BEFORE THE ARKANSAS SECURITIES COMMISSIONER
Case No. S-20-0034

RECEIVED
20 JUN 22 AM 10: 24
ARKANSAS SECURITIES DEPT.

IN THE MATTER OF
KUETTEL CAPITAL LLC and
ADAM J. KUETTEL

REQUEST FOR ORDER SUMMARILY SUSPENDING REGISTRATIONS

The Staff of the Arkansas Securities Department (Staff) has received information and has in its possession certain evidence which indicates that Kuettel Capital LLC and Adam J. Kuettel have violated provisions of the Arkansas Securities Act (Act), codified at Ark. Code Ann. §§ 23-42-101 - 509, and the Rules of the Arkansas Securities Commissioner (Rules).

ADMINISTRATIVE AUTHORITY

1. This matter is brought in connection with violations of the Act and Rules and is therefore properly before the Arkansas Securities Commissioner (Commissioner) in accordance with Ark. Code Ann. § 23-42-308.

RESPONDENTS

2. Adam J. Kuettel, CRD No. 5473537, is the chief executive officer and founder of Keuttel Capital LLC, CRD No. 174575 (KC). Kuettel is registered as an investment adviser representative of KC. At all times relevant to this matter Kuettel was a resident of northwest Arkansas, where the Staff believes he still resides.

3. KC is a state registered investment adviser formed by Kuettel and registered in Arkansas on February 12, 2015. Its address is 609 SW 8th Street, Bentonville, Arkansas 72712.

FACTS SUPPORTING ORDER
SUMMARILY SUSPENDING REGISTRATION

4. An examination by the Staff of KC revealed many irregularities in the operation of KC. Kuettel is the chief executive officer and owner of 75% to 85% of KC. Although KC had several registered investment adviser representatives, Kuettel was actually the only representative who met with clients and made investment recommendations. His clients considered him to be their investment adviser. If they ever met any of the other employees of KC, it was only in passing. Accordingly, any action taken in a client account attributed to KC is also the action of Kuettel.

5. For most accounts and particularly for larger accounts, Kuettel strongly urged clients to give him discretion to trade their accounts without consulting with the clients or even notifying them of his actions. Although clients technically did not have to give Kuettel discretion, most did so.

6. As part of their registration process, investment advisers are required to file what is known as the Brochure, which is a detailed statement of the investment adviser's qualifications and business practices. Investment advisers are required to supply each client and prospective client a copy of the Brochure. Rule 302.02(g)(1)(A), Rules of the Arkansas Securities Commissioner. The Brochure listed and briefly discussed four methods of analysis that could be used for investment strategy: technical analysis, fundamental analysis, cyclical analysis and modern portfolio theory. The risk of each method was also set forth. In sales literature and on its website, KC purported to give each client an investment recommendation based on the client's specific circumstances,

goals and risk tolerances. KC purported to use an "active trading strategy" and not such things as index-based funds, robo-advisers or "trendy investments." This was said to be a "mathematical approach" based on research. Frank Smith, a professor at Colorado State University, was identified as the person who did this research for KC.

7. The Staff did not find that KC and Kuettel applied an individualized approach to each investor. Instead, many accounts had identical trades in them and many of those trades did not match the clients' stated goals and risk tolerances set forth on the new account forms.

8. Kuettel changed the risk tolerances and goals of several clients, making them open to much more aggressive strategies and riskier investments. To make these changes, Kuettel forged his clients' signatures on account forms used by the broker-dealer to make trades and otherwise govern the terms of the account.

9. In three different sections setting forth the screening of securities for different types of funds, the Brochure stated that KC would only consider stocks worth more than $10 per share. Stocks with a price this low are usually known as microcap or penny stocks, which are issued by companies that have a low capitalization. They are often not traded on national stock exchanges and are often hard to value. They do not have to file the same detailed financial statements with the United States Securities and Exchange Commission (SEC) required of larger firms. Information about these companies and the value of the stock is not often easy to find. Because of low volume trading in these stocks, they are subject to wild swings in price. A purchase of a large number of shares can easily drive the price up, and the sale of a large number of shares can easily drive the price down.

10. Even though Kuettel told his clients that KC would not consider buying stock worth less than $10 per share, i.e., penny stocks, he made significant purchases of such stocks, which resulted in significant losses in many client accounts. Examples of penny stocks Kuettel invested his clients' funds in heavily are:

a. Denbury Resources Inc. A small company focused on hydrocarbon exploration. Its share price went from $ 2.53 when Kuettel began putting some of his clients in it in April 2019 to $ .42 as of the current date.

b. Gear Energy Ltd. A small company focused on hydrocarbon exploration. Its share price went from $ .69 when Kuettel began putting some of his clients in it in April 2019 to $ .19 as of the current date.

c. Zomedica Pharmaceuticals Corp. A small veterinary diagnostic and pharmaceutical company. Its share price went from $ .79 when Kuettel began putting some of his clients in it in January 2019 to $ .20 as of the current date.

11. Other inappropriate trades Kuettel effected in several client accounts were non-traditional exchange traded funds (ETFs), including inverse ETFs, leveraged ETFs and leveraged inverse ETFs (collectively, Non-traditional ETFs). ETFs are index funds traded as though they are equity stocks. Inverse ETFs are keyed to a particular index or market and designed to fluctuate inversely to that index or market. Leveraged ETFs increase or decrease in value by multiples, usually of two or three. For example, a leveraged ETF keyed to the S & P 500 (S&P) index will deliver returns of two or three times the change in the S&P, and an inverse leveraged ETF will deliver a multiple gain or loss of the inverse of the change in the index, e.g., a 20% loss on a 10% gain in the index. These

Non-traditional ETFs all reset on a daily basis.

12. Kuettel also utilized exchange traded notes (ETNs), a security similar to ETFs which also track an index in the same way ETFs do. These can also be inverse and leveraged. These are typically issued by banks and represent the unsecured debt obligations of banks, which make them carry more credit risk that ETFs.

13. ETFs and ETNs are hedging tools designed to deliver the return promised in one day. Adverse returns could result from holding them for longer periods of time, particularly if the index to which the Non-traditional ETFs or ETNs is keyed goes in a direction other than the direction anticipated when the Non-traditional ETFs or ETNs were purchased. These characteristics of Non-traditional ETFs and ETNs were well known and could be easily ascertained at the time Kuettel purchased these Non-traditional ETFs and ETNs by simply reading the first two or three pages of the prospectuses of these securities. Examples of such language in prospectuses for Non-traditional ETFs and ETNs purchased by Kuettel in client accounts are as follows:

a. Direxion Daily Latin America Bull 3X Shares. A Non-traditional ETF tracking the S&P Latin America 40 Index, on the first page of the prospectus the following appears (boldface and italics in the original):

> This leveraged ETF seeks a return that is 300% the return of its benchmark index ***for a single day*.** **The fund should not be expected to provide three times the return of the benchmark's cumulative return for periods greater than a day.**

b. Direxion Daily Junior Gold Miners Index Bear and Bull 2X Shares. A Non-traditional ETF tracking the MVIS Global Junior gold Miners Index, on the first page of the prospectus (which covers two ETFs) the following appears (boldface and italics in the original):

> These leveraged ETFs seek a return that is 200% or -200% of the return of their benchmark index ***for a single day*.** **The funds should not be expected to provide two times or negative two times the return of the benchmark's cumulative return for periods greater than a day.**

c. ProShares UltraPro 3x Crude Oil ETF. A Non-traditional ETF tracking the Bloomberg WTI Crude Oil Subindex. On the second page of the prospectus (which covers two ETFs) the following appears in boldface:

> **Each Fund seeks to return (before fees and expenses) a multiple (3x) or an inverse multiple (-3x) times of the performance of its Benchmark for a single day, not for any other period. . . . Daily compounding of a Fund's investment returns can dramatically and adversely affect its longer-term performance during periods of high volatility.**

d. Velocity Shares 3x Long Crude Oil ETN. An ETN tracking the S&P Crude Oil Index ER. On the first page of the prospectus (which covers two ETNs) the following appears (boldface and italics in original):

> **The ETNs are not intended to be "buy and hold" investments. The ETNs are intended to be daily trading tools for sophisticated investors to manage daily trading risks. . . . The ETNs are riskier than securities that have intermediate- or long-term investment objectives, and may not be suitable for investors who plan to hold them for a period of more than one day. . . .** ***If you hold the ETNs for more than one day, it is possible that you will suffer significant losses in the ETNs even if the performance of the Index over the time you hold the ETNs is positive, in the case of leveraged Long ETNs, or negative in the case of the Leveraged Inverse ETNs.***

e. Velocity Shares 3x Long Natural Gas ETN. An ETN tracking the S&P GSCI Natural Gas Index ER. On the first page of the prospectus (which covers two ETNs) the following appears (boldface, italics and underlining in original):

> **The ETNs are not intended to be "buy and hold" investments. The ETNs are intended to be daily trading tools for sophisticated investors to express short-term market views and manage daily trading risks. . . . The ETNs are considerably riskier than securities that have intermediate or long-term investment objectives, and may not be suitable for investors who plan to hold them for a period of more than one day. . . . *If you hold the ETNs for more than one day, it is possible that you will suffer significant losses in the ETNs even if the performance of the Index (as defined below) over the time you hold the ETNs is positive, in the case of 3x Long Natural Gas ETNs, or negative, in the case of the 3x Inverse Natural Gas ETNs.***

14. In the last several years Kuettel has followed this strategy for all of his clients placed in a broker-dealer account. Significant holdings in penny stocks and ETFs and ETNs were the rule. As a result, many of his clients sustained large losses. The following four clients are representative of Kuettel's investment decisions.

a. AR1 is a family revocable trust opened in March 2015 with approximately $ 2.1 million. The husband and wife stated investment goals of growing assets for use in retirement with a fifteen-year time horizon. From January 2019 to March 2020, AR1 experienced realized losses of $1,381,804.10, about 60% of the account value.

b. AR2 is an individual retirement account (IRA) opened in August 2018 with approximately $1.8 million. Because this account is an IRA, its goal is to provide for retirement. From January 2019 to March 2020, AR1 experienced realized losses of $1,058,714.21, about 59% of the account value.

c. AR3 is a married couple with four accounts, two IRA accounts and two non-qualified (not IRA) accounts, opened from late 2017 to early 2018. The total invested in the four accounts was approximately $290,000. From January 2019 to March 2020 AR3 experienced realized losses of $153,528.49 in the four accounts, about 53% of the combined value of the four accounts.

d. AR4 is an individual who opened a 401(k) plan with KC in 2014 and contributed about $73,000 over the years. Between January 2019 and March 2020 AR4 lost $63,015.38, about 86% of the account value.

15. Contrary to what Kuettel told his clients in the Brochure and on his website, Kuettel has not been crafting an individualized plan or investment strategy based on the individual financial circumstances, investment goals and risk tolerances of each client. Instead, he has followed the same strategy for all his clients in discretionary accounts, which are most of the accounts KC handles.

16. The strategy Kuettel has been using is described above and involves the improper use of inverse and leveraged ETFs and ETNs and the liberal use of penny stocks. Many of thesse products and securities appear to be focused on the oil and gas industry. In any case the Staff's analysis found that the strategies and purchases employed by Kuettel were not based on any research done by his firm, as promised in the Brochure and on his website.

17. The use of penny stocks at all was something the Brochure and the website said the firm and Kuettel would not do.

18. In the brochure and on the KC website Kuettel represented that he was a Certified Financial Planner (CFP). This certification is awarded by the Certified Financial Planners

Board of Standards (CFP Board). It requires an amount of education before the certification is awarded and some ongoing education to maintain it. The CFP Board takes disciplinary action against individuals for violations of its rules. The Brochure in this case was filed in April 2019. The CFP website shows that Kuettel was a CFP but that the certification was suspended for most of 2017 for a suspension imposed on him by the Financial Regulatory Authority (FINRA). After that suspension, Kuettel apparently never took steps to reinstate his CFP certification. The CFP website states that he is not certified as a CFP.

19. On the KC website Kuettel represents that he is an Accredited Portfolio Management Advisor, which is a certification awarded by the College for Financial Planning. The website of the College for Financial Planning shows that he has no such certification.

APPLICABLE LAW

20. Ark. Code Ann. § 23-42-307 makes it unlawful for any investment adviser or investment adviser representative 1) to employ any device, scheme or artifice to defraud the other person, 2) to engage in any act practice or course of business which operates or would operate as a fraud or deceit upon the other person or 3) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statement made, in the light of the circumstances under which it is made, not misleading.

21. Rule 308.02(a) provides that it is a fraudulent, deceptive, dishonest or unethical practice of an investment adviser or investment adviser representative to recommend the purchase, sale or exchange of any security without reasonable grounds to believe that the

recommendation is suitable for the client on the basis of information about the client furnished by the client concerning the client's investment objectives, financial situation and needs and any other information known or acquired after a reasonable analysis of the information provided by the client.

22. Rule 308.02(x), Rules of the Arkansas Securities Commissioner provides that it is a fraudulent, deceptive, dishonest or unethical practice of an investment adviser to use a certification in the provision of advice as to the value or advisability of investing in, purchasing or selling securities that indicates that investment adviser has special certification or training in advising clients in such a way as to mislead any person.

23. Rule 308.02(y), Rules of the Arkansas Securities Commissioner provides that it is a fraudulent, deceptive, dishonest or unethical practice of an investment adviser to engage in any act, practice or course of business that operates or would operate as a fraud or deceit.

VIOLATIONS OF LAW

SECURITIES FRAUD
ARK. CODE ANN. § 23-42-307(2)
RULE 308.02(y), RULES OF THE ARKANSAS SECURITIES COMMISSIONER

24. By representing to the public in the Brochure and in KC's website that clients of KC and Kuettel would receive investment recommendations and strategies tailored to each client's individual investment objectives, financial situation and risk tolerances, but actually employing a single strategy to all, Kuettel engaged in an act practice or course of business which operates or would operate as a fraud or deceit upon another, which is a violation of Ark. Code Ann. § 23-42-307(2) and Rule 308.02(y), Rules of the Arkansas

Securities Commissioner.

SECURITIES FRAUD
ARK. CODE ANN. § 23-42-307(3)

25. By representing to the public in the Brochure and in KC's website that Kuettel would never recommend the purchase of stock worth less than $10 a share (penny stock) and then investing client resources in significant amounts of penny stock, KC and Kuettel made an untrue statement of a material fact in the course of investment advice, a violation of Ark. Code Ann. § 23-42-307(3).

FRAUDULENT, DECEPTIVE, DISHONEST OR UNETHICAL PRACTICES OF INVESTMENT ADVISERS - FORGERY OF CLIENT SIGNATURES
RULE 308.02(y), RULES OF THE ARKANSAS SECURITIES COMMISSIONER

26. By forging his clients signatures on account forms used by the broker-dealer to make trades and otherwise govern the terms of the account in order to change risk tolerances and goals, Kuettel engaged in an act that would operate as a fraud or deceit in violation of Rule 308.02(y), Rules of the Arkansas Securities Commissioner.

UNSUITABLE RECOMMENDATION
RULE 308.02(a), RULES OF THE ARKANSAS SECURITIES COMMISSIONER

27. By recommending and then making purchases of inverse and leveraged ETFs and ETNs and holding them in client accounts for months instead of for no more than one day, as the prospectuses of such securities plainly state clearly on the first several pages, which led to substantial losses, KC and Kuettel made a recommendation to clients without a reasonable basis for believing the recommendation was suitable for the clienst based on all available information, a fraudulent, deceptive, dishonest or unethical practice of an investment adviser in violation of Rule 308.02(a), Rules of the Arkansas Securities

Commissioner.

DISHONEST USE OF CERTIFICATIONS
RULE 308.02(x), RULES OF THE ARKANSAS SECURITIES COMMISSIONER

28. By using two certifications that he did not have, Certified Financial Planner (CFP) and Accredited Portfolio Management Advisor (APMA), in the Brochure and on the KC website, Kuettel used these certifications in the provision of advice as to the value or advisability of investing, purchasing or selling securities that indicated that Kuettel had special certification or training in advising clients which was misleading, a fraudulent, deceptive, dishonest or unethical practice of an investment adviser pursuant to Rule 308.02(x), Rules of the Arkansas Securities Commissioner.

LEGAL AUTHORITY TO ISSUE ORDER SUMMARILY SUSPENDING REGISTRATIONS

29. Ark. Code Ann. § 23-42-308(a)(1) and (a)(2)(B) provides that the Commissioner may suspend or revoke any registration if it is found that the registrant has willfully violated or failed to comply with any provision of the Act or Rules and suspension of registration is in the public interest.

30. Ark. Code Ann. § 23-42-308(c)(1) provides that the Commissioner may summarily suspend registration pending final determination of any proceeding instituted under the Act.

WHEREFORE, the Staff respectfully requests that the Commissioner issue immediate summary suspensions of the registrations of Kuettel Capital LLC and Adam J. Kuettel because the violations of law set out above show that the Respondents should not be registered as an investment adviser and investment adviser representative, respoectively, in Arkansas, and it is in the public interest that the registrations be summarily and immediately suspended.

Respectfully submitted,
Arkansas Securities Department
1 Commerce Way, Suite 402
Little Rock, Arkansas 72202
(501) 324-9260

By: ______________________
Theodore Holder

Attorney for the Staff
ARKANSAS SECURITIES DEPARTMENT