.,
Bruce J. Scambler, and
Jeff A. Berlin,

Respondents.

ODS File No. 05-055

NOTICE OF OPPORTUNITY FOR HEARING

1. Pursuant to Section 405 of the Oklahoma Securities Act (“Predecessor Act”), Okla. Stat. tit. 71, §§ 1-413, 501, 701-703 (2001 & Supp. 2003), and Section 1-602 of the Oklahoma Uniform Securities Act of 2004 (“Act”), Okla. Stat. tit. 71, §§ 1-101 through 1-701 (Supp. 2004), the Enforcement Division of the Oklahoma Department of Securities (“Department”) conducted an investigation into the activities of Merrick Energy Development, LLC, Merrick Operating Company, Bruce J. Scambler, and Jeff A. Berlin (collectively, “Respondents”), in connection with the offer and/or sale of securities in and/or from the state of Oklahoma.

2. On the 4th day of March 2009, the attached Enforcement Division Recommendation (“Recommendation”) was left in the office of the Administrator of the Department (“Administrator”).

3. Pursuant to Section 406 of the Predecessor Act, Section 1-604 of the Act, and 660:2-9-1 of the Rules of the Oklahoma Securities Commission and the Administrator of the Department of Securities (as amended July 1, 2007) (“Rules”), the Administrator hereby gives notice to Respondents of their obligation to file an answer and their right to request a hearing to show why an order based on the Recommendation should not be issued.

4. The answer must be in writing and received by the Administrator within fifteen (15) days after service of this Notice. As required by 660:2-9-2 of the Rules, the answer shall indicate whether Respondents request a hearing and shall specifically admit or deny each allegation contained in the Recommendation or state that Respondents do not have, and are unable to obtain, sufficient information to admit or deny each allegation.

5. A respondent’s failure to file an answer in compliance with 660:2-9-2 of the Rules, to include a request for a hearing as provided for herein, shall result in the issuance of an order to cease and desist against the respondent and the imposition of a civil penalty in the

amount of \$5,000, pursuant to Section 406 of the Predecessor Act, Section 1-604 of the Act and 660:2-9-2 of the Rules.

6. Upon receipt of a written request, pursuant to 660:2-9-2 of the Rules, a hearing on the Recommendation shall be promptly scheduled or a written order denying a hearing shall be issued.

7. Notice of the date, time and location of the hearing shall be given to Respondents not less than forty-five (45) days in advance thereof, pursuant to 660:2-9-2 of the Rules.

Witness my Hand and the Official Seal of the Oklahoma Department of Securities this 20th day of March, 2009.

(SEAL)



IRVING L. FAUGHT, ADMINISTRATOR OF THE
OKLAHOMA DEPARTMENT OF SECURITIES

CERTIFICATE OF MAILING

The undersigned hereby certifies that on the 20th day of March, 2009, a true and correct copy of the above and foregoing Notice of Opportunity for Hearing and attached Enforcement Division Recommendation was mailed by certified mail, return receipt requested, with postage prepaid thereon, addressed to:

Merrick Energy Development, LLC
11300 N. Pennsylvania Ave., #150
Oklahoma City, OK 73120

GO Energy Corporation
11300 N. Pennsylvania Ave., #150
Oklahoma City, OK 73120

Jeff A. Berlin
13919 N. May Ave., #B200
Oklahoma City, OK 73134

Jeff A. Berlin
16509 Bradbury Circle
Edmond, OK 73003

Bruce Scambler
1715 Guilford Lane
Nichols Hills, OK 73120

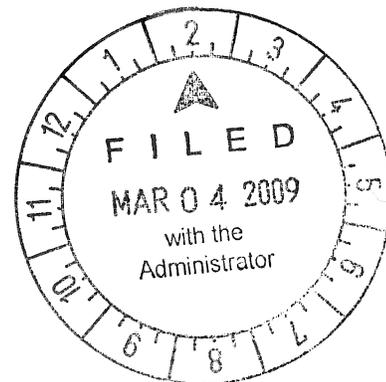
Bruce Scambler
11300 N. Pennsylvania Ave., #150
Oklahoma City, OK 73120

The undersigned also hereby certifies that on the 20th day of March, 2009, a true and correct copy of the above and foregoing Notice of Opportunity for Hearing and attached Enforcement Division Recommendation was mailed by first-class mail, with postage prepaid thereon, addressed to:

Mark A. Robertson
3033 NW 63rd St., Ste. 200
Oklahoma City, OK 73116-3607

Brenda Lencson

STATE OF OKLAHOMA
DEPARTMENT OF SECURITIES
FIRST NATIONAL CENTER
120 N. ROBINSON, SUITE 860
OKLAHOMA CITY, OKLAHOMA 73102



In the Matter of:

Merrick Energy Development, LLC,
Merrick Operating Company, now known as GO Energy Corp.,
Bruce J. Scambler, and
Jeff A. Berlin,

Respondents.

ODS File No. 05-055

ENFORCEMENT DIVISION RECOMMENDATION

Pursuant to Section 405 of the Oklahoma Securities Act ("Predecessor Act"), Okla. Stat. tit. 71, §§ 1-413, 501, 701-703 (2001 & Supp. 2003), and Section 1-602 of the Oklahoma Uniform Securities Act of 2004 ("Act"), Okla. Stat. tit. 71, §§ 1-101 through 1-701 (Supp. 2004), the Enforcement Division of the Oklahoma Department of Securities ("Department") conducted an investigation into the activities of Merrick Energy Development, LLC ("MED"), Merrick Operating Company ("MOC"), Jeff A. Berlin ("Berlin"), and Bruce J. Scambler ("Scambler"), in connection with the offer and/or sale of securities in and/or from the state of Oklahoma.

Based thereon, the following Findings of Fact, Authorities, and Conclusions of Law are submitted to the Administrator of the Department ("Administrator"), or his designee, in support of sanctions against Respondents.

Findings of Fact

1. MED organized as an Oklahoma limited liability company in September 2003 and was terminated in March 2005. During its existence, MED held itself out to be an independent, development stage oil and gas exploration and production company that had initiated a venture on the South and West Merrick Prospects in Logan and Lincoln Counties in Oklahoma. At all times material hereto, MED's principal place of business was in Oklahoma.

2. MOC (formerly known as "Duit Green") was organized as an Oklahoma corporation in 1999. MOC changed its name to GO Energy Corporation in August 2006. At all times material hereto, MOC was the manager of MED. At all times material hereto, MOC's principal place of business was in Oklahoma.

3. At all times material hereto, Scambler was President, Chief Financial Officer, and a director of MOC. Scambler, acting in concert with Berlin, took the initiative in founding and organizing the business of MED.

4. Until approximately June 2004, Berlin was the Chief Executive Officer and a director of MOC. Berlin, acting in concert with Scambler, took the initiative in founding and organizing the business of MED.

5. In or after September 2003, Respondents began offering and/or selling membership interests in MED ("Units") in and/or from the state of Oklahoma.

6. On May 3, 2004, MED filed a *Notice of Sale of Securities* in reliance on Regulation D and Section 4(6) of the Securities Act of 1933 with the United States Securities and Exchange Commission. The Units were not registered under the Predecessor Act or the Act, and no exemption notice filings were made with the Administrator.

7. In connection with the offer and/or sell of Units, Respondents created, and distributed to prospective investors, a private placement memorandum dated March 15, 2004 ("PPM"). The PPM stated that a maximum of 63 Units were being offered at \$55,500 per Unit, or an aggregate of \$3,496,500, beginning March 15, 2004. Page 14 of the PPM stated that the Units were being offered and/or sold in reliance upon Section 4(2) of the Securities Act of 1933 and Rule 505 of Regulation D promulgated thereunder. Page 14 of the PPM also stated that the Units were being offered and/or sold in reliance upon Rule 504 of Regulation D.

8. The PPM named Berlin and Scambler as the "Executive Officers" of MOC. The PPM stated that prospective investors requiring additional information could contact Berlin or Scambler and provided telephone numbers for each of them.

9. According to the PPM, Berlin was previously the corporate manager of, and an investor in, several oil and gas companies collectively called the "Access Energy Group of Companies" ("Access Group"). Beginning in January 2003, Scambler was a manager of the Access Group.

10. According to the PPM, organizers and initial founders of MED and those individuals who provided formation capital to MED were to be referred to as "Initial Members" while persons who purchased Units pursuant to the offering under the PPM ("Offering") were to be referred to as "Investor Members." Both Initial Members and Investor Members (collectively, "Members") were "Class A Members" with equal rights and obligations.

11. The PPM stated in pertinent part:

Under the Operating Agreement, the day to day activities of the Company will be controlled by MOC. . . . Accordingly, no person should purchase Units unless such person is willing to entrust day to day management of the Company and substantial control over the affairs of the Company to MOC and accept and agree that Managers [MOC] are contracting with the Company to be the Manager of the project for a three year period and each Executive Manager will retain seven (7) Units as issued.

12. Page 2 of the PPM stated in pertinent part:

The Company must sell at least fifteen (15) Class A Units under this Offering to secure leases and fund operations. If it does not it will refund all moneys raised in connection with this Offering, after paying legal and accounting fees and expense [sic] incurred in connection with the Offering. If the Company is unable to complete the Offering, it may not be able to continue operations unless it can find alternative financing. The Company may not be able to obtain such financing on terms reasonably acceptable to the Company, if at all. See "Risk Factors-Start-up"; "Risk Factors-No Operating History"; "Risk Factors-Minimal Capitalization; Limited Availability of Funds; Need for Additional Financing." Except as stated above, the Company plans to use any proceeds of the Offering as soon as they are received from an investor and is under no obligation to refund the proceeds of this Offering if it does issue over fifteen 15 Class A Units (or any significant portion of such total Offering amount) in connection with its Offering.

13. Page 64 of the PPM stated in pertinent part:

The Company will sell at least 15 Class A Units under this Offering. If the Company does not sell at least 15 Class A Units, the Company will refund all moneys raised in connection with this Offering, less Offering expenses.

14. In or before December 2003, Berlin and Scambler held a meeting in Kansas City for members of two limited liability companies in the Access Group: Access Energy III, LLC ("AE III"), and Access Energy IV, LLC ("AE IV") ("Kansas City Meeting"). AE III and AE IV were failing companies. During the Kansas City Meeting, the majority of the members of AE III and AE IV voted in favor of selling the assets of AE III and AE IV to MED for a certain sum of money with the idea that MED could raise funds to acquire additional leases to increase the profitability of the purchased assets. During the Kansas City Meeting, Respondents offered the members of AE III and AE IV the opportunity to purchase Units in MED.

15. Member Fitzgerald ("Fitzgerald"), a resident of Iowa, attended the Kansas City Meeting. In January 2004, after meeting with Berlin in Florida and receiving a PPM, Fitzgerald informed Berlin via telephone that he would invest in MED. Between January 16, 2004 and January 26, 2004, Fitzgerald invested a total of \$55,500 in MED via three checks. All three checks were endorsed by Scambler and one check was also endorsed by Berlin. All three checks were deposited into a BancFirst account held in the name of MED in Oklahoma. On April 16, 2004, Fitzgerald signed a Subscription Agreement ("Subscription Agreement") stating:

The undersigned (the "Subscriber") hereby offers to purchase Class A membership interests (the "Units") of Merrick Energy Development LLC, an Oklahoma Limited Liability Company ("the

Company”), under the terms of this agreement (the “Subscription”) and [the PPM].

Fitzgerrell mailed the Subscription Agreement to the Oklahoma City address of MED. It is unclear whether Fitzgerrell was intended to be an Initial Member or an Investor Member.

16. Between February 20, 2004 and March 1, 2004, Investor Member Thompson (“Thompson”), a resident of Kansas, invested \$35,000 in MED by wiring funds into the MED bank account at BancFirst in Oklahoma. Thompson’s investment was for a partial Unit. Thompson never signed a Subscription Agreement.

17. Investor Members Tannahill (the “Tannahills”), residents of Missouri, attended the Kansas City Meeting. Subsequently, the Tannahills met with Berlin in Kansas City to ask additional questions. The Tannahills signed a Subscription Agreement on March 30, 2004. On or about April 5, 2004, the Tannahills invested \$10,000 in MED via a cashier’s check that was endorsed by Berlin and deposited into the MED BancFirst account in Oklahoma. The Tannahills mailed their cashier’s check and signed Subscription Agreement to the Oklahoma address of MED.

18. Investor Member Bronson (“Bronson”), a Missouri resident, attended the Kansas City Meeting. Prior to investing in MED, Bronson received a PPM. On or about April 8, 2004, Bronson invested \$25,000 in MED via a cashier’s check that was endorsed by Berlin and deposited into the MED BancFirst account in Oklahoma. Bronson signed a Subscription Agreement on April 24, 2004. Bronson mailed his payment and completed Subscription Agreement to the Oklahoma City address of MED.

19. The investment proceeds received by MED from Fitzgerrell, Thompson, the Tannahills, and Bronson (“Investment Proceeds”) were not solely expended on legal and accounting fees and expenses incurred in connection with the Offering. A portion of the Investment Proceeds was spent on non-offering expenses including, but not limited to, acquisition expenses for oil and gas leases and management fees for Berlin, and payments to the Oklahoma City Gun Club, the Petroleum Club of Oklahoma City, the Oklahoma Philharmonic, and an educational foundation.

20. On or around June 3, 2004, Scambler attempted to remove Berlin from his position as an officer and director of MOC by denying him access to bank accounts, company records, and the office of MOC and MED and by demanding Berlin’s resignation. Scambler’s attempts to remove Berlin resulted in litigation that was subsequently resolved through settlement.

21. The Offering was kept open until October 2004 purportedly to allow Thompson to complete his purchase and to allow Berlin’s brother to submit a Subscription Agreement.

22. At the time the Offering closed in October 2004, less than 15 Units of MED had been sold under the Offering.

23. On October 31, 2004, MED had a balance of \$958.96 in its BancFirst account.

24. Respondents did not refund any portion of the Members' monies upon their requests.

To the extent any of these Findings of Fact are more properly characterized as Conclusions of Law, they should be so considered.

Authorities

1. Section 1-701(A) of the Act provides:

The predecessor act exclusively governs all actions or proceedings that are pending on the effective date of this act or may be instituted on the basis of conduct occurring before the effective date of this act, but a civil action may not be maintained to enforce any liability under the predecessor act unless instituted within any period of limitation that applied when the cause of action accrued or within five (5) years after the effective date of this act, whichever is earlier.

2. Section 2 of the Predecessor Act provides in pertinent part:

(r) "*Promoter*" includes:

(1) a person who, acting alone or in concert with one or more persons, takes the entrepreneurial initiative in founding or organizing the business or enterprise of an issuer[.]

* * *

(v) "*Security*" means any:

* * *

(11) investment contract;

* * *

(15) investment of money or money's worth including goods furnished and/or services performed in the risk capital of a venture with the expectation of some benefit to the investor where the investor has no direct control over the investment or policy decision of the venture[.]

3. Section 1-102 of the Act provides in pertinent part:

(27) “*Promoter*” includes:

a. a person who, acting alone or in concert with one or more persons, takes the entrepreneurial initiative in founding or organizing the business or enterprise of an issuer[.]

(32) “*Security*” means a[n] . . . investment contract. . . . The term:

* * *

d. includes as an “investment contract” an investment in a common enterprise with the expectation of profits to be derived primarily from the efforts of a person other than the investor and a “common enterprise” means an enterprise in which the fortunes of the investor are interwoven with those of either the person offering the investment, a third party, or other investors,

e. includes as an “investment contract,” among other contracts, an interest in a limited partnership and a third party managed limited liability company and an investment in a viatical or life settlement or similar contract or agreement,

f. includes an investment of money or money’s worth including goods furnished or services performed in the risk capital of a venture with the expectation of some benefit to the investor where the investor has no direct control over the investment or policy decision of the venture[.]

4. Section 101 of the Predecessor Act provides:

It is unlawful for any person, in connection with the offer, sale or purchase of any security, directly or indirectly[:]

(1) to employ any device, scheme, or artifice to defraud,

(2) to make any untrue statement of material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, [or]

(3) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

5. Section 1-501 of the Act provides:

It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly:

1. To employ any device, scheme, or artifice to defraud;
2. To make an untrue statement of material fact or to omit to state a material fact necessary in order to make the statement made, in the light of the circumstances under which it is made, not misleading; or
3. To engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

6. Section 301 of the Predecessor Act provides:

It is unlawful for any person to offer or sell any security in this state unless:

- (1) it is registered under this act or the security or transaction is exempted under Section 401 of this title; or
- (2) it is a federal covered security.

7. Section 301 of the Act provides:

It is unlawful for a person to offer or sell a security in this state unless:

1. The security is a federal covered security;
2. The security, transaction, or offer is exempted from registration under Sections 6 through 8 of this act [Sections 1-201 through 1-203 of this title]; or
3. The security is registered under this act.

8. Section 401 of the Predecessor Act provides in pertinent part:

(b) The following transactions are exempted from Sections 301, 305.2 and 402 of this title:

- (10)(B) Any sale by an issuer in this state exempted from Section 5 of the Securities Act of 1933 pursuant to Section 4(6) thereof; or

by virtue of a rule or regulation adopted by the United States Securities and Exchange Commission pursuant to Section 4(2) of such act; or pursuant to Rules 501 through 508 of Regulation D adopted by the United States Securities and Exchange Commission (17 C.F.R. 230.501 through 230.508), provided that:

(i) offering expenses do not exceed those allowed for securities registered pursuant to the provisions of this title, except that such limitation shall not apply to sales of securities effected in reliance on Rule 506 of Regulation D (17 C.F.R. 230.506);

(ii) no general advertising or general solicitation is used; and

(iii) the issuer files with the Administrator a notice at such time and in such form as is designated by the Administrator by rule.

9. Section 1-203 of the Act provides:

A rule adopted or order issued under this act may exempt a security, transaction, or offer; a rule under this act may exempt a class of securities, transactions, or offers from any or all of the requirements of Sections 10 and 32 of this act [Sections 1-301 and 1-504 of this title]; and an order under this act may waive, in whole or in part, any or all of the conditions for an exemption or offer under Sections 6 and 7 of this act [Sections 1-201 and 1-202 of this title].

10. Section 660:11-11-43 of the Rules of the Oklahoma Securities Commission and the Administrator of the Department of Securities (effective July 1, 2004 through June 30, 2007) ("2004 Rules") provides in pertinent part:

(b) Terms of the exemption. By authority delegated to the Administrator in Section 1-203 of the Securities Act, the following transactions are determined to be classes of transactions for which registration is not necessary or appropriate for the protection of investors and are exempt from Sections 1-301 and 1-504 of the Securities Act: any offer or sale of securities exempted from Section 5 of the 1933 Act pursuant to Section 4(6) thereof; or any offer or sale of securities offered or sold in compliance with the 1933 Act, Regulation D, Rules 230.504 and/or 230.505, including any offer or sale made exempt by application of Rule 508(a); provided the following further conditions and limitations are satisfied:

(1) offering expenses do not exceed those allowed for securities registered pursuant to the provisions of this title;

(2) no general advertising or general solicitation is used; and

(3) the issuer files with the Administrator no later than fifteen (15) days after the first sale of securities subject to the Securities Act one (1) signed copy of the notice of sales on Form D as most recently filed with the SEC, including the Appendix thereto. Such filing shall also include the following:

(A) an undertaking by the issuer to furnish to the Administrator, upon written request, the information furnished by the issuer to offerees;

(B) unless otherwise available, a consent to service of process on Form U-2 and (if applicable) Form U-2A; and

(C) the notice of exemption fee required by Section 1-612.A.12 of the Securities Act.

(c) Substantial compliance. A failure to comply with a term, condition or requirement of (b)(3) of this section will not result in the loss of the exemption from the requirements of Section 1-301 of the Securities Act for any offer or sale to a particular individual or entity if the person relying on the exemption shows:

(1) the failure to comply did not pertain to a term, condition or requirement directly intended to protect that particular individual or entity; and

(2) the failure to comply was insignificant with respect to the offering as a whole; and

(3) a good faith and reasonable attempt was made to comply with all applicable terms, conditions and requirements of (3)(b) of this section.

(d) Action by Administrator. Where an exemption is established only through reliance upon (c) of this section, the failure to comply shall nonetheless be actionable by the Administrator under the Securities Act.

11. Section 660:10-11-43 of the Rules of the Oklahoma Securities Commission and the Administrator of the Department of Securities (as amended July 15, 1998 and January 1, 2001)(“Predecessor Rules”) provides:

(a) Introduction. Subparagraph (B) of Section 401(b)(10) of the Securities Act contains substantive requirements which must be strictly adhered to before an issuer may validly rely on the exemption from registration. This rule is designed to interpret the terms and provisions of Section 401(b)(10)(B) of the Securities Act and to provide substantive guidelines to insure the availability of the exemption for an issuer’s offering.

(b) Notice of sales. A notice of sales pursuant to Section 401(b)(10)(B)(iii) of the Securities Act must be filed as provided in this Subsection.

(1) Notice. Issuers relying upon the exemption from registration in Section 401(b)(10)(B) of the Securities Act shall file with the Administrator one (1) signed copy of each notice of sales on Form D filed with the SEC and at the same times as filed with the SEC provided the initial notice of sales may be filed with the Administrator no later than fifteen (15) days after the first sale of securities subject to the Securities Act.

(2) Fee. The first notice of sales filed with the Administrator in connection with such offering shall include the fee set forth in Section 412 of the Securities Act.

(3) Time of filing. A notice shall be considered filed with the Administrator as of the date on which it is received at the Administrator's office, or as of the date on which the notice is mailed by means of United States registered or certified mail to the Administrator's office if the notice is delivered to such office after the date on which it is required to be filed.

(c) Disqualifying provision. Failure to comply with subsection (b) of this Section shall not result in the loss of availability of the exemption pursuant to Section 401(b)(10)(B) of the Securities Act unless the issuer, any of its predecessors or affiliates have been subject to a cease and desist order of the Administrator or any order, judgment, or decree by another state securities agency, the SEC or any court of competent jurisdiction temporarily, preliminarily or permanently enjoining such person for failure to comply with subsection (b) of this Section or Rule 503 of Regulation D. This subsection shall not apply if the Administrator determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption be denied. Requests for waivers of this disqualifying provision of this subsection shall be in writing setting forth the reasons therefor.

12. Section 405 of the Predecessor Act provides in pertinent part:

(a) The Administrator in his discretion:

(1) may make such public or private investigations within or outside of this state as he deems necessary to determine whether any person has violated or is about to violate any provision of this act or any rule or order hereunder, or to aid in the enforcement of this act or in the prescribing of rules and forms hereunder[.]

13. Section 1-602 of the Act provides in pertinent part:

A. The Administrator may:

1. Conduct public or private investigations within or outside of this state which the Administrator considers necessary or appropriate to determine whether a person has violated, is violating, or is about to violate this act or a rule adopted or order issued under this act, or to aid in the enforcement of this act or in the adoption of rules and forms under this act[.]

14. Section 413 of the Predecessor Act provides in pertinent part:

(a) Sections 101, 201(a), 301, 404 and 408 of this title apply to persons who sell or offer to sell when:

- (1) an offer to sell is made in this state; or
- (2) an offer to buy is made and accepted in this state.

* * *

(c) For the purpose of this section, an offer to sell or to buy is made in this state, whether or not either party is then present in this state, when the offer:

- (1) originates from this state; or
- (2) is directed by the offeror to this state and received at the place to which it is directed (or at any post office in this state in the case of a mailed offer).

(d) For the purpose of this section, an offer to buy or to sell is accepted in this state when acceptance:

- (1) is communicated to the offeror in this state; and
- (2) has not previously been communicated to the offeror, orally or in writing outside this state; and acceptance is communicated to the offeror in this state, whether or not either party is then present in this state, when the offeree directs it to the offeror in this state reasonably believing the offeror to be in this state and it is received at the place to which it is directed (or at any post office in this state in the case of a mailed acceptance).

15. Section 1-610 of the Act provides in pertinent part:

A. Sections 10 and 11, subsection A of Section 18, subsection A of Section 19, subsection A of Section 20, subsection A of section 21, and

Sections 29, 34, 37, and 38 of this act [Sections 1-301 and 1-302, 1-401, 1-402, 1-403, 1-404, 1-501, 1059, 1-509, and 1-510 of this title] do not apply to a person that sells or offers to sell a security unless the offer to sell or the sale is made in this state or the offer to purchase or the purchase is made and accepted in this state.

* * *

D. For the purpose of this section, an offer to purchase or to sell is accepted in this state, whether or not either party is then present in this state, if the acceptance:

1. Is communicated to the offeror in this state and the offeree reasonably believes the offeror to be present in this state and the acceptance is received at the place in this state to which it is directed; and
2. Has not previously been communicated to the offeror, orally or in a record, outside this state.

16. Section 406 of the Predecessor Act provides in pertinent part:

(a) If the Administrator reasonably believes, whether or not based upon an investigation conducted under Section 405 of this title, that a person has violated the Oklahoma Securities Act, except under the provisions of Section 202.1 or 305.2 of this title, or a rule or order of the Administrator under the Oklahoma Securities Act or has engaged in dishonest or unethical practices in the securities business, the Administrator, in addition to any specific power granted by any other section of the Oklahoma Securities Act, may impose one or more of the following sanctions:

- (1) issue an order against the person to cease and desist from engaging in such violation or dishonest or unethical practices or doing any act in furtherance thereof;

* * *

- (4) place limitations on the activities, functions, or operation of the person;

- (5) issue an order against a person who willfully violates the Oklahoma Securities Act or a rule or order of the Administrator under the Oklahoma Securities Act, imposing a civil penalty up to a maximum of Five Thousand Dollars (\$5,000.00) for a single violation or transaction or of Fifty Thousand Dollars (\$50,000.00)

for multiples violations or transactions in a single proceeding or a series of related proceedings;

(6) recover the costs of the investigation conducted under Section 405 of this title.

17. Section 1-604 of the Act provides in pertinent part:

A. If the Administrator determines that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this act or a rule adopted or order issued under this act or constituting a dishonest or unethical practice or that a person has materially aided, is materially aiding, or is about to materially aid an act, practice, or course of business constituting a violation of the act or a rule adopted or order issued under this act or constituting a dishonest or unethical practice, the Administrator may:

1. Issue an order directing the person to cease and desist from engaging in the act, practice, or course of business or to take other action necessary or appropriate to comply with this act;
2. Issue an order denying, suspending, revoking, or conditioning the exemptions for a broker-dealer under subparagraph d or f of paragraph 1 of subsection B of Section 18 of this act [Section 1-401 of this title] or an investment adviser under subparagraph c of paragraph 2 of subsection B of Section 20 of this act [Section 1-403 of this title];
3. Issue an order under Section 9 of this act [Section 1-204 of this title].

* * *

C. If a hearing is requested or ordered pursuant to subsection B of this section, a hearing must be held pursuant to the Administrative Procedures Act. A final order may not be issued unless the Administrator makes findings of fact and conclusions of law in a record in accordance with the Administrative Procedures Act. The final order may make final, vacate, or modify the order issued under subsection A of this section.

D. In a final order under subsection C of this section, the Administrator may impose a civil penalty up to a maximum of

Five Thousand Dollars (\$5,000.00) for a single violation or up to Two Hundred Fifty Thousand Dollars (\$250,000.00) for multiple violations in a single proceeding or a series of related proceedings.

- E. In a final order, the Administrator may charge the actual cost of an investigation or proceeding for a violation of this act or a rule or order issued under this act. . . .

Conclusions of Law

1. Scambler and Berlin were promoters of MED as defined by Section 2 of the Predecessor Act and Section 1-102 of the Act.

2. The Units are securities as defined by Section 2 of the Predecessor Act and Section 1-102 of the Act.

3. Respondents offered and/or sold the Units in and/or from the state of Oklahoma in reliance on an exemption from registration provided in Section 401(b)(10)(B) of the Predecessor Act.

4. Respondents failed to file a Notice of Sales with the Administrator in violation of Section 401(b)(10)(B) of the Predecessor Act and 660:10-11-43 of the Predecessor Rules.

5. Respondents made untrue statements of material fact and 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 in connection with the offer and/or sale of securities in and/or from the state of Oklahoma, in violation of Section 101 of the Predecessor Act and Section 1-501 of the Act.

6. The Administrator has the authority to order Respondents to cease and desist from engaging in an act, practice, or course of business constituting a violation of the Act and to impose civil penalties against Respondents.

7. It is in the public interest to order Respondents to cease and desist from engaging in an act, practice, or course of business constituting a violation of the Act and to impose civil penalties against Berlin and Scambler.

To the extent any of these Conclusions of Law are more properly characterized as Findings of Fact, they should be so considered.

WHEREFORE, it is recommended that the Administrator order Respondents to cease and desist from engaging in violations of the Act or doing any act in furtherance thereof, impose civil penalties against Berlin and Scambler in the amount of \$5,000 each, and impose any other sanction(s) deemed appropriate and authorized by law.

Dated this 4th day of March, 2009.

Respectfully submitted,

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