

BEFORE THE ARKANSAS SECURITIES COMMISSIONER

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ARKANSAS SECURITIES

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IN THE MATTER OF  
SAMUEL C. TALBERT  
\_\_\_\_\_

Case No. S-09-059

Order No. S-09-059-10-0202

CONSENT ORDER

This consent order is entered pursuant to the Arkansas Securities Act, codified at Ark. Code Ann. §§ 23-42-101 through 23-42-509, (Act), the Rules of the Arkansas Securities Commissioner promulgated under the Act (Rules), and the Arkansas Administrative Procedures Act, codified at Ark. Code Ann. §§ 25-15-201 through 25-15-219, in accordance with an agreement by and between the Staff of the Arkansas Securities Department (Staff) and Samuel C. Talbert (Talbert), in full settlement of all claims that could be brought against Talbert by the Staff.

Talbert admits the jurisdiction of the Act and the Arkansas Securities Commissioner (Commissioner), waives his right to a formal hearing and, without admitting or denying the findings or Staff allegations made herein, agrees to the entry of this order and agrees to abide by its terms.

FINDINGS OF FACT

1. Carr Miller Capital, LLC (CMC) is a New Jersey limited liability company. Its address listed on its certificate of formation is 7 Norrsken Drive, Marlton, New Jersey 08053. CMC is not registered in accordance with the Act in any way.
2. Carr Miller Capital Investments, LLC, CRD No. 141999, (CMI) is a state-regulated investment adviser firm based in New Jersey. Its main office is located at Chatham

Executive Center, First Floor, 26 Main Street, Chatham, New Jersey 07928. It also had offices in New York, New York, Friendswood, Texas, and Little Rock, Arkansas. Its Little Rock office was located at 650 Shackelford Road, Suite 325. It 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. According to CMI's filings with the CRD<sup>1</sup>, it was formerly known as Carr Miller Capital, LLC, and it also used the name, Carr Miller Investments. According to the CRD, it changed its name once again on December 21, 2009, to Capital Markets Advisory, LLC. For purposes of this order, it will continue to be referred to as CMI.

3. Talbert, CRD No. 5524603, an Arkansas resident, is registered with the Arkansas Insurance Department (AID) as a resident producer insurance agent. He is the owner, president, controller and tax preparer of Allied Financial Services, Inc., d/b/a Allied Insurance and Financial Services, Inc. (Allied), whose current address is 650 Shackelford Road, Suite 325, Little Rock, Arkansas 72211. He is also the owner, registered agent, president and controller of Allied Wealth Management, Inc. (AWM), whose current address is 650 Shackelford Road, Suite 325, Little Rock, Arkansas 72211. He has never been registered with the Department in any capacity, although he has passed his series 65 test and now has a CRD number.
4. Talbert along with two other individuals were employed as managing directors of the Little Rock office of CMI.

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<sup>1</sup>Central Registration Depository, the electronic registration system set up and run by the Financial Industry Regulatory Agency (FINRA) for the securities industry in North America.

*SALE OF COMMERCIAL NOTES*

5. In August 2009, the Staff opened an investigation of Talbert, CMC, CMI and other persons associated with them. Records recovered in an on-site examination of CMI offices reveal that Talbert sold instruments that appear to be promissory notes entitled Commercial Notes (Notes) to six investors for a total of \$1,043,703.70. They were all for a term of nine months. The details of each Note can be 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%
AR2	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%
AR4	5/29/09	100,000.00	9 Months	8%
AR5	6/5/09	30,271.70	9 Months	8%
AR5	7/15/09	25,000.00	9 Months	8%
AR9	8/26/09	64,712.00	9 Months	8%

6. Before investors purchased the notes, they were required to certify that they were accredited investors, a term defined by federal law in Rule 501(a) of Regulation D, 17 C.F.R. §230-501(a) promulgated under the Securities Act of 1933. In a document produced by CMC entitled Executive Summary, which was sent to Talbert when he requested literature from CMC to use in marketing the Notes, the broad purpose of the Notes was disclosed as follows:

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 take 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.

7. According to the Executive Summary, CMC would invest in a virtually unlimited number and type of investments to make the return of 8% interest over a nine month period. As an example of the types of investments and investment vehicles it used, the Executive Summary described four investment funds formed by CMC into which the funds used to purchase the Notes could be invested to produce the promised return.
8. 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.
9. Talbert relied upon representations that the Notes were not securities, that no registration of the Notes was required and that Talbert would not need any type of securities license to sell the Notes.
10. Talbert received commissions for the sale of the notes. These commissions were to be paid out in installments to Talbert over a period of one year. Talbert began receiving payments in January 2009, but the monthly payments ended with the last payment for August 2009. Talbert received a total of \$6,438.99 in compensation from CMC and/or CMI for the sale of these notes. He has since returned these commissions to the investors from whose investments they were derived.

*OFFER OF BONDS IN CONNECTION WITH  
LIFE INSURANCE FOR RETIREMENT SYSTEM MEMBERS*

11. Representing Allied, Talbert approached the Arkansas Teacher Retirement System (ATRS) sometime in September 2008 about providing life insurance for its members. Talbert's business card stated that he provided "Insurance • Mortgages • Investments" and "Securities offered through Carr Miller Capital LLC." This plan was presented to an official of ATRS in a PowerPoint presentation. The plan presented was based on a life insurance policy on the lives of "ALL 80,000 EMPLOYEES" covered by ATRS that would pay ATRS a \$25,000 death benefit on each employee at his or her death. The premiums for this life insurance policy would be paid for by "the proceeds of interest earned from AAA Bond portfolio with yields from 8-10%." The plan was summarized as follows:

Simply put, that is annual premiums of \$7,200,000 to \$14,400,000 for all 80,000 employees of ATRS. Carr Miller Capital and their Associates can provide Bonds with 8-10% yields that can be used to pay premiums and still leave a very nice return for ATRS and for the teachers and employees of ATRS. The AAA bonds with 8-10% yields on \$300,000,000 will provide \$24,000,000 to \$30,000,000 annually to ATRS.
12. Talbert did not offer the bonds, himself, but recommended that the bonds be purchased through another. He did not expect commissions on bond sales, but did expect commissions for the sale of life insurance on the lives of ATRS members.
13. No sales were made of these bonds.
14. Talbert has cooperated with the Staff fully in its investigation of CMC, CMI and other

persons associated with them.

## APPLICABLE LAW

15. Ark. Code Ann. § 23-42-102(15)(A)(xi) defines a security as an investment contract.
16. Ark. Code Ann. § 23-42-102(15)(A)(i) defines a security as a note.
17. Ark. Code Ann. § 23-42-102(15)(A)(iv) defines a security as a bond.
18. Ark. Code Ann. § 23-42-105(15)(A)(vi) defines a security as an evidence of indebtedness.
19. Ark. Code Ann. § 23-42-501 provides that it is unlawful for any person to offer or sell any security which is not registered or which is not exempt from registration under the terms of the Act or federal law.
20. Ark. Code Ann. § 23-42-102(2) defines broker-dealer as any person engaged in the business of effecting transactions in securities for the account of others.
21. Ark. Code Ann. § 23-42-102(1)(A) defines agent as any individual who represents a broker-dealer in effecting or attempting to effect purchases or sales of securities.
22. Ark. Code Ann. § 23-42-301(a) provides that it is unlawful for any person to transact business in this state as a broker-dealer or an agent of a broker-dealer unless he is registered as such pursuant to the Act.
23. Ark. Code Ann. § 23-42-102(8) defines investment adviser as any person who, for compensation, engages in the business of advising others of, among other things, the advisability of selling securities.
24. Ark. Code Ann. § 23-42-301(c) provides that it is unlawful for any person to transact

business in this state as an investment adviser without first being registered as such, unless such person is registered as an investment adviser or agent of an investment adviser registered with the United States Securities and Exchange Commission or is exempt from registration under the Investment Advisers Act of 1940.

### CONCLUSIONS OF LAW

25. The investments made herein and referred to as Notes were investment contracts, a type of security listed at Ark. Code Ann. § 23-42-102(15)(A)(xi). An investment contract is the investment of money into the risk capital of a common enterprise or venture with the expectation of benefit or profit with no effective control over the venture. According to the Executive Summary discussed in paragraphs 6 and 7, these 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 its use and totally dependent on the efforts of others, specifically those of CMC.
26. The investments referred to as Notes were evidenced by promissory notes, as set out in paragraph 5, all but 2 promising an 8% return over a nine month term. These were both notes and evidences of indebtedness, both of which are types of securities as defined by Ark. Code Ann. §§ 23-42-102(15)(A)(i) and (vi), respectively.
27. A search of the records of the Department reveals neither a registration for the Notes, or a proof of exemption for them. Further, the records of the Department do not reveal a notice filing pursuant to Ark. Code Ann. § 23-42-509, which is necessary in the case of

covered securities under federal law, and these notes do not fit within the definition of covered securities under federal law.

28. The facts set out above in paragraphs 5 -10 show that in regard to the Notes Talbert offered and sold unregistered securities in violation of Ark. Code Ann. § 23-42-501.
29. The facts set out above in paragraphs 5-10 show that in regard to the Notes, Talbert effected transactions in securities for the account of others. As noted earlier in paragraphs 1- 3, Talbert was not registered in accordance with the Act as a broker-dealer or as an agent of a broker-dealer. Therefore, he acted as an unregistered broker-dealer or an unregistered agent of a broker-dealer in violation of Ark. Code Ann. § 23-42-301(a).
30. The investments Talbert recommended that ATRS purchase were bonds, a type of security listed at Ark. Code Ann. § 23-42-102 (15)(A)(iv).
31. The facts set out in paragraphs 4 and 12-15 show that when dealing with ATRS, Talbert recommended the purchase of securities and bonds for compensation in the form of commissions to be earned on the concomitant sale of life insurance. Therefore, Talbert acted as an unregistered investment adviser in violation of Ark. Code Ann. § 23-42-301(c).

## UNDERTAKING

In settlement of this matter, Talbert, without admitting or denying any of the findings or Staff allegations made above, undertakes and agrees with the Staff that he:

1. Will not engage in activities involving advice to buy or sell securities unless and until he becomes registered with the Department pursuant to the Act as a representative of



- a registered investment adviser which is:
- a. Approved by the Staff and
  - b. Has agreed to on-site, heightened supervision of Talbert for a period of one year, including at least monthly reviews by a senior representative of the company to review and ensure compliance with the Arkansas Securities Act and Rules of the Arkansas Securities Commissioner promulgated under the Act;
2. For a period of one year from the date of this order, will not effect transactions in securities for the account of others unless and until he is registered with the Department pursuant to Act as an agent of a registered broker-dealer which is:
- a. Approved by the Staff and
  - b. Has agreed to on-site, heightened supervision of Talbert for a period of one year, including at least monthly reviews by a senior representative of the company to review and ensure compliance with the Arkansas Securities Act and Rules of the Arkansas Securities Commissioner promulgated under the Act; and
3. Will continue to cooperate fully in the Staff's investigation of CMC and CMI and all persons related thereto and cooperate fully in any action that the Staff might bring in connection with that investigation, including providing truthful testimony if needed.

## OPINION

The facts set out in paragraphs 1-14 support the conclusions of law set out in paragraphs 25-31. Because it is beneficial to members of the public that those who effect transactions in securities in the accounts of others as broker-dealers or agents of broker-dealers and those who

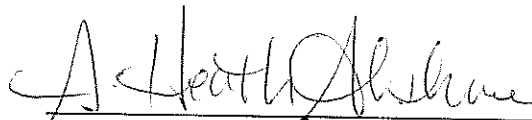
act as investment advisers by recommending the purchase or sale of securities and giving advice as to the value of securities have the training necessary to be registered with the Department as broker-dealers, agents of broker-dealers or investment advisers, this order is in the public interest.

## ORDER

IT IS THEREFORE ORDERED that SAMUEL C. TALBERT shall:

1. Cease and desist from all activities in violation of Ark. Code Ann. § 23-42-501 and refrain from selling any security in Arkansas unless such security is registered under the Act, exempt from registration, or a covered security;
2. Cease and desist from all activities in violation of Ark. Code Ann. § 23-42-301(a) and refrain from effecting transactions in securities for the account of others until such time as he becomes registered with the Department in accordance with the undertaking set out above; and
3. Cease and desist from all activities in violation of Ark. Code Ann. § 23-42-301(c) and refrain from acting as an investment adviser unless and until he becomes registered with the Department in accordance with the undertaking set out above; and
4. Comply with all undertakings set forth in this Order.

WITNESS MY HAND AND SEAL this 29<sup>th</sup> day of July, 2010.



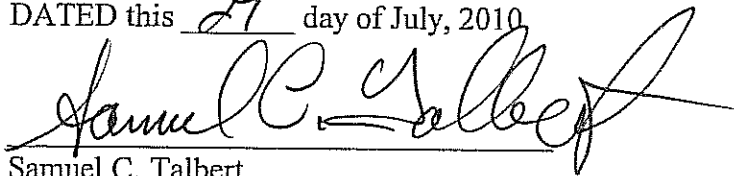
A. Heath Abshure

ARKANSAS SECURITIES COMMISSIONER

CONSENT TO ENTRY OF ORDER

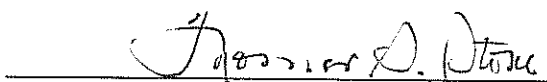
Samuel C. Talbert hereby acknowledges that he has been served a copy of this Order, has read the foregoing, is aware of his right to a hearing and appeal in this matter, and has waived same.

DATED this 29 day of July, 2010



Samuel C. Talbert

Approved by:



Signed this 29 day of July, 2010.

Thomas S. Stone

*Attorney for Samuel C. Talbert*