STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
NEW JERSEY BUREAU OF SECURITIES
OAL DKT. NO. BOS 5368-03

IN THE MATTER OF: **CARL BARONE; JOSEPH BENINATO; STEPHEN BIALON; JOSEPH BOSCIA; THOMAS J. BRADEN; MICHAEL J. BROWN; PAT CENICOLA; OSCAR K. CHAMBERS; JOSEPH A. CLAIR; D'AMBOLA; BRUCE DEHAVEN; GARY FILLWEBER; MICHAEL FLEYZOR; KENNETH J. FRANCO; FRANK GUIDA; STEPHEN J. LARKIN; THOMAS MCCABE; JACK MOLONEY; OSCAR OLSEN; MICHAEL PRENDERGAST; FRANK PEREZ; MICHAEL PETRULLA; JAMES P. PHILBIN; MANUEL PRIETO; JOHN SANTORO; JEFFREY SLOAN; and LOUIS SOTO**	Administrative Action **FINAL DECISION AND ORDER ADOPTING THE INITIAL DECISION GRANTING PARTIAL SUMMARY DECISION (LIABILITY ONLY)**

BEFORE FRANKLIN L. WIDMANN, CHIEF
NEW JERSEY BUREAU OF SECURITIES

This matter is before Franklin L. Widmann, Chief of the New Jersey Bureau of Securities (hereinafter "Bureau Chief"), Division of Consumer Affairs, to review the August 12, 2004 Partial Summary Decision (hereinafter "Initial Decision") of Administrative Law Judge (hereinafter "ALJ") Stephen G. Weiss in this matter, and to render a Final Decision pursuant to N.J.A.C. 1:1-12.5(e).

Procedurally, the time period for the Agency Head to file a Final Agency Decision in this matter concludes on September 30, 2004, in accordance with N.J.S.A. 52:14B-10, which requires an Agency Head to adopt, reject, or modify the Initial Decision within 45 days of receipt. The Initial Decision in this matter was received on August 16, 2004.

Based upon a thorough review of the Initial Decision and of the entire record, including Exceptions filed on behalf of Respondent Carl Barone, dated August 25, 2004, and the reply of the

Attorney General dated September 1, 2004, the Bureau Chief hereby ADOPTS the Initial Decision in this matter, AFFIRMING the granting of Staff's motion for partial summary decision as to liability only on Counts I, II, and III of the Administrative Complaint for the reasons set forth in the Initial Decision and for the reasons which follow.

ANALYSIS

The Bureau of Securities specifically adopts the findings and legal conclusions of the ALJ in the Initial Decision, and in particular his finding and conclusion that the notes in question are securities which were not exempted from registration requirements pursuant to N.J.S.A. 49:3-50(a)(10). This is the only conclusion that can be reached consistent with the legislative scheme embodied in the entire Uniform Securities Law, 1997, N.J.S.A. 49:3-47 to -76, of this state, as the ALJ correctly stated in his decision on the identical issue in the previously filed matter *IMO Clearing Services of America, Inc., et al, OAL Docket No. BOS 1796-02* at p. 25. The fact that the meaning of the term "commercial paper" as used in N.J.S.A. 49:3-50(a)(10), is informed by the substantial body of federal case law and by S.E.C. Release No. 33-4412, 26 Fed. Reg. 9158 (1961), is consistent with express legislative intent in New Jersey. It is in accord with the policy expressed in our statute that it should be construed to effectuate its general purpose to make uniform the law of those states which enact similar laws, and to co-ordinate its interpretation and administration with related federal regulations. N.J.S.A. 49:3-75.

In New Jersey, as in a number of other states, the commercial paper exemption requires that the commercial paper be of prime quality, and of a type sold only to highly sophisticated investors. See People v. Dempster, 242 N.W.2d 381 (Mich 1976); Tanner v. State Corp., Comm'n, 574 S.E. 2d 525 (Va 2003); Joseph C. Long, 12 Blue Sky Law § 6:46 (2001). An interpretation of the exemption that would permit the mere fact that the notes mature within nine months to satisfy its requirements clearly would frustrate the salutary purposes of the New Jersey Uniform Securities Law (1997). In this matter, the ALJ's findings of fact that all of the issuers failed to pay at least some of the interest and all of the principal on the last promissory notes issued, and that the guarantors failed to deliver on their

guarantees, negates any description of these notes as being of prime quality of a type sold only to sophisticated investors. The notes are instead similar in their attributes to those which were found by the court in S.E.C. v. J.T. Wallenbrock, 313 F.3d 532 (9th Cir. 2002), to have been securities requiring registration. As in that case, short term notes such as these were sold in a scheme in which default was inevitable and the alleged guarantees worthless. They can hardly be characterized as being of prime quality. The notes further fail to meet the essential requirements of a commercial paper exemption because they were being sold to ordinary investors acting in reliance upon the advice of the Respondents, and not to so-called "sophisticated" investors, thereby lessening the need for registration.

The burden of demonstrating the existence of the elemental requirements of any exemption is on the person claiming the exemption. N.J.S.A. 49:3-50(d). The claim of Respondents that they themselves were "duped" with regard to the *bona fides* of the notes they sold is a tacit admission that the notes were not of prime quality and that they failed in their duty to investigate and disclose properly. They need not have intended to deceive their clients to be liable for the violations alleged in the complaint, so long as they acted willfully in the sense that they were aware of what they were doing when they sold these unregistered notes. State v. Russell, 119 N.J.Super. 344 (App. Div. 1972).

The Initial Decision here under review is limited to Respondents' liability for the violations alleged in the complaint. It is a partial summary decision on liability only. The assertion in the exceptions to the Initial Decision filed by Respondent Barone that he sold the unregistered securities of only one of the issuers listed in the finding of the ALJ and not the others is simply not material to his liability, even if it may have some bearing upon his sanctions. This is true for all of the Respondents who sold or assisted in the sales, or induced others to sell or assist in the sales of some, but not others, of the unregistered securities listed by the ALJ in his Initial Decision. Similarly, assertions regarding the payment of restitution to investors are material only to the eventual determination of sanctions, and not to the liability of the Respondents now at issue.

Therefore, the ALJ's findings of fact and conclusions of law are ADOPTED because they are based upon substantial credible evidence in the record about which there are no genuine issues of material fact in dispute.

For all of the foregoing reasons:

IT IS on this 21st day of September, 2004

ORDERED that the Initial Decision of the ALJ dated August 12, 2004, for the reasons set out therein and for the reasons set forth above is hereby ADOPTED.

NEW JERSEY BUREAU OF SECURITIES

BY: Franklin L. Widmann

Franklin L. Widmann, Chief