1 STATE OF WASHINGTON DEPARTMENT OF FINANCIAL INSTITUTIONS 2 **SECURITIES DIVISION** 3 IN THE MATTER OF DETERMINING Order Number S-10-077-10-SC01 Whether there has been a violation of the 4 Securities Act of Washington by: STATEMENT OF CHARGES AND 5) NOTICE OF INTENT TO ENTER AN S & B Energy, LLC and Robert J. Braun, ORDER TO CEASE AND DESIST AND 6 TO CHARGE COSTS 7 Respondents) 8 THE STATE OF WASHINGTON TO: S & B Energy, LLC Robert James Braun 9 10 STATEMENT OF CHARGES 11 Please take notice that the Securities Administrator of the State of Washington has reason 12 to believe that Respondents, S & B Energy, LLC and Robert J. Braun, have each violated the 13 14 Securities Act of Washington and that their violations justify the entry of an order of the 15 Securities Administrator under RCW 21.20.390 against each to cease and desist from such 16 violations and to charge investigative costs. The Securities Administrator finds as follows: 17 TENTATIVE FINDINGS OF FACT 18 19 Respondents 20 1. S & B Energy, LLC ("S & B Energy") is a Washington limited liability company that 21 was formed on March 9, 2007. S & B Energy had its principal place of business in Spokane, 22 Washington. S & B Energy's stated business purpose was to build and to operate ethanol 23 plants, starting with a plant in Spokane County, Washington. However, no ethanol plants were 24

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ever built. S & B Energy was administratively dissolved on July 1, 2009.

2. Robert J. Braun ("Braun") is a Washington resident. Braun was also a managing member of S & B Energy.

Nature of the Offering

- 3. From at least 2006 through 2008, Respondents each offered and sold more than \$500,000 worth of S & B Energy investments to more than ten Washington investors. The investments included the offer and sale of limited liability company membership interests in S & B Energy and the offer and sale of investments in S & B Energy's future ownership of an ethanol plant that would be built in Medical Lake, Washington. To date, there have been no repayments of the investments and no ethanol plant was ever built.
- 4. Respondents each represented to investors that S & B Energy was engaged in a joint venture with a Fresno, California company called Nova Fuels. The joint venture was formed to build an ethanol plant in Medical Lake, Washington. The plant was to be owned by a California limited liability company called Novahol Medical Lake, LLC. S & B Energy would purportedly receive a 30% interest in the ownership of the plant. Respondents each offered and sold investments in 25% of S & B Energy's share of the proposed plant.
- 5. When offering and selling S & B Energy investments, Respondents each represented to investors that S & B Energy needed investor financing to obtain preliminary funding for an ethanol plant. Respondents each represented that investor financing would be used to apply for permits, to secure a property lease for a plant site, and to complete some initial development work. Respondents each represented that construction financing would be obtained once a plant site had been located and permits were issued.

6. When offering and selling S & B Energy investments, Respondents each represented to investors that S & B Energy and the investors would share in the profits from the operation of a completed ethanol plant. Respondents each represented that investor funds would be pooled together and would be used to finance the up-front costs of building an ethanol plant. The investors had no control over the use of their invested funds and they did not participate in the management or the business operations of S & B Energy. The investors were each relying upon Respondents to generate a return on their investment.

Misrepresentations and Omissions

- 7. When offering and selling S & B Energy investments, Respondents each represented to investors that their investments would be repaid within one year. Respondents each represented that investors would receive dividend payments for their percentage interest in a completed ethanol plant.
- 8. When offering and selling limited liability company membership interests in S & B Energy, Respondents each gave investors an S & B Energy business plan. The business plan had a stated goal that within two years after breaking ground, the ethanol plant would have \$120 million in annual sales and would operate at a 40% net annual profit. The business plan stated that annual growth was projected to be 3% per year for the first five years of the plant's operation. The business plan had a stated goal that the plant would generate more than \$166 million of sales for each year of operation and that the plant would have an estimated annual net after-tax profit of \$90 million. Respondents each failed to disclose any reasonable basis for these estimates.

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- 9. When offering and selling investments in S & B Energy's share of ownership in an ethanol plant to be owned by Novahol Medical Lake, LLC, Respondents each represented to investors that a \$25,000 investment would yield an estimated \$200,000 per year in dividend income. Respondents each failed to disclose any reasonable basis for this estimate.
- 10. When offering and selling S & B Energy investments, Respondents each failed to disclose significant risks of the investments. Respondents each failed to give the investors financial information, including financial statements for S & B Energy and financial statements for Novahol Medical Lake, LLC. Respondents each failed to disclose that the operation of an ethanol plant might be unprofitable. Respondents each failed to disclose that the investments had an arbitrary offering price that had no relationship to the net worth of S & B Energy. Respondents each failed to disclose the business operating history of Nova Fuels, the joint venture partner with S & B Energy. Respondents each failed to disclose that investors could lose their entire investment because S & B Energy did not have a specified minimum amount of required capital and because S & B Energy did not have sufficient funds to build and to operate an ethanol plant. Respondents each failed to disclose the specific intended use of the investors' funds. Respondents each failed to disclose that the technology for the proposed ethanol plant was still experimental. Respondents each failed to disclose that the plant would have operational risks. Respondents each represented to investors that the proposed ethanol plant would sell its fuel through a customary fuel brokerage agreement, but Respondents each failed to disclose that no fuel sales agreements had ever been negotiated and that the market for the fuel was still unproven. Respondents each failed to disclose the types of permits that would

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be required to build an ethanol plant. Respondents each failed to disclose regulatory risks associated with getting the approval to build an ethanol plant.

Failure to Produce Documents and to Appear and Testify

11. On April 16, 2010, the Securities Division issued subpoena number S-10-077-10-DI01, a Subpoena Duces Tecum and to Testify, to Braun. The subpoena called for the production of documents by May 14, 2010 and for on May 24, 2010. The subpoena was personally served on Braun. Braun sent a reply letter dated May 12, 2010. Braun stated that he was unable to comply with the "request" for documents and testimony. The letter stated that he did not have an attorney and could not afford to retain an attorney. Therefore, Braun refused to produce documents or to give testimony until an attorney could represent Braun.

Registration Status

- 12. S & B Energy is not currently registered to sell its securities in the state of Washington and has not previously been so registered.
- 13. Robert J. Braun is not currently registered as a securities salesperson or securities broker-dealer in the state of Washington and has not previously been so registered.

Based upon the Tentative Findings of Fact, the following Conclusions of Law are made:

CONCLUSIONS OF LAW

I.

The offer or sale of the investments described in the Tentative Findings of Fact constitutes the offer or sale of a security, as defined in RCW 21.20.005(10) and (12), in the form of an investment contract.

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II.

As described in the Tentative Findings of Fact, S & B Energy and Braun have each violated RCW 21.20.140, the securities registration provision of the Securities Act of Washington, when offering and selling said securities because no registration for such offer or sale is on file with the Securities Administrator.

III.

As described in the Tentative Findings of Fact, Braun violated RCW 21.20.040, the securities salesperson and securities broker-dealer registration provision of the Securities Act of Washington, by offering or selling said securities while not registered as a securities salesperson or securities broker-dealer in the state of Washington.

IV.

As described in the Tentative Findings of Fact, S & B Energy and Braun have each violated RCW 21.20.010, the anti-fraud provision of the Securities Act of Washington, because in connection with the offer or sale of said securities, they each made an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

NOTICE OF INTENT TO ORDER THE RESPONDENTS TO CEASE AND DESIST

Based on the above Tentative Findings of Fact and Conclusions of Law, the Securities Administrator intends to order, pursuant to RCW 21.20.390, that Respondents, S & B Energy, LLC and Robert J. Braun, and their agents and employees each shall cease and desist from any violation of RCW 21.20.010, RCW 21.20.040, and RCW 21.20.140.

NOTICE OF INTENT TO CHARGE COSTS

Based on the above Tentative Findings of Fact and Conclusions of Law, the Securities Administrator intends to charge, pursuant to RCW 21.20.390, investigative costs of \$5,000 against Robert J. Braun.

AUTHORITY AND PROCEDURE

This Statement of Charges is entered pursuant to the provisions of chapter 21.20 RCW and is subject to the provisions of chapter 34.05 RCW The respondents, S & B Energy, LLC and Robert J. Braun, may each make a written request for a hearing as set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING accompanying this order.

If a respondent fails to make a timely hearing request, the Securities Administrator intends to adopt the above Tentative Findings of Fact and Conclusions of Law as final and to enter a permanent order to cease and desist as to that respondent and to charge any costs sought against that respondent.

Dated and Entered this 18th day of June, 2010

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SUZANNE E. SARASON

Chief of Enforcement

Presented by:

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Enforcement Attorney

STATEMENT OF CHARGES AND NOTICE OF INTENT TO ENTER AN ORDER TO CEASE AND DESIST AND TO CHARGE COSTS

DEPARTMENT OF FINANCIAL INSTITUTIONS **Securities Division**

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