

STATE OF NEW JERSEY  
BUREAU OF SECURITIES  
153 Halsey Street, 6<sup>th</sup> Floor  
P.O. Box 47029  
Newark, New Jersey 07101  
(973) 504-3600

IN THE MATTER OF

ForeverGreen  
Enterprises, Inc.

and

Michael D. Kelly  
(CRD# 861239)

**SUMMARY ORDER**

TO: Michael D. Kelly  
Essex Junction, VT 05452

Pursuant to the authority granted to Abbe R. Tiger, Chief of the New Jersey Bureau of Securities ("Bureau Chief"), under the Uniform Securities Law (1997), N.J.S.A. 49:3-47 et seq. (the "Securities Law"), including N.J.S.A. 49:3-70.1 and certain regulations, and based upon a review of the relevant facts, including documents obtained during the investigation conducted by the New Jersey Bureau of Securities ("Bureau"), the Bureau Chief hereby finds that there is good cause to enter this Summary Order against Michael D. Kelly ("Kelly") and ForeverGreen Enterprises, Inc. ("ForeverGreen") and makes the following findings:

### FINDINGS OF FACT

1. Kelly, currently residing in Essex Junction, Vermont, was employed at Waterhouse Securities, Inc. (CRD# 7870) (now known as TD Ameritrade) and registered in various capacities from January 1986 to January 1997. He has never been registered in any capacity with the Bureau.
2. Kelly was the founder, President, Chief Executive Officer and Chairman of the Board of Directors of ForeverGreen.
3. ForeverGreen was incorporated in the State of New Jersey on November 13, 2003 and in the State of Delaware on May 26, 2005.
4. The two ForeverGreen entities were merged on or about June 27, 2005, with the surviving entity established as a foreign profit corporation, domiciled in the State of Delaware.
5. Kelly was identified as ForeverGreen's corporate agent in the company's New Jersey filings, with a listed address of 6 Blueberry, Tinton Falls, NJ 07724-9728.
6. The State of Delaware suspended and then revoked ForeverGreen's corporate charter because the company failed to file an annual report for two consecutive years.
7. Kelly operated ForeverGreen out of two (2) home addresses he maintained in New Jersey, first at 6 Blueberry Lane, Tinton Falls, New Jersey, 07724-9728, and then at 4 Cotswold Circle, Ocean, New Jersey 07712.
8. From approximately January 2007 through July 2009, Kelly offered and sold ForeverGreen stock ("ForeverGreen Stock")

using three (3) separate ForeverGreen private placement memoranda (PPM) provided to investors.

9. The ForeverGreen PPMs, which, unbeknownst to investors, were issued concurrently, offered 5,500,000, 7,500,000 and 11,500,000 shares of ForeverGreen Stock respectively.
10. The ForeverGreen Stock sold by Kelly was not registered with the Bureau, not "federally covered," and was not otherwise exempt from registration.
11. ForeverGreen was not registered with the Bureau in any capacity.
12. At various times, both orally and in writing in the PPMs, ForeverGreen and Kelly represented to potential investors that ForeverGreen's business objective was to derive fuels and alternative energy resources from industrial, chemical and medical wastes.
13. The ForeverGreen PPMs made untrue statements of material fact and omitted material facts, including:
  - a. The ForeverGreen PPMs failed to disclose to investors the existence of other concurrently issued PPMs;
  - b. The ForeverGreen PPMs failed to disclose to investors that the other concurrently issued PPMs contained material differences with regard to the number of shares of ForeverGreen Stock outstanding and the company's use of investor funds;
  - c. The ForeverGreen PPMs falsely stated that

ForeverGreen's Board of Directors would meet monthly when, in fact, the Board of Directors rarely, if ever, met; and

- d. The ForeverGreen PPMs falsely stated that Allan Marrus ("Marrus") was the Chief Financial Officer of the company when, in fact, Marrus had no formal association with ForeverGreen and had asked Kelly to remove this misstatement from the PPMs prior to the distribution of the PPMs to potential investors.

14. Additionally, Kelly and/or ForeverGreen representatives orally made untrue statements of material fact, including:

- a. promises of high rates of return;
- b. that ForeverGreen would become a public company in the near future; and
- c. the use of proceeds.

15. In or about 2009, ForeverGreen offered its investors the opportunity to resell their shares to ForeverGreen for the original price they had paid. Numerous investors requested the return of their principal investment, but no funds were returned by ForeverGreen. Several investors were promised that they would be provided with the requisite tender form to make a refund request, but such forms were not provided by ForeverGreen.

16. Kelly was a signatory of at least three (3) separate bank accounts, including Account No. XXX-XXX-7733, a personal bank

account ("the Personal Account"), Account No. XXX-XXX-6245; a ForeverGreen business account ("the Business Account") and Account No. XXX-XXX-3695, ("the Investor Account").

17. The majority of the investor money was deposited into the Investor Account and then transferred into the Business Account. A lone investor's deposit of \$45,000 went directly into the Business Account.
18. Investor monies deposited into the Business and Investor Accounts were used for the personal benefit of Kelly and his family. For example, healthcare insurance premiums for Kelly's family, ATM cash withdrawals and transfers were drawn on the Business and Investor Accounts, as well as transfers into his personal account.
19. In the aggregate, approximately \$319,613 out of the approximately \$576,286 in investor funds raised by ForeverGreen (principal investments plus accrued interest) was misused by Kelly for his personal benefit and that of his family.

**CONCLUSIONS OF LAW**  
**KELLY AND FOREVERGREEN**  
**MADE UNTRUE STATEMENTS OF MATERIAL FACT OR OMITTED**  
**MATERIAL FACTS**  
**N.J.S.A. 49:3-52(b)**

20. The preceding paragraphs are incorporated by reference as though set forth verbatim herein.
21. By the conduct detailed above, Respondents made materially false and misleading statements and/or omitted material facts

to ForeverGreen investors in connection with the offer and sale of securities in violation of N.J.S.A. 49:3-52(b).

22. Each misstatement and omission upon each investor is a separate violation of N.J.S.A. 49:3-52(b) and is cause for the imposition of a civil monetary penalty for each separate violation pursuant to N.J.S.A. 49:3-70.1.

**KELLY AND FOREVERGREEN ENGAGED IN A PRACTICE OR COURSE OF  
CONDUCT WHICH OPERATED AS A FRAUD OR DECEIT  
N.J.S.A. 49:3-52(c)**

23. The preceding paragraphs are incorporated by reference as though set forth verbatim herein.
24. By the conduct detailed above, Respondents engaged in an act, practice or course of business that operated as a fraud and/or deceit upon the ForeverGreen investors and others in violation of N.J.S.A. 49:3-52(c).
25. Each violation of N.J.S.A. 49:3-52(c) upon each investor is a separate violation and is cause for the imposition of a civil monetary penalty for each separate violation pursuant to N.J.S.A. 49:3-70.1.

**KELLY ACTED AS AN UNREGISTERED AGENT  
N.J.S.A. 49:3-56(a)**

26. The preceding paragraphs are incorporated by reference as though set forth verbatim herein.
27. Kelly acted as an agent in effecting or attempting to effect transactions in securities from or in New Jersey, without

being registered with the Bureau to sell the ForeverGreen Stock in violation of N.J.S.A. 49:3-56(a).

28. Each sale to investors constitutes a separate violation of N.J.S.A. 49:3-56(a) and is cause for the imposition of a civil penalty for each separate violation pursuant to N.J.S.A. 49:3-70.1.

**FOREVERGREEN EMPLOYED AN UNREGISTERED AGENT**  
**N.J.S.A. 49:3-56(h)**

29. The preceding paragraphs are incorporated by reference as though set forth verbatim herein.
30. ForeverGreen employed Kelly, who was not registered with the Bureau, as an agent in effecting or attempting to effect transactions in securities to and from New Jersey in violation of N.J.S.A. 49:3-56(h).
31. Each sale to investors is a separate violation of N.J.S.A. 49:3-56(h) and is cause for the imposition of a civil penalty for each separate violation pursuant to N.J.S.A. 49:3-70.1.

**KELLY AND FOREVERGREEN OFFERED AND SOLD**  
**UNREGISTERED SECURITIES**  
**N.J.S.A. 49:3-60**

32. The preceding paragraphs are incorporated by reference as though set forth verbatim herein.
33. Respondents offered and sold securities in the form of ForeverGreen Stock that was not registered with the Bureau, in violation of N.J.S.A. 49:3-60.

34. Each offer and sale of unregistered securities constitutes a separate violation of N.J.S.A. 49:3-60 and is cause for the imposition of a civil monetary penalty for each separate violation pursuant to N.J.S.A. 49:3-70.1.

**THEREFORE**, based on the foregoing findings of fact and conclusions of law,

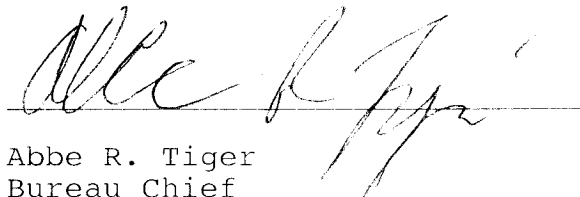
**IT IS** on this 15<sup>TH</sup> day of November 2011,

**ORDERED THAT** judgement is hereby entered against Kelly and ForeverGreen for a civil monetary penalty assessed in the amount of \$400,000.00, a sum for which they are jointly and severally liable; and it is further

**ORDERED THAT** Kelly and ForeverGreen shall cease and desist from further violations of the Uniform Securities Law; and it is further

**ORDERED THAT** Respondents are denied all exemptions contained in N.J.S.A. 49:3-50, subsection (a), paragraph 9, 10 and 11 and subsection (b); and it is further

**ORDERED THAT** the exemptions to the registration requirements provided by N.J.S.A. 49:3-56(b), N.J.S.A. 49:3-56<sup>c</sup> and N.J.S.A. 49:3-56(g) are hereby revoked.



Abbe R. Tiger  
Bureau Chief  
New Jersey Bureau of Securities



NOTICE OF RIGHT TO HEARING

You are advised that upon service of notice of this Summary Order by the Bureau Chief, you shall have up to fifteen (15) days to respond to the Bureau in the form of a written answer and written request for a hearing. A request for a hearing must be accompanied by a written response, which addresses specifically each of the reasons set forth in the Order which formed the basis for its entry. A general denial is unacceptable. Within five (5) business days of receiving the written answer and request for a hearing, the Bureau Chief shall either transmit the matter to the Office of Administrative Law for a hearing, or schedule a hearing at the Bureau of Securities. At any hearing involving this matter, an individual respondent may appear on his/her own behalf or be represented by an attorney. If an applicant fails to respond by filing a written answer and request for a hearing with the Bureau within the fifteen (15) day prescribed period, the Order shall remain in effect until modified or vacated.

NOTICE OF OTHER ENFORCEMENT REMEDIES

You are advised that the Uniform Securities Law (1997) N.J.S.A. 49:3-47 et seq., provides several enforcement remedies, which are available to be exercised by the Bureau Chief, either alone or in combination. These remedies include, in addition to this action, the right to seek and obtain injunctive and ancillary relief in a civil enforcement action N.J.S.A. 49:3-69, and the right to seek and obtain civil penalties in an administrative or civil action, N.J.S.A. 49:3-70.1.

You are further advised that the entry of a Summary Order does not preclude the Bureau Chief from seeking and obtaining other enforcement remedies against you in connection with the claims made against you in this action.