

**STATE OF ALABAMA  
ALABAMA SECURITIES COMMISSION**

IN THE MATTER OF:     )  
  )  
TRITON EP, LLC            )  
GARRY B. SMITH           )  
JOHN M. FAETH            )  
  )  
          RESPONDENTS          )

ADMINISTRATIVE ORDER  
NO. CO-2006-0009

**CONSENT ORDER**

The Alabama Securities Commission ("Commission"), having authority to administer and provide for the enforcement of all provisions of Title 8, Chapter 6, Code of Alabama 1975, the Alabama Securities Act ("Act"), upon due consideration of the subject matter hereof, and having confirmed information of the offers for sale and/or sale of securities into, within or from the state of Alabama, has determined as follows:

**RESPONDENTS**

1. TRITON EP, LLC. ("TRITON") is a Texas limited liability company with a business address of 1504 North Greenville Avenue, Suite 150, Allen, Texas 7502.
2. GARRY B. SMITH, at all times relevant to this Order, was President of TRITON, with a business address of 1504 North Greenville Avenue, Suite 150, Allen, Texas 75002.
3. JOHN M. FAETH ("FAETH") at all times relevant to this Order, was the Chief Executive Officer of TRITON, with a business address of 1504 North Greenville Avenue, Suite 150, Allen, Texas 75002.

**STATEMENT OF FACTS**

4. As evidenced by a TRITON memorandum dated January 7, 2005, RESPONDENTS offered a joint venture interest in the Baker #1 Joint Venture, which was formed or to be formed

to participate in an oil and gas title or lease or payments out of production in a gas or oil well, to an Alabama resident for \$45,250.00.

5. On August 6, 2004, RESPONDENTS offered and sold a joint venture interest in the Neighbors #1 Joint Venture, which joint venture was formed or to be formed to participate in an oil and gas title or lease or payments out of production in a gas or oil well, to an Alabama resident for \$26,000.00.

6. On September 15, 2004, RESPONDENTS filed a Rule 506 Form D submission for the Neighbors #1 Joint Venture.

7. As evidenced by a letter dated October-8, 2004, SMITH solicited and received a \$9,000.00 investment from an Alabama resident for "completion costs" for the Neighbors #1 Joint Venture well.

8. As evidenced by a memorandum dated August 15, 2005, RESPONDENTS offered to sell a joint venture interest in the Wiese #1 Joint Venture, which joint venture was formed or to be formed to participate in an oil and gas title or lease or payments out of production in a gas or oil well, to an Alabama resident for \$47,525.00.

9. As evidenced by a memorandum dated September 15, 2005, RESPONDENTS offered to sell a joint venture interest in the Neighbors #2 Joint Venture, which joint venture was formed or to be formed to participate in an oil and gas title or lease or payments out of production in a gas or oil well, to an Alabama resident for \$35,050.00.

10. The Alabama investor stated that he had no established business relationship with RESPONDENTS prior to the first solicitation.

11. On March 6, 2006, Administrative Order, Cease and Desist Order #2006-009, was issued by the Commission to RESPONDENTS. The Order alleged the solicitation/sale of

unregistered securities by TRITON, into, within, or from the State of Alabama through SMITH and FAETH without benefit of registration as a securities agent.

12. In a response to the Cease and Desist Order, counsel for the RESPONDENTS represented to the Commission that his clients were not aware that the investor in question was a resident of Alabama. Counsel also advised that when they were made aware of an investor's legal residence, notice filings were made reporting the offer and sale of the federal covered securities as required under Rule 506.

13. Information made available to the Commission by RESPONDENTS also indicates that a list of qualified and filtered potential-investors was purchased from American Information Systems, a California entity.

#### CONCLUSIONS OF LAW

14. The Commission makes the following Conclusions of Law *without any admission or denial* by the any of the Respondents:

15. Section 8-6-2 (10), Code of Alabama 1975, defines a certificate of interest or participation in an oil, gas or mining title or lease, or in payments out of production under such a title or lease, or any right to subscribe to any of the foregoing, as a security. The Commission concludes, without admission or denial by the Respondents herein, that participation in an oil, gas, or mining title or lease, or in payments out of production under such a title or lease, and are securities as defined by the Act.

16. A review of the files of the registration division of the Alabama Securities Commission determined that the securities as reference in item 4 above are not registered, nor exempt from registration. It is a violation of Section 8-6-4, Code of Alabama 1975, to offer or sell a security into, within, or from the State of Alabama without benefit of registration.

17. The Commission policy statement concerning limited offering exemption requires the submission of a Form D within fifteen days of the date of the first sale in the State of Alabama. RESPONDENTS filing for the Neighbors #1 Joint Venture was not filed in a timely manner.

18. Neither TRITON, SMITH, or FAETH, are registered in the State of Alabama as a dealer or securities agent. It is a violation of Section 8-6-3(a), Code of Alabama 1975, to conduct securities transactions in the state of Alabama as a dealer or agent, without benefit of registration.

19. One or more of the Respondents is affiliated with the entity TEXCO Securities Inc. Prior to the issuance of the Cease and Desist Order, TEXCO Securities Inc. applied to be a registered NASD broker-dealer, and the NASD subsequently approved the registration of this entity. In view of the subject broker-dealer application, the Commission accepts the Respondents' consent to this Order "without admitting or denying" the Conclusions of Law as all future sales by any of the Respondents are to be made by the NASD-registered broker-dealer and with proper registration.

**WHEREAS**, RESPONDENTS admit that the above referred to transactions were effected in the state of Alabama prior to registration, and state that the information and assertions presented to the Commission during its investigation of this matter are true and correct; that RESPONDENTS understand the Commission relied upon such information and assertions in its determination to accept this Order, and that should information or assertions prove to be incorrect or misrepresented, the Commission may seek such other administrative, civil or criminal remedies that may be available to it under the provisions of the Act.

**WHEREAS**, RESPONDENTS have voluntarily waived all rights to a hearing upon entry

of this Order, and have consented to the entry of this Order, and

**WHEREAS**, the Commission finds this Order necessary and appropriate in the public interest for the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act, and

**WHEREAS**, the Commission and RESPONDENTS are desirous of settling this matter as hereafter set forth and agree to the entry of this Order.

**WHEREAS**, RESPONDENTS have tendered an offer of rescission to all Alabama residents and subsequently furnished a copy of the rescission offer to the Commission. Contact with the investors by the Commission verified that the offer was either accepted or rejected by the investor.

**ACCORDINGLY, IT IS HEREBY ORDERED:**

1. That RESPONDENTS shall, until such time as properly registered in the State of Alabama, or exempt therefrom, refrain from effecting securities transactions into, within or from the state of Alabama.
2. That any security offered or sold by RESPONDENTS in the State of Alabama is registered, or subject to a perfected exemption.
3. That RESPONDENT TRITON shall ensure that proper procedures are enacted to preclude any future non-compliance with the Act.
4. That in accordance with Section 8-6-19(j)(1), Code of Alabama 1975, RESPONDENTS shall pay to the **State of Alabama** an administrative assessment in the total sum Five Thousand Dollars (\$5,000), said funds to be tendered in certified funds contemporaneously with the entry of this Order.
5. That in accordance with Section 8-6-19(k)(1), Code of Alabama 1975,

RESPONDENTS shall pay to the **Alabama Securities Commission**, as partial reimbursement for the Commission's cost for investigating this matter, the sum of Five Thousand Dollars (\$5000), said funds to be tendered in certified funds contemporaneously with the entry of this Order.

6. RESPONDENTS are not disqualified from 17 C.F.R. §§ 230.504, 230.505, and/or 230.506, and may rely upon these exemptions and any other applicable registration and transaction exemptions.

7. That the entry of this Order resolves the Cease and Desist Order, Administrative Order No. CD-2006-0009, issued MARCH 6, 2006 to RESPONDENTS and is hereby vacated.

8. That this Order shall not constitute a disqualification from registration as a broker or dealer in the State of Alabama for Respondents or any Affiliate.

AGREED AND CONSENTED to on dates indicated:

RESPONDENTS:  
TRITON EP, LLC:

BY: [Signature]

TITLE: President

DATE: 5/24/06

GARRY B. SMITH:

BY: [Signature]

TITLE: President

DATE: 5/24/06

JOHN M. FAETH:

BY: John M. Faeth

TITLE: CEO

DATE: 5/23/06

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APPROVED AND ORDERED this 26<sup>th</sup> day of May, 2006

ALABAMA SECURITIES COMMISSION  
770 Washington Avenue, Suite 570  
Montgomery, AL 36130-4700  
(334) 242-2984

BY:

[Signature]  
JOSEPH P. BORG  
Director

