

**BEFORE THE ARKANSAS SECURITIES COMMISSIONER**

**Case No. S-09-059**

**Order No. S-09-059-10-OR01**

RECEIVED

NOV - 1 PM 2:41

ARKANSAS SECURITIES DEPT.

---

**In the Matter of**

**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**

**CEASE AND DESIST ORDER**

On September 17, 2009, the Staff of the Arkansas Securities Department (Staff) filed its Request for a Cease and Desist Order. The Staff amended this request with an Amended Request for Cease and Desist Order on September 23, 2009. On October 29, 2010, the Staff filed a Second Amended Request for Cease and Desist Order (Request). In its Request, the Staff states that it has information and certain evidence indicating that Carr Miller Capital, LLC; Capital Markets Advisory, LLC, f/k/a, Carr Miller Capital Investments, LLC; Everett Charles Ford Miller; and Brian Patrick Carr have violated provisions of the Arkansas Securities Act (Act), codified at Ark. Code Ann. §§ 23-42-101 through 509. The Arkansas Securities Commissioner (Commissioner) has reviewed the Request and based upon the representations made therein finds that:

**Findings of Fact**

The Request contains the following representations of fact:

1. Carr Miller Capital, LLC (CMC) is a New Jersey limited liability company. The certificate of formation for CMC was filed on June 26, 2006, with the New Jersey Department of

the Treasury (NJ Treasury). The main business address for CMC is listed as 7 Norrsken Drive, Marlton, New Jersey 08053. CMC is not registered under the Act in any way.

2. Capital Markets Advisory, LLC, was formerly known as Carr Miller Capital Investments, LLC (CMI). It is a state-regulated investment adviser firm based in New Jersey. On December 21, 2009, CMI changed its name to Capital Markets Advisory, LLC. It is herein referred to as Carr Miller Capital Investments, LLC, or CMI. According to the Central Registration Depository (CRD), CMI's main office is located at 51 JFK Parkway, First Floor West, Short Hills, New Jersey 07078. According to the CRD, CMI had another office in Little Rock located at 650 Shackelford Road, Suite 325. CMI was registered with the Arkansas Securities Department (Department) as an investment adviser from December 17, 2008, until it withdrew its registration, effective on October 29, 2009. Its CRD number is 141999.

3. Everett Charles Ford Miller, a New Jersey resident, is listed with the NJ Treasury as a five percent owner of CMI, and CMC's sole owner, authorized representative, and chief executive officer. Although Miller was registered as a representative of CMI in New Jersey during the time period discussed herein, he has never been registered in any capacity with the Department. His CRD number is 4166092.

4. Brian Patrick Carr, a New Jersey resident, is listed with the NJ Treasury as a ninety-five percent owner of CMI and its managing member. Carr is registered with the CRD as CMI's managing member and chief compliance officer. His CRD number is 2577346.

5. In August 2009, the Staff opened an investigation into the CMI Little Rock office. Records recovered in an on-site examination of CMI's Little Rock office reveal that through the agency of CMI and its agents, CMC offered or sold twelve promissory notes entitled Commercial Notes (Notes) to nine Arkansas investors for a total of \$1,398,866.70. They were all written for a

term of nine months. Both CMI and its agents received commissions for all but one of these offers or sales.<sup>1</sup> The details of each offer or sale is summarized as follows:

INVESTOR	DATE	AMOUNT	TERM	RATE
AR1	12/1/08	25,000.00	9 Months	8%
AR2	2/1/09	189,720.00	9 Months	7%
	2/11/09	309,000.00	9 Months	4%
AR3	4/20/09	200,000.00	9 Months	8%
AR4	12/20/08	100,000.00	9 Months	8%
	5/29/09	100,000.00	9 Months	8%
AR5	6/5/09	30,271.70	9 Months	8%
	7/15/09	25,000.00	9 Months	8%
AR6	7/15/09	12,041.00	9 Months	8%
AR7	7/15/09	293,122.00	9 Months	8%
AR8	9/1/09	50,000.00	9 Months	8%
AR9	7/24/09	64,712.00	9 Months	8%

6. The on-site examination revealed that Samuel C. Talbert, Robert E. Bragg and Richard A. Garrett were referred to as managing directors of the Little Rock office of CMI, but only Bragg was registered as a representative of CMI. Neither Talbert nor Bragg are respondents in this Cease and Desist Order as both have entered into Consent Orders with the Department (Department Order Nos. S-09-059-10-OR02 and S-09-059-10-OR03). Talbert is an Arkansas resident registered with the Arkansas Insurance Department (AID) as a resident producer

---

<sup>1</sup> The offer had been accepted by AR8 and the sale was being attempted at the time of the Staff's on-site examination. AR8's check was delivered to the Little Rock CMI office, and the paperwork was completed. However, the check and paperwork were not forwarded on to CMC's New Jersey office. AR8's funds were returned to him. Although no commissions were paid, an offer to sell was made.

insurance agent. He is the owner, president, controller, and tax preparer of an insurance agency, Allied Financial Services, Inc., d/b/a Allied Insurance and Financial Services, Inc. (Allied).

Allied's address was at all times discussed herein the same as CMI's Little Rock office. Garrett is also an Arkansas resident registered with the AID and associated with Allied. Neither Talbert nor Garrett have ever been registered with the Department in any capacity. Either Talbert or Bragg were involved in the sale of all but one of the Notes, the one sold to AR8, which was cancelled.

7. On April 1, 2008, CMC and CMI entered into an agreement entitled "ADVISORY/CONSULTANT AGREEMENT/Related to CarrMiller Capital Notes." According to this agreement, CMC engaged CMI as "independent contractor/consultant" to "solicit and refer clients to [CMC]" who CMI believed were "suitable to [CMC] to 'lend' proceeds for the purpose of beneficially participating in the [CMC] portfolio." CMC agreed to pay CMI a \$50,000 yearly retainer and five percent per annum of principal amount of the notes sold, payable monthly over a twelve month period, reducing to two percent after January 2010. The retainer would be credited against the five percent fee. Thus, by the time CMI opened its Little Rock office, CMC had authorized the offer and sale of the Notes.

8. Miller, Carr, and staff members of CMC told the staff of the CMI Little Rock office in meetings and in telephone and email communications that the Notes were not securities, were covered by Regulation D,<sup>2</sup> and could be sold without a license or registration. Nevertheless, the agents were informed that there were advantages to being registered as an investment adviser representative (IA representative) of CMI. If an agent had passed the Series 65 test and was registered as an IA representative of CMI, the commission would be paid to the agent every year as

---

<sup>2</sup> Regulation D is promulgated under the Securities Act of 1933 and codified at 17 C.F.R. §§ 230.501 through 230.508.

an investment advisory fee, but if he had not passed the test and was not registered as an IA representative, the commission would only be paid during the first year.

9. There were no offering materials for the Notes. Sometime in late 2008 or early 2009, Talbert told a CMC staff member that he was having trouble selling the Notes because people were wary in the wake of the Madoff scandal<sup>3</sup> and asked CMC for more information to give prospective purchasers of the Notes. In response, CMC supplied CMI with a document entitled Carr Miller Capital Executive Summary (Executive Summary), which was produced for the use of agents selling the Notes. Although they were not permitted to give copies of the Executive Summary to prospective purchasers, this was the only information CMI agents could convey to prospective purchasers about the Notes. Talbert, Bragg, and other agents conveyed the information in the Executive Summary to prospective purchasers of the Notes in offering and selling the Notes.

10. The Staff found several copies of the Executive Summary during its examination. 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 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

---

<sup>3</sup> Madoff scandal refers to the case of Bernard Madoff who pleaded guilty in March 2009 to having run a massive Ponzi scheme losing investors some \$18 billion. News of the case first broke in December, 2008. He was sentenced to 150 years’ imprisonment on June 29, 2009. *See* <http://www.justice.gov/usao/nys/madoff.html>.

are invested to produce a return.

11. In regard to the Notes, a search of the records of the Department reflects 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.

12. As the sole owner and managing member of CMC, Miller occupied a position with CMC with the responsibility and authority to determine and oversee CMC's business conduct. He signed each of the Notes on CMC's behalf. Miller could have prevented CMC from authorizing the offer and sale of the Notes, but instead caused CMC to offer and sell the Notes to Arkansas residents through the agency of CMI.

13. At all times discussed herein, both Carr and Miller had signed forms filed with the CRD on behalf of CMI, and both were listed as authorized representatives of CMI in the records of the NJ Treasury. Miller was a signatory on several CMI checking accounts, including the account from which CMI paid commissions, and exerted as much control of CMI as Carr. Although Carr has always been listed as CMI's chief compliance officer on the CRD, Miller was listed as the compliance officer in the CMI policies and procedures manual found in the Little Rock office when the Staff performed an examination of that office in August 2009. According to the CMI policies and procedures manual, Miller remained the compliance officer until the manual was changed later in August 2009. Miller was then replaced by Gabriel Marques, another person who was not registered as a representative of CMI and not noted on the CRD as the compliance officer. Both Carr and Miller were executive officers of CMI in charge of compliance with securities laws who could have prevented CMI from transacting business as an unregistered broker-dealer by

offering and selling the Notes for CMC for a commission. Instead, Carr and Miller caused CMI to act as an unregistered broker-dealer and facilitated the offer and sale of the Notes by CMI for a commission.

### **Conclusions of Law**

14. “Securities” include notes, evidences of indebtedness, and investment contracts. Ark. Code Ann. § 23-42-102(15)(A)(i), (vi), and (xi). All of the Notes offered and sold by Respondents were evidenced by promissory notes, each promising varying rates of return. The Notes were notes and evidences of indebtedness and included within the definition of “security” found in Ark. Code Ann. § 23-42-102. Further, the Notes were part of an overall investment scheme that qualifies as an investment contract under Ark. Code Ann. § 23-42-102. According to the Executive Summary, the Notes represented the investment of money into an investment pool to be managed by CMC. The investment pool would be invested into a variety of businesses. The investors would be totally without control over this pool and totally dependent on the efforts of others, specifically those of CMC.

15. It is unlawful for any person to offer or sell any security that is not registered under the Act or exempt from registration under the Act. Ark. Code Ann. § 23-42-501. CMC offered and sold unregistered securities, the Notes, through its agent, CMI, in violation of Ark. Code Ann. § 23-42-501.

16. Miller, as the sole owner and managing member of CMC, held a position at CMC with the responsibility and authority for determining and overseeing the type of business engaged in by CMC. In this position, Miller should have prevented CMC from offering and selling the Notes, but instead authorized and facilitated the offer and sale of the Notes. Therefore, Miller is

personally responsible for this violation of Ark. Code Ann. § 23-42-501.

17. An agent of an issuer is any individual who represents an issuer in effecting or attempting to effect purchases or sales of securities. Ark. Code Ann. § 23-42-102(1)(A). An agent of a broker-dealer is any individual who represents a broker dealer in effecting or attempting to effect purchases or sales of securities. Ark. Code Ann. § 23-42-102(1)(A). It is unlawful for any person to transact business in Arkansas as an agent of an issuer, a broker-dealer, or an agent of a broker-dealer without first being registered under the Act. Ark. Code Ann. § 23-42-301. CMI was neither registered as an agent of the issuer, CMC, nor as a broker-dealer, when it solicited Arkansas residents to invest in CMC. Accordingly, CMI violated Ark. Code Ann. § 23-42-301 when it solicited Arkansas residents to purchase the Notes without being properly registered.

18. Carr and Miller occupied positions of responsibility and authority with CMI from which they should have prevented CMI from acting as an unregistered broker-dealer or agent of the issuer. Carr, as the ninety-five percent owner, managing member and chief compliance officer of CMI, held a position at CMI with responsibility and authority for authorizing the business activities engaged in by CMI. Although Miller was not listed as an officer of CMI on the CRD, as a practical matter he held a position similar to that of Carr by virtue of his actual involvement with CMI's daily business. He also had responsibility and authority for CMI's business activities. In their positions with CMI, Carr and Miller could have prevented CMI from acting as an unregistered broker-dealer and agent of CMC. Instead, Carr and Miller authorized and facilitated the offer and sale of the Notes as an unregistered broker-dealer or agent of the issuer. Therefore, Carr and Miller are personally responsible for CMI's violation of Ark. Code Ann. § 23-42-301.

19. The seriousness of the violations described above should not be taken lightly, as



violations of Ark. Code Ann. §§ 23-42-301 and 23-42-501 can give rise to civil liability under Ark. Code Ann. § 23-42-106.

20. 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 any rule or order under the Act, the Commissioner may summarily order the person to cease and desist from the act or practice. Ark. Code Ann. § 23-42-209. Respondents have engaged in conduct that violates the Act. Based upon the seriousness of the violations, the recurrent nature of the violations, the opportunity to commit future violations, the degree of harm to investors resulting from the violations, and the remedial function to be served by this Cease and Desist Order, this Cease and Desist Order is in the public interest and appropriate.

21. The Commissioner is empowered by Ark. Code Ann. § 23-42-205(a) to make any public or private investigations within or outside of Arkansas which he deems necessary to determine whether any person has violated or is about to violate any provision of the Act or any rule or order issued or promulgated under the Act or to aid in the enforcement of the Act. Based upon the representations made by the Staff in its pleadings, it is appropriate that the Staff continue its investigation into Carr Miller Capital, LLC; Capital Markets Advisory, LLC, f/k/a Carr Miller Capital Investments, LLC; Everett Charles Ford Miller; and Brian Patrick Carr to determine if other violations of the Act and Rules of the Arkansas Securities Commissioner (Rules) have occurred. This investigation should include the total amount and type of securities offered and sold by or through the agency of any of the Respondents or any associated or affiliated entities or persons as yet unknown, the methods used and representations made in connection with the offer and sale of securities, and the disposition of any funds invested.

## Order

22. Carr Miller Capital, LLC, shall immediately cease and desist from further violations of Ark. Code Ann. § 23-42-501 and refrain from selling any security in Arkansas unless such security is registered pursuant to the Act, exempt from registration, or a covered security.

23. Everett Charles Ford Miller shall immediately cease and desist from further violations of Ark. Code Ann. § 23-42-501 and exercise his authority to prevent Carr Miller Capital, LLC, from selling any security in Arkansas unless such security is registered pursuant to the Act, exempt from registration, or a covered security.

24. Capital Markets Advisory, LLC, f/k/a/ Carr Miller Capital Investments, LLC, shall immediately cease and desist from further violations of Ark. Code Ann. § 23-42-301 and refrain from acting as a broker-dealer or agent of the issuer until such time as Capital Markets Advisory, LLC, is registered or shown to be exempt from registration pursuant to the Act.

25. Brian Patrick Carr and Everett Charles Ford Miller shall immediately cease and desist from further violations of Ark. Code Ann. § 23-42-301 and exercise their authority to prevent Capital Markets Advisory, LLC, from acting as a broker-dealer or agent of the issuer until such time as Capital Markets Advisory, LLC, is registered or shown to be exempt from registration pursuant to the Act.

25. The Staff of the Department shall continue its investigation into Carr Miller Capital, LLC; Capital Markets Advisory, LLC, f/k/a Carr Miller Capital Investments, LLC; Everett Charles Ford Miller; and Brian Patrick Carr; and any other associated or affiliated persons or entities to determine the breadth of the violations described herein as well as any other violations of the Act or Rules.

26. A hearing on this Cease and Desist Order shall be held if requested by the

Respondent(s) in writing within thirty days of the date of the entry of this Cease and Desist Order of if otherwise ordered by the Commissioner. Ark. Code Ann. § 23-42-209(a)(2)(A). Such request should be addressed to the Commissioner and submitted to the following address:

Arkansas Securities Commissioner  
201 East Markham, Suite 300  
Little Rock, Arkansas 72201

27. If no hearing is requested and none is ordered by the Commissioner, this Cease and Desist Order will remain in effect until it is modified or vacated by the Commissioner. Ark. Code Ann. § 23-42-209(a)(2)(B).

Dated November 1, 2010

A handwritten signature in black ink that reads "A. Heath Abshure". The signature is written in a cursive style with a large, prominent initial "A".

A. Heath Abshure  
Arkansas Securities Commissioner