

BEFORE THE ARKANSAS SECURITIES COMMISSIONER
CASE NO. S-10-0113

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ARKANSAS SECURITIES DEPT.

IN THE MATTER OF:

Order No. S-10-0113-11-OR02

Lewis & Clark Outdoors, Inc.

RESPONDENT

CONSENT ORDER

This Consent Order is entered pursuant to the Arkansas Securities Act, codified at Ark. Code Ann. §§ 23-42-101 through 23-42-509 (“Act”), the Rules of the Arkansas Securities Commissioner (“Rules”) promulgated under the Act, and the Arkansas Administrative Procedures Act, codified at Ark. Code Ann. §§ 25-15-201 through 25-15-219, in accordance with an agreement by and between the Staff of the Arkansas Securities Department (“Staff”) and Lewis & Clark Outdoors, Inc. (“Lewis & Clark”), in full and final settlement of all claims that could be brought against Lewis & Clark by the Staff on the basis of the facts set forth herein.

Lewis & Clark admits the jurisdiction of the Act and the Arkansas Securities Commissioner (“Commissioner”), waives its right to a formal hearing, consents to the entry of this order, and agrees to abide by its terms. Lewis & Clark also agrees that entry of this order has no impact on civil liability to Arkansas investors, if any, under Ark. Code Ann. § 23-42-106 for the violations detailed below.

FINDINGS OF FACT

1. Lewis & Clark is a corporation organized under the laws of the State of Arkansas, with its principal business office located at 8980 West Miller Road, Springdale, Arkansas. In promotional material, Lewis & Clark bills itself as an outdoor specialty retailer, providing customers with apparel, footwear, and gear for outdoor-related activities, such as camping, hiking, and bicycling.

2. James E. Potts (“Potts”) is an individual with a residential address located in Springdale, Arkansas. Potts is an owner and the president of Lewis & Clark.

3. On or about April 14, 2003, in order to sell stock, Lewis & Clark filed a proof of exemption with the Arkansas Securities Department (“Department”) claiming a transactional exemption for a small private offering of securities under Ark. Code Ann. § 23-42-504(a)(9) and Rule 504.01(A)(9) of the Rules. This exemption became effective with the Department on April 18, 2003, and expired on April 18, 2004. Through a search of the United States Securities and Exchange Commission’s (“SEC”) Electronic Data Gathering Analysis and Retrieval system, the Staff found a Form D filed with the SEC for this offering dated April 18, 2003, and claiming a corresponding federal exemption under Rule 504 of Regulation D (“Reg D”), promulgated by the SEC under Section 3(b) of the Securities Act of 1933 (“1933 Act”). Based on Department records and additional searches by the Staff, other than the April 14, 2003, exemption filing with the Department, Lewis & Clark has made no other filings with the Department in order to sell securities, including no new exemption filings with the Department after the expiration of its previous transactional exemption.

4. Lewis & Clark initiated another stock offering on or about March 31, 2006 (the “Offering”), which was represented in the Offering’s private placement memorandum (“PPM”) as a private placement under Reg D. The PPM indicated that the Offering was for 30,000 shares of voting common stock for a purchase price of \$50.00 per share, with an aggregate offering price of \$1.5 million.

5. Lewis & Clark provided the Staff with stock ledgers, and Potts provided testimony, indicating that from on or about March 31, 2006, through April 8, 2008, Lewis & Clark offered and sold shares of voting common stock through the Offering to twenty-seven investors, seventeen of whom were residents of Arkansas. The information Lewis & Clark provided in its stock ledgers is represented, in pertinent part, in Charts 1 and 2 below.

Chart 1 – Stock ledger information provided to the Staff on September 9, 2010.

Shareholder	Date	# Shares	Investment Amount	Price Per Share
SH1	04/08/06	3,000	\$150,000	\$50.00
SH2	04/26/06	2,000	\$100,000	\$50.00
SH3	05/22/06	600	\$25,000	\$41.67
	08/01/06	240	\$10,000	\$41.67
SH4	06/15/06	2,000	\$100,000	\$50.00
SH5	08/01/06	600	\$25,000	\$41.67
	12/08/06	240	\$10,000	\$41.67
SH6	08/11/06	1,707	\$80,000	\$46.87
	11/01/06	213	\$10,000	\$46.95
	08/27/07	600	\$15,000	\$25.00
	11/17/08	1,699	\$82,500	\$48.56
SH7	08/22/06	500	\$25,000	\$50.00
	09/20/07	360	\$15,000	\$41.67
SH8	08/26/06	1,200	\$50,000	\$41.67
SH9	08/31/06	500	\$25,000	\$50.00
SH10	09/06/06	240	\$10,000	\$41.67
SH11	09/07/06	500	\$25,000	\$50.00
SH12	10/02/06	1,000	\$50,000	\$50.00
SH13	10/02/06	500	\$25,000	\$50.00
SH14	10/04/06	500	\$25,000	\$50.00
SH15	10/16/06	200	\$10,000	\$50.00
SH16	10/16/06	2,400	\$100,000	\$41.67
SH17	10/17/06	240	\$10,000	\$41.67
SH18	10/31/06	1,500	\$62,500	\$41.67
SH19	12/01/06	240	\$10,000	\$41.67
	08/23/07	960	\$40,000	\$41.67
SH20	02/28/07	600	\$25,000	\$41.67
SH21	09/20/07	360	\$15,000	\$41.67
SH22	10/01/07	240	\$10,000	\$41.67
SH23	10/25/07	240	\$15,000	\$62.50
SH24	04/09/08	750	\$31,250	\$41.67
SH25	04/21/08	1,500	\$62,500	\$41.67
	Totals	27,429	\$1,248,750	Average \$44.95

Chart 2 – Stock ledger information provided to the Staff on December 29, 2010.

Shareholder	Date	# Shares	Investment Amount	Price Per Share
SH1	04/08/06	3,600	\$150,000	\$41.67
SH2	04/26/06	2,400	\$100,000	\$41.67
SH3	08/01/07	840	\$35,000	\$41.67
SH4	06/15/06	2,400	\$100,000	\$41.67
SH5	08/01/06	840	\$35,000	\$41.67
SH6	08/11/06	4,500	\$187,500	\$41.67
SH7	10/16/06	600	\$25,000	\$41.67
	10/16/06	360	\$15,000	\$41.67
SH8	08/26/06	1,200	\$50,000	\$41.67
SH9	08/31/06	600	\$25,000	\$41.67
SH10	09/06/06	240	\$10,000	\$41.67
SH11	09/07/06	600	\$25,000	\$41.67
SH12	10/02/06	1,200	\$50,000	\$41.67
SH13	10/02/06	600	\$25,000	\$41.67
SH14	10/04/06	600	\$25,000	\$41.67
SH15	10/16/06	240	\$10,000	\$41.67
SH16	10/13/06	2,400	\$100,000	\$41.67
SH17	10/17/06	240	\$10,000	\$41.67
SH18	12/19/06	1,500	\$62,500	\$41.67
SH19	08/21/07	1,200	\$50,000	\$41.67
SH20	02/28/07	600	\$25,000	\$41.67
SH21	09/15/07	360	\$15,000	\$41.67
SH22	10/17/07	240	\$10,000	\$41.67
SH23	10/23/07	360	\$15,000	\$41.67
SH24	04/08/08	750	\$31,250	\$41.67
SH25	04/08/08	1,500	\$62,500	\$41.67
SH26	08/01/06	1,200	\$50,000	\$41.67
SH27	10/16/06	2,400	\$100,000	\$41.67
	Totals	33,570	\$1,398,750	Average \$41.67

6. Chart 2 above represents information from Lewis & Clark’s stock ledger, which, according to Lewis & Clark, was updated in December 2010. The stock ledger included a footnote, which stated the following regarding the price per share of its stock:

The 2006 offering terms were for 30,000 shares at \$50 each. The offering price was later lowered by 10% to \$41.67 per share. If an investor purchased shares prior to August 2007, they were issued additional shares so their relative interest was not diluted. For example, [SH1] purchased 3,000 shares at \$50 each. 600 additional shares were issued to prevent any dilution of [their] purchase under the 2006 offering.

However, the information depicted in the two stock ledgers differs as to the various prices of Lewis & Clark stock and the dates on which the changes in the price of Lewis & Clark stock occurred.

7. In addition to the information in Chart 2 above regarding Lewis & Clark's sales of stock during the Offering, the December 29, 2010, stock ledger also indicated that, from on or about June 27, 2009, through an unspecified date in 2010, Lewis & Clark sold approximately 34,032 shares of stock at \$4.11 per share through a series of sales to one investor in Arkansas, Lewis & Clark's Chief Executive Officer, for a total of approximately \$140,000.00. Lewis & Clark did not issue additional shares to prevent dilution after these sales, as it did in 2007.

8. Although Lewis & Clark prepared a PPM, it could provide no evidence that the PPM was delivered to all of its investors. Lewis & Clark could only provide the Staff with a copy of one executed subscription agreement, a document that set forth the basic terms under which Lewis & Clark would sell and investors would purchase shares of stock, which acknowledged, among other things, one investor's receipt of the PPM and other disclosure documents for the Offering and purchase of the Lewis & Clark stock for investment purposes only. While the PPM limited the sales under the Offering to accredited investors, Lewis & Clark could only provide the Staff with copies of two executed investor suitability questionnaires for the Offering, used to determine whether potential investors in Lewis & Clark were qualified purchasers in the Offering and met certain suitability requirements under state and federal law before they were sold shares of stock, proving that two investors were, in fact, accredited.

9. No director, officer, manager, or employee of Lewis & Clark filed a Form D with the SEC; made any registration or exemption filing with the Department; or filed a Notice of Sale of Securities on Form D with the Department after the first sale in Arkansas, for Lewis & Clark's sales of securities between 2006 and 2010.

10. In addition to the unregistered, nonexempt offers and sales of Lewis & Clark stock detailed above, Lewis & Clark offered and sold three promissory notes, which were not registered with the Department or exempted from registration. Pursuant to an agreement on September 23, 2005, an Arkansas resident ("AR1") invested \$150,000.00 with Lewis & Clark with interest earnings of 12% annually. On April 9, 2007, another Arkansas resident ("AR2") invested \$100,000.00 with Lewis & Clark with interest earnings of 10% annually. SH4, an existing shareholder who originally purchased stock from Lewis & Clark on June 15, 2006, invested an additional \$30,000.00 with Lewis & Clark on May 19, 2009, with interest earnings of approximately 50% annually. Lewis & Clark has maintained its monthly interest payment obligations since the issuance of the promissory notes to AR1, AR2, and SH4.

11. The shares of Lewis & Clark stock sold to eighteen Arkansas investors, and the promissory notes sold to AR1, AR2, and SH4, between 2005 and 2010 were not properly registered with the Department, exempt from registration, or covered securities, in violation of Ark. Code Ann. § 23-42-501.

CONCLUSIONS OF LAW

12. The Act defines a security as any note or stock. Ark. Code Ann. § 23-42-102(15)(A)(i) and (ii).

13. It is unlawful for any person to offer or sell any security in this state unless it is registered under the Act; the security or transaction is exempted under Ark. Code Ann. §§ 23-42-503 or 23-42-504; or it is a covered security. Ark. Code Ann. § 23-42-501.

14. Any transaction pursuant to an offer and sale to not more than thirty-five purchasers other than those designated in Ark. Code Ann. § 23-42-504(a)(8) during any period of twelve consecutive months is exempted from Ark. Code Ann. §§ 23-42-501 and 23-42-502, if 1) the seller reasonably believes that all the buyers are purchasing for investment; and (2) no commission or other remuneration shall be paid or given directly or indirectly for soliciting any prospective buyer in this state unless the person receiving any such commission or remuneration is registered pursuant to Ark. Code Ann. § 23-42-301. Ark. Code Ann. § 23-42-504(a)(9)(A).

15. Before any transaction shall be executed as an exempted transaction under Ark. Code Ann. § 23-42-504(a)(9), a proof of exemption must first be filed with the Commissioner and the Commissioner by order shall not have disallowed the exemption within the next ten full business days. Ark. Code Ann. § 23-42-504(b)(1).

16. Securities underlying a transactional exemption effected pursuant to Ark. Code Ann. § 23-42-504 may be issued until such time as the transaction is complete. The maximum time period for completing a transaction is twelve months from the effective date. After the expiration of the effective period of the exemption, a new filing is required. Rule 504.02(I) of the Rules.

17. Pursuant to Ark. Code Ann. § 23-42-509(c)(1) and Rule 509.01(B)(2) of the Rules, notice filers for covered securities under Section 18(b)(4)(D) of the 1933 Act must file a Notice of Sale of Securities on Form D with the Department no later than fifteen days after the first sale in Arkansas.

18. Lewis & Clark violated Ark Code Ann. § 23-42-501 when it made multiple sales of securities to investors in Arkansas between 2005 and 2010 without the securities being registered under the Act, exempted under Ark. Code Ann. §§ 23-42-503 or 23-42-504, or covered securities.

19. The Act permits the informal disposition of a proceeding or allegations by consent order. Ark. Code Ann. § 23-42-209(c). The Staff and Lewis & Clark desire to fully resolve and

dispose of these proceedings and allegations and agree to do so in accordance with the terms of this Consent Order.

20. Entry of this Consent Order does not affect the civil liability of Lewis & Clark to Arkansas investors, if any, under Ark. Code Ann. § 23-42-106.

ORDER

By agreement and with the consent of the Staff and the authorized representative of Lewis & Clark, it is hereby ordered that Lewis & Clark shall be responsible for the payment of a civil penalty in the amount of \$7,000.00 to the Arkansas Securities Department. The payment of said civil penalty shall be made in two installments of \$3,500.00, the first of which is due within ten days of the entry of this Consent Order, and the second of which is due no later than Friday, December 30, 2011. The payments shall be made by check payable to the Arkansas Securities Department, 201 East Markham Street, Suite 300, Little Rock, Arkansas 72201.

Furthermore, Lewis & Clark shall cease and desist from offering or selling any securities in the State of Arkansas unless those securities are properly registered with the Department, exempt from the registration provisions of the Act, or covered securities.

IT IS SO ORDERED.

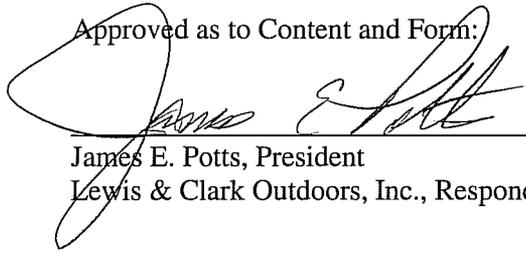


A. Heath Abshure
Arkansas Securities Commissioner

Nov. 14, 2011

Date

Approved as to Content and Form:



James E. Potts, President
Lewis & Clark Outdoors, Inc., Respondent

11/9/11

Date

Steven L. Brooks, Counsel for the Respondent
Friday, Eldredge & Clark, LLP

Date

Amber E. Crouch, Staff Attorney
Arkansas Securities Department

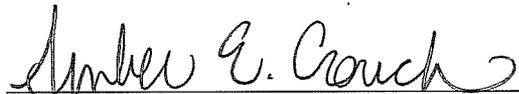
Date

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James E. Potts, President
Lewis & Clark Outdoors, Inc., Respondent



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Amber E. Crouch, Staff Attorney
Arkansas Securities Department

Date

11-9-11

Date

11/14/11

Date