

BEFORE THE ARKANSAS SECURITIES COMMISSIONER

CASE NO. S-14-0008

ORDER NO. S-14-0008-16-OR03

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ARKANSAS SECURITIES DEPT.

IN THE MATTER OF

**TALON CAPITAL, LLC;
TALON CAPITAL, LP; and
CHARLES BAILEY FERRILL, JR.**

RESPONDENTS

CEASE AND DESIST ORDER

On September 12, 2016, the Staff of the Arkansas Securities Department (“Staff”) filed its Request for Cease and Desist Order (“Request”). In its Request, the Staff states that it has certain information and evidence indicating that Talon Capital, LLC; Talon Capital, LP; and Charles Bailey Ferrill, Jr. have violated provisions of the Arkansas Securities Act (“Act”), codified at Ark. Code Ann. §§ 23-42-101 through 23-42-509. The Arkansas Securities Commissioner (“Commissioner”) has reviewed the Request and based upon the representations made therein finds that:

FINDINGS OF FACT

The Request contains the following representations of fact:

1. Charles Bailey Ferrill, Jr. (“Ferrill”), CRD No. 1046104, is an individual resident of the state of Arkansas. Ferrill was registered with the Arkansas Securities Department (“Department”) as a broker-dealer agent from May 18, 1989, through May 9, 2011. Ferrill was most recently registered with the Department as a broker-dealer agent with Regal Securities, Inc. (“RSI”), CRD No. 7297, an Arkansas registered broker-dealer firm based in Glenview, Illinois, from July 5, 2007, through May 9, 2011. While employed by RSI, Ferrill worked in the RSI office supervised by Raymond Dickie Adcock (“Adcock”), CRD No. 1592822, and located at 2725 Cantrell Road, Suite 201, Little Rock, Arkansas 72202 (“Regal Branch Office”). Ferrill is not currently registered with the Department in any capacity.

2. Talon Capital, LLC (“Talon LLC”) is a limited liability company organized and existing under the laws of the state of Arkansas. At all relevant times herein, Talon LLC had a principal place of business located at the Regal Branch Office. Talon LLC has never been registered with the Department in any capacity pursuant to the Act.

3. Talon Capital, LP (“Talon LP”) is a limited partnership organized and existing under the laws of the state of Delaware. At all relevant times herein, Talon LP had a principal place of business located at the Regal Branch Office. Talon LP has never been registered with the Department in any capacity pursuant to the Act.

4. Adcock is an Arkansas resident who first became registered with the Department as a broker-dealer agent on February 23, 1989. Adcock most recently was registered with RSI from July 5, 2007, until April 8, 2015, where he was a general securities principal with supervisory authority. From September 5, 2008, until April 8, 2015, Adcock was dually registered with the Department as an investment adviser representative with RSI’s affiliated investment adviser firm Regal Advisory Services, Inc. (“RAS”), CRD No. 123842. Adcock was Ferrill’s supervisor at the Regal Branch Office. Adcock is no longer registered with the Department in any capacity as the result of a Consent Order entered by the Commissioner on September 1, 2016, thereby revoking his registrations as a broker-dealer agent and investment adviser representative in the state of Arkansas due to violations of the Act related to facts and circumstances set forth in this Order.

5. Adcock and Ferrill formulated a business plan to operate a hedge fund and consequently formed two companies together – Talon LLC on February 23, 2011, and Talon LP approximately a year later on February 15, 2012 (collectively, the “Talon Entities”). Adcock and Ferrill originally were the principals and managers of Talon LLC. However, on April 16, 2011, Adcock officially tendered his resignation from Talon LLC in all capacities, leaving Ferrill as the

only owner, officer, and manager for the company. Talon LLC served as the general partner and investment manager of Talon LP. Therefore, no individuals other than Adcock and Ferrill had any control over the Talon Entities at any point in time. Ferrill managed the Talon Entities out of the Regal Branch Office and used the same telephone and facsimile numbers as the Regal Branch Office. The Talon entities have never been registered with the Department and have never made registration or exemption filings with the Department to offer and sell securities in Arkansas.

6. The Talon entities, through Ferrill, sold unregistered, non-exempt securities in two separate offerings to eight Arkansas investors and six Mississippi investors. Ferrill offered, recommended, and sold the securities to individuals who were either clients of RSI/RAS, or persons with whom he maintained a personal relationship. The two offerings raised a combined total of \$540,000.00 in investor funds.

7. From on or about March 14, 2011, through October 3, 2012, Talon LLC offered and sold twenty-six units of Talon LLC for \$17,500.00 per unit and one partial unit for \$10,000.00 through unsecured convertible promissory notes ("Notes"). The Notes offering raised a total of \$465,000.00, with \$307,500.00 from Arkansas investors and \$157,500.00 from Mississippi investors.

8. On April 9, 2012, Talon LP offered and sold a security in the form of a limited partnership interest ("Partnership") to one Arkansas investor ("AR1") who, by that date, had also invested \$105,000.00 in the Talon LLC Notes offering. AR1 invested \$75,000.00 in the Partnership offering. While other investors were solicited by Ferrill to invest in the Partnership offering, including large institutional investors, AR1 was the sole investor in the Partnership offering.

9. Talon LLC marketed and sold the Notes using an approximate twenty-page offering document, or private placement memorandum (“PPM”), which was intended to provide sales and disclosure information to investors regarding the investment. Adcock prepared the PPM using a template found on the internet. Ferrill delivered the PPM to prospective investors. Talon LLC was marketed as a “hedge fund incubator” for an eventual hedge fund to be started by Talon LP. The PPM provided that investments in the Notes would be used to open a brokerage account for Talon LLC at RSI where Adcock would serve as the agent and implement a trading program to generate profits for investors. The proposed trading program involved the use of executing covered options over several different types of exchange traded funds. The PPM represented that the trading program would generate profits for investors while establishing a proven trading record meant to attract potential institutional investors and high-net worth individuals for investment in the Talon LP hedge fund. The PPM stated that investors would receive quarterly interest payments constituting twelve percent per year paid quarterly on a \$17,500.00 investment, totaling \$2,100.00 per year for six years, or a total of \$12,600.00. The interest payments would be generated from profits accrued via trades performed by Adcock in the brokerage account. The PPM did not disclose that a salary or any other form of compensation would be paid to Ferrill for his role in selling the Notes to investors.

10. Adcock and Ferrill opened a bank account for Talon LLC on March 14, 2011, using the first Notes investment of \$35,000.00 from AR1. The statements for the Talon LLC bank account were mailed to the Regal Branch Office. Adcock and Ferrill were the only persons with access to and signatory authority for the Talon LLC bank account. All of the investors in the Notes offering wrote checks directly to Talon LLC, which were later deposited into the bank account by Adcock or Ferrill. AR1, the sole investor in the Partnership offering, wrote a \$75,000.00 check to

Talon LP, which was deposited into the Talon LLC bank account. Adcock and Ferrill never opened a separate bank account for Talon LP but instead made deposits and withdrawals for Talon LP through the Talon LLC bank account.

11. Beginning on May 16, 2011, Ferrill began to withdraw or transfer funds at irregular times from the Talon LLC checking account to a personal checking account he labeled an “operating account.” From May 16, 2011, through September 4, 2013, Ferrill withdrew or transferred a total of approximately \$259,000.00 from the Talon LLC checking account into his personal checking account. Ferrill’s personal withdrawal of investor funds in such a way from the Talon LLC bank account was never disclosed to the investors in the Notes offering. Ferrill used a small percentage of these funds, believed to be approximately \$1,600.00 a month, to pay Talon LLC expenses, such as rent, telephone bills, and reimbursements for gasoline and other travel expenses. Ferrill treated the remainder of the funds as salary and used these funds to pay his personal expenses. Aside from miscellaneous living expenses, Ferrill used investor funds to make approximately \$52,000.00 in personal credit card payments, \$65,000.00 in personal automobile loan and mortgage payments, and \$32,000.00 in payments on private country club dues.

12. As noted above, the Talon LLC PPM provided that investors would receive quarterly interest payments to be generated from profits derived from a trading program implemented in a brokerage account at RSI. From August 3, 2011, through September 4, 2013, Adcock wired funds at Ferrill’s request from the Talon LLC brokerage account to the Talon LLC checking account. Subsequently, Talon LLC made interest payments out of the Talon LLC bank account to investors in the Notes offering. However, neither Talon LLC’s bank account nor its brokerage account generated enough profits to make the guaranteed quarterly interest payments

described in the Notes PPM. Therefore, the interest payments made to investors in the Notes offering were sourced predominantly from the principal investments of other investors.

13. Since July 2013, Talon LLC has not made any payments to investors in the Notes offering. The investors in the Notes offering lost nearly all of their principal investment, minus the limited funds received from the Talon LLC checking account as purported interest payments. Ferrill's excessive personal use of over one-half of the principal investment in the Notes caused the predominant amount of investor loss and rendered the trading program in the Talon LLC brokerage account at RSI unsustainable. The remainder of investor funds were lost to trade losses, trade commissions, and minor business expenses. The Talon LLC brokerage account at RSI has been closed, and Talon LLC's checking account is currently dormant.

14. Regarding Talon LP, the \$75,000.00 invested by AR1 in the Talon LP Partnership offering initially was deposited into the Talon LLC checking account, then later transferred to open a Talon LP brokerage account at RSI. Adcock invested the funds in a variety of securities, including covered options in various exchange-traded funds. Over time, AR1 became unhappy with the performance of the Talon LP brokerage account. On October 7, 2013, Adcock submitted a form to RSI to transfer \$60,881.29 from the Talon LP brokerage account to the Talon LLC checking account, thereby closing out the brokerage account with a loss of approximately \$14,118.71. Adcock later withdrew \$60,576.00 from the Talon LLC checking account and tendered that amount to AR1 in the form of a cashier's check as partial repayment of his initial investment.

15. Neither the Notes offering nor the Partnership offering was registered with the Department pursuant to the Act. Although the Notes offering was labeled a "private placement offering" in the PPM, Talon LLC did not register or claim an exemption from registration with the

United States Securities and Exchange Commission. Regarding both the Notes and the Partnership offerings, the Department has found no record of a filing evidencing a registration, a proof of exemption in accordance with the Act, or a notice filing pursuant to federal law in connection with a covered security.

APPLICABLE LAW

16. Ark. Code Ann. § 23-42-102(17)(A)(xi) includes notes and investment contracts under the Act's definition of a security.

17. Ark. Code Ann. § 23-42-102(10) defines issuer as any person who issues any security.

18. Ark. Code Ann. § 23-42-301(a) provides that it is unlawful for any person to transact business as an agent of an issuer of securities without first being registered as such pursuant to the Act.

19. Ark. Code Ann. § 23-42-501 provides that it is unlawful for any person to offer or sell any security unless it is registered, exempt, or a covered security.

20. Ark. Code Ann. § 23-42-507(2) makes it unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly, to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading.

21. Ark. Code Ann. § 23-42-507(3) makes it unlawful to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

CONCLUSIONS OF LAW

22. The subject Notes issued by Talon LLC constitute securities pursuant to Ark. Code Ann. § 23-42-102(17)(A)(i). The subject Partnership interest issued by Talon LP constitutes a security as an investment contract pursuant to Ark. Code Ann. § 23-42-102(17)(A)(xi). The Partnership interest was advertised, offered, and sold on the premise that the investor would receive economic benefits in the form of returns on his principal investment. The investor contributed to the risk capital of the venture. The money invested was always subject to the risk that the Respondents would not fulfill promises and the investor would not receive the return advertised. The investor had no control over the process necessary to generate returns on the investment. The Partnership interest was packaged, advertised, marketed, and sold as the type of investment that the Act is intended to govern. Therefore, the subject Notes and Partnership offerings are securities under Ark. Code Ann. § 23-42-102(17)(A).

23. The securities sold by Talon LLC and Talon LP, through Ferrill, were not registered with the Department, exempt from registration with the Department, or considered covered securities under federal law. Therefore, Talon LLC; Talon LP; and Ferrill violated Ark. Code Ann. § 23-42-501 when they sold the subject securities to investors.

24. Talon LLC and Talon LP are both defined as an issuer by Ark. Code Ann. § 23-42-102(10). The facts set out above demonstrate that Ferrill, while unregistered, represented Talon LLC and Talon LP in effecting or attempting to effect the purchases or sales of securities to investors. Therefore, Ferrill acted as unregistered agent of an issuer in violation of Ark. Code Ann. § 23-42-301(a).

25. Talon LLC and Ferrill, in connection with the offer, sale or purchase of a security, 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. The Talon LLC PPM and Ferrill

himself failed to disclose to investors that Ferrill would receive a salary or any other form of compensation for his role in selling the Notes to investors. Nevertheless, despite omitting to disclose this information to investors, Ferrill converted over one-half of the principal invested in the Notes offering to his personal use. Additionally, Talon LLC and Ferrill, in connection with the offer, sale or purchase of a security, made untrue statements of material fact to investors. The Talon LLC PPM provided that investors would receive quarterly interest payments to be generated from profits derived from a trading program implemented in a brokerage account at RSI. Instead, Talon LLC, under Ferrill's direction and management and by way of his direct action, paid investors purported interest payments, not out of profits generated from trading, but from funds derived from the principal investments of other investors in the Notes offering. The purpose of these purported interest payments was to conceal Ferrill's excessive personal use of investor funds and the fledgling performance of the Talon LLC brokerage account. Therefore, for the above and foregoing reasons, Talon LLC and Ferrill committed securities fraud in violation of Ark. Code Ann. § 23-42-507(2).

26. Talon LLC and Ferrill, in connection with the offer, sale, or purchase of a security, have engaged in an act, practice, or course of business that operated as a fraud or deceit upon investors by converting over one-half of the investment funds for the unauthorized personal use of Ferrill, a purpose not disclosed as a use for the funds when the securities were advertised, marketed and sold to the investors. Therefore, by reason of the foregoing, Talon LLC and Ferrill committed securities fraud in violation of Ark. Code Ann. § 23-42-507(3).

ORDER

27. Respondents shall immediately cease and desist from further violations of Ark. Code Ann. § 23-42-501 by refraining from soliciting, offering, and/or selling securities in the state of Arkansas unless and until the securities are properly registered pursuant to the Act, exempt from such registration, or a covered security.

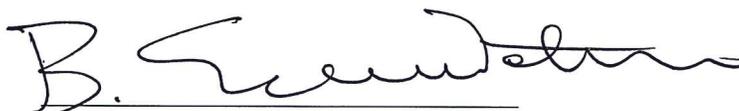
28. Respondent Ferrill shall immediately cease and desist from further violations of Ark. Code Ann. § 23-42-301 by refraining from acting as an agent of the issuer until such time as he is properly registered or shown to be exempt from registration pursuant to the Act.

29. Respondents shall immediately cease and desist from further violations of Ark. Code Ann. § 23-42-507(2) and Ark. Code Ann. § 23-42-507(3) by refraining from committing fraud or deceit in connection with the offer or sale of any securities in the state of Arkansas.

30. A hearing on this Cease and Desist Order shall be held if requested by any of the Respondents in writing within thirty days of the entry of this Order or if otherwise ordered by the Commissioner. Ark. Code Ann. § 23-42-209(a)(2)(A). Such request should be addressed to the Commissioner and submitted to the following address: Arkansas Securities Commissioner, 201 East Markham, Suite 300, Little Rock, Arkansas 72201.

31. If no hearing is requested and none is ordered by the Commissioner, this Cease and Desist Order will remain in effect until it is modified or vacated by the Commissioner. Ark. Code Ann. § 23-42-209(a)(2)(B)

Dated this 12th day of September, 2016.



B. Edmond Waters
Arkansas Securities Commissioner