



**BEFORE THE COMMISSIONER OF COMMERCE AND INSURANCE
FOR THE STATE OF TENNESSEE**

TENNESSEE SECURITIES DIVISION,)
)
 Petitioner,)
)
 v.)
)
 MISER ASSET MANAGEMENT, LLC)
 and DEREK ALAN MISER)
)
 Respondents.)

MATTER No.: 23-00728

CONSENT ORDER

The Securities Division of the Tennessee Department of Commerce and Insurance (“Division”) and Miser Asset Management, LLC (“Miser Asset”) and Derek Alan Miser (“Mr. Miser”) and together, (“Respondents”), agree to the entry and execution of this Consent Order in accordance with Tennessee Code Annotated (“Tenn. Code Ann.”) § 48-1-116 of the Tennessee Securities Act of 1980 (“Act”), as amended, and Tenn. Code Ann. § 48-1-101 to 48-1-201, subject to the approval of the Commissioner of the Tennessee Department of Commerce and Insurance (“Commissioner”).

PARTIES

1. Miser Asset is an investment adviser firm with its principal place of business located in Knoxville, Tennessee, and is assigned Central Registration Depository (“CRD”) number 318164 with the Financial Industry Regulatory Authority (“FINRA”).

2. Mr. Miser is the owner and chief managing member of Miser Asset and is assigned CRD number 2882966 with FINRA. At all times relevant to the examination, Mr. Miser served as Miser Asset's chief compliance officer.

3. The Division is the lawful agent through which the Commissioner discharges the administration of the Act pursuant to Tenn. Code Ann. § 48-1-115.

GENERAL STIPULATIONS

4. It is expressly understood that this Consent Order is subject to the Commissioner's acceptance and has no force and effect until such acceptance is evidenced by the entry and execution of the Commissioner.

5. It is expressly understood that this Consent Order is in the public interest, necessary for the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act.

6. This Consent Order is executed by the Commissioner, the Division, and the Respondents to avoid further administrative action with respect to this cause. Should this Consent Order not be accepted by the Commissioner, it is agreed that presentation to and consideration of this Consent Order by the Commissioner shall not unfairly or illegally prejudice the Commissioner from further participation or resolution of these proceedings.

7. The Respondents fully understand that this Consent Order will in no way preclude additional proceedings by the Commissioner against the Respondent for acts and/or omissions not specifically addressed in this Consent Order nor for facts and/or omissions that do not arise from the facts or transactions herein.

8. The Respondents fully understand that this Consent Order will in no way preclude proceedings by state government representatives, other than the Commissioner, for acts or

omissions addressed specifically in this Consent Order, violations of law under statutes, rules, or regulations of the State of Tennessee that arise out of the facts, acts, or omissions contained in this Consent Order, or acts or omissions addressed specifically herein that result from the execution of this Consent Order.

9. The Respondents waive all further procedural steps and waive all rights to seek judicial review of, or otherwise challenge the validity of this Consent Order, the stipulations and imposition of discipline contained herein, or the consideration and entry and execution of this Consent Order by the Commissioner.

10. This Consent Order is submitted on the condition that, if accepted, the Commissioner will not bring any future actions against the Respondents alleging violations based on the same factual findings described herein.

FINDINGS OF FACT

11. On or about January 11, 2023, the Division opened a routine cyclical post-registration examination of the Respondents. This is Miser Asset's first post-registration examination.

12. Miser Asset first became registered as an investment adviser in the State of Tennessee on or about May 19, 2022.

13. The Division requested certain documents and information from the Respondents in correspondence dated January 11, 2023, sent via email. The Division reiterated these requests in email correspondence on or about February 6, 2023.

14. Respondents provided incomplete responses to these requests.

15. The Division followed up with a 48-hour letter to the Respondents requesting production of certain documents and information on or about February 15, 2023. By the end of

February 2023, Respondents provided the Division's examiner with a more complete response to the Division's requests for documents and information.

16. Respondents did not maintain, and were unable to produce balance sheets, statements of profit and loss, and monthly net capital computations. To date, the Division has not received any of these financial records from the Respondents.

17. At the time of the examination, the Respondents were unable to produce any agreements for any of their thirteen (13) clients. Following the examination, Respondents provided the Division with copies of signed client agreements for all thirteen (13) of those clients.

18. At the time the examination began, the Respondents did not have any cybersecurity procedures and had inadequate information security procedures. Respondents subsequently provided information security and their cybersecurity procedures to the Division.

CONCLUSIONS OF LAW

19. Pursuant to Tenn. Code Ann. § 48-1-115(a), the responsibility for the administration of the Act is vested in the Commissioner. The Division is the lawful agent through which the Commissioner discharges this responsibility pursuant to Tenn. Code Ann. § 48-1-115(b).

20. Tenn. Code Ann. § 48-1-116 provides that the Commissioner may make, promulgate, amend, and rescind such orders as are necessary to carry out the provisions of the Act upon a finding that such order is in the public interest, necessary for the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act.

21. Tenn. Code Ann. § 48-1-111 provides, in part, that:

- (a) Every registered broker-dealer and investment adviser shall make and keep such accounts, correspondence, memoranda, papers, books, and other records as the commissioner by rule prescribes. All records so required shall

be preserved for three (3) years unless the commissioner by rule prescribes otherwise for particular types of records.

...

- (d)(1) All the records referred to in subsection (a) are subject at any time and from time to time to such reasonable periodic, special, or other examinations, within or outside of this state, by representatives of the commissioner, as the commissioner deems necessary or appropriate in the public interest or for the protection of investors.

22. Tenn. Code Ann. § 48-1-112 provides, in part, that:

- (a) The commissioner may by order deny, suspend, or revoke any registration under this part if the commissioner finds that:

- (1) The order is in the public interest and necessary for the protection of investors; and
- (2) The applicant or registrant or, in the case of a broker-dealer or investment adviser, any affiliate, partner, officer, director, or any person occupying a similar status or performing similar functions:

...

- (B) Has willfully violated or willfully failed to comply with any provision of this part or a predecessor chapter or any rule or order under this part or a predecessor chapter, including, without limitation, any net capital requirements;

...

- (G) Has engaged in dishonest or unethical practices in the securities business;

...

- (d) In any case in which the commissioner is authorized to deny, revoke, or suspend the registration of a broker-dealer, agent, investment adviser, investment adviser representative, or applicant for broker-dealer, agent, investment adviser, or investment adviser representative registration, the commissioner may, in lieu of or in addition to such disciplinary action, impose a civil penalty in an amount not to exceed five thousand dollars (\$5,000) for all violations for any single transaction, or in an amount not to exceed ten thousand dollars (\$10,000) per violation if an individual who is a designated adult is a victim.

23. Tenn. Comp. R. & Regs. 0780-04-03-.01(6) provides that:

- (a) Except as provided under subparagraph (6)(d) of this Rule, every investment adviser registered or to be registered shall have and maintain a minimum net capital of fifteen thousand dollars (\$15,000).

24. Tenn. Comp. R. & Regs. 0780-04-03-.02(3) provides, in part, that:

- (a) Except as provided in subparagraph (3)(c) of this Rule, every registered investment adviser shall maintain and keep current the following books and records relating to its business, unless waived by order of the commissioner:

1. Ledgers (or other records) reflecting assets and liabilities, income and expenses, and capital accounts;
2. A record showing all payments received, including date of receipt, purpose, and from whom received, and all disbursements, including date paid, purpose, and to whom made;
3. A record showing all receivables and payables;
4. Records showing separately for each client the securities purchased or sold, and to the extent it has been made available to the investment adviser, the date on which, amount of, and price at which the purchases or sales were executed, and the name of the broker-dealer who effected the transaction;

...

8. Copies of all agreements entered into by the investment adviser with respect to any account, which agreements shall set forth the fees to be charged and the manner of computation and method of payment thereof, and copies of all communications, correspondence, and other records relating to securities transactions;

...

10. A computation made monthly of the investment adviser's net capital[.]

25. Tenn. Comp. R. & Regs. 0780-04-03-.02(6)(c) provides, in part, that:

- (c) The following are deemed "dishonest or unethical business practices" by an investment adviser or an investment adviser representative under T.C.A. § 48-1-112(a)(2)(G), to the extent permitted under Section 203A of the Investment Advisers Act, without limiting those terms to the practices specified herein:

...

26. Failing to provide information requested by the Division pursuant to the Act or these Rules.

26. The Findings of Fact detailed above show that Respondents failed to maintain minimum net capital as required by Tenn. Comp. R. & Regs. 0780-04-03-.01(6). Respondents' violation constitutes grounds for civil penalties pursuant to Tenn. Code Ann. § 48-1-112(a)(2)(B).

27. The Findings of Fact detailed above show that Respondents failed to keep and maintain records required by Tenn. Comp. R. & Regs. 0780-04-03-.02(3)(a) pursuant to Tenn. Code Ann. § 48-1-111(a). Respondents' violations constitute grounds for civil penalties pursuant to Tenn. Code Ann. § 48-1-112(a)(2)(B).

28. The Findings of Fact detailed above show that Respondents failed to provide information requested by the Division pursuant to Tenn. Code Ann. § 48-1-111(d)(1) in violation of Tenn. Comp. R. & Regs. 0780-04-03-.02(6)(c)26. Respondents' violations are grounds for civil penalties pursuant to Tenn. Code Ann. § 48-1-112(a)(2)(G).

29. The Commissioner finds the following relief appropriate, in the public interest, and necessary for the protection of investors.

ORDER

NOW, THEREFORE, based on the foregoing, including the Respondents' waiver of the right to a hearing and appeal under the Act and the Tennessee Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-101 *et seq.*, and the Respondents' admission to the jurisdiction of the Commissioner, the Commissioner finds that the Respondents agree to the entry and execution of this Consent Order to settle this matter as evidenced by the Respondents' signature.

IT IS ORDERED, pursuant to Tenn. Code Ann. § 48-1-116(a), that the Respondents shall:

1. **COMPLY** with the Act, as amended, and all rules promulgated thereunder.
2. Respondent Mr. Miser shall **COMPLETE** twelve (12) hours of investment adviser continuing education within thirty (30) days of the execution and entry of this consent order. All required continuing education must be from providers approved by the North American Securities Administrators Association ("NASAA"), and will be in addition to that which is required pursuant to Tenn. Comp. R. & Regs. 0780-04-03-.17. Proof of completion shall be submitted to the Division's Director of Registration, April Odom, by sending such via email to April.X.Odom@tn.gov no later than sixty (60) days following entry and execution of this consent order.
3. Respondents shall **PAY A CIVIL PENALTY** to the State of Tennessee of eight thousand dollars (\$8,000). Such payment shall be due and payable within thirty (30) days of execution of this Consent Order by the Commissioner. The payment of such civil penalty shall be made by check payable to the Tennessee Department of Commerce and Insurance. Page one (1) of this Consent Order must accompany the payment for reference. Payment shall be mailed to the attention of:

**State of Tennessee
Department of Commerce and Insurance
Attn: Jacob R. Strait
500 James Robertson Parkway
Davy Crockett Tower
Nashville, Tennessee 37243**

4. **GRACE PERIOD** – Payment shall be timely made if postmarked within five (5) business days of the date payment is due.
5. **ACCELERATION** – Respondents hereby agree that failure to remit any payment more than sixty (60) calendar days following the due date of said payment as indicated in the above

scheduled payments shall constitute default. Upon default, the entire outstanding civil penalty shall be due and payable immediately.

6. **DELINQUENCY** – Respondents hereby agree that failure to make any payment according to this Consent Order shall result in the immediate revocation of Respondents' registrations with the Division.

7. **MODIFICATION** – The Division and Respondent hereby agree that modifications to this Consent Order regarding any term may only be made in writing and signed by an authorized representative of each party.

8. The Respondents' failure to comply with the terms of this Consent Order, including the manner and method of payment of the civil penalty described above, shall result in further administrative disciplinary actions, which may include the assessment of additional civil penalties.

9. This Consent Order represents the complete and final resolution of and discharge of all administrative and civil claims, demands, actions, and causes of action by the Commissioner against the Respondents for violations of the Act with respect to the transactions involved in above-referenced facts. However, excluded from and not covered by this paragraph, are any claims by the Division arising from or relating to the enforcement of the Consent Order provisions contained herein.

10. This Consent Order is in the public interest and the best interests of the Parties. It represents a settlement of the controversy between the Parties and is for settlement purposes only. By the signatures affixed below, or in two (2) or more counterparts, the Respondents affirmatively state the following: the Respondents freely agree to the entry and execution of the Consent Order; the Respondents waive the right to a hearing on, or a review of, the matters, the Findings of Fact, and the Conclusions of Law underlying this Consent Order or the enforcement of this Consent

Order; and the Respondents encountered no threats or promises of any kind by the Commissioner, the Division, or any agent or representative thereof.

11. By signing this Consent Order, the Commissioner, the Division, and the Respondents affirmatively state their agreement to be bound by the terms of this Consent Order and aver that no promises or offers relating to the circumstances described herein, other than the terms of settlement as set forth in this Consent Order, are binding upon them.

12. This Consent Order may be executed in two (2) or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same document. The facsimile, email, or other electronically delivered signatures of the parties shall be deemed to constitute original signatures, and facsimile or other electronic copies shall be deemed to constitute duplicate originals.

ENTERED AND EXECUTED _____ April 10, 2025.



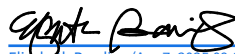
Carter Lawrence (Apr 10, 2025 10:10 CDT)

Carter Lawrence, Commissioner
Department of Commerce and Insurance

APPROVED FOR ENTRY AND EXECUTION:



Derek Alan Miser
Individually and on behalf of:
Miser Asset Management, LLC.



Elizabeth Bowling (Apr 7, 2025 09:06 CDT)

Elizabeth Bowling
Assistant Commissioner for Securities
Department of Commerce and Insurance



Jacob R. Strait
Associate General Counsel
Department of Commerce and Insurance