

DENISE VOIGT CRAWFORD  
SECURITIES COMMISSIONER



JOSE ADAN TREVINO  
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JOHN R. MORGAN  
DEPUTY SECURITIES COMMISSIONER

NICHOLAS C. TAYLOR  
MEMBER

### State Securities Board

KENNETH W. ANDERSON, JR.  
MEMBER

JACK D. LADO  
MEMBER

MAIL: P.O. BOX 13167  
AUSTIN, TEXAS 78711-3167

208 E. 10th Street, 5th Floor  
Austin, Texas 78701-2407  
Phone (512) 305-8300  
FAX (512) 305-8310  
<http://www.ssb.state.tx.us>

### SSB Docket No. 02-36

IN THE MATTER OF  
ENERGY ASSOCIATES, INC.;  
JOHN R. ZAKHARIA  
AND MICHAEL SITHER

§  
§  
§  
§

Order No. CDO-1481

TO: Energy Associates, Inc.  
152 East Reynolds Road, Suite 201  
Lexington, Kentucky 40517

John R. Zakharia  
152 East Reynolds Road, Suite 201  
Lexington, Kentucky 40517

Michael Sither  
152 East Reynolds Road, Suite 201  
Lexington, Kentucky 40517

### EMERGENCY CEASE AND DESIST ORDER

This is your OFFICIAL NOTICE of the issuance by the Securities Commissioner of the State of Texas ("Securities Commissioner") of an EMERGENCY CEASE AND DESIST ORDER pursuant to Section 23-2 of The Securities Act, TEX. REV. CIV. STAT. ANN. art. 581-1 et seq. (Vernon 1964 & Supp. 2002) ("Texas Securities Act").

The Staff of the Enforcement Division ("the Staff") of the Texas State Securities Board ("the Securities Board") has presented evidence sufficient for the Securities Commissioner to find that:

### FINDINGS OF FACT

1. Energy Associates, Inc. ("Respondent EAI") is the proposed Operator of the wells to be developed by the Energy Associates Joint Venture 2002-2 (the "Joint Venture"), a four well drilling program consisting of three proposed wells located in Clay County, Kentucky, and one proposed well located in Whitley County, Kentucky.

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### FINDINGS OF FACT

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Respondent EAI is a Kentucky corporation whose last known address is 152 East Reynolds Road, Suite 201, Lexington, Kentucky 40517.

2. John R. Zakharia ("Respondent Zakharia") is a natural person who was President, Chief Executive Officer and Treasurer of Respondent EAI at all times material hereto and whose last known business address is the same as Respondent EAI.
3. Michael Sither ("Respondent Sither") is a natural person who acted as a salesman of Respondent EAI as described herein and whose last known business address is the same as Respondent EAI.
4. During and about September, 2002, and October, 2002, Respondent Sither, on behalf of Respondent EAI and Respondent Zakharia, telephoned at least one Texas resident (the "Offeree") and made available an opportunity to purchase a whole or fractional unit of the Joint Venture (a "Joint Venture Unit"). Respondent Sither informed the Offeree that Respondent Sither was a salesperson for Respondent EAI and that Respondent Sither would receive a ten percent commission for the sale of a Joint Venture Unit.

Respondent Sither sent, or caused to be sent, sales literature and a Private Placement Memorandum to the Offeree. The Private Placement Memorandum included a Subscription Agreement that was to be completed by the Offeree, returned to Respondent EAI and accepted by Respondent Zakharia on behalf of Respondent EAI. The Private Placement Memorandum further indicated that each Joint Venture Unit represented a 1/32 working interest in each of the four proposed wells, identified numerous risks associated with the purchase thereof, and noted that such Joint Venture Units were being sold on a non-commission basis.

5. During and about October, 2002, Respondent Zakharia telephoned the Offeree and made two oral sales presentations regarding the aforementioned opportunity to purchase a whole or fractional Joint Venture Unit. Respondent Zakharia informed the Offeree that salespersons would receive commissions based on sales of Joint Venture Units and that such Joint Venture Units constituted "low risk" investments.
6. The Joint Venture Units have not been registered by qualification, notification or coordination and no permit has been granted for their sale within Texas.
7. Respondent EAI, Respondent Zakharia and Respondent Sither (collectively "Respondents") have not been registered to offer or sell securities or to render investment advice within Texas from October 1, 1997, through the present.
8. Respondents' indication in the Private Placement Memorandum that the Joint Venture Units would be sold on a non-commission basis is misleading in light of the above-described statements by Respondent Zakharia and Respondent Sither that reflect the payment of commissions to salespersons for sales of the Joint Venture Units.

9. Respondent Zakharia's indication that the Joint Venture Units constituted "low risk" investments is misleading in light of the numerous risks identified in the Private Placement Memorandum.

#### CONCLUSIONS OF LAW

1. The Joint Venture Units are investment contracts and represent interests in or under an oil, gas or mineral lease and are therefore "securities" as that term is defined in Section 4.A of the Texas Securities Act.
2. Respondents engaged in the offer for sale of the above-described securities in Texas as the term "offer for sale" is defined in Section 4.E of the Texas Securities Act.
3. Respondents violated Section 7 of the Texas Securities Act by offering for sale the above-described securities in Texas at a time when the securities were not registered with the Securities Commissioner.
4. Respondents are acting as "dealers" or "agents" in securities as those terms are defined in Section 4.C and 4.D of the Texas Securities Act.
5. Respondents violated Section 12 of the Texas Securities Act by offering securities for sale in Texas without being registered pursuant to the provisions of Section 12 of the Texas Securities Act.
6. Respondents have made offers for sale of securities in Texas that are materially misleading or otherwise likely to deceive the public through the use of the above-described representations regarding the payment of commissions. Respondent Zakharia has made offers for sale of securities in Texas that are materially misleading or otherwise likely to deceive the public through the use of the above-described representations regarding the risks associated with the purchase of the above-described securities.
7. Respondents' conduct, acts and practices threaten immediate and irreparable harm to the public.
8. The foregoing violations constitute bases for the issuance of an Emergency Cease and Desist Order pursuant to Section 23-2 of the Texas Securities Act.

#### ORDER

1. It is therefore ORDERED that Respondents immediately CEASE AND DESIST from acting as securities agents or dealers in Texas until they are registered or an available exemption is utilized.
2. It is further ORDERED that Respondents immediately CEASE AND DESIST from offering securities in Texas until the securities have been registered with the Securities Commissioner or an available exemption is utilized.


3. It is further ORDERED that Respondents immediately CEASE AND DESIST from offering securities in Texas through an offer containing a statement that is materially misleading or otherwise likely to deceive the public.

NOTICE

Under Section 23-2 of the Texas Securities Act, you may request a hearing before the 31st day after the date you were served with this Order. The request for a hearing must be in writing, directed to the Securities Commissioner, stating the grounds for the request to set aside and modify the order. Failure to request a hearing will result in the order becoming final and nonappealable.

You are advised under Section 29.D of the Texas Securities Act that any knowing violation of an order issued by the Securities Commissioner under the authority of Section 23-2 of the Texas Securities Act is a criminal offense punishable by a fine of not more than \$5,000 or imprisonment in the penitentiary for not more than two years, or by both such fine and imprisonment.

SIGNED AND ENTERED by the Securities Commissioner this 23<sup>rd</sup> day of October, 2002.

  
DENISE VOIGT CRAWFORD  
Securities Commissioner