BEFORE THE
BUSINESS, TRANSPORTATION AND HOUSING AGENCY
DEPARTMENT OF CORPORATIONS
STATE OF CALIFORNIA

In the Matter of the DESIST AND REFRAIN ORDER Issued To: Cole Halliburton, President Richard P. Underwood, aka Rick Underwood, Director Steve S. Stengell, aka Stephen Scott Stengell, Senior Vice President Scott A. Harris, Senior Vice President Frank Morones, Senior Account Executive Allied Syndications, Inc., dba Allied Energy Group and as T3 CBM Development T3 CBM Development, a Kentucky general partnership 510 Bering Drive, Suite 300 Houston, Texas 77057 2800 Griffin Drive Bowling Green, Kentucky 42101 Respondents.	OAH No.: N2007120338

DECISION

The attached Proposed Decision of the Administrative Law Judge of the Office of Administrative Hearings, dated April 25, 2008, is hereby adopted by the Department of Corporations as its Decision in the above-entitled matter.

This Decision shall become effective on July 30, 2008.

IT IS SO ORDERED this 29th day of July 2008.

CALIFORNIA CORPORATIONS
COMMISSIONER

Preston DuFauchard

BEFORE THE
BUSINESS, TRANSPORTATION AND HOUSING AGENCY
DEPARTMENT OF CORPORATIONS
STATE OF CALIFORNIA

In the Matter of the DESIST AND REFRAIN ORDER Issued To: Cole Halliburton, President; Richard P. Underwood. aka Ric Underwood. Director; Steve S. Stevell, aka Stephen Scott Stengell, Senior Vice President; Scott A. Harris, Senior Vice President; Frank Morones. Senior Account Executive; Allied Syndications, Inc., dba AIlied Energy Group, and as T3 CBM Development; T3 CBM Development, a Kentucky general partnership 510 Bering Drive, Suite 300 Houston, TX 77057 2800 Griffin Drive Bowling Green. KY 42101 Respondents,	OAH No. N2007120338

PROPOSED DECISION

Administrative Law Judge Ralph J. Venturino, State of California, Office of Administrative Hearings, heard this matter in Sacramento, California on February 5, 2008.

Lindsay B. Herrick, Corporations Counsel, represented the State of California, Department of Corporations (Department).

John H. Baker, Esq. represented respondents. Respondents were not present

The record remained open for receipt of simultaneous written briefs/closing arguments but not for submission of additional evidence. The Department's Post Hearing

Brief and respondents' Closing Argument were timely received on February 29, 2008, with the originals marked, respectively, as exhibit 17 and exhibit B. The Department's and respondents' replies were timely received on March 12, 2008, with the originals marked, respectively, as exhibit 18 and exhibit C.

In its briefs, the Department asked for reconsideration of evidentiary rulings and the allowance of additional documentary evidence. The respondents had an opportunity to address the Department's requests in its briefs and objected. After subsequent letter briefing on respondents' March 17, 2008 request for sur-replys to address non-evidentiary issues, respondents' sur-reply request was denied. The record was closed on March 26, 2008, and the matter was submitted.

The Department's request for the addition of documentary evidence is denied. The admission of exhibit 13 is reconsidered. The relevant portions of exhibit 13 are now admitted as administrative hearsay to support and explain the admissions against interest that respondents made in their written response.

FACTUAL FINDINGS

1. Preston DuFauchard as Commissioner of Corporations of the State of California, Department of Corporations, made and filed the Desist and Refrain Order (DRO), in his official capacity, on November 13, 2007.

2. The Department is the agency of the state responsible for enforcement of the Corporate Securities Law, California Corporations Code section 25000 et seq.

3. The DRO was filed pursuant to the authority of Corporations Code section 25532. The DRO demanded that respondents desist and refrain "from the further offer or sale in the State of California of securities, including but not limited to investment contracts in the form of units, unless and until qualification has been made under the law, unless exempt." The Department made the demand because respondents were allegedly offering or selling such securities, in a way contrary to the demand, in violation of Corporations Code section 25110.

The DRO further demanded that respondents desist and refrain "from offering or selling or buying or offering to buy any security in the State of California, including but not limited to and investment contracts in the form of units, by means of any written or oral communication which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading." The Department made the demand because respondents allegedly had been offering or selling such securities, in a way contrary to the demand, in violation of Corporations Code section 25401.

4. On December 13, 2007, timely and through counsel, respondents requested a hearing. They also responded to the DRO allegations, including certain admissions, and offered affirmative defenses.

5. On December 21, 2007, the Department served a Notice of Hearing on respondents indicating a hearing on February 5, 2008, in Sacramento, California to begin at 9:00 a.m.[1]

6. On January 29, 2008, respondents, through their counsel, implicitly recognized receipt of the Department's December 21, 2007 Notice of Hearing when they filed a request for a continuance of the February 5, 2008 hearing date. The respondents did not challenge the December 21, 2007 Notice of Hearing prior to its Reply Brief.[2]

7. Allied Syndications, Inc. is a Texas corporation, formed on June 3, 2003, with a business address at 2800 Griffin Drive, Bowling Green, Kentucky, 42101. It maintains an Internet website at www.alliedenergy.com.

8. On April 10, 2005, Allied Syndications, Inc. was acquired by Technol Fuel Conditioners, Inc. Subsequent to a concomitant reverse merger, the resulting entity became Technol Fuel Conditioners, Inc. doing business as Allied Syndications, Inc.

9. Allied Energy Group was formed on July 17, 2006. It had a business address also at 2800 Griffin Drive, Bowling Green, Kentucky, 42101. Its directors were listed as Shane Polson (Polson) and Terra Underwood.

10. Respondent Cole Halliburton (Halliburton) was the President of Allied Syndications, Inc. (Allied) doing business as Allied Energy Group and as T3 CBM Development.[3] Halliburton is a managing general partner of T3 CBM Development.

11. Respondent Richard P. Underwood (Underwood), also known as Rick Underwood, also known as Ric Underwood was, in March and May 2004, a principal of Allied and Allied Energy Group, who maintained addresses at 2800 Griffin Drive, Bowling Green, Kentucky, 42101, and 510 Bering Drive, Suite 300, Houston, Texas, 77057. Underwood was the subject of a Stop Order and Order to Cease and Desist that the Kentucky Department of Financial Institutions issued on or about May 12, 2003 (May 12, 2003

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[1] The February 5, 2008 hearing date was according to an agreement of the parties. This Notice of Hearing was the second Notice the Department served. It was served subsequent to the inclusion of additional respondents, and respondents' unopposed request for a continuance of the initial December 21, 2007 hearing date.

[2] Respondent's claim, in their Reply Brief, that their "is nothing in the record to show that a valid Notice of Hearing was served on respondents" is not true.

[3] Unless a time frame is specifically identified, all facts concerning respondents relate to the time frames relevant to the allegations.

Kentucky SO & OCD). He also was the subject of an Order of Prohibition and Revocation that the Wisconsin Department of Financial Institutions executed on July 14, 1998.

12. The Department did not establish that Underwood was a Director and General Manager of Allied when the subject T3 CBM Development units were offered and sold. However, he was listed in respondents' T3 CBM Development Confidential Private Placement Memorandum (Memorandum) as a founder and shareholder of Allied who, as owner of Crude Oil Drilling, Inc., will secure a contract from Allied for "turnkey drilling and operating."

13. Respondent Steve S. Stengell (Stengell), also known as Steven Scott Stengell, was the Vice President of Allied.

14. Respondent Scott A. Harris (Harris) was Senior Vice President of Allied.

15. Respondent Frank Morones (Morones) was Senior Account Executive of Allied.

16. Allied was a managing general partner of T3 CBM Development (T3). T3 was a Kentucky general partnership with an address also at 2800 Griffin Drive, Bowling Green, Kentucky, 42101.

17. On October 30, 2006, Morones, on behalf of Allied, made a telephone call to a Department undercover investigator to offer him an opportunity to invest in units of T3. Morones asked for the investigator by his undercover alias, "John Fox." The investigator did not call Morones first and did not know how Morones initially got his name. Prior to the call, the investigator did not know about the offer, and did not know Morones, Allied, or any of the other respondents.

Morones asked if the investigator "had invested before or was interested in investing" to which the investigator simply answered, "yes." Morones then asked if the investigator was "accredited" to which the investigator also answered "yes." Morones did not ask, nor did investigator provide information about John Fox's annual income or net worth.

18. The questions Morones posed to the investigator indicated Morones did not initially understand what the investigator"s investor status was. This corroborates that there was no prior relationship between respondents and the investigator and that, when Morones called, the investigator did not know whether John Fox was accredited.

19. Under the circumstances, Morones's call to John Fox is a "cold call" or a public solicitation. Morones's lack of diligence in confirming whether John Fox understood what "accredited" meant, or whether John Fox met the requirements for being an accredited investor confirms the "public" nature of the offering. Respondents sent "John Fox" an

investor package that included a T3 Confidential Private Placement Memorandum (T3 Memorandum).[4]

20. Beginning in October 2006, Halliburton, Stengell, Harris, Morones, Allied, and T3 offered and sold partnership investment units of T3 to at least one member of the public. There were 25 T3 partnership units offered or sold, at $26,000 per unit, to raise $650,000 in funds to drill, test, and complete three gas wells in Rogers County, Oklahoma. Investing partners were responsible to pay an additional $5,400 per well, per unit, for an additional $405,000, if Allied chose to complete the wells. Allied has accepted completion costs from its investment partners.

21. The partnership units were offered or sold in California as issuer transactions.

22. The Department did not issue a permit or other form of qualification authorizing any person to offer and sell the subject partnership units in California.

23. On May 19, 2006, the State of Kentucky brought an Administrative Complaint against Allied, Underwood, Stengell, and Polson, among others. This litigation was disclosed in the T3 Memorandum.

The Department did not establish the details of the Administrative Complaint.

24. The Securities Commissioner of the State of Texas (Texas Commissioner) issued an Emergency Cease and Desist Order, on March 5, 2004, that involved Allied and Underwood, among other respondents (March 2004 Texas ECDO). The Commissioner issued the emergency order after making findings of fact based upon "sufficient evidence" the Texas State Securities Board presented to her. In that emergency order, the findings included Allied and Underwood intentionally failing to disclose material facts. These material facts included Underwood's involvement in the May 12, 2003 Kentucky SCO & OCD, and making material misrepresentations in connection with the offer for sale of oil and gas working interests. In addition, respondents claimed an exemption that was found to be misleading and unavailable because they engaged in public solicitation or advertisements. The legal conclusions included the determination that the working interests were securities that were not properly registered according to the Texas Securities Act, and that Allied and Underwood engaged in fraud in connection with the offer for sale of the securities. Allied and Underwood had an opportunity to request a hearing concerning the March 2004 Texas ECDO.

All respondents, including AIlied and Underwood, waived a hearing and other procedural rights but entered into an Agreed Cease and Desist Order on March 27, 2004 (Texas ACDO). The March 2004 Texas ECDO continued in force and effect through the date that the Texas Commissioner entered the Texas ACDO. The Texas ACDO findings included Allied and Underwood making materially misleading representations because of the

[4]The document respondents sent to potential investors that would include all necessary disclosures.

failure to disclose Underwood's involvement in the May 12, 2003 Kentucky SO & OCD. Allied and Underwood agreed to the legal conclusions that the working interests were securities that were not properly registered according to the Texas Securities Act, and that Allied and Underwood "engaged in conduct that is materially misleading and likely to deceive the public in connection with the offer for sale of securities." The Texas Commissioner imposed an $8,000 fine.

In light of these factual circumstances, Allied's statement in its T3 Memorandum that the March 5, 2004 Texas Emergency Order was temporary (emphasis in original), and against the Chaucer Fredricksburg Prospect with only Allied as a "sponsor," is misleading because the "temporary" Order became permanent with substantially the same relevant findings of illegality. The findings of illegality are facts that a reasonable investor would want to consider in deciding whether or not to invest.

25. The Administrator of the Division of Securities of the Department of Financial Institutions of the state of Wisconsin executed an Order of Prohibition and Revocation on July 14, 1998. The Order was based upon a July 13, 1998 Petition for Order and a June 25, 1998 Waiver and Consent to Order signed by David G. Rose, President of Robo Enterprises, Inc. (Robo), on behalf of Robo. The Waiver and Consent to Order indicated that Robo waived its right to hearing and that it did not contest the issuance of Order that was eventually executed on July 14, 1998 based upon allegations in the July 13, 1998 Petition for Order. The Consent to Order did not indicate that Robo denied the allegations supporting the Order or that Robo was settling without admitting the allegations.

Among the allegations in the July 30, 1998 Petition for Order were that Richard P. "Ric" Underwood was Executive Vice President of Robo and that he, along with others, improperly offered securities or sale using an unlicensed agent, and after filing a "Form D" that was false or misleading in a material respect.

The above litigation was not disclosed in the T3 Memorandum.

26. Via written response through his attorney, Underwood admitted that he was indicted by a Federal Grand Jury in the Western District of Kentucky for tax matters. He was subsequently sentenced. Underwood denied these matters concerned Allied or T3. The indictment was filed on March 8, 2006 and covered the calendar year 1998, through on or about March 2, 2004.[5]

The above litigation was not disclosed in the T3 Memorandum.

27. Stengell is the subject of a Summary Order to Cease and Desist (Pennsylvania SOCD) that the Pennsylvania Securities Commission issued on May 7, 2002. Stengell's involvement was as the Vice President of Investor Relations and an "affiliate" of Sunclear

[5]The dates were gleaned from exhibit 13.

Energy, Inc. (Sunclear). Sunclear was a Nevada corporation doing business in Bowling Green, Kentucky. The basis of the Pennsylvania SOCD was Sunclear's offer for sale of unregistered and nonexempt securities to a least one person who had "no substantive, preexisting relationship" with Sunclear or its affiliates, was not accredited under "Section 501 of Regulation D," and "did not have sufficient knowledge and experience in financial and business matters to be capable of evaluating the merits and risks of the investments." The securities related to exploration, production, and development of oil and gas production in the United States.

In a November 12, 2003 Order relating to the Pennsylvania SOCD, the Pennsylvania Securities Commission accepted Stengell's offer of settlement, and prospectively rescinded the Pennsylvania SOCD. The Order confirmed that Stengell was the Vice President of Investor Relations. It also confirmed Sunclear's offer for sale of unregistered and nonexempt securities to a least one person who had "no substantive, preexisting relationship" with Sunclear or its affiliates, was not accredited under "Section 501 of Regulation D." and "did not have sufficient knowledge and experience in financial and business matters to be capable of evaluating the merits and risks of the investments." Stengell was barred from offering or selling securities in Pennsylvania, for six months, unless he retained knowledgeable counsel experienced in securities laws. He was ordered to pay $1,000 in costs.

The above litigation was not completely disclosed in the T3 Memorandum.

28. Respondents did not appear at the hearing, except through counsel. They did not offer testimony to support any factual bases for their alleged affirmative defenses. Respondents' factual admissions against interest in their December 13, 2007, response were considered. The legal affirmative defenses, including all the ones that argue that the Department failed to present a prima facie case are decided via this proposed decision.[6]

LEGAL CONCLUSIONS

1. These proceedings do not involve a suspension or revocation of a professional license, or a fundamental vested right. *(Ettinger v. Board of Medical Quality Assurance*, (1982) 135 Cal.App.3d 853, 856; *San Benito Foods v. Ann M Veneman* (1996) 50 Cal.App.4th 1998.) The standard of proof in these proceedings is preponderance of the evidence. (Evid. Code, § 115.)

2. The burden of proof is on the Department concerning the appropriateness of its DRO. The respondents bear the burden on their affirmative defenses. (Corp. Code, § 25163; *People v. Salas* (2006) 37 Cal.4th 967.)

[6] *Frost v. State Personnel Board* (1960) 190 Cal.App.2d 1.

3. A partnership unit of T3 was an investment contract and a security within the parameters of Corporations Code sections 25019 and 25110. (See, also, *SEC v. Howey* (1946) 328 U.S. 293.) It was not a private offering. (Findings 17 through 22, and 28,)[7]

4. Corporations Code section 25110 provides, in pertinent part, that:

> [I]t is unlawful for any person to offer or sell in this state any security... unless such sale has been qualified...or unless such security or transaction is exempted or not subject to qualification ...

Respondents were required to qualify the partnership unit of T3 with the Department pursuant to Corporations Code section 25110 and did not. (Findings 22 and 28.)

5. Corporations Code section 25401 provides:

> It is unlawful for any person to offer or sell a security in this state or buy or offer to buy a security in this state by means of any written or oral communication which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

The test of materiality is a fact "so obviously important to an investor that reasonable minds cannot not differ on the question of materiality." *(TSC Industries v. Northway* (1976) 426 U.S. 438.) Expert testimony is not needed with an obvious fact, such as the type of fact described in the materiality test. (See, *Lawless v. Calaway* (1944) 24 Cal.2d. 81.)

The fact that a principal, or anyone involved in the financial transactions of a business enterprise, has been sanctioned or found to have violated similar business laws in other states is a fact obviously important to an investor when deciding whether or not to invest. This is especially true when the type of business enterprise (in this instance, speculation in oil and gas wells), is the same. In this circumstance there is no reason why this would not hold for acts that took place more than five years ago. The omissions and misrepresentations in Findings 24 through 27 are material and not subject to expert testimony.

6. Cause for issuance of the Department's DRO was established pursuant to Corporations Code sections 25532 and 25110, in that respondents offered and sold a security subject to qualification pursuant to the Code without first being qualified (Findings 7 through 22, and 28, and Conclusions 3 and 4).

[7]Any private offering Regulation D, Rule 506 Exemption Notice that Allied or T3 filed with the Department did not apply -

7. Cause for issuance of the Department's DRO was established pursuant to Corporations Code sections 25532 and 25401, in that respondents offered and sold a security by means of written or oral communications which included untrue statements of material facts and omitted material facts (Findings 7 through 22, 24 through 28, and Conclusion 5).

Respondents knowingly did not conform their conduct to the requirements of the Corporations Code. In these circumstances the DRO is necessary to protect the public interest.

ORDER

The. Desist and Refrain Order issued by the Department of Corporations against respondents is AFFIRMED.

Respondents' appeal is DENIED.

Dated: April 25, 2008

RALPH J. VENTURINO
Administrative Law Judge
Office of Administrative Hearings