

BEFORE THE ARKANSAS SECURITIES COMMISSIONER

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ARKANSAS SECURITIES DEPT.

IN THE MATTER OF
CARR MILLER CAPITAL, LLC;
CAPITAL MARKETS ADVISORY, LLC, f/k/a
CARR MILLER CAPITAL INVESTMENTS, LLC;
EVERETT CHARLES FORD MILLER; and
BRIAN PATRICK CARR

Case No. S-09-059

SECOND AMENDED REQUEST FOR CEASE AND DESIST ORDER

The staff of the Arkansas Securities Department (Staff) has received information and has in its possession certain evidence which indicates that Carr Miller Capital, LLC; Capital Markets Advisory, LLC, f/k/a Carr Miller Capital Investments, LLC; Everett Charles Ford Miller; and Brian Patrick Carr have violated provisions of the Arkansas Securities Act (Act), codified at Ark. Code Ann. §§ 23-42-101 through 509. The Staff previously filed a request for a cease and desist order on September 17, 2009, and an amended request for cease and desist order on September 23, 2009.

ADMINISTRATIVE AUTHORITY

1. This matter is brought in connection with violations of the Act, and is therefore properly before the Arkansas Securities Commissioner (Commissioner) in accordance with Ark. Code Ann. § 23-42-209.

RESPONDENTS

2. Carr Miller Capital, LLC (CMC) is a New Jersey limited liability company. The certificate of

formation for CMC was filed on June 26, 2006, with the New Jersey Department of the Treasury (NJ Treasury)¹. The main business address for CMC is listed as 7 Norrskan Drive, Marlton, New Jersey 08053. CMC is not registered in accordance with the Act in any way.

3. Capital Markets Advisory, LLC, was formerly known as Carr Miller Capital Investments, LLC (CMI). It is a state-regulated investment adviser firm based in New Jersey. On December 21, 2009, CMI changed its name to Capital Markets Advisory, LLC. Because it was not known by the new name at any time discussed herein, it will be referred to as Carr Miller Capital Investments, LLC, and the acronym, CMI. According to the Central Registration Depository (CRD)², CMI's main office is located at 51 JFK Parkway, First Floor West, Short Hills, New Jersey 07078. According to the CRD, CMI had another office in Little Rock located at 650 Shackleford Road, Suite 325. It was registered with the Arkansas Securities Department (Department) as an investment adviser from December 17, 2008, until it withdrew its registration, effective on October 29, 2009. Its CRD number is 141999.
4. Everett Charles Ford Miller, a New Jersey resident, is listed with the NJ Treasury as a 5% owner of CMI and CMC's sole owner, authorized representative and chief executive officer. Although Miller was registered as a representative of CMI in New Jersey during the time period discussed herein, he has never been registered in any capacity with the Department. His CRD number is 4166092.

¹New Jersey business formation records are kept in the NJ Treasury.

²The electronic registration system set up and run by the Financial Industry Regulatory Agency (FINRA) for the securities industry in North America.

5. Brian Patrick Carr, a New Jersey resident, is listed with the NJ Treasury as a 95% owner of CMI and its managing member. Carr is registered with the CRD as CMI's managing member and chief compliance officer. His CRD number is 2577346.

FACTS SUPPORTING CEASE AND DESIST ORDER

6. In August 2009, the Staff opened an investigation into the CMI Little Rock office. Records recovered in an on-site examination of CMI's Little Rock office reveal that through the agency of CMI and its agents, CMC offered or sold 12 promissory notes entitled Commercial Notes (Notes) to nine Arkansas investors for a total of \$1,398,866.70. They were all written for a term of nine months. Both CMI and its agents received commissions for all but one of these offers or sales.³ The details of each offer or sale can be summarized as follows:

INVESTOR	DATE	AMOUNT	TERM	RATE
AR1	12/1/08	25000.00	9 Months	8%
AR2	2/1/09	189720.00	9 Months	7%
	2/11/09	309000.00	9 Months	4%
AR3	4/20/09	200000.00	9 Months	8%
AR4	12/20/08	100000.00	9 Months	8%
	5/29/09	100000.00	9 Months	8%
AR5	6/5/09	30271.70	9 Months	8%
	7/15/09	25000.00	9 Months	8%
AR6	7/15/09	12041.00	9 Months	8%
AR7	7/15/09	293122.00	9 Months	8%
AR8	9/1/09	50000.00	9 Months	8%
AR9	7/24/09	64712.00	9 Months	8%

7. The on-site examination revealed that Samuel C. Talbert, Robert E. Bragg and Richard A.

³The offer had been accepted by AR8 and the sale was being attempted at the time of the Staff's on-site examination. AR8's check was delivered to the Little Rock CMI office, and the paperwork was completed. However, the check and paperwork were not forwarded on to CMC's New Jersey office. AR8's funds were returned to him. Although no commissions were paid, an offer to sell was made.

Garrett were referred to as managing directors of the Little Rock office of CMI, but only Bragg was registered as a representative of CMI.⁴ Talbert is an Arkansas resident registered with the Arkansas Insurance Department (AID) as a resident producer insurance agent. He is the owner, president, controller and tax preparer of an insurance agency, Allied Financial Services, Inc., d/b/a Allied Insurance and Financial Services, Inc. (Allied), whose address was at all times discussed herein the same as CMI's Little Rock office. Garrett is also an Arkansas resident registered with the AID and associated with Allied. Neither Talbert, nor Garrett has never been registered with the Department in any capacity. Either Talbert, or Bragg were involved in the sale of all but one of the Notes, the one sold to AR8, which was cancelled.

8. On April 1, 2008, CMC and CMI entered into an agreement entitled "ADVISORY/CONSULTANT AGREEMENT/Related to CarrMiller Capital Notes." According to this agreement, CMC engaged CMI as "independent contractor/consultant" to "solicit and refer clients to [CMC]" who CMI believed were "suitable to [CMC] to 'lend' proceeds for the purpose of beneficially participating in the [CMC] portfolio." CMC agreed to pay CMI a \$50,000 yearly retainer and 5% per annum of principal amount of the notes sold, payable monthly over a 12 month period, reducing to 2% after January 2010. The retainer would be credited against the 5% fee. Thus, by the time CMI opened its Little Rock office, CMC had authorized the offer and sale of the Notes.

⁴Neither Talbert, nor Bragg are respondents in this order, and both have entered into consent orders that can be found on the Arkansas Securities Department website under administrative orders issued in 2010, bearing the numbers S-09-059-10-OR02 and S-09-059-10-OR03, respectively.

9. Miller, Carr and staff members of CMC told the staff of the CMI Little Rock office in meetings and in telephone and email communications at various times during the period CMI's Little Rock office was open that the Notes were not securities, were covered by Regulation D⁵ and could be sold without a license or registration. Nevertheless, the agents were informed, there were advantages to being registered as an investment adviser representative (IA representative) of CMI: if an agent had passed the Series 65 test and was registered as an IA representative of CMI, the commission would be paid to the agent every year as an investment advisory fee, but if he had not passed the test and was not registered as an IA representative, the commission would only be paid during the first year.
10. There were no offering materials for the Notes. Sometime in later 2008 or early 2009, Talbert told a CMC staff member that he was having trouble selling the Notes because people were more wary in the wake of the Madoff scandal⁶ and asked CMC for more information to give prospective purchasers of the Notes. In response, CMC supplied CMI with a document entitled Carr Miller Capital Executive Summary (Executive Summary), which was produced for the use of agents selling the Notes. Although they were not permitted to give copies of the Executive Summary to prospective purchasers, this was the only information CMI agents could convey to prospective purchasers about the Notes. Talbert, Bragg and other agents

⁵This is a federal regulation promulgated pursuant to the Securities Act of 1933 and codified at 17 C.F.R. §§ 230.501 through 230.508.

⁶Madoff scandal refers to the case of Bernard Madoff who pleaded guilty in March 2009 to having run a massive Ponzi scheme losing investors some \$18 billion. News of the case first broke in December, 2008. He was sentenced to 150 years' imprisonment on June 29, 2009. *See* <http://www.justice.gov/usao/nys/madoff.html>.

conveyed the information in the Executive Summary to prospective purchasers of the Notes in offering and selling the Notes.

11. The Staff found several copies of the Executive Summary during its examination. In the Executive Summary the broad purpose of the Notes was disclosed as follows:

Carr Miller Capital invests directly into a vast number of companies and unique opportunities Opportunities are available in any market; however, the current economy creates even more opportunities than usual. Carr Miller is positioned to take advantage of these opportunities by creating an ‘Opportunity Pool’. Carr Miller builds this fund by borrowing money from private individuals and companies and then take advantage of these investment opportunities. Carr Miller maintains diversity by investing in unrelated types of industries. Our firm has created proprietary internal Funds to accomplish these goals.

In the remainder of the Executive Summary, four CMC “proprietary internal” investment funds are described as typical or representative of funds into which the proceeds of the sales of the Notes are invested to produce a return.

12. In regard to the Notes, a search of the records of the Department reflects no registration, no proof of exemption from the registration provisions of the Act and no notice filing filed in the case of a covered security under federal law in accordance with Ark. Code Ann. § 23-42-509. Further, a search of the records of the United States Securities and Exchange Commission (SEC) reveals no filing regarding the Notes pursuant to Regulation D.
13. As the sole owner and managing member of CMC, Miller occupied a position with CMC with the responsibility and authority to determine and oversee CMC’s business conduct. He signed each of the Notes on CMC’s behalf. Miller could have prevented CMC from authorizing the offer and sale of the Notes, but instead caused CMC to offer and sell the Notes to Arkansas residents through the agency of CMI.

14. At all times discussed herein, both Carr and Miller had signed forms filed with the CRD on behalf of CMI, and both were listed as authorized representatives of CMI in the records of the NJ Treasury. Miller was a signatory on several CMI checking accounts, including the account from which CMI paid commissions, and exerted as much control of CMI as Carr. Although Carr has always been listed as CMI's chief compliance officer on the CRD, Miller was listed as the compliance officer in the CMI policies and procedures manual found in the Little Rock office when the Staff performed an examination of that office in August 2009. Miller remained the compliance officer according to the CMI policies and procedures manual until the manual was changed later in August 2009, at which time Miller was replaced by Gabriel Marques, another person who was not registered as a representative of CMI and not noted on the CRD as the compliance officer. Both Carr and Miller were executive officers of CMI in charge of compliance with securities laws who could have prevented CMI from transacting business as an unregistered broker-dealer by offering and selling the Notes for CMC for a commission. Instead, Carr and Miller caused CMI to act as an unregistered broker-dealer and facilitated the offer and sale of the Notes by CMI for a commission.

APPLICABLE LAW

15. Ark. Code Ann. § 23-42-102(15)(A)(xi) defines a security as an investment contract.
16. Ark. Code Ann. § 23-42-102(15)(A)(i) defines a security as a note.
17. Ark. Code Ann. § 23-42-102(15)(A)(vi) defines a security as an evidence of indebtedness.
18. Ark. Code Ann. § 23-42-501 provides that it is unlawful for any person to offer or sell any security which is not registered or which is not exempt from registration under the terms of

the Act or federal law.

19. Ark. Code Ann. § 23-42-102(2) defines broker-dealer as any person, which can be a limited liability company in accordance with Ark. Code Ann. § 23-42-102(11), engaged in the business of effecting transactions in securities for the account of others.
20. Ark. Code Ann. § 23-42-301(a) provides that it is unlawful for any person to transact business in this state as a broker-dealer unless he is registered as such pursuant to the Act.

VIOLATIONS OF LAW

21. The investments made herein and referred to as Notes were investment contracts, a type of security listed at Ark. Code Ann. § 23-42-102(15)(A)(xi). An investment contract is the investment of money into the risk capital of a common enterprise or venture with the expectation of benefit or profit with no effective control over the venture. According to the Executive Summary discussed in ¶¶ 10 and 11, these notes represented the investment of money into an investment pool to be managed by CMC. The investment pool would be invested into a variety of businesses. The investors would be totally without control over this pool and totally dependent on the efforts of others, specifically those of CMC.
22. All investments referred to as Notes were evidenced by promissory notes, as discussed in ¶ 6, each promising varying rates of return. These were both notes and evidences of indebtedness, both of which are types of securities as defined by Ark. Code Ann. §§ 23-42-102(15)(A)(i) and (vi), respectively.
23. The facts set out above at ¶¶ 1 - 12 show that CMC offered and sold unregistered securities, the Notes, through its agent, CMI, a violation of Ark. Code Ann. § 23-42-501.

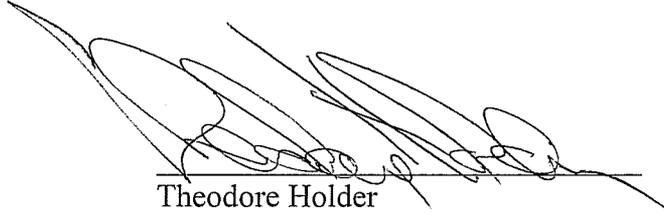
24. The facts set out above in ¶¶ 1 - 12 show that CMI acted as an unregistered broker-dealer, effecting transactions in securities for the accounts of others, in offering and selling the Notes for CMC for a commission, a violation of Ark. Code Ann. § 23-42-301(a).
25. The facts set out above at ¶¶ 1 - 13 show that Miller, as the sole owner and managing member of CMC, held a position at CMC with the responsibility and authority for determining and overseeing the type of business engaged in by CMC. In his position Miller could have prevented CMC from offering and selling the Notes, which were unregistered securities, but instead authorized and facilitated the offer and sale of the Notes. Therefore, Miller is personally responsible for this violation of Ark. Code Ann. § 23-42-501.
26. The facts set out above in ¶¶ 1-14 show that Carr and Miller occupied positions of responsibility and authority with CMI from which they could have and should have prevented CMI from acting as an unregistered broker-dealer. Carr, as the 95% owner, managing member and chief compliance officer of CMI, held a position at CMI with responsibility and authority for authorizing the business activities engaged in by CMI. Although Miller was not listed as an officer of CMI on the CRD, as a practical matter he held a position similar to that of Carr by virtue of his actual involvement with CMI's daily business, and he, also, had responsibility and authority for CMI's business activities. In their positions with CMI Carr and Miller could have prevented CMI from offering and selling the Notes, which were unregistered securities, as an unregistered broker-dealer and agent of CMC. Instead, Carr and Miller authorized and facilitated the offer and sale of the Notes as an unregistered broker-dealer and agent of CMC. Therefore, Carr and Miller are personally responsible for CMI's violation of Ark. Code Ann. § 23-42-301(a), acting as an unregistered broker-dealer.

LEGAL AUTHORITY TO ISSUE CEASE AND DESIST ORDER

27. Ark. Code Ann. § 23-42-209(a)(1)(A) provides that whenever it appears to the Commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of the Act, he may summarily order the person to cease and desist from the act or practice.

WHEREFORE, the Staff respectfully requests that the Commissioner summarily issue a cease and desist order against Carr Miller Capital, LLC; Capital Markets Advisory, LLC, f/k/a Carr Miller Capital Investments, LLC; Everett Charles Ford Miller; and Brian Patrick Carr, ordering them to cease and desist from any further actions in the state of Arkansas in connection with the offer or sale of securities until such time as the securities in question and the persons and entities offering and selling the securities are all properly registered or shown to be exempt from registration pursuant to the Arkansas Securities Act. It is further requested that the Commissioner order the Staff to continue its investigation into this matter to determine other possible violations of the Act by Carr Miller Capital, LLC; Capital Markets Advisory, LLC, f/k/a Carr Miller Capital Investments, LLC; Everett Charles Ford Miller; Brian Patrick Carr; and any affiliates or associates whose identities and/or actions are presently unknown to the Staff, including but not limited to securities fraud.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Theodore Holder', is written over a horizontal line.

Theodore Holder
Arkansas Securities Department
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Little Rock, Arkansas 72201

Counsel for the Staff