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ARKANSAS SECURITIES DEPT.

**BEFORE THE ARKANSAS SECURITIES COMMISSIONER  
CASE NO. S-10-0060**

**IN THE MATTER OF**

**BAMCO GAS, LLC;  
ERNEST ANCIN BARTLETT, III;  
AND HOWARD MILLER APPEL**

**RESPONDENTS**

**REQUEST FOR CEASE AND DESIST ORDER**

The Staff of the Arkansas Securities Department ("Staff") has received information and has in its possession certain evidence which indicates that Bamco Gas, LLC ("Bamco"), Ernest Ancin Bartlett, III (CRD# 1581684) ("Ernest Bartlett" or "Bartlett"), and Howard Miller Appel (CRD# 1293152) ("Howard Appel" or "Appel") (collectively "Respondents") have violated various provisions of the Arkansas Securities Act, Ark. Code Ann. §§ 23-42-101 through 23-42-509 ("Act"), and the Rules of the Arkansas Securities Commissioner ("Rules"), and for its Request for Cease and Desist Order states as follows:

**ADMINISTRATIVE AUTHORITY**

1. This action is brought in connection with violations of the Act and Rules and is, therefore, properly before the Arkansas Securities Commissioner ("Commissioner"), in accordance with Ark. Code Ann. § 23-42-209.

**RESPONDENTS**

2. Bamco is a private, manager-managed Delaware limited liability company ("LLC"), which was formed in 2004 to participate in various areas of the oil and natural gas industry, including acquiring, exploring, drilling, and developing oil and gas properties; and acquiring ownership interests in oil and gas properties, projects, or entities. Bamco's focus was to acquire exploration and development assets in the Texas Gulf Coast Region. During the time period set forth herein, Bamco's main office was located at 111 Presidential Boulevard, Suite

158, Bala Cynwyd, Pennsylvania 19004 (“Main Office Address”). Bamco registered as a foreign LLC in Arkansas on June 22, 2006. According to the Arkansas Secretary of State, Bamco’s status was subsequently revoked on December 31, 2007.

3. Bartlett is a resident of Little Rock, Arkansas. Bartlett was registered with the Arkansas Securities Department (“Department”) as a broker-dealer agent with E. F. Hutton & Company Inc. from December 5, 1986, through September 25, 1987, and with Prudential-Bache Securities Inc. from September 25, 1987, through June 1, 1988. Through a decision rendered on June 14, 1989, the National Association of Securities Dealers (“NASD”), now known as the Financial Industry Regulatory Authority, censured Bartlett, fined him \$15,000.00, and barred him from association with any NASD-registered broker-dealer in any capacity. NASD found that Bartlett exercised discretionary power over three customer accounts, and purchased and sold securities without the prior written consent from the customers. Additionally, NASD found that Bartlett used high-pressure sales tactics and made exaggerated and misleading statements to customers to solicit their business. Bartlett also failed to respond to NASD’s requests for information pursuant to the NASD Rules of Fair Practice.

4. Howard Appel is a resident of Pennsylvania. Appel has never been registered with the Department in any capacity. Appel was registered with NASD and other states’ securities agencies as a broker-dealer agent with five different broker-dealer firms from August 21, 1984, through December 22, 1990.

5. Bartlett, Appel, and entities with which they are associated have been involved in a myriad of complex securities offerings spanning an undetermined period of time.

## FACTS SUPPORTING CEASE AND DESIST ORDER

6. Between August 2005 and December 2008, Bamco conducted securities offerings of senior debentures (“Senior Bamco Debentures”) and subordinate debentures (“Subordinate Bamco Debentures”) (collectively “Bamco Debentures”) collateralized by the revenue and assets of Bamco, including its oil and gas properties, which raised a total of \$17 million from investors in Alabama, Arkansas, Colorado, Connecticut, Florida, Kansas, Kentucky, Louisiana, Massachusetts, Michigan, Ohio, Oklahoma, Texas, Washington, West Virginia, and Wisconsin.

7. Bamco sold the Bamco Debentures exclusively through Crews & Associates, Inc. (“Crews”) (CRD# 8052), an Arkansas broker-dealer firm registered with the Department since March 25, 1980. Crews served as the private placement agent (“Placement Agent”) for the Senior Bamco Debenture offering and the Subordinate Bamco Debenture offering. Crews and Bamco sold all of the Bamco Debentures to accredited investors and qualified institutional buyers (“QIBs”) using offering documents (“private placement memoranda” or “PPMs”) that were prepared by Bamco, Crews, and Crews’ outside counsel.

8. Bamco offered and sold two series of Bamco Debentures. On August 9, 2005, Bamco closed a private placement offering of Series 2005, \$10,000,000 8.25% Debentures – the Senior Bamco Debentures. Similarly, on March 28, 2008, Bamco closed a subsequent private placement offering of Series 2008, \$7,000,000 10.00% Subordinate Debentures – the Subordinate Bamco Debentures. On August 16, 2005, and April 14, 2008, respectively, Bamco filed Notices of Sales of Securities on SEC Form D (“Form D”) with the Department for the Senior Bamco Debenture offering and the Subordinate Bamco Debenture offering. Bamco made the Form D filings pursuant to Ark. Code Ann. §§ 23-42-501(3) and 23-42-509(c)(1) in order to

offer or sell the Bamco Debentures in and from Arkansas as federal covered securities in private placement offerings.

9. Bamco issued the Senior Bamco Debentures pursuant to a trust indenture in 2005 (“2005 Trust Indenture”) to raise funds to pay off the outstanding balance of prior debts or loans from Texas Capital Bank headquartered in Dallas, Texas, in the amount of \$1,836,543.00; RMS Advisors, Inc. (“RMS Advisors”), described in the PPM for the Senior Bamco Debenture offering as a Bamco “related party” in the amount of \$1,253,341.00; FEQ Gas, Inc. (“FEQ Gas”), a related party, in the amount of \$56,338.00; DDH Resources II, Limited (“DDH Resources”), in the amount of \$734,956.00; and Westwood AR, Inc., a related party, in the amount of \$310,389.00; provide working capital for Bamco; fund a debt service reserve account in the amount of \$750,000.00; and pay the costs of the issuance of the Senior Bamco Debentures. The Senior Bamco Debenture holders possessed a security interest in and senior lien on Bamco’s revenues, any property or funds held by the trustee for the Bamco Debentures (“Trustee”) pursuant to the 2005 Trust Indenture, and all other assets of Bamco existing at the time of the offering or acquired after the offering.

10. Bamco issued the Subordinate Bamco Debentures pursuant to a supplemental trust indenture in 2008 (“2008 Trust Indenture”) (collectively with the 2005 Trust Indenture, “Trust Indentures”) to provide approximately \$6,079,350.00 in working capital that Bamco expected to use to acquire a 45% interest in Freedom Pipeline, LLC (“Freedom Pipeline”), a Texas LLC, from its then owner, Striker Petroleum, LLC (“Striker”), a Texas LLC also engaged in the oil and gas industry; provide approximately \$500,000.00 for working capital purposes; and pay the costs of issuance of the Subordinate Bamco Debentures. The Subordinate Bamco Debenture holders obtained a subordinate security interest in Bamco’s revenues, the property or

funds held by the Trustee pursuant to the 2008 Trust Indenture, and all other assets of Bamco then held or acquired after the offering, including the 45% interest in Freedom Pipeline that was to be acquired with the proceeds of the Subordinate Bamco Debentures.

11. On December 3, 2009, the SEC filed a complaint against Striker in the United States District Court for the Northern District of Texas, Dallas Division, for violations of the federal securities fraud provisions found in Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], Section 10b of the Securities Exchange Act of 1934 [15 U.S.C. § 78j(b)] (“Exchange Act”), and Rule 10b-5 of the Exchange Act [17 C.F.R. 240.10b-5] in the offer and sale of debentures by Striker collateralized by oil and gas properties, which raised approximately \$57 million from investors across the country from September 2006 through September 2008. Specifically, the offering materials for the debentures were alleged to have included misstatements and omissions regarding Striker’s assets, earnings, use of investor proceeds, and employment of an independent trustee for the debentures. The SEC’s action resulted in agreed permanent injunctions against Striker and its principals, the freezing of Striker’s assets, and the appointment of a receiver, attorney Dennis L. Roossien, Jr. (“Roossien”) of Munsch Hardt Kopf & Harr, P.C., of Dallas, Texas. *See SEC v. Striker Petroleum, LLC, Mark S. Roberts, and Christopher E. Pippin*, Case No. 3:09-CV-2304-D (N.D. Tex. Dec. 3, 2009).

12. Roossien’s *Receiver’s First Interim Report* filed with the court on July 30, 2010, stated, in pertinent part, as follows:

The structure of these [debenture] offerings was such that Striker was the manager of each of the issuer entities, and Reichmann Petroleum Corp. [“(Reichmann”)] would serve as the operator of the properties. Later offerings raised another \$57 million, and they were premised upon the use of funds to drill new wells on essentially the same leases and to fund the acquisition of a pipeline [, held by Freedom Pipeline, LLC,] that served certain of the properties. In these offerings, Striker itself was the issuer of what were called the debenture investments . . . .

Parallel to Mark Roberts [, Striker's president, director, and sole owner ("Mark Roberts" or "Roberts")], *there were others raising money on the same assets under the Bamco banner, principally by Earnest [sic] Bartlett and Howard Appel.* The extent of this fundraising is unknown, but there were at least two debenture offerings that were similar to the Striker debenture offerings, and *the land records show that Bamco also received percentage interests in the same wells in which Striker had percentage interests. Additionally, there were multiple transfers of the oil and gas properties and the pipeline back and forth between Striker and Bamco.* (Emphasis added).

In 2010, after notification of Bamco's potentially-overlapping interests in Striker's oil wells, the Staff initiated an investigation into Bamco and the circumstances surrounding the sales of the Bamco Debentures.

13. First Security Bank of Searcy, Arkansas ("First Security"), served as the Trustee for the Bamco Debentures. First Security is an Arkansas state bank, wholly-owned subsidiary of First Security Bancorp, and affiliate of Crews. Bamco sold the Senior Bamco Debentures pursuant to the 2005 Trust Indenture dated August 1, 2005, between Bamco and the Trustee. Bamco sold the Subordinate Bamco Debentures pursuant to the 2008 Trust Indenture dated March 15, 2008, between Bamco and the Trustee. Bamco and the Trustee also entered into certain corresponding continuing disclosure agreements for the Bamco Debenture offerings.

14. During the time period set forth herein, Bartlett served as the president and principal of FEQ Investments, Inc. ("FEQ Investments"), a Delaware corporation which served as the manager of FEQ Gas, LLC ("FEQ Gas") (collectively with FEQ Gas, "FEQ Entities"), a manager-managed Delaware LLC for which Bartlett also served as a principal. FEQ Gas served as the manager of Bamco. Bartlett had the authority to manage Bamco on a daily basis through his control of the manager entity, FEQ Gas. Furthermore, Bartlett was a "principal interest holder" ("Principal Member") with control of Bamco, owning 8.32% of Bamco through his

control of the FEQ Entities – FEQ Gas, which owned 2.03% of Bamco, and FEQ Investments, which owned 6.29% of Bamco.

15. The following information about Bartlett was included in the PPM for the Senior Bamco Debenture offering and the PPM for the Subordinate Bamco Debenture offering:

Ernest Bartlett has been a self-employed investment banker and private investor in the oil and gas industry for over 5 years. He has engaged in investment banking services for private and publicly held companies for over 20 years. He has performed investment banking services for two publicly held companies in the oil and gas industry, Touchstone Resources USA, Inc. (otc:tsnu) and Endeavour International Corp. (amex:end), who have raised in excess of \$100 million of capital in the public market for oil and gas exploration and development. He has acted as advisor for numerous oil and gas projects in the private sector that have raised equity investment [sic] of over \$100 million in oil and gas projects in the private sector, and that have contributed to the discovery of in excess of 1 Trillion cubic feet of natural gas and equivalents.

16. For the Senior Bamco Debenture offering, Appel served as an “Authorized Company Representative” of Bamco and as Bamco’s Secretary. During the time period set forth herein, Appel served as the general partner of 1025 Partners, LP (“1025 Partners”), a Delaware limited partnership (“LP”); as the president of RMS Advisors, a Nevada corporation described by Bamco as a related party; and as the president of DDH Resources, an entity of unidentified origin. RMS Advisors served as the manager of various entities, including, but not limited to, RMS Gas, LLC (“RMS Gas”), a Delaware LLC; and PHT Gas, LLC (“PHT Gas”), a Delaware LLC.

17. Appel was the single largest Principal Member with control of Bamco, owning 27.29% of Bamco through his control of 1025 Partners, which owned 10.04%; RMS Gas, which owned 7.99%; PHT Gas, which owned 5.71%; 1025 Investments, Inc. (“1025 Investments”), a Nevada corporation for which Appel served as president and director, which owned approximately 1.99%; and RMS Advisors, which owned a 1.56% interest in Bamco. Appel also

controlled or had interests in numerous other entities with interests in Bamco and Bamco related parties, several of which shared Bamco's Main Office Address.

### **Bamco Receivership**

18. Frank Faust ("Faust"), Senior Vice President & Trust Officer for the Trustee, sent a letter to Bamco on February 25, 2009, reminding Bamco of the following requirements under the Trust Indentures:

Pursuant to Section 5.01 of the [Trust] Indentures, "[a]ll Revenues shall, as and when received by [Bamco], be deposited into the Revenue Fund." To date, while Bamco has not missed a payment on any of the debentures issued under the [Trust] Indentures, [Bamco] has not been following these agreed upon procedures. I have to insist that Bamco immediately commence depositing its Revenues as and when received into the Revenue Fund . . . .

Faust also detailed certain additional, monthly deposits required by Bamco. Regarding additional irregularities in Bamco's compliance with its agreements with the Trustee, Faust stated as follows:

Bamco has also not delivered certain required financial disclosure, including the 12/31/07 Year End Reviewed Statement and the 3/31/08, 6/30/08 and 9/30/08 unaudited quarterly statements . . . .

With the giving of notice and the passage of time, upon the direction of the debenture holders, it would be incumbent upon me to declare a default as a result of the above violations of the [Trust] Indentures.

Please provide assurance to me that Bamco will bring itself into compliance with the Indentures immediately.

19. On May 4, 2009, the Trustee filed a complaint against Bamco in the Pulaski County Circuit Court in Little Rock, Arkansas, which initiated a receivership action against Bamco and requested the appointment of a receiver over Bamco's assets. *See First Sec. Bank v. Bamco Gas, LLC*, Case No. 60CV-09-3218 (Ark. Sixth Jud. Cir. – Div. 2; May 4, 2009). In its complaint, the Trustee alleged, in pertinent part, as follows:

Bamco Gas has not provided the Financial Statements, accounting information, and disclosures contractually required by the [2005] Trust Indenture.

....

Despite its contractual obligations in the Trust Indenture and demands made by the Trustee, Bamco Gas has refused to deposit all its revenues into the Revenue Fund.

Bamco Gas is in violation of its contractual trust obligations to deposit all of its revenues into the Revenue Fund at First Security Bank.

It is believed, and therefore alleged, that the revenues of Bamco Gas, which are the security for its Debenture obligations under the Trust Indenture, are being held and transferred in derogation of the Trustee's security interest and its contractual rights under the Trust Indenture.

It is believed, and therefore alleged, that the Trustee's security interest in the revenues of Bamco Gas is being impaired by such funds being transferred and depleted outside of the Revenue Fund, and its protective provisions established by the Trust Indenture.

....

Despite its contractual obligations in the Trust Indenture and demands made by the Trustee, Bamco Gas has failed and refused to provide Trustee the Financial Statements, accounting information, and disclosures.

20. The Trustee made the last semiannual distribution payments to Subordinate Bamco Debenture holders on December 1, 2008, less than nine months after the Subordinate Bamco Debenture offering, and to the Senior Bamco Debenture holders on June 1, 2009.

21. The court appointed Llano Consolidated Resources, LLC ("Llano"), a Texas LLC managed by Steven E. Loper ("Looper") of Amarillo, Texas, as the receiver for Bamco on May 6, 2009, tasked with taking charge and possession of the offices, assets, facilities, records, correspondence, and books of Bamco; collection of Bamco's revenues and gross receipts; and other managerial and operational duties. On May 13, 2010, the court removed Llano and Loper as Bamco's receiver for failure to abide by the court's orders and appointed Alan Wayne

Barksdale (CRD# 4538369) of Little Rock, Bartlett's step-son-in-law, as the successor receiver for Bamco ("Barksdale" or "Successor Receiver").

22. On June 15, 2012, the Successor Receiver filed his *Motion of Receiver for Approval of (A) Sale Transaction, (B) Proposed Distribution of Receivership Assets, and (C) Related Relief* ("Receiver's Motion") with the court. On October 1, 2012, the court entered an *Order Granting Motion of Receiver for Approval of: (A) Sale Transaction; (B) Proposed Distribution of Receivership Assets; and (C) Related Relief* ("Approval Order"). Specifically, the Receiver's Motion detailed the following proposed sale transaction of Bamco's assets:

The [Successor] Receiver, Mr. Barksdale, is also the Chairman and Chief Executive Officer of, and the owner of the largest equity interest in, Red Mountain Resources, Inc. ("RMR"), a [Florida corporation and] publicly traded entity. RMR is engaged in the oil and gas exploration and production business . . . .

Mr. Barksdale, on behalf of RMR, is proposing to purchase . . . from [Bamco's] Receivership Estate [assets] . . . all of [Bamco's] rights, title and interest in the Lease Assets[, Bamco's fractional interests in oil and gas leases located in the state of Texas;] Whitewater Pipeline Interest[, oil and gas working interests in an exploration project located in Delta and Mesa Counties, Colorado, and the corresponding pipeline assets;] and [Bamco's] Miscellaneous Assets[, including office furniture, computers, and related equipment worth approximately \$10,000.00] . . . . As consideration for the purchase of [Bamco's assets,] RMR will issue, and/or cause to be delivered, to the Receivership Estate 5,375,000 shares of RMR's common stock . . . .

. . . .

The [Successor] Receiver makes no representations or warranties with respect to the value of the Asset Sale Shares and would state, for informational purposes only, that as of the close of trading on May 21, 2012, RMR's stock closed at \$1.42 per share.

. . . .

. . . [T]he [Successor] Receiver proposes that once RMR has tendered the Asset Sale Shares to the Receiver at the close of the Sale Transaction (which tender shall occur within five (5) days of the final approval of the Sale Transaction by the Court), the Receiver shall deliver the Asset Sale Shares to the

Trustee within three (3) business days thereafter for distribution to the Class 1 Secured Senior Debenture Claims, followed by distributions to the Class 2 Secured Subordinate Debenture Claims.

23. Pursuant to the Approval Order, Barksdale as the Successor Receiver received the 5,375,000 shares of RMR, the corporation for which he also serves as the president, chief executive officer, and chairman, in exchange for Bamco's assets. The Successor Receiver subsequently distributed the shares of RMR and certain funds to the remaining Bamco Debenture holders. On March 25, 2013, the Trustee filed a *Motion Seeking Approval of Final Distribution and Dismissing Receivership* requesting that the court dismiss the Bamco receivership due to the fact that all assets of Bamco have been sold and distributed to the holders of the Senior Bamco Debentures. The court subsequently entered an *Order Granting Approval of Final Distribution* on March 29, 2013.

#### **Bamco Private Placement Memoranda**

24. Bamco offered and sold the Senior Bamco Debentures and the Subordinate Bamco Debentures using PPMs that contained misstatements and omissions of material facts and information regarding Bamco, Bamco's affiliates and control persons, and the Bamco Debentures, including, but not limited to, the following:

a. Appel Involvement and Background –

i. From February 1985 through March 1990, Appel was registered as an agent with and served as the president and registered principal of the broker-dealer firm Bailey, Martin & Appel ("BMA"). In 1991, NASD permanently barred him from associating with any NASD-registered broker-dealer in any capacity and fined him \$125,000.00 resulting from Appel's participation in a fraudulent scheme to manipulate the price of the stock of a publicly-traded

company. BMA, acting through Appel, effected principal sales of equity securities, agency cross transactions, and municipal securities to public customers at unfair prices. BMA also failed to make certain disclosures on confirmations, sold unregistered shares of common stock to customers, and sold LP interests on an “all or none” basis and caused funds to be disbursed from the escrow account before the contingency was met.

ii. Appel faced numerous other regulatory actions and customer complaints from his time as a registered broker-dealer agent. Appel’s most recent customer complaint from 1995 resulted in an NASD arbitration decision in December 1997 finding Appel jointly and severally liable to a former customer for \$44,500.00 plus interest and over \$12,600.00 in attorney’s fees for allegations including breach of fiduciary duty, breach of contract, fraud and deceit, negligent misrepresentation, breach of duty of reasonable care, respondeat superior, agency, and breach of duty to supervise.

iii. In *United States v. Howard M. Appel*, Case No. 1:04-cr-00505-JG (E.D.N.Y. filed May 26, 2004), Appel pleaded guilty to the felonies of conspiracy to commit securities fraud and conspiracy to commit money laundering on September 21, 2004. On February 26, 2008, he was sentenced to one year and one day in prison and three years of supervised release. Appel was ordered to pay \$2,883,037.99 in restitution to approximately 68 individuals, which was scheduled to be paid at 20% of Appel’s net monthly income to begin immediately after his release. Appel served his prison sentence from June 12, 2008, through April 24, 2009.

iv. On June 12, 2008, the exact date Appel entered prison, Appel emailed several individuals, including Bartlett. Appel referenced and specified certain funds owed to Bamco at that time as a result of various transactions. Additionally, Appel encouraged individuals needing to reach him to either email him or coordinate with Bartlett, as he would be “tough to reach.”

v. Pursuant to an invoice from Appel as president of RMS Advisors dated August 3, 2005, RMS Advisors received a wired payment of \$1,253,341.92 from the Trustee from the proceeds of the Senior Bamco Debenture offering. Pursuant to another invoice signed by Appel as president of DDH Resources dated August 3, 2005, DDH Resources received a payment of \$734,956.71 from the Trustee from the proceeds of the Senior Bamco Debentures. The separate invoices listed the address for RMS Advisors and DDH Resources as Bamco’s Main Office Address. Additionally, the PPMs for the Senior Bamco Debenture offering and the Subordinate Bamco Debenture offering disclosed that Bamco had a 30.94% ownership interest in PHT Gonzalez Partners, LP (“PHT Gonzalez”), a Delaware LP. Appel was the president of PHT Gonzalez. Further, certain bank statements show that Bamco made payments on Appel’s credit cards and indicate various debits and credits to and from entities affiliated with Appel during the time period set forth herein. Appel also signed multiple Bamco-related contracts and documents on behalf of Bamco related parties and entities.

vi. In the PPM for the Senior Bamco Debenture offering under the heading “Related Parties,” Bamco states that “[w]hile not an affiliate of Touchstone Resources USA, Inc. [“Touchstone”]] . . . , [Bamco] has overlapping interests

with Touchstone. Touchstone is the operator of [Bamco's] PHT Vicksburg Project, and other projects, discussed [in the PPM]. Touchstone is a leading-edge oil and gas exploration company targeting high-potential assets." Under the heading "Joint Operating Agreements/Joint Ventures" in the PPM for the Senior Bamco Debenture offering, Bamco further discloses that "Touchstone and [Bamco] entered into a joint venture in April 2004 . . . . Touchstone is a participant in and is the operator of certain of [Bamco's] wells." Additional documents filed with the SEC regarding Cygnus Oil & Gas Corporation ("Cygnus"), a Delaware corporation formerly known as Touchstone, indicate that as of July 3, 2006, Appel as president of HMA Advisors, Inc. ("HMA Advisors"), a Delaware corporation, was the beneficial owner of with voting and/or dispositive power over 300,000 shares of Cygnus stock. HMA Advisors has also shared Bamco's Main Office Address.

vii. Bamco maintained a brokerage account at Crews solely for the purpose of purchasing Senior Bamco Debentures in the secondary market with its excess capital. Bamco's account profile and account forms at Crews completed on March 22, 2007, listed both Bartlett and Appel at Bamco's Main Office Address as the contacts for Bamco's account. Appel was Crews' second point of contact for Bamco, in case Bartlett was unavailable at any time.

viii. Additionally, a June 2, 2005 letter from W.D. Von Gonten & Co. ("W.D. Von Gonten"), a Texas petroleum engineering firm, and addressed to Appel at Bamco Associates, LLC [sic], at Bamco's Main Office Address, indicates that Appel requested an estimate of Bamco's oil and gas reserves and revenues as of

May 1, 2005. The findings of the W.D. Von Gonten reserve report prepared pursuant to Appel's request and a similar request also submitted by Bartlett were ultimately included in the PPM for the Senior Bamco Debenture offering, although Appel is not specifically identified in the PPM.

ix. Despite Appel's involvement with Bamco and involvement with and control of numerous entities affiliated with or related to Bamco, Appel's connection to and control of Bamco and adverse legal and regulatory history were not disclosed in the PPMs for the Senior Bamco Debenture offering or the Subordinate Bamco Debenture offering.

b. Inconsistent Disclosure of Principal Members –

i. Bamco included a description of its Principal Members in the PPMs for the Senior Bamco Debenture offering and the Subordinate Bamco Debenture offering, which, as stated, controlled a majority of the company at the time the Bamco Debentures were sold. A total of ten Principal Members were listed with Bamco ownership levels of between 0.91% and 14.5%. For entities controlled by certain individuals, such as Ernest Bartlett's control of FEQ Gas (2.03% owner) and FEQ Investments (6.29% owner), the PPMs specifically disclosed the names of the individuals with control.

ii. As stated above, Appel served as the general partner of 1025 Partners, and as the president of RMS Advisors, a Bamco related party. RMS Advisors served as the manager of RMS Gas and PHT Gas. Both 1025 Partners (10.04% owner) and RMS Gas (7.99% owner) are disclosed in the PPMs for the Senior Bamco Debenture offering and the Subordinate Bamco Debenture offering as Principal

Members, yet Appel's control of these entities is not similarly disclosed when compared to the other Principal Members of Bamco. Additionally, 1025 Investments owned 1.99%, and PHT Gas owned a 5.71% interest in Bamco. These entities are not disclosed as Principal Members or mentioned at all in the PPMs for the Senior Bamco Debenture offering or the Subordinate Bamco Debenture offering, despite the fact that entities owning as much as 0.91% are disclosed, along with their control persons. Through Appel's control of these entities, Appel owned an approximate 27.29% interest in Bamco and was effectively the Principal Member controlling the largest percentage interest in Bamco, over 10% more than any other Principal Member.

c. Snyder Loan –

i. Bamco failed to adequately describe the series of transactions through which Bamco was to acquire the 45% interest in Freedom Pipeline from Striker, and the risks associated with these transactions.

ii. Jim C. Snyder ("Snyder") is a resident of Seattle, Washington. Pursuant to a promissory note dated March 7, 2008, Snyder granted a bridge loan to Striker ("Striker Bridge Loan") in the aggregate principal amount of \$5.5 million to pay certain debts to Freedom Pipeline, which was secured by a lien on the following property:

*All of the membership interests in Freedom Pipeline, LLC, . . . owned by [Striker], currently consisting of a ninety percent (90%) ownership interest, and all attachments, increases, revision, or additions thereto, granted to [Striker] under the Second Amended Chapter 11 Plan of Reorganization of Freedom Pipeline, LLC as modified, dated October 17, 2007. (Emphasis added).*

iii. On March 28, 2008, Snyder entered into a subordination of the Striker Bridge Loan in which, in consideration for payment of all existing indebtedness under the Striker Bridge Loan, Snyder subordinated his security interest in Freedom Pipeline. In the subordination agreement, Snyder also loaned Bamco, Freedom Pipeline, and Striker the additional sum of \$3 million for which, in part, Snyder received a subordinate lien on the assets of Bamco. On March 28, 2008, Bamco was to acquire 45% of Freedom Pipeline from Striker, which would subsequently be pledged to the Trustee as collateral for the Subordinate Bamco Debentures pursuant to the terms of the 2008 Trust Indenture.

iv. In the PPM for the Subordinate Bamco Debenture offering, Bamco stated the following regarding a \$5 million promissory note dated October 30, 2007, between Striker and Reichmann, and Striker's ultimate payment of the note on March 8, 2008:

From the proceeds of the Subordinate Debentures, [Bamco], directly or indirectly and in cooperation with Striker, will acquire an interest in Freedom Pipeline, which was originally owned by Reichmann . . . . Reichmann filed for bankruptcy on December 8, 2006, and has continued to operate its business and manage its properties, assets and affairs as a debtor-in-possession.

On December 27, 2006, an involuntary chapter 7 bankruptcy was initiated against Freedom and on January 8, 2007, the bankruptcy court entered an Agreed Order for Relief. A settlement agreement was reached in October 2007 between Freedom, Striker, Texas Wyoming Drilling, Inc. and Energy Transfer Fuel, LP ("ETF") resolving the various claims, objections and disputes asserted in connection with Freedom's bankruptcy case. The bankruptcy court approved the Settlement by Order dated October 18, 2007. Pursuant to the October 18, 2007 Settlement Order, Freedom filed an amended plan of reorganization ("Freedom Plan") *setting forth certain payments to Reichmann, including a \$5,000,000 promissory note in satisfaction*

of Reichmann's claims. The Freedom Plan was approved by the bankruptcy court on October 17, 2007.

*Pursuant to the settlement, Reichmann received on October 30, 2007, a promissory note (the "Promissory Note") from Striker in the original principal amount of \$5,000,000, accruing interest at a rate of nine percent (9%) per annum from the date of the Promissory Note. The Promissory Note had a ninety (90) day maturity date and is secured by the ninety percent (90%) of the stock of Freedom currently owned by Striker pursuant to the Freedom Plan with ten percent (10%) owned ETF . . . .*

The Promissory Note was to originally mature on January 28, 2008. Striker requested and Reichmann agreed to a short extension of the Promissory Note which was to mature on March 9, 2008. *Striker paid this Promissory Note on March 8, 2008.* (Emphasis added).

v. The delivery instructions in the closing transcripts for the Subordinate Bamco Debenture offering stated that the proceeds from the sale of the Subordinate Bamco Debentures were to be distributed as follows:

- 1) accrued interest in the amount of \$25,277.78 shall be deposited into the 2008 Subordinate Debenture Fund;
- 2) \$6,079,350.00 shall be deposited in the Freedom Pipeline Project Fund;
- 3) Upon approval from the Special Counsel, from the Freedom Pipeline Project Fund, *pay the Promissory Note payable to Mr. Jim C. Snyder in the amount of \$5,522,150 representing principal plus accrued interest;*
- 4) Upon payment of the Promissory Note, the Trustee shall transfer from the Freedom Pipeline Project Fund an amount of \$5,000 into the Costs of Issuance Account for payment of Bamco's counsel fee payable to Fox Rothschild LP; and
- 5) \$760,000 shall be deposited in the Cost of Issuance Account within the 2008 Subordinate Debenture Fund to pay the costs of issuance as set forth on Schedule A attached hereto; (Emphasis added).

vi. On March 28, 2008, Snyder sent a statement to the Trustee for the amount due to pay the Striker Bridge Loan, which included the principal balance of \$5.5 million and the interest due through March 28, 2008, of \$22,150.00, for a total of \$5,522,150.00. Documents show that the Trustee wired Snyder a total of \$5,522,150.00 on March 28, 2008, to pay the Striker Bridge Loan.

vii. Bamco failed to disclose that Striker was able to pay off its debt to Reichmann through the Striker Bridge Loan and that the majority of the proceeds from the sale of the Subordinate Bamco Debentures would be used to pay off the Striker Bridge Loan debt.

viii. Furthermore, Snyder was considered a "Class A" member of Bamco during the Bamco Debenture offerings, having invested approximately \$968,000.00 and owning an approximate 3.22% interest in Bamco. Additionally, Snyder loaned Bamco \$2 million pursuant to a 12% promissory note in August 2006. While the notes to Bamco's December 31, 2006, financial statements attached to the PPM for the Subordinate Bamco Debenture offering mention the promissory note under the heading "Notes Payable – Related Party," no additional information is disclosed regarding Snyder, his investments in Bamco, or the Striker Bridge Loan by Snyder.

d. Jedco Lien on Freedom Pipeline --

i. Bamco failed to disclose a preexisting \$7.8 million lien on Freedom Pipeline. Instead, it planned a refinancing of the Bamco Debentures almost immediately after the closing of the Subordinate Bamco Debenture offering that would repay this debt.

ii. James E. Davison (“James Davison” or “Davison”) is a resident of Ruston, Louisiana. During the time period set forth herein, Davison served as the member of Jedco Properties, LLC (“Jedco”), a Louisiana LLC.

iii. Effective as of October 9, 2007, Jedco agreed to loan Freedom Pipeline \$7.8 million (“Jedco Debt”) pursuant to a 6% interest promissory note secured by the total of Freedom Pipeline’s assets at the time, including the pipeline which was to be acquired with the proceeds from the Subordinate Bamco Debenture offering. As stated in the promissory note, the total of the \$7.8 million was to be loaned to Freedom Pipeline in two advances – the first advance in the principal amount of \$6 million on October 9, 2007, and the second advance of \$1.8 million through several subsequent payments. Mark Roberts signed the promissory note as Freedom Pipeline’s president; Bartlett for Bamco, as a member of Freedom Pipeline; and Roy Patton for Energy Transfer Fuel, LP, a Delaware LP, as a member of Freedom Pipeline. A deed of trust for the Jedco Debt was recorded in Johnson County, Texas, on January 27, 2009. A Uniform Commercial Code financing statement was also filed with Texas Secretary of State.

iv. The promissory note for the Jedco Debt stated as follows regarding Bamco:

Notwithstanding anything contained in this Note or any other Loan Documents . . . to the contrary, no portion of any principal amount of the indebtedness evidenced by this Note (including, but not limited to, the [two advances to Freedom Pipeline], *include any of the \$1,133,000 loan advanced by [Jedco] to Bamco Gas, LLC.* (Emphasis added).

Specifically regarding the \$1.133 million loan referenced in the promissory note for the Jedco Debt, pursuant to another promissory note dated December 10,

2008, Davison loaned an additional \$1.133 million directly to Bamco (“Bamco Loan”). The promissory note for the Bamco Loan stated as follows:

[James Davison] has extended a loan to [Bamco] in the principal amount of this Note, *to enable [Bamco] to pay the principal and accrued interest due and owing under certain debentures issued by [Bamco].* This Note evidences and sets forth the terms of [Bamco]’s obligation to repay said loan to [James Davison]. Among [Bamco]’s assets, [Bamco] owns and has the right to own and control a total of 90% of the membership interests in Freedom Pipeline . . . , with the remaining 10% of the membership interests in Freedom Pipeline owned by Energy Transfer Corp. [sic] [Bamco] *acknowledges that a certain loan in the principal amount of \$6,000,000 previously extended by [James Davison] or an affiliate thereof is secured by and convertible into a 45% interest in Freedom Pipeline.* (Emphasis added).

v. The promissory note for the Bamco Loan was signed by Bartlett for Bamco. Additionally, Bartlett signed on behalf of PHT Whitewater, LLC (“PHT Whitewater”), a Delaware LLC; and FEQ Realty, LLC (“FEQ Realty”), a Delaware LLC sharing Bamco’s Main Office address, both of which are managed by FEQ Gas, which is managed by FEQ Investments, for which Bartlett serves as the president. PHT Whitewater and FEQ Realty agreed to unconditionally guarantee and act as sureties for the complete and timely payment and performance of the promissory note for the Bamco Loan. Bartlett, for FEQ Realty, also agreed to pledge and grant a second mortgage on FEQ Realty’s leasehold interests in approximately 1,200 acres in Stone County, Arkansas, and all improvements thereon, as collateral security for FEQ Realty’s guarantee, and further agreed to execute additional mortgages, instruments, and other documents as Davison required. Also signing for FEQ Gas, Bartlett pledged FEQ Gas’s then-held 14.64% interest in Bamco as additional collateral for the issuance of the

promissory note for the Bamco Loan. The Trustee's records show an incoming wire transfer of \$1.133 million from Davison to the Trustee on December 2, 2008.

vi. A series of emails between individuals involved with Bamco, HMA Advisors for which Appel serves as president, and the Subordinate Bamco Debenture offering from December 1 – 10, 2008, shows the revision of and the ultimate execution of the promissory note for the Bamco Loan by Ernest Bartlett. In an email on December 10, 2008, Crews agents indicated they would contact Bartlett for his signatures on the promissory note for the Bamco Loan.

vii. On April 22, 2008, Bamco and Striker had entered into an Amended and Restated Purchase and Sales Agreement, which was to convey certain Bamco assets to Striker and which stated as follows:

[Striker] or its successor *Assure Energy, Inc. ("AEI")* shall assume and/or refinance [Bamco] bonds in the principal amount of approximately \$13.5 million payable to Crews & Associates, Inc., *and the obligation to James Davison in the amount of \$6 million plus interest currently secured by the assets of Freedom Pipeline.* (Emphasis added).

[Striker] shall cause AEI to issue to [Bamco] or its designees 5,947,249 shares of common stock of AEI, representing approximately 29.8% of the shares of AEI being issued to [Striker] and its affiliate in connection with the contribution of assets described in Section 1.04 [of this Amended and Restated Purchase and Sales Agreement].

viii. As early as April 30, 2008, negotiations were underway regarding an offering of approximately \$25 million in AEI debentures that were to be issued in conjunction with a proposed consolidation of entities including, but not limited to, Striker, Bamco, and Freedom Pipeline, with and into AEI. The AEI debenture project would have consisted of the refinancing of the Bamco Debentures and the

financing of additional properties and facilities of AEI. There is no evidence that AEI issued debentures for the above-stated purpose.

ix. Bamco failed to disclose this proposed consolidation of Striker, Bamco, and Freedom Pipeline in the PPM for the Subordinate Bamco Debenture offering, or the potential refinancing of the Bamco Debentures that was to occur after the closing of the Subordinate Bamco Debenture offering. Additionally, Bamco failed to disclose that the refinancing of the Bamco Debentures would be used to repay James Davison for the Jedco Debt.

x. In the *Trustee's Eighth Notice to Debenture Holders of Bamco Gas, LLC* dated September 21, 2011, the Trustee included the following statement provided by the Successor Receiver's counsel regarding Freedom Pipeline:

Freedom Pipeline has a secured creditor, Jedco Properties, LLC . . . who is owed approximately \$8 million . . . . The debt owed to Jedco is secured by Freedom's pipeline assets. There is a Promissory Note, recorded Deed of Trust, Assignment of Rents and Security Agreement, and filed UCC Statement. To the best of the Successor Receiver's knowledge, the Jedco secured debt has not been serviced for a couple of years. For certain, Freedom has not had the cash to service the debt since the Successor Receiver was appointed. Recently the Successor Receiver was contacted by Jedco and informed that Jedco had made a decision to initiate foreclosure proceedings.

Freedom's financial situation is as follows: Since the Successor Receiver's appointment [in May 2010], Freedom has been able to cash flow itself on a current operational basis. The problem is that freedom has a large "legacy debt" issue, consisting of both secured and unsecured debts that were left over from the Freedom Bankruptcy and/or accrued thereafter. These "legacy debts" are in addition to the Jedco secured debt . . . .

. . . .

Accordingly, Freedom owes various creditors "legacy debts" in an aggregate of no less than \$600,000 and which could

be as much as nearly \$2 million. At this time, Freedom does not have the means to service the Jedco secured debt or satisfy the “legacy debts” and does not anticipate that it would have the financial ability to do so in the near future. . . . The Successor Receiver believes that at this time it is reasonable to assume that the value of Freedom’s assets, at best, may be just about equal to the Jedco secured debt, but likely under.

Given Freedom’s current financial condition as described above, the Successor Receiver believes, in his business judgment, that it would be reasonable to abandon Freedom and allow Jedco to proceed with the foreclosure. Further, the Successor Receiver does not intend to take any action to stop the foreclosure proceedings, once initiated. . . .

xi. Additionally, in the receivership action against Bamco, the Successor Receiver stated as follows in his June 15, 2012, Receiver’s Motion:

The Trustee informed the Receiver that, prior to the appointment of the Receiver, the Trustee was unaware of the existence of the Jedco Debt. The Trustee stated that in 2008, at the time of the issuance of the Subordinate Debentures, Bamco did not disclose the Jedco Debt. The Receiver is informed that upon learning of the Jedco Debt and the foreclosure proceeding from the Receiver, the Trustee provided notice to the holders of the Debentures of the newly disclosed information . . . .

On November 1, 2011, Texas Midstream [Acquisition Corp, LLC, an assignee of Jedco and holder of the Jedco Debt,] foreclosed on Freedom’s assets. As a result of the foreclosure, Freedom no longer has any remaining assets of value and its operations have ceased. Accordingly, the Receivership Estate’s interest in Freedom, consisting of an approximately 90% membership interest, is of no marketable value.

xii. As stated in the PPM for the Subordinate Bamco Debenture offering, Bamco was to use the proceeds from the sale of the Subordinate Bamco Debentures directly or indirectly to purchase 45% of Freedom Pipeline. Furthermore, Bamco described Freedom Pipeline and the properties that the pipeline encompasses in the PPM for the Subordinate Bamco Debentures.

However, Bamco failed to disclose the Jedco Debt and the fact that negotiations were underway to refinance the Bamco Debentures in the principal amount of approximately \$13.5 million payable, in part, for the Jedco Debt secured by the assets of Freedom Pipeline.

e. Improper Dispensation of Assets –

i. Between the Senior Bamco Debenture offering and the Subordinate Bamco Debenture offering, Bamco violated a provision of the 2005 Trust Indenture regarding the dispensation of certain assets. Specifically, the 2005 Trust Indenture stated as follows regarding the dispensation of assets:

Sale of Assets. From and after the issuance of any of the Debentures and for so long as any of the Debentures are Outstanding, [Bamco] shall not sell, lease or otherwise dispose of or transfer assets, properties, rights or claims, including, without limitation, any Facilities, *in excess of One Hundred Thousand Dollars (\$100,000) in the aggregate in any twelve-month period*, or sell, lease or otherwise dispose of or transfer any of its assets, properties, rights or claims not in the ordinary course of business, unless such sale, lease or other disposition is at not less than fair market value and the proceeds thereof are deposited in the Revenue Fund and applied to the redemption of Debentures . . . . (Emphasis added).

ii. While reviewing Bamco's financial statements prior to the Subordinate Bamco Debenture offering, Crews and the Trustee discovered that Bamco had not complied with the "Sale of Assets" provision of the 2005 Trust Indenture. Bamco was effectively in default due to its failure to make required deposits of proceeds from the sale, lease, or other dispensation of its assets. Subsequently, as required by the 2005 Trust Indenture, Crews, the Trustee, and Crews' outside counsel obtained the required waiver of the defaults from 25% of the Senior Bamco Debenture holders.

iii. On March 5, 2008, three Senior Bamco Debentures holders constituting the necessary 25% executed waivers of the Bamco default, less than a month before the closing of the Subordinate Bamco Debenture offering on March 28, 2008. The waivers stated as follows:

[S]ince January 1, 2006, [Bamco] has sold, leased or otherwise disposed of assets and received cash proceeds upon the sale, lease or other disposition thereof of \$6,302,563.00 with such amounts being received during 2007; and . . . since January 1, 2006, [Bamco] has, however, also acquired additional oil and gas interests at a cost of \$14,123,671 such that [Bamco's] net book value of proved and unproved oil and gas properties totaled \$10,999,235 and \$5,234,571, respectively, as of September 30, 2007.

iv. While the PPM for the Senior Bamco Debenture offering included language regarding the requirements for the dispensation of assets by Bamco, Bamco failed to disclose its inappropriate dispensation of assets and the subsequent waiver of Bamco's default of the 2005 Trust Indenture by the Senior Bamco Debenture holders in the PPM for the Subordinate Bamco Debenture offering.

#### APPLICABLE LAW

25. A "security" includes any debenture. Ark. Code Ann. § 23-42-102(15)(a)(v).

26. A "person" includes an individual, a corporation, an LLC, or a partnership. Ark. Code Ann. § 23-42-102(11).

27. An "issuer" is a person who proposes to issue any security. Ark. Code Ann. § 23-42-102(9).

28. "Control" is the power to direct or cause the direction of the management or policies of a person, whether through ownership of securities, by contract, or otherwise. Control

of a person is presumed when any individual is a director, partner or officer exercising executive responsibility or has a similar status or performs similar functions; directly or indirectly has the right to vote 25% or more of the voting securities of a person; or is entitled to 25% or more of the profits of a person. Rule 102.01(11).

29. It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly, to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading. Ark. Code Ann. § 23-42-507(2).

30. Whenever it appears to the Commissioner, upon sufficient grounds or evidence satisfactory to the Commissioner, that any person has engaged or is about to engage in any act or practice constituting a violation of the Act, or any rule or order under the Act, the Commissioner may summarily order the person to cease and desist from the act or practice. Upon the entry of the order, the Commissioner shall promptly notify the person that the order has been entered, of the reasons therefor, and of his or her right to a hearing on the order. Ark. Code Ann. § 23-42-209(a)(1)(A) and (B). A hearing shall be held on the written request of the person aggrieved by the order if the request is received by the Commissioner within 30 days of the date of the entry of the order, or if ordered by the Commissioner. Ark. Code Ann. § 23-42-209(a)(2)(A). If no hearing is requested and none is ordered by the Commissioner, the order will remain in effect until it is modified or vacated by the Commissioner. Ark. Code Ann. § 23-42-209(a)(2)(B). After notice and an opportunity for a hearing, the Commissioner may affirm, modify, or vacate the cease and desist order. Ark. Code Ann. § 23-42-209(a)(2)(C)(i).

## CONCLUSIONS OF LAW

31. The Senior Bamco Debentures and the Subordinate Bamco Debentures are securities, pursuant to Ark. Code Ann. § 23-42-102(15)(a)(v).

32. Bamco is an issuer and a person, pursuant to Ark. Code Ann. § 23-42-102(9) and (11). Bartlett, Appel, and their affiliated entities are persons, pursuant to Ark. Code Ann. § 23-42-102(11).

33. Bartlett was the president and principal of FEQ Investments, which served as the manager of FEQ Gas, for which Bartlett was also a principal. Bartlett had the authority to manage Bamco on a daily basis through his control of FEQ Gas. Bartlett exercised executive responsibility over Bamco and had control over Bamco during the time period discussed herein, pursuant to Rule 102.01(11). In such capacity, Bartlett had the power to direct or cause the direction of the management or policies of Bamco.

34. Appel was the single largest Principal Member with control of Bamco, owning an approximate 27.29% interest in Bamco through his control of 1025 Partners, RMS Gas, PHT Gas, 1025 Investments, and RMS Advisors. As a Principal Member with a 27.29% interest in Bamco, Appel directly or indirectly had the right to vote 25% or more of the voting securities of Bamco or was entitled to 25% or more of the profits of Bamco. Furthermore, for the Senior Bamco Debenture offering, Appel served as an Authorized Company Representative of Bamco and as an officer of Bamco, as its Secretary. Appel had control over Bamco during the time period discussed herein, pursuant to Rule 102.01(11). In such capacity, Appel had the power to direct or cause the direction of the management or policies of Bamco.

35. In addition to controlling Bamco, Bartlett and Appel provided the facts and information contained in the PPMs for the Bamco Debentures. Likewise, Bartlett and Appel

withheld material facts and information necessary to render the PPMs not misleading. The Respondents committed securities fraud by misstating or omitting to state the material facts and information detailed in paragraph 24 regarding Bamco, Bamco's affiliates and control persons, and the Bamco Debentures in the PPM for the Senior Bamco Debentures and the PPM for the Subordinate Bamco Debentures. As a result, the Respondents violated Ark. Code Ann. § 23-42-507(2) in the offer and sale of the Bamco Debentures in Arkansas.

36. A cease and desist order against the Respondents is necessary and appropriate in the public interest and for the protection of investors, pursuant to Ark. Code Ann. § 23-42-209(a)(1)(A).

#### **PRAYER FOR RELIEF**

WHEREFORE, the Staff requests that the Commissioner order Bamco Gas, LLC, Ernest Bartlett, and Howard Appel to immediately CEASE AND DESIST from further acts of fraud and deceit in connection with the offer, sale, or purchase of securities in violation of Ark. Code Ann. § 23-42-507(2). Upon notice and an opportunity for a hearing on the cease and desist order, the Staff further requests that the Commissioner affirm the order and grant all other permissible relief to the Staff.

Respectfully submitted,



Amber E. Crouch  
Staff Attorney  
Arkansas Securities Department

July 8, 2013  
Date