

BEFORE THE ARKANSAS SECURITIES COMMISSIONER

Case No. S-08-024

Order No. S-08-024-10-OR02

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ARKANSAS SECURITIES DEPT.

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IN THE MATTER OF  
MICHAEL HART HORNIBROOK

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CONSENT ORDER

This Consent Order is entered pursuant to the Arkansas Securities Act, codified at Ark. Code Ann. §§ 23-42-101, *et seq.* (Repl. 2000), (Act), the Rules of the Arkansas Securities Commissioner promulgated under the Act (Rules) and the Arkansas Administrative Procedures Act, codified at Ark. Code Ann. §§ 25-15-201, *et seq.* (Repl. 2002) in accordance with an agreement by and between the Staff of the Arkansas Securities Department (Staff) and Michael Hart Hornibrook, in full settlement of all claims that could be brought against Hornibrook by the Staff.

Hornibrook admits the jurisdiction of the Act and the Arkansas Securities Commissioner (Commissioner), waives his right to a formal hearing and agrees to the entry of this Order and agrees to abide by its terms.

FINDINGS OF FACT

1. Hornibrook is a resident of Little Rock, Arkansas. From February 2002 to October 2002, Hornibrook was a registered representative of Lone Star Securities, a broker-dealer selling only oil and gas interests, tax shelters, limited partnerships in primary distributions and private placements. Hornibrook was based in Hot Springs, Arkansas, where he offered and sold working interests (WI) in oil and gas projects. His Central Registration Depository number is 4509476. He has not been registered in the securities industry in any capacity since he voluntarily terminated his registration with Lone Star.
2. On July 23, 2003, Hornibrook incorporated Hornibrook Oil and Gas Company, Inc.

(HOGCO), with the Arkansas Secretary of State as a for profit corporation. Working through HOGCO, Hornibrook set out to obtain and sell WI in oil and gas well projects. HOGCO's office was located first at 10 Millbrook Court, Little Rock, Arkansas 72227, and later at 7509 Cantrell Road, Suite 226, Little Rock, Arkansas 72207.

3. In April 2004, Hornibrook obtained an oil and gas lease on land in Alabama that allowed HOGCO to redrill an oil and gas well drilled and later abandoned by Munoco Company L.C. named the Richards 23-5, No. 1 (Richards Well). To offer and sell WI in the Richards Well, Hornibrook used contracts entitled "Turnkey Lease Purchase Agreement," "Lease Purchase Agreement" and "Participation Agreement." These contracts were identical in all material respects and differed only in their titles and in the price quoted for each 1% of WI offered. Each contract explained that the investment was based on sales of 100% of the WI, which carried with it 75% of the net revenue interests (NRI). Each contract specified the price of each 1% of WI being offered and sold, which varied from investor to investor: 1 quoted \$2,300 per 1%, 3 quoted \$3,250 per 1%, 5 quoted \$3,750 per 1%, 5 quoted \$4,000 per 1%, 3 quoted \$5,000 per 1% and 3 quoted \$25,000 per 1%. Hornibrook offered or sold WI in the total amount of \$435,550 to twenty investors in the Richards Well from April 2004 through September 2007. The contract noted that the WI being offered and sold were not registered pursuant to federal law or the securities laws of any state. The contract further provided that HOGCO would deliver each investor an assignment sufficient to vest in the investor the WI that HOGCO had agreed to sell. For each of the sales of WI made, Hornibrook signed the sales contract as the president of HOGCO, and Hornibrook took a 10% commission.
4. In August 2006 Hornibrook obtained an oil and gas lease on land in Washington County, Arkansas. He obtained drilling permits from the Arkansas Oil and Gas Commission for three wells on that property, named the Cookie Shelton No. 1, the Cookie Shelton No. 1-17 and the

Baker 1-16 (Washington County Wells). To offer and sell WI in the Washington County Wells, Hornibrook used a contract entitled "Joint Venture Participation Agreement." Each of these agreements explained that the investment was based on sales of 100% of the WI, which carried with it 75% of the NRI. Each contract noted the WI being purchased and the total amount being charged, which allowed calculation of the price of each 1% of WI offered and sold. For most investors, this amount was \$1,900 per 1% WI, but for one investor that amount was \$7,315.14 (\$292,605.60 for a 40% WI). Hornibrook offered or sold \$322,005.60 in working interests to eleven investors in the Washington County Wells from August 2006 through October 2007. The contract noted that it would be difficult to transfer any WI purchased because "state and federal regulatory laws that may prohibit a transfer without regulatory permission or registration." The contract further provided that the WI acquired by the investor would be held in the name of HOGCO or an operator for the well until such time as the well were determined to be "commercially productive of gas or oil at which time" HOGCO would deliver to the investor a 'recordable assignment of interest in the well.' For each of the sales of WI made, Hornibrook signed the sales contract as the president of HOGCO, and Hornibrook took a 10% commission.

5. The oil and gas well working interests Hornibrook sold in the Richardson Well and the Washington County Wells were not registered in accordance with the Act or exempt from registration.
6. When Hornibrook was offering and selling working interests in the Richardson Well and the Washington County Wells, he was not registered in any capacity pursuant to the Act.

#### APPLICABLE LAW

7. Ark. Code Ann. § 23-42-102(15)(A)(xvi) defines a security as any 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.

8. Ark. Code Ann. § 23-42-501 provides that it is unlawful for any person to offer or sell any security which is not registered or which is not exempt from registration.
9. Ark. Code Ann. § 23-42-102(9) defines issuer as any person who issues any security.
10. Ark. Code Ann. § 23-42-102(1)(A), as it applies to the facts of this case, defines agent as any individual who represents an issuer in effecting or attempting to effect purchases or sales of securities.
11. Ark. Code Ann. § 23-42-301(a) provides that it is unlawful for any person to transact business in this state as an agent of an issuer of securities unless he is registered as such pursuant to the Act.

### CONCLUSIONS OF LAW

12. The working interests in the Richards Well and the Washington County Wells discussed herein were securities as defined in the Act at Ark. Code Ann. § 23-42-102(15)(A)(xvi).
13. A search of the records of the Arkansas Securities Department (Department) reveals neither a registration for the working interests in the Richards Wells or the Washington County Wells, nor a proof of exemption for them. Further, the records of the Department do not contain a notice filing pursuant to Ark. Code Ann. § 23-42-509, which is necessary in the case of covered securities, which are defined under federal law.
14. The facts set out above in ¶¶ 1-5 show that Hornibrook offered and sold unregistered securities in violation of Ark. Code Ann. § 23-42-501.
15. The facts set out above in ¶¶ 1-5 show that Hornibrook represented the issuer of the securities involved herein, HOGCO, in effecting or attempting to effect purchases or sales of working interests in the Richardson Well and the Washington County Wells. Even though Hornibrook was the president and sole owner of HOGCO, in taking a 10% commission for each

completed sale, he acted as an agent of HOGCO in the offer and sale of its securities. As noted in ¶ 6, Hornibrook was not registered in accordance with the Act as an agent of HOGCO. Therefore, he acted as an unregistered agent of an issuer in violation of Ark. Code Ann. § 23-42-301(a).

## UNDERTAKING

In settlement of this matter, Hornibrook undertakes and agrees with the Staff that he:

1. Will not offer or sell securities unless those securities are registered in accordance with the Act or are exempt from the registration provisions of the Act;
2. Will not represent any issuer of securities in effecting or attempting to effect the purchase or sale of the issuer's securities unless he is registered with the Department as an agent of the issuer; and
3. Will not seek registration in accordance with the Act to work as an agent of an issuer or broker-dealer for a period of two (2) years from the date of this order in Arkansas, unless his employing firm provides on-site, heightened supervision of Hornibrook's activities by a Series 24 registrant. This heightened supervision must include daily review of Hornibrook's new accounts, trades and correspondence by a Series 24 registered principal to ensure that all correspondence and documents provided to customers have been approved and that trades are authorized, suitable and comply with supervisory and compliance policies and procedures set forth by his employing firm.

## OPINION

The facts set out in ¶¶ 1 through 6 support the conclusions of law set out in ¶¶ 12 through 15. Because it is beneficial to members of the public that all securities sold be registered with the Department or exempt from the registration provisions of the Act, and because it is beneficial to members of the public that those who represent any issuer of securities in effecting or attempting

to effect the purchase or sale of the issuer's securities be registered with the Department as agents of the issuer, this Consent Order is in the public interest.

### ORDER

IT IS THEREFORE ORDERED that MICHAEL HART HORNIBROOK, in accordance with the undertaking set out above, cease and desist from offering or selling any securities unless those securities are registered with the Department or exempt from the registration provisions of the Act, that he cease and desist from acting as an agent of an issuer unless and until he becomes registered with the Department and that he not seek registration to work as an agent of an issuer or broker-dealer for a period of two (2) years from the date of this order, unless the employer agrees to heightened supervision in accordance with ¶ 3 of the Undertaking.

WITNESS MY HAND AND SEAL this 23<sup>rd</sup> day of November, 2010.

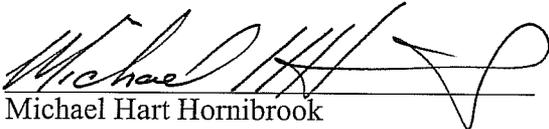


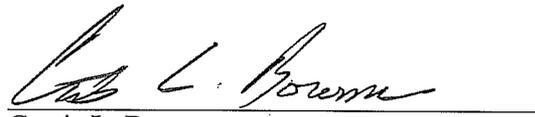
A. Heath Abshure  
Arkansas Securities Commissioner

CONSENT TO ENTRY OF ORDER

Michael Hart Hornibrook hereby acknowledges that he has been served a copy of this Consent Order, has read the foregoing, is aware of his right to a hearing and appeal in this matter and has waived the same.

Dated this 23<sup>d</sup> day of November, 2010.

  
Michael Hart Hornibrook

  
Curtis L. Bowman  
*Attorney for Michael Hart Hornibrook*

Signed this 23<sup>d</sup> day of November, 2010.