

STATE OF ARKANSAS
SECURITIES DEPARTMENT

IN THE MATTER OF
MARSHELL MILLER

No S05-028-06-CO01

CONSENT ORDER

This consent order is entered pursuant to the Arkansas Securities Act, codified at Ark. Code Ann. §§ 23-42-101, *et seq.* (Repl. 2000), (the Act), the Rules of the Arkansas Securities Commissioner promulgated under the Act (the Rules) and the Arkansas Administrative Procedures Act, codified at Ark. Code Ann. §§ 25-15-201, *et seq.* (Repl. 2002) in accordance with an agreement by and between the Staff of the Arkansas Securities Department (the Staff) and MARSHELL EARL MILLER (Miller) in full settlement of all claims that could be brought against him in a complaint by the Staff as a result of his employment at the with Merrill Lynch Pierce Fenner and Smith at its Little Rock, Arkansas branch office from June, 1987 to March, 2006.

It is expressly understood and agreed that this consent order is a compromise of disputed claims and is entered into for the sole purpose of resolving the issues between the parties. Mr. Miller denies the material allegations of wrongdoing and any findings or conclusions of wrongdoing on his part. Miller denies the allegations of the Staff and only for the purpose of settling this matter and avoiding costly litigation, consents to the entry of this order and agrees to abide by its terms.

FINDINGS OF FACT

1. Miller is presently seeking registration as an agent of a broker-dealer with Morgan Stanley

DW, Inc. At all times mentioned in this order, he was employed by and registered as an agent of a broker-dealer with Merrill Lynch Pierce Fenner and Smith (Merrill Lynch) at its Little Rock, Arkansas branch office. His CRD number is 1512527.

2. During the course of his employment with Merrill Lynch, Miller became the broker for the accounts of five Arkansas Burial Associations. Burial associations are persons or business entities that undertakes to defray part or all of the expenses of burials, including merchandise, supplies and the like used in burials, for its members. Members of burial associations purchase these benefits and are given a certificate that provides for the payment of services to funeral and burial service providers. Ark. Code Ann. § 23-78-101(1) (Repl. 2004).
3. When he inherited three of these accounts from a broker who left Merrill Lynch in the early 1990s, he changed the makeup of the holdings in the accounts from mostly government securities to mostly corporate bonds rated B or better, but less than A by nationally recognized investment services. He followed the same strategy with two other burial association accounts he acquired in 2001 or 2003, changing the makeup of those accounts from mostly government securities to mostly corporate bonds approximately eight days after acquiring the accounts.
4. Miller also recommended , on occasion, trades of these corporate bonds more often than was advisable, sometimes holding them for as short a period as thirty days or less.. At times, this short term trading of long term products, bonds, resulted in losses in some accounts.

CONCLUSIONS OF LAW

5. The law concerning burial associations in Arkansas is contained at Ark. Code Ann. §§ 23-78-

101, *et seq.* (Repl 2004). Ark. Code Ann. § 23-78-122(a)(2)(F) (Repl. 2004) provides that a burial association may invest a portion of its income in corporate bonds, but only in bonds that are rated “A” or better by a nationally recognized investment service.

6. Rule 308.01(D), Rules of the Arkansas Securities Commissioner, entitled Recommendations to Customers, defines a misleading and unethical practice of a broker-dealer or agent, the commission of which can be considered grounds for denial, suspension or revocation of broker-dealer or agent registration. The practice proscribed herein is recommending to a customer the purchase of any security without reasonable grounds for believing that the recommended security is suitable for the customer based on facts disclosed by the customer concerning the customer’s other securities holdings and financial situation and needs or encouraging a customer to invest beyond her immediate financial resources.
7. Rule 308.01(E), Rules of the Arkansas Securities Commissioner, defines excessive trading as a misleading and unethical practice of a broker-dealer or agent, the commission of which can be considered grounds for denial, suspension or revocation of broker-dealer or agent registration. Excessive trading is inducing trading in a customer’s account which is excessive in size or frequency in view of the financial resources and character of the account, exclusively for the purpose of accumulating profits.

OPINION

8. Miller’s recommendations to purchase corporate bonds rated less than A, set forth in ¶ 3, above, was an unsuitable recommendation because in light of the prohibition of corporate bonds rated less than “A” in Ark. Code Ann. § 23-78-122(a)(2)(F) (Repl. 2004) it was the recommendation of an illegal investment. It therefore constituted a violation of Rule

308.01(D), Rules of the Arkansas Securities Commissioner.

9. Miller's too frequent trading of corporate bonds, the short term trading in long term products, detailed in ¶ 4, was excessive trading that resulted in losses to the customers, while benefitting Miller by producing commissions, a violation of Rule 308.01(E), Rules of the Arkansas Securities Commissioner.

ORDER

IT IS THEREFORE ORDERED, pursuant to the agreement of the Staff and Miller, that Miller pay \$10,000 in partial restitution of the commissions he earned to the account that suffered the most losses, the amount payable within ninety (90) days from now, to wit, on or before 29 November 2006.

WITNESS MY HAND AND SEAL this 31st day of August, 2006.


Michael B. Johnson
SECURITIES COMMISSIONER

STATE OF ARKANSAS
SECURITIES DEPARTMENT

IN THE MATTER OF
MARSHELL MILLER

No S-05-028-06-CO01

CONSENT TO ENTRY OF CONSENT ORDER
BY MARSHELL MILLER

MARSHELL EARL MILLER (Miller) hereby acknowledges that he has been served with a copy of this Consent Order reflecting his settlement of the matters set out therein, has read the Consent Order, is aware of his rights to a complaint setting out allegations against him, a hearing on that complaint and an appeal and has waived those rights.

It is expressly understood and agreed that this consent order is a compromise of disputed claims and is entered into for the sole purpose of resolving the issues between the parties and avoiding costly litigation. Mr. Miller denies the material allegations of wrongdoing and any findings or conclusions of wrongdoing on his part.

Nevertheless, Miller admits the jurisdiction of the Arkansas Securities Commissioner and consents to the entry of the Consent Order by the Arkansas Securities Commissioner for the sole purpose of settlement of the issues contained therein, as stated above.


MARSHELL EARL MILLER

8/31/2006
Date