

**STATE OF ARKANSAS
SECURITIES DEPARTMENT**

IN THE MATTER OF

ORDER EXCLUDING CORPORATION
FROM INVESTMENT ADVISER
DEFINITION PURSUANT TO ARK.
CODE ANN. § 23-42-102(8)(F)

GULLANE CAPITAL LLC.

NO. 80004311

FINDINGS OF FACT

1. On March 18, 2003, a letter was received by the Arkansas Securities Commissioner requesting that Gullane Capital LLC (“Gullane Capital”) be determined to be excluded from the definition of an investment adviser as set forth in Ark. Code Ann. § 23-42-102(8)(F) while it is acting as the member manager of Gullane Capital Partners LLC (“GCP”) in the manner set forth in its Operating Agreement.
2. Gullane Capital, a Delaware limited liability company with its office located at 310 Mid-Continent Plaza, Suite 440, West Memphis, Arkansas 72303, is a single member limited liability company owned by Richard A. “Trip” Miller, III (“Miller”).
3. Gullane Capital is the sole member manager of GCP, a Delaware limited liability company. The principal office of GCP is also located at 310 Mid-Continent Plaza, Suite 440, West Memphis, Arkansas 72303. GCP has been established for the sole purpose of making concentrated, long-term equity investments with its investors’ capital contributions. GCP will conduct an offering of its Class A membership interests (the “Interests”) pursuant to Rule 506 promulgated under the Securities Act of 1933 to financially experienced

and sophisticated investors (or to investors who are represented by such a person) who represent that they are able to bear the economic risk of the investment and who are “accredited investors,” as defined in Rule 501(a); however, Interests may be offered to three (3) investors who may not be considered “accredited investors”. The three non-accredited investors will be Miller, Richard Cook (“Cook”) and Dowe Bynum (“Bynum”). Cook and Bynum are the two owners of Gullane Advisers LLC (“Gullane Advisers”), formerly known as Cook & Bynum Capital Management, LLC.

4. Gullane Advisers will act as the sub-adviser to Gullane Capital. Gullane Advisers is an investment adviser registered with the State of Alabama.
5. This offering will provide that there can be no more than ninety-nine (99) beneficial owners of the Interests. Thus, since this is to be a private offering and since there will be less than a hundred beneficial owners, GCP will not be an “investment company” as defined by the Investment Company Act of 1940 (the “IA Act”).
6. Under GCP’s Operating Agreement (the “Operating Agreement”), Gullane Capital, as the sole member manager, will be responsible for identifying, determining and implementing investments in companies which meets GCP’s investment criteria. Gullane Advisers, as the sub-adviser, has been retained by Gullane Capital to assist in discharging this responsibility. Gullane Capital will handle the offer and sale of the Interests. The minimum purchase price for an investment in GCP is \$1,000,000 unless Gullane Capital, in its sole discretion, agrees to accept some lesser amount.

7. Under the Operating Agreement, Gullane Capital will receive a management fee equal to 1% of the fair market value of the assets of GCP calculated and paid quarterly in advance. Gullane Capital will also receive a performance fee equal to 6 2/3% of the new profit in each Class A member's capital account computed annually.
8. Gullane Capital has agreed that this Order is conditional upon compliance, not only with the findings set forth above, but also with the following:
 - (a) Gullane Capital and GCP will prominently disclose in the GCP offering documents that Gullane Capital has been exempted by this Order from the investment adviser registration provisions of the Arkansas Securities Act (the "Act");
 - (b) Gullane Capital agree to allow the Commissioner to inspect their books and records and to provide information requested by the Commissioner for the purpose of investigating customer complaints or other potential violations of the Act or the Rules of the Arkansas Securities Commissioner (the "Rules");
 - (c) Gullane Capital acknowledge that its activities will be subject to Ark. Code Ann. § 23-42-507 and to Rule 308.02 of the Rules;
 - (d) Gullane Capital acknowledges that it will limit its services to one client, GCP.

- (e) Gullane Capital acknowledges that all securities recommended to GCP will be registered, exempted or classified as covered securities under the Securities Act of 1933, the Securities Exchange Act of 1934, or the securities laws of the State of Arkansas or other state whose law is applicable.
- (f) Miller, Cook and Bynum may only become and remain investors in GCP while they are non-accredited so long as Miller is the sole owner of Gullane Capital, and Cook and Bynum are the sole owners and principals of Gullane Advisers.
- (g) This Order is discretionary and applies only to advice rendered by Gullane Capital to GCP.

CONCLUSIONS OF LAW

1. Under Rule 102.01(7)(B), GCP is treated as a single client.
“For the purposed of Section 23-42-102(8)(E)(ii) of the Act and Rule 102.01 (27), the following shall be deemed a single client ...(B) A limited liability company ...that receives investment advice based upon its investment objectives rather than the individual investment objectives of its ...members”
2. Similarly, GCP would be treated as a single client under Section 203(b)(3) of the IA Act. GCP is the only client Gullane Capital will have and is the only entity is which it will act as a member manager or similar capacity. Under Section 203(b)(3) of the IA Act, Gullane Capital would not need to be registered as an investment adviser with the Securities and Exchange Commission since it has only a single client and does not hold itself out

- generally to the public as an investment adviser nor does it act as an investment adviser to any investment company registered under the IA Act or a company which has elected to be a business development company.
3. Ark. Code Ann. § 23-42-102(8)(F) provides that the term “Investment Adviser” does not include persons not within the intent of this [subsection] as the Commissioner may by rule or order designate.

OPINION

In recognition of the representations made by Gullane Capital, it does not appear necessary in order to protect the investors of GCP that Gullane Capital should be required to register as an investment adviser under the Act. Such investors are amply able to adequately look to their own interests and make their own determinations regarding the appropriateness of such advice. Particularly is this the case where disclosure of the Order will be required and Gullane Capital has agreed to be bound by the antifraud provisions of the Act and the Rules pertaining to unethical practices by investment advisers.

ORDER

IT IS THEREFORE ORDERED that Gullane Capital is excluded from the definition of an investment adviser under Ark. Code Ann. § 23-42-102(8)(F) for the purpose of advising GCP, provided that it complies with the conditions set forth in this Order.

WITNESS MY HAND AND SEAL this 31st day of March 2003.

A handwritten signature in black ink, appearing to read "M. Johnson", written in a cursive style.

MICHAEL B. JOHNSON
ARKANSAS SECURITIES COMMISSIONER