

**BEFORE THE SECURITIES COMMISSIONER
OF THE STATE OF KANSAS**

In the Matter of:

MARK W. MILLER (CRD #1671248) as an individual and
MW MILLER FINANCIAL INC., (CRD #116738),

Docket No. 2009 E 007
KSC No. 2008-5431

Respondents.

Pursuant to K.S.A. 17-12a412

STIPULATION FOR CONSENT ORDER

This proceeding follows an examination conducted by the Office of the Securities Commissioner of Kansas. As a result of the examination, staff for the Securities Commissioner now allege as follows:

Allegations of Fact

1. Respondent Mark W. Miller (Miller) is an individual with a last known address of [REDACTED]. The Respondent was a registered investment adviser representative for MW Miller Financial Inc. Respondent Miller did not renew his registration with the Kansas Securities Commissioner's Office effective January 1, 2009. Respondent Miller is also the CEO and founder of Respondent MW Miller Financial Inc. Respondent Miller is also a licensed insurance agent.

2. Respondent MW Miller Financial Inc. (Miller Financial) was a registered investment adviser pursuant to the Kansas Uniform Securities Act. As of January 1, 2009, Miller Financial did not renew its registration with the Kansas Securities Commissioner's Office. Miller Financial was previously named Miller Capital Management Inc. Miller Financial is currently located at 4650 College Blvd. Suite 201, Overland Park, KS 66211.

3. On April 23, 2008, the Office of the Kansas Securities Commissioner conducted a compliance examination of Respondent Miller Financial. Respondent Miller was requested to provide a detailed list of records on behalf of Respondent Miller Financial. At this time, this detailed list of records is incomplete.

A. Unreasonable Advisory Fees

4. The examination found that Respondent Miller Financial was charging clients management fees for advice on allocations of investments underlying equity indexed annuities when Respondent Miller had received commissions on the sale of such annuities. Many clients had no written client agreement that allowed Respondents to charge an advisory fee in addition to receiving a commission.

5. The examination revealed that Respondent Miller Financial failed to timely amend its Form ADV Part II following an earlier change in the firm's compensation practices resulting from the charging of management fees on equity indexed annuities.

B. Custody, Minimum Adjusted Net Worth & Surety Bond

6. During the April 23, 2008 exam, the examiner found that Respondent Miller Financial exercised authority to directly deduct advisory fees from clients' brokerage accounts maintained with a custodian of the accounts. An investment adviser that exercises authority to directly deduct advisory fees is deemed to have "custody" of client funds, as that term is defined in K.A.R. 81-14-9(a)(1).

7. The examiner further found that Respondent Miller Financial failed to comply with the safekeeping requirements of K.A.R. 81-14-9(b)(1)(F)(ii) in connection with directly deducting advisory fees when it failed to send invoices to clients itemizing the fees directly deducted.

8. An investment adviser that has custody of client funds is required to maintain at all times a minimum adjusted net worth of \$35,000. Investment advisers that are deemed to have custody of client funds solely by reason of exercising authority to directly deduct advisory fees are exempt from the \$35,000 minimum adjusted net worth requirement, provided they comply with the safekeeping requirements of K.A.R. 81-14-9(b)(1)(F). Respondent Miller Financial did not qualify for this exemption because, as noted above, it did not comply with the safekeeping requirements when it failed to send invoices to clients itemizing the fees directly deducted.

9. During and since the April 23, 2008 examination, Respondents have not provided financial statements, prepared in accordance with generally accepted accounting principals, which establish conclusively that Respondent Miller Financial satisfies this minimum adjusted net worth requirement of \$35,000.

10. As an investment adviser deemed to have custody of client funds, Respondent Miller Financial was required to be bonded for at least \$35,000, unless it maintained a minimum adjusted net worth that exceeded \$35,000 or it qualified for the safekeeping requirements exemption from the minimum adjusted net worth requirements. Respondent Miller has failed to demonstrate that it ever maintained the required bond.

C. Books & Records

11. During the April 23, 2008 compliance exam, examiners found that Respondents Miller Financial and Miller were using outdated client agreements or were missing certain client agreements.

12. As of April 23, 2008, Respondents Miller Financial and Miller were charging 21 clients a one percent management fee on equity indexed annuities without signed client agreements. The

one percent management fee was in addition to the commission that was already paid in connection with the purchase of the equity indexed annuities.

13. Respondents Miller Financial and Miller were charging 5 clients a one percent management fee for equity indexed annuities, when signed client agreements only allowed Miller Financial and Miller to charge a fee on securities transactions.

14. The April 23, 2008 exam revealed that Respondent Miller Financial did not maintain, at that time, a customer complaint or investment adviser litigation file.

15. Although Respondent Miller Financial did mail to the Office of the Securities Commissioner an annual updating amendment to its ADV Part II within 90 days of its December 31, 2007 fiscal year end, it did not timely file electronically an annual updating amendment to its ADV Part II.

Allegations of Law

1. The Office of the Kansas Securities Commissioner has jurisdiction over this matter pursuant to the Kansas Uniform Securities Act.

A. Unreasonable Advisory Fees

2. Respondents Miller Financial and Miller charged unreasonable advisory fees, in violation of K.A.R. 81-14-5(d)(8) and K.S.A. 17-12a412(d)(13), by charging management fees on equity indexed annuities in addition to sales commissions.

B. Custody, Minimum Adjusted Net Worth & Surety Bond

3. Respondent Miller Financial is in violation of K.A.R. 81-14-9(d)(2) in that the Respondent did not maintain an adjusted net worth of \$35,000.

4. Respondent Miller Financial is in violation of K.A.R. 81-14-9(e) in that the Respondent failed to have a surety bond of at least \$35,000.

C. Books and Records

5. Respondents Miller Financial and Miller entered into investment advisory contracts that were not in writing, in violation of K.A.R. 81-14-4(b)(10).

6. Respondents Miller Financial and Miller did not maintain a customer complaint or investment advisor litigation file in violation of K.A.R. 81-14-4(b)(17).

7. Respondent Miller Financial did not electronically file an updating amendment to its ADV Part II by the end of its fiscal year as is required by K.A.R. 81-14-1(b)(3)(B).

Stipulation and Agreement

Respondents Mark W. Miller, in his individual capacity, and MW Miller Financial Inc. wishing to obtain a disposition of the above referenced matter without invoking any rights to a hearing, have determined not to contest the issuance of the attached Consent Order on the basis of the above referenced allegations.

It is, therefore, stipulated and agreed, by and between the Respondents and staff for the Securities Commissioner of Kansas, as follows:

1. Respondents Miller Financial and Miller acknowledge that the Securities Commissioner for the State of Kansas has jurisdiction over the Respondents and the subject matter of this action.
2. Respondents Miller Financial and Miller waive their rights to any hearing to contest the allegations set forth in the Allegation of Fact and Law, and they consent to the issuance of the attached Consent Order on the basis of the allegations set forth above. The Respondents also waive the right to seek judicial review of this proceeding.
3. Respondents Miller Financial and Miller neither admit nor deny the allegations of fact and law as set forth above.

4. Respondents Miller Financial and Miller voluntarily agree to a bar from registration as an investment adviser or investment adviser representative with the Kansas Securities Commissioner's Office for a three year period beginning December 31, 2008 to December 30, 2011.
5. Respondent Miller understands that even though he is a licensed insurance agent, he cannot provide investment advice as an investment adviser or investment adviser representative.
6. Respondent Miller agrees to pay a fine of \$10,000 to the Office of the Securities Commissioner. It is agreed that the fine shall be suspended until such time, if any, that Respondent Miller seeks re-registration.
7. Respondents Miller Financial and Miller agree to comply with all laws governing investment advisers and investment adviser representatives in the State of Kansas following re-registration. Specifically, the Respondents agree to do each of the following:
 - a) enter into written contracts with all existing clients, in a form approved by the Kansas Securities Commissioner;
 - b) comply with all then applicable recordkeeping requirements set forth in K.A.R. 81-14-4; and
 - c) comply with all then applicable requirements of K.A.R. 81-14-9 if Respondents exercise "custody" of the client funds, as that term is defined in K.A.R. 81-14-9 (a)(1).
8. Respondent Miller acknowledges that his re-registration as an investment adviser representative by the Kansas Securities Commissioner may be conditioned upon the imposition of then-appropriate special supervisory procedures by the registered investment adviser with which Respondent Miller is then affiliated.

APPROVED BY:

MW MILLER FINANCIAL INC.

By: /s/ Mark Miller
Mark W. Miller, President

6-2-09
Date

State of Kansas)
) ss.
County of Johnson)

This instrument was signed before me on this, the 2nd day of June, 2009, by Mark W. Miller on behalf of MW Miller Financial Inc.

(seal) /s/ Kelli Schlesselman
Notary Public

My appointment expires: 8-19-09

APPROVED BY:

/s/ Erin Hoestje _____
Erin M. Hoestje, #22042
Associate General Counsel
Office of the Securities Commissioner
618 S. Kansas Avenue
Topeka KS 66603

6/10/09 _____
Date