STATE OF WASHINGTON DEPARTMENT OF FINANCIAL INSTITUTIONS SECURITIES DIVISION

IN THE MATTER OF DETERMINING whether there has been a violation of the Securities Act of Washington by:	Order No. S-11-0671-11-CO01 CONSENT ORDER
Samuel A. Barnes,	Ó
d/b/a Samuel Barnes and Associates;)
d/b/a Evergreen Investments, LLC;)
d/b/a Evergreen Investment Club, LLC;)
d/b/a Evergreen Desert Investments, LLC;)
d/b/a Evergreen Financial;)
Evergreen 1031, LLC;)
Respondents)

INTRODUCTION

Pursuant to the Securities Act of Washington, chapter 21.20 RCW, the Securities Division of the Department of Financial Institutions ("Securities Division") and Respondents, Samuel A. Barnes and Evergreen 1031, LLC; do hereby enter into this Consent Order in settlement of the matters alleged herein. Respondents, Samuel A. Barnes and Evergreen 1031, LLC, neither admit nor deny the Findings of Fact and Conclusions of Law as stated below.

FINDINGS OF FACT

Respondents

1. Samuel A. Barnes ("Barnes") is a resident of Ephrata, Washington, who does business as (d/b/a) Samuel Barnes and Associates, a sole proprietorship registered with the State of Washington. Barnes has used several other business names, which he did not properly form as business entities or register as trade names, including: Evergreen Investments, LLC; Evergreen Investment Club, LLC; Evergreen Desert Investments, LLC; and Evergreen Financial. From approximately October 2005 to December 2006, Barnes was licensed in the State of Washington as an investment adviser

representative with 1st Global Advisors Inc. From approximately January 2005 to December 2006, Barnes was licensed as a securities salesperson (CRD no. 4899147) in the State of Washington with 1st Global Capital Corp. Barnes has been licensed to practice public accounting with the Washington State Board of Accountancy since 1997.

2. Evergreen 1031, LLC ("Evergreen 1031") is a Washington limited liability company formed by Barnes on September 22, 2008, with a business address in Ephrata, Washington.

Nature of the Offering

- 3. Between approximately 2009 and 2011, Barnes raised nearly \$800,000 through the offer and sale of investments in Evergreen 1031, LLC to at least eight investors in Washington. Barnes initially formed Evergreen 1031, LLC in 2008 to facilitate section 1031 tax-deferred real estate exchanges for his tax preparation clients. Barnes opened a bank account in the name of Evergreen 1031, LLC to receive proceeds from property sales, and to facilitate the purchase of replacement properties as part of 1031 exchanges.
- 4. Beginning around 2009, Barnes began offering and selling real estate investments and arranged for investors to deposit funds into the Evergreen 1031, LLC bank account. In the fall of 2009, Barnes sent a letter to several of his clients regarding alternatives to investing in the stock market. The letter stated: "I was a licensed securities advisor and I couldn't even recommend to my clients that they invest in the equities markets after so much turmoil." Barnes indicated that home prices in certain U.S. cities had dropped 50% to 60% and investors could make "some good money . . . when they come back up." Barnes indicated that he had traveled to Arizona and California and confirmed that it was a "good time to buy" homes in those states. Barnes indicated that he wanted to invest "other peoples' money along with mine." Barnes stated that the minimum investment was \$20,000, and that investors could not request a withdrawal of their funds for a period of one year. Barnes claimed that investors would

CONSENT ORDER

have security in "the real estate purchased and some properties that I personally already own." Barnes stated that he would control buying and selling decisions and that property in Grant County, Washington would also be purchased.

- 5. Along with the letter, Barnes also provided a fact sheet regarding "Evergreen Investments, LLC." The fact sheet stated that Evergreen Investments, LLC was a limited liability company managed by Barnes. In truth, Barnes never formed a limited liability company in that name. The fact sheet explained that Evergreen Investments was an "investment club" that would purchase single family homes in Phoenix, Arizona. According to Barnes, the homes that were purchased would be rented out and professionally managed by a property management company in Arizona. Barnes represented that after the price of the homes increased, the homes would be sold at a profit.
- 6. After sending out the initial letter and fact sheet to potential investors in 2009, Barnes continued to offer and sell investments to new investors through 2010 and early 2011. Barnes met with clients at his office in Ephrata and orally described the investment opportunity to them. Barnes did not provide investors with any written disclosure document regarding the investment. Barnes arranged for investor checks to be deposited into an account in the name of Evergreen 1031, LLC. Barnes typically provided investors with a membership certificate, which indicated that the investor held an ownership interest in a limited liability company named "Evergreen Investment Club." In fact, Barnes never formed such an entity, and the investors did not hold any ownership interest in an entity bearing that name.
- 7. Barnes provided some of his investors with an Investor Information form for "Evergreen Desert Investments, LLC." The form indicated that Evergreen Desert Investments, LLC was a "limited liability corporation" [sic] managed by Barnes, although Barnes never formed such an entity. Investors had the option of selecting either a fixed return of 6% or an "Unlimited Return." Barnes provided other

investors with an account statement that identified Barnes as their Financial Advisor and described the investment as "Conservative Long-term Tax Advantaged."

8. In 2011, Barnes sent a letter to one of his investors that stated "Thank you for choosing Evergreen Investment to invest your individual funds." The letter stated that the investor had chosen the "most conservative investment Evergreen has available" and that "We have had a great deal of success in putting our clients in to [sic] that investment for retirement investing purposes." The letter further represented that the "the return has actually been pretty good over the last two years even though most other "low risk" investments available on the market have been returning very little." Barnes also sent a three-page "Investment Prospectus" for "Evergreen Investments, LLC" which was described as a "newly formed" LLC. In fact, Barnes never formed a limited liability company in this name. Barnes also provided the investor with an Investment Account Agreement, which included a purported securities brokerage account number.

Misrepresentations and Omissions

- 9. In the offer and sale of the Evergreen 1031, LLC investments, the Respondents failed to disclose material information, which made the information that was disclosed, misleading to investors. The Respondents failed to provide investors with any written disclosure document containing material information concerning the investment, including, but not limited to, the prior use of offering proceeds, and financial statements for Evergreen 1031, LLC.
- 10. The Respondents also misrepresented the risks associated with the investment, characterizing it as "conservative" and "low risk." Barnes misleadingly stated to one investor that the investment was very low risk and similar to a savings account at a bank. Barnes created the misleading impression that the investment was secured by real estate, including real estate that he personally owned. Barnes provided some investors with a misleading membership chart that indicated he had

360-902-8760

contributed some of his personal real estate to Evergreen 1031, LLC in 2008 and 2010. In fact, at the time that Barnes offered and sold his investments, Evergreen 1031, LLC had no recorded ownership interest in any real property. In July 2011, months after selling the investments, Barnes recorded a quit claim deed on three properties that he owned in Ephrata, Washington, for the benefit of Evergreen 1031, LLC. These properties were subject to bank or seller liens.

11. The Respondents also made misrepresentations concerning the use of investor funds. The Respondents led investors to believe that their funds would be used to purchase real estate in Arizona and Washington. In fact, no investor funds were used to purchase properties in Arizona or Washington. Instead, Barnes used investor funds for other purposes, including personal debts, personal expenses, expenses associated with real estate that he personally owned, and to repay prior investors. Barnes failed to disclose to investors that he transferred investor funds to other bank accounts that he controlled, and used those funds for other undisclosed purposes.

Registration Status

- 12. Evergreen 1031, LLC is not currently registered to sell its securities in the State of Washington and has not previously been so registered.
- 13. Samuel A. Barnes is not currently registered as a securities broker-dealer or securities salesperson in the State of Washington, and has not been registered as a securities salesperson since 2006.

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

CONCLUSIONS OF LAW

1. The offer or sale of the investments described above constitutes the offer or sale of a security as defined in RCW 21.20.005(14) and (17), in the form of an investment contract.

360-902-8760

- 2. As set forth in the Findings of Fact, Respondents Samuel A. Barnes and Evergreen 1031, LLC have each offered and sold unregistered securities in violation of RCW 21.20.140, the securities registration section of the Securities Act of Washington.
- 3. As set forth in the Findings of Fact, Samuel A. Barnes has violated RCW 21.20.040, the securities broker-dealer and securities salesperson registration section of the Securities Act of Washington, by offering or selling said securities while not registered as a securities broker-dealer or securities salesperson in the state of Washington.
- 4. As set forth in the Findings of Fact, Respondents, Samuel A. Barnes and Evergreen 1031, LLC, in connection with the offer or sale of said securities, have each made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, in violation of RCW 21.20.010, the anti-fraud section of the Securities Act of Washington.

CONSENT ORDER

Based upon the foregoing and finding it in the public interest:

IT IS AGREED AND ORDERED that Respondents, Samuel A. Barnes; Evergreen 1031, LLC; and their agents and employees each shall cease and desist from violating RCW 21.20.140, the securities registration section of the Securities Act of Washington.

IT IS FURTHER AGREED AND ORDERED that Respondent Samuel A. Barnes and his agents and employees each shall cease and desist from violating RCW 21.20.040, the securities broker-dealer and securities salesperson registration section of the Securities Act of Washington.

IT IS FURTHER AGREED AND ORDERED that Respondents Samuel A. Barnes and Evergreen 1031, LLC; and their agents and employees each shall cease and desist from violating RCW 21.20.010, the anti-fraud section of the Securities Act of Washington.

360-902-8760

IT IS FURTHER AGREED that prior to the entry of this Consent Order, Samuel A. Barnes shall repay all of the outstanding investments in Evergreen 1031, LLC.

IT IS FURTHER AGREED that prior to the entry of this Consent Order, the law firm of Thomas Seguine will mail checks drawn on an attorney trust account to Evergreen 1031, LLC investors, in full repayment of all principal that is owed, plus 3% simple interest, or will wire transfer that same amount to a bank account approved by each such investor through an approved routing number provided to the bank at which such attorney maintains his trust account.

IT IS FURTHER AGREED AND ORDERED that Respondent Samuel A. Barnes, shall be liable for and shall pay investigative costs of \$5,000, prior to the entry of this Consent Order.

IT IS FURTHER AGREED that the Securities Division has jurisdiction to enter this Consent Order.

IT IS FURTHER AGREED that Respondents, Samuel A. Barnes and Evergreen 1031, LLC each enter into this Consent Order freely and voluntarily and with a full understanding of its terms and significance.

IT IS FURTHER AGREED that in consideration of the foregoing, Respondents, Samuel A. Barnes and Evergreen 1031, LLC each waive their right to a hearing and to judicial review of this matter pursuant to RCW 21.20.440 and Chapter 34.05 RCW.

WILLFUL VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.

Signed this <u>26th</u> day of <u>March</u>	, 2012
Signed by:	
Samuel A. Barnes, Individually	

1			
2	Signed by:		
3	Evergreen 1031, LLC		
4			
5	By/s/ Samuel A. Barnes, its managing member		
6			
7	Signed by:		
8	SIGNED and ENTERED this 24th	day ofApril	_, 2012
9			
10			
11		WILLIAM M. BEATTY	
12		Securities Administrator	
13	Approved by:	Presented by:	
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15	Suzanne E. Sarason	Robert Kondrat	
16	Chief of Enforcement	Enforcement Attorney	
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