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BEFORE THE ARKANSAS SECURITIES COMMISSIONER
Case No. S-09-059
Order No. S-09-059-12-OR14

IN THE MATTER OF

CAPITAL MARKETS ADVISORY, LLC, F/K/A CARR MILLER CAPITAL INVESTMENTS, LLC; AND BRIAN PATRICK CARR

CARR MILLER CAPITAL, LLC; CAPITAL MARKETS ADVISORY, LLC, F/K/A CARR MILLER CAPITAL INVESTMENTS, LLC; EVERETT CHARLES FORD MILLER; AND BRIAN PATRICK CARR **RESPONDENTS**

ORDER

On October 29, 2010, the Staff of the Arkansas Securities Department ("Staff") filed a Complaint alleging that Capital Markets Advisory, LLC, f/k/a Carr Miller Capital Investments, LLC ("CMCI"), and Brian Patrick Carr ("Carr") willfully violated provisions of the Arkansas Securities Act ("Act"), Ark. Code Ann. §§ 23-42-101 through 23-42-509.

On October 29, 2010, the Staff filed a related Second Amended Request for Cease and Desist Order alleging that Carr Miller Capital, LLC ("CMC"), CMCI, Everett Charles Ford Miller ("Miller"), and Carr violated various provisions of the Act.

On November 1, 2010, I issued a Cease and Desist Order finding that CMC and Miller violated the Act by offering and selling unregistered securities; that CMCI, Miller, and Carr violated the Act by acting as an unregistered broker-dealer in offering and selling CMC's unregistered securities for commissions; and ordering CMC, CMCI, Miller, and Carr to cease and desist from all such activities in Arkansas unless and until all securities and persons offering and selling the securities were properly registered or exempt from registration. On November 1,

2010, I issued a Notice of Hearing setting a hearing date on the Complaint and advising the Staff, CMCI, and Carr of the forthcoming hearing.

On November 30, 2010, counsel for CMCI requested a hearing on the Cease and Desist Order to be held concurrently with the scheduled hearing on the Complaint. CMC and Miller were both properly served with copies of the Cease and Desist Order and did not request a hearing.

On January 18, 2012, a hearing on the Complaint and the Cease and Desist Order ("Hearing") was held at the Arkansas Securities Department ("Department"). Counsel for CMCI and Carr appeared. CMC and Miller did not appear or participate in the Hearing. At the conclusion of the Hearing, I permitted the parties to submit post-hearing briefs, which the Staff and counsel for CMCI and Carr filed on February 23, 2012.

The following findings are based upon the documentary evidence presented by the Staff and by counsel for CMCI and Carr, witness testimony, and all other matters properly before me:

FINDINGS OF FACT

1. CMC is a New Jersey limited liability company formed on June 26, 2006. CMC has never been registered in any capacity with Department.

2. Miller (CRD# 4166092), a New Jersey resident, is a five-percent owner of CMCI and CMC's sole owner, authorized representative, and chief executive officer. Although Miller was registered as an investment adviser representative of CMCI in New Jersey during the time period discussed herein, Miller has never been registered in any capacity with the Department.

3. CMCI (CRD# 141999), a New Jersey limited liability company, is a state-regulated investment adviser firm. CMCI maintained an Arkansas office located at 650 Shackleford Road, Suite 325, Little Rock, Arkansas 72211. CMCI was registered with the

Department as an investment adviser from December 17, 2008, until the withdrawal of its registration became effective with the Department on October 29, 2009.

4. Carr (CRD# 2577346), a New Jersey resident, is the ninety-five-percent owner of CMCI and CMCI's managing member and chief compliance officer. Carr was not registered with the Department during the time period discussed herein.

5. Samuel C. Talbert ("Talbert"), Robert E. Bragg ("Bragg"), and Richard A. Garrett ("Garrett") were referred to as managing directors of the Little Rock office of CMCI, but only Bragg (CRD# 4663116) was registered with the Department as an investment adviser representative of CMCI from January 2, 2009, through September 29, 2009. Talbert and Garrett were not registered with the Department during the time period discussed herein.

6. On April 1, 2008, CMC and CMCI entered into an agreement entitled "Advisory/Consultant Agreement/Related to CarrMiller [sic] Capital Notes" ("Advisory Agreement"). According to this agreement, CMC engaged CMCI as an "independent contractor/consultant" to "solicit and refer clients to [CMC]" whom CMCI believed were "suitable to [CMC] to 'lend' proceeds for the purpose of beneficially participating in the [CMC] portfolio." CMC agreed to pay CMCI a $50,000.00 yearly retainer and five percent per annum of the principal amount of CMC promissory notes sold, payable monthly over a twelve-month period, and reducing to two percent after January 2010. The retainer would be credited against the five-percent fee.

7. From December 2008 through July 2009, pursuant to Advisory Agreement, CMCI and its agents in the CMCI Little Rock office offered and sold eleven promissory notes entitled Commercial Notes ("Notes") to eight investors for a total of $1,348,866.70. CMCI and its agents received commissions for the sale of these eleven Notes, and Talbert and Bragg were the

CMCI agents directly involved in the sale of these eleven Notes. Garrett offered an additional Note to another investor for $50,000.00, who submitted and completed the necessary purchase documents and payment to the CMCI Little Rock office. However, the documents and payment were not forwarded to the CMC office; the investor's funds were returned to the investor; and no commissions were received by CMCI or Garrett. All twelve of the Notes had a term of nine months. Ten of the Notes had a stated rate of interest of eight percent; one Note had a stated rate of interest of seven percent; and one Note had a stated rate of interest of four percent.

8. The Department's records reflect 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 Form D filing regarding the Notes pursuant to Regulation D ("Reg D") under the Securities Act of 1933 (17 C.F.R. §§ 230.501 through 230.508).

9. CMCI and its agents assisted investors in completing the necessary paperwork to purchase the Notes and received payment for the Notes, which was subsequently forwarded to CMC. CMCI's agents were instructed by Miller and Carr to vary the interest rates of the Notes based upon the level of liquidity an investor required. While all of the Notes were for a term of nine months, investors who potentially needed access to their invested funds within as early as thirty days after purchase received a lower interest rate. Investors who did not need access to their invested funds for a longer period of time received higher interest rates.

10. Miller, Carr, and staff members of CMC told the staff of the CMCI Little Rock office in meetings and in telephone and email communications that the Notes were not securities. However, Miller, Carr, and staff members of CMC also told the staff of the CMCI Little Rock

office that the Notes were being sold pursuant to Reg D and could be sold without a license or registration. Carr also told CMCI's agents not to advertise the Notes to the public but, instead, to offer the Notes to existing customers, clients, and friends, due to the advertising prohibition found in Reg D.

11. In June 2009, CMCI hosted an office grand opening in order to generate business. CMCI's agents promoted the grand opening through advertisements sent to their existing clients and in the newspaper. At the grand opening, clients of CMCI's agents learned about CMCI as an investment firm and were recruited to do investment business with CMCI. One client purchased a Note at the grand opening, although the meeting was not intended to directly promote the Notes.

12. Initially, there were no offering materials for the Notes. In late 2008 or early 2009, Talbert told a CMC staff member that he was having trouble selling the Notes and asked CMC for more information to give prospective purchasers of the Notes. In response, CMC supplied CMCI with a document entitled "Carr Miller Capital Executive Summary" ("Executive Summary"), which was produced to aid CMCI in selling the Notes. This was the only information CMCI could convey to prospective purchasers about the Notes, although they were not permitted to give copies of the Executive Summary to prospective purchasers. Talbert, Bragg, and other CMCI agents conveyed the information in the Executive Summary to prospective purchasers of the Notes in offering and selling the Notes.

13. 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 tak[ing] advantage of these investment opportunities. Carr Miller maintains diversity by investing in unrelated types of industries. Our firm has created proprietary internal Funds [sic] 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.

14. On July 29, 2010, Talbert and Bragg, the two CMCI agents who were directly involved in the sale of all the Notes, entered into separate consent orders with the Department related to their offers and sales of the Notes (Department Order Nos. S-09-059-10-OR02 and S-09-059-10-OR03) for violating the Act by effecting transactions in unregistered securities, effecting transactions in securities as unregistered broker-dealers or agents, and, with regard to Talbert, acting as an unregistered investment adviser representative.

15. At all times discussed herein, both Carr and Miller signed forms filed with the Central Registration Depository on behalf of CMCI, and both were listed as authorized representatives of CMCI in the records of the New Jersey Department of the Treasury. Miller was a signatory on several CMCI checking accounts, including the account from which CMCI paid commissions, and exerted as much control of CMCI as Carr. Carr and Miller were executive officers of CMCI in charge of compliance with securities laws and who facilitated the offer and sale of the Notes by CMCI.

CONCLUSIONS OF LAW

16. The Act's definition of a security includes notes and evidences of indebtedness. Ark. Code Ann. § 23-42-102(15)(A)(i) & (vi). The definition of a security under the Act should not be construed narrowly. *Schultz v. Rector-Phillips-Morse, Inc.*, 552 S.W.2d 4, 8 (Ark. 1977).

The Act was promulgated to protect investors, and it utilizes a broad definition of securities to determine which transactions are subject to the Act. *Carder v. Burrow*, 940 S.W.2d 429, 431 (Ark. 1997) (citing *Schultz*, 552 S.W.2d at 8).

17. While the Act's definition of a security includes notes, not all notes are considered securities. The U.S. Supreme Court adopted the Second Circuit's "family resemblance" test to determine whether a note is a security. *Reves v. Ernst & Young*, 494 U.S. 56, 63-65 (1990). Under the family resemblance test, there is a rebuttable presumption that any note is a security. *Id.* at 65. That presumption may be rebutted only by a showing that the note bears a strong family resemblance to an item on a judicially formulated list of specific exceptions. *Id.* at 63-64. This list of exceptions includes

> the note delivered in consumer financing, the note secured by a mortgage on a home, the short-term note secured by a lien on a small business or some of its assets, the note evidencing a "character" loan to a bank customer, short-term notes secured by an assignment of accounts receivable, or a note which simply formalizes an open-account debt incurred in the ordinary course of business (particularly if, as in the case of the customer of a broker, it is collateralized).

Exch. Nat'l Bank of Chicago v. Touche Ross & Co., 544 F.2d 1126, 1138 (2d Cir. 1976). The Second Circuit later added "notes evidencing loans by commercial banks for current operations to the categories previously listed [in *Exch. Nat'l Bank*]." *Chem. Bank v. Arthur Andersen & Co.*, 726 F.2d 930, 939 (2d Cir. 1984).

18. *Reves* outlined the following four factors used to analyze whether an instrument bears a strong family resemblance to items on the list of exceptions: 1) Motivation of the issuer and buyer - If the issuer of the note plans to use the proceeds for general business use, and the investor is primarily interested in the profit to be generated by the note, the instrument is likely a security. If the issuer will use the proceeds from the note to purchase a consumer good or for a

commercial purpose, the note is less likely a security; 2) Plan of distribution - If the instrument is one that is "common[ly] trad[ed] for speculation or investment," it is more likely to be a security; 3) Expectations of investing public - If the investing public reasonably considers the notes to be securities, the note is more likely to be a security; and (4) Certain risk-reducing factors - If the risk of the note is somehow reduced, such as through the existence of another regulatory scheme or by the note being secured, the note is less likely to be a security. *Reves*, 494 U.S. at 66-67.

19. Under the *Reves* analysis, the Notes are presumed to be securities, and the application of the family resemblance test to the facts of this case does not rebut the presumption. CMC did not use the proceeds from the Notes for a commercial purpose. Instead, according to the Executive Summary, CMC acted as an investment company and invested the proceeds into companies and opportunities through CMC proprietary internal investment funds in order to produce a return. The eight investors who purchased the Notes did so for no other reason than to make a profit. The investors were expecting a return on their investment, and the Executive Summary characterized the Notes as investments. As a result, the investors had a reasonable expectation that the Notes were securities. Additionally, there was no risk-reducing regulatory scheme available for the Notes. Thus, when analyzed under the *Reves* family resemblance test, the Notes do not bear a strong family resemblance to the list of judicially formulated exceptions and are securities.

20. In 1997 in *Carder v. Burrow*, the Arkansas Supreme Court applied the "risk capital" test, a five-element test used by the Arkansas Court of Appeals to analyze whether an instrument was a security in *Smith v. State*, 587 S.W.2d 50, 52 (Ark. Ct. App. 1979). *Carder*, 940 S.W.2d at 431. The five elements of the risk capital test are "(1) the investment of money or money's worth; (2) investment in a venture; (3) the expectation of some benefit to the investor as

a result of the investment; (4) contribution towards the risk capital of the venture; and (5) the absence of direct control over the investment or policy decisions concerning the venture." *Smith*, 587 S.W.2d at 52. The Court reiterated the importance of using a "broad and flexible definition" governing possible securities transactions and the "flexible approach" continually used by the courts when interpreting the definition of a security, as discussed in *Schultz*. *Carder*, 940 S.W.2d at 431.

21. In determining that the note was an ordinary secured commercial loan and not a security, the Court in *Carder* focused on the *Smith* element requiring the "expectation of some benefit" and held that Appellant Carder's expectation to profit from the transaction through the receipt of a fixed rate of interest from a promissory note was not dependent upon the earnings of the corporation, since payment of the loan rate was expected regardless of company profitability. *Id.* at 431-32. The Court cited the Eighth Circuit case of *First Fin. Fed. Sav. & Loan Ass'n. v. E. F. Hutton Mortgage Corp.*, 834 F.2d 685 (8th Cir. 1987), which analyzed Arkansas law and stated that "a fixed rate of return is [not] an 'expectation of benefit to the investor' as contemplated by the Arkansas Court of Appeals in *Smith v. State*" because it did not give the holder "an opportunity for either capital appreciation or participation in the [company's] earnings." *Id.* at 689. However, the U.S. Supreme Court has since held that "[t]here is no reason to distinguish between promises of fixed returns and promises of variable returns for purposes of the test [of a whether an instrument is security]." *SEC v. Edwards*, 540 U.S. 389, 394 (2004).

22. Under the *Carder* risk capital test, the Notes are securities. The eight investors who bought the Notes invested a combined total of $1,348,866.70 in the risk capital of CMC's venture with the expectation of a profit from a fixed rate of return, which was dependent upon the success of CMC's investments in certain "companies and unique opportunities" and

"diversity by investing in unrelated types of industries," as stated in the Executive Summary. The investors did not have direct control over CMC's activities concerning the ventures and were dependent on the efforts of others, specifically those of CMC, with regard to the investments.

23. Whether applying the *Reves* family resemblance test or the *Carder* risk capital test, the CMC Notes sold by CMCI and its agents are securities.

24. Section 3(a)(4)(A) of the Securities and Exchange Act of 1934, 15 U.S.C. § 78c(a)(4)(A) (2006) ("Exchange Act") defines "broker," and the Act defines "broker-dealer," as "a person engaged in the business of effecting transactions in securities for the account of others . . . ." Ark. Code Ann. § 23-42-102(2). However, the Exchange Act and the Act do not expressly define "effecting transactions" or "engag[ing] in the business," thus a variety of factors have been used in SEC No-Action Letters and by the courts to analyze whether a person is acting as a broker-dealer.

25. The factors that have been utilized by the courts and the SEC Staff in No-Action Letters to determine whether a person is a broker-dealer include

> whether that person 1) is an employee of the issuer; 2) received commissions as opposed to a salary; 3) is selling, or previously sold, the securities of other issuers; 4) is involved in negotiations between the issuer and the investor; 5) makes valuations as to the merits of the investment or gives advice; and 6) is an active rather than passive finder of investors.

SEC v. Hansen, No. 83 Civ. 3692, 1984 WL 2413, *10 (S.D.N.Y. Apr. 6, 1984); *See, e.g., SEC v. Kramer*, 778 F. Supp. 2d 1320, 1334 (M.D. Fla. 2011); *DeHuff v. Digital Ally, Inc.*, Civil Action No. 3:08CV327TSL–JCS, 2009 WL 4908581, *3 (S.D. Miss. Dec. 11, 2009); *SEC v. Martino*, 255 F. Supp. 2d 268, 283 (S.D.N.Y. 2003); *See also Cornhusker Energy Lexington, LLC v. Prospect St. Ventures,* No. 8:04CV586, 2006 WL 2620985, *6 (D. Neb. Sept. 12, 2006).

26. Out of the commonly-applied factors, the receipt of transaction-based compensation or commissions has been found to be "one of the hallmarks of being a broker-dealer." *Cornhusker*, 2006 WL 2620985 at *6; *See, e.g., Kramer*, 778 F. Supp. 2d at 1334; *See also* Brumberg, Mackey & Wall, P.L.C., SEC No-Action Letter, 2010 WL 1976174, *1 (May 17, 2010) ("[A]ny person receiving transaction-based compensation in connection with another person's purchase or sale of securities typically must register as a broker-dealer or be an associated person of a registered broker-dealer."); John W. Loofbourrow Assoc., Inc., SEC No-Action Letter, 2006 WL 3933273, *2 (June 29, 2006) ("The underlying concern has been that transaction-based compensation represents a potential incentive for abusive sales practices that registration is intended to regulate and prevent."); 1st Global, Inc., SEC No-Action Letter, 2001 WL 499080, *14 (May 7, 2001) ("Persons who receive transaction-based compensation generally have to register as broker-dealers . . . because, among other reasons, registration helps to ensure that persons with a 'salesman's stake' in a securities transaction operate in a manner consistent with customer protection standards governing broker-dealers . . . .").

27. CMCI's agents promoted CMCI through advertising to and communications with their existing clients and a grand opening meeting, which informed clients about CMCI's investment business. With regard to the Notes, CMCI's agents recruited their existing clients to purchase the Notes; took the orders for the Notes; assisted their clients in completing paperwork to purchase the Notes; answered questions about the Notes; discussed the investors' liquidity preferences to determine the rate of interest; received the investors' payment for the Notes; and forwarded payment and documents to complete the transaction to CMC. Most importantly, CMCI and its agents received commissions that were based on the amount of the Notes sold. CMCI and its agents performed several of the actions inherent to broker-dealer activity,

including the receipt of commissions – the hallmark of broker-dealer activity, and, as a result, acted as a broker-dealer in Arkansas.

28. Whenever it appears to the Commissioner, upon sufficient grounds or evidence satisfactory 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 or Rules, except the provisions of Ark. Code Ann. § 23-42-509, or any rule or order under the Act, he may summarily order the person to cease and desist from the act or practice. Ark. Code Ann. § 23-42-209(a)(1)(A). Upon the entry of the order, the Commissioner shall promptly notify such person that the order has been entered, of the reasons therefor, and of his or her right to a hearing on the order. Ark. Code Ann. § 23-42-209(a)(1)(B).

29. A hearing shall be held on the written request of the person aggrieved by the order if the request is received by the Commissioner within thirty days of the date of the entry of the order, or if ordered by the Commissioner. Ark. Code Ann. § 23-42-209(a)(2)(A). If no hearing is requested and none is ordered by the Commissioner, the order will remain in effect until it is modified or vacated by the Commissioner. Ark. Code Ann. § 23-42-209(a)(2)(B). After notice and an opportunity for a hearing, the Commissioner may affirm, modify, or vacate the cease and desist order under Ark. Code Ann. § 23-42-209(a)(1)(A). Ark. Code Ann. § 23-42-209(a)(2)(C)(i).

30. When a party fails to request a hearing within the time specified in the cease and desist order or other administrative order, the allegations against the party may be deemed admitted. Rule 604.09(A) of the Rules of the Arkansas Securities Commissioner ("Rules"). If a party fails to appear or participate in an administrative adjudication after proper service of notice, the Staff may proceed with the hearing and the Commissioner may render a decision in the

absence of the party. The allegations against the party may be deemed admitted. Without further proceedings or notice to the party, the Commissioner shall issue a final order. The Commissioner may, if deemed necessary, receive evidence from the Staff, as part of the record, concerning the appropriateness of the amount of any civil penalty sought in the request. Rule 604.09(B) of the Rules.

31. The Commissioner may by order revoke any registration if he finds that the order is in the public interest and the registrant has willfully violated or willfully failed to comply with any provision of the Act or a predecessor act or any rule or order under the Act or a predecessor act. Ark. Code Ann. § 23-42-308(a)(1) and (a)(2)(B).

32. If no proceeding is pending or instituted and withdrawal automatically becomes effective, the Commissioner may nevertheless institute a revocation or suspension proceeding under Ark. Code Ann. § 23-42-308(a)(2)(B) within one year after the withdrawal became effective and may enter a revocation or suspension order as of the last date on which registration was effective. Ark. Code Ann. § 23-42-308(e)(3).

33. Upon notice and opportunity for a hearing, the Commissioner may fine any broker-dealer, agent, investment adviser, or representative for each separate violation of the Act. Ark. Code Ann. § 23-42-308(g). Prior to July 31, 2009, the Commissioner was authorized to levy a fine of up to $5,000.00 per violation of the Act. Section 23-42-308(g)(1) of the Act was amended effective July 31, 2009, to increase the maximum fine that the Commissioner may levy for each violation of the Act from $5,000.00 to $10,000.00. Ark. Code Ann. § 23-42-308(g)(1).

34. It is unlawful for any person to offer or sell any security in Arkansas 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.

35. It is unlawful for any person to transact business in Arkansas as a broker-dealer or agent unless such person is registered with the Department pursuant to the Act. Ark. Code Ann. § 23-42-301(a). The definition of a person includes, but is not limited to, an individual or a limited liability company. Ark. Code Ann. § 23-42-102(11). An agent is defined as any individual, other than a broker-dealer, who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities. Ark. Code Ann. § 23-42-102(1)(A).

36. The Notes were never registered, exempt from registration under any state or federal exemption, or covered securities. The Notes were unregistered securities, the offer and sale of which in Arkansas violated Ark. Code Ann. § 23-42-501.

37. CMCI, a limited liability company and a registered investment adviser with the Department, willfully violated Ark. Code Ann. § 23-42-501 of the Act when it offered and sold the unregistered Notes. CMCI offered and sold a total of eleven Notes from on or about December 2008 through July 2009. These eleven Notes were unregistered securities, constituting eleven separate violations of the Act and carrying a fine of up to $5,000.00 per violation. Furthermore, in September 2009, CMCI offered one Note, which was also an unregistered security, constituting one violation of the Act and carrying a fine of up to $10,000.00.

38. CMCI was not registered as a broker-dealer with the Department when it made the offers and sales of the unregistered Notes in Arkansas. As a result, CMCI acted as an unregistered broker-dealer, in violation of Ark. Code Ann. § 23-42-301(a). Further, CMCI was to receive a retainer of $50,000.00 plus five percent per annum of the principal amount of the unregistered, non-exempt Notes sold, which CMCI was not legally entitled to sell.

39. CMCI's withdrawal of its registration as an investment adviser in Arkansas became effective on October 29, 2009. The Staff filed its Complaint on October 29, 2010, within one year of CMCI's withdrawal. Therefore, CMCI's registration may be revoked as of October 29, 2009, the last date on which its registration was effective with the Department.

40. Carr withdrew his registration in Arkansas more than one year before the Complaint was filed on October 29, 2010. Therefore, the Staff's request in the Complaint for remedies against Carr pursuant to Ark. Code Ann. § 23-42-308(g) is denied.

41. Carr was not registered in Arkansas when the Notes were offered and sold. However, Carr held a position of responsibility and authority with CMCI and exercised significant control over CMCI. Therefore, based upon the seriousness of the violations described herein, sufficient grounds and satisfactory evidence remains to warrant an affirmation of the Cease and Desist Order against CMCI and Carr.

ORDER

After being duly and properly notified, Miller and CMC did not request a hearing within the time period specified in the Cease and Desist Order. Furthermore, Miller and CMC did not appear or participate in the Hearing. Accordingly, pursuant to Ark. Code Ann. § 23-42-209(a)(1)(C)(i), the Cease and Desist Order entered on November 1, 2010, is affirmed as to Miller and CMC.

Based upon the documentary evidence presented by the Staff and by counsel for CMCI and Carr, witness testimony, and all other matters properly before me, it is hereby ordered:

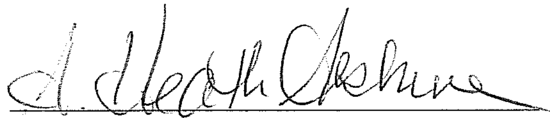
1. The Cease and Desist Order entered on November 1, 2010, against Carr Miller Capital, LLC; Capital Markets Advisory, LLC, f/k/a Carr Miller Capital Investments, LLC (CRD# 141999); Everett Charles Ford Miller

(CRD# 4166092); and Brian Patrick Carr (CRD# 2577346) should be and hereby is AFFIRMED in all respects and for all purposes;

2. The registration of CMCI as an investment adviser firm in Arkansas is hereby REVOKED as of October 29, 2009, the last date on which its registration in Arkansas was effective, for its offer and sale of unregistered securities in Arkansas, in violation of Ark. Code Ann. § 23-42-501.

3. CMCI is hereby fined $30,000.00 for its offers and sales of unregistered, non-exempt securities from on or about December 2008 until September 2009. The payment of this fine shall be made to the Arkansas Securities Department within ten days of the entry of this Order.

IT IS SO ORDERED on this 30th day of August, 2012.



A. Heath Abshure
Arkansas Securities Commissioner