

**BEFORE THE COMMISSIONER OF COMMERCE AND INSURANCE
OF THE STATE OF TENNESSEE AT NASHVILLE**

TENNESSEE SECURITIES DIVISION,)
 Petitioner)
)
vs.)
)
VERNON SHIFLETT,)
SENIOR BROKERAGE, GREG BROOKS)
MARSHALL HOGGARD,)
DIVERSIFIED MANAGEMENT RESOURCES)
D.M.R. LLP, M.D.R. 12, LLP,)
AMERICAN EAGLE COMMERCE & TRUST,)
AVALON INVESTMENT & SECURITIES)
GROUP, INC., and NICK PAUL WISDA)
 Respondents.)

No. 12.06-053281

CONSENT ORDER

The Tennessee Securities Division ("Division") and Avalon Investment & Securities Group, Inc., Respondent herein, agree to the entry of this Consent Order in accordance with Tenn. Code Ann. § 48-2-116 of the Tennessee Securities Act of 1980, as amended, Tenn. Code Ann. § 48-2-101, et seq. ("Act"), which states that the Commissioner of Commerce and Insurance ("Commissioner") from time to time may make such orders as are necessary to carry out the provisions of the Act.

GENERAL STIPULATIONS

1. 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 of the Commissioner.

2. This Consent Order is executed by the Respondent for the purpose of avoiding further administrative action with respect to this cause. Furthermore, 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 in or resolution of these proceedings.

3. Respondent fully understands that this Consent Order will in no way preclude additional proceedings by the Commissioner against the Respondent for acts or omissions not specifically addressed in this Consent Order for facts and/or omissions that do not arise from the facts or transactions herein addressed.

4. Respondent fully understands that this Consent Order will in no way preclude additional proceedings by the Commissioner of Commerce and Insurance or any other state government representative against the Respondent for violations of law under other statutes, rules, or regulations of the State of Tennessee, which may arise out of the facts, acts, or omissions contained in the Findings of Fact and Conclusions of Law stated herein, or which may arise as a result of the execution of this Consent Order by the Respondent.

5. Respondent expressly waives all further procedural steps, and expressly waives all rights to seek judicial review of or to otherwise challenge or contest the validity of the Consent Order, the stipulations and imposition of discipline contained herein, and the consideration and entry of said Consent Order by the Commissioner.

FINDINGS OF FACT

1. The Tennessee Securities Act of 1980, as amended, Tenn. Code Ann. § 48-2-101, et seq. ("Act"), places the responsibility for the administration of the Act on the Commissioner of Commerce and Insurance ("Commissioner"). The Division is the lawful

agent through which the Commissioner discharges this responsibility. Tenn. Code Ann. § 48-2-115.

2. Respondent, Avalon Investment & Securities Group, Inc., ("Avalon") (CRD # 6281) is a business entity with its principal place of business located at 404 Avalon Ave., Suite 200, P.O. Box 2646, Muscle Shoals, Alabama 35662. Avalon is registered with the Division as a broker-dealer.

3. Respondent, Marshall Hoggard ("Hoggard") (CRD # 1515720) is a citizen and resident of Madison County, Tennessee. He maintains his address at 24-A Federal Drive, Jackson, Tennessee 38306. Hoggard was registered with the Division as an agent of Avalon until the registration was terminated in December 2001.

4. In May 2000, Hoggard became a registered agent for Avalon. Avalon had in place certain "Written Supervisory Procedures" pertaining to the sale of limited partnerships, which procedures required agents to submit all primary and supporting documents for review and acceptance by Avalon, such acceptance to be manifested by an Avalon principal affixing his/her signature/initials and the date of processing review on the documents. In accordance with the procedure, Hoggard submitted documents to Avalon for two (2) limited partnerships previously sold by him (1993-1999) while he was still registered as an agent for Cardinal Investments, Inc., his most recent former employer, but did not submit documents for any ongoing limited partnership sales.

5. In February 2001, Hoggard completed an "Income Disclosure Form" ("IDF"), at the direction of Avalon as required by NASD Rule 3030, for year 2000 income derived from sources other than securities activities through Avalon. The IDF specifically stated in its instructions "do not list specific companies" and "Any further inquiries will be at the

discretion of Avalon”.

6. Hoggard disclosed on the IDF that he received income in the year 2000 from non-Avalon related sales of limited partnerships interests.

7. The limited partnerships interests being sold by Hoggard were unregistered securities.

8. Avalon has an affirmative legal duty under the Act to reasonably supervise its agents, including Hoggard, and the IDF disclosure constituted implied notice which should have prompted Avalon to investigate the circumstances surrounding Hoggard’s non-firm related sales activities which included the sale of securities. Hoggard’s supervisor at Avalon did not conduct a reasonable inquiry into the disclosure made on the IDF, nor did any other Avalon supervisory representative.

CONCLUSIONS OF LAW

9. Pursuant to Tenn. Code Ann. § 48-2-115(a), the responsibility for administration of the Act is upon the Commissioner. The Division is the lawful agent through which the Commissioner discharges this responsibility.

10. Tenn. Code Ann. § 48-2-112(a)(2)(J) states, in pertinent part, that (a) the commissioner may by order deny, suspend, or revoke any registration under this part if the commissioner finds that: (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: (J) Has failed reasonably to supervise such person’s agents if the person is a broker-dealer, or such person’s employees if the person is an investment adviser.

11. The averments in paragraphs four – eight of this Consent Order constitute

practices by Avalon which would provide grounds under Tenn. Code Ann. § 48-2-112(a)(2)(J) for the entry of an order of sanctions against Avalon.

ORDER

NOW, THEREFORE, on the basis of the foregoing, and Respondent's waiver of the right to a hearing and appeal under the Tennessee Securities Act and Tennessee's Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-5-101 et seq., and Respondent's agreement to the terms of this Order and its admission of jurisdiction of the Commissioner, the Commissioner finds that Respondent, for the purpose of settling this matter with the Division, admits the matters herein, has agreed to the entry of this Order and that the following Order is appropriate, in the public interest and necessary for the protection of investors.

IT IS ORDERED, pursuant to Tennessee Code Annotated § 48-2-116(a) of the Tennessee Securities Act that:

1. Respondent, Avalon Investment & Securities Group, Inc., **IS ORDERED TO AND AGREES** to fully comply with the Tennessee Securities Act of 1980, as amended, and all rules promulgated thereunder.

2. Respondent, Avalon Investment & Securities Group, Inc., **IS ORDERED TO AND AGREES** to promptly update and contemporaneously maintain all required filings with the Division, including but not limited to, all electronic filings such as Form BD along with all of the Schedules attached thereto. Said update (to the extent not already completed) is to be completed, per the attached "Checklist", within one (1) week from the date this Consent Order is executed by the Commissioner for the Department of Commerce and Insurance. Avalon Investment & Securities Group, Inc. **IS ORDERED TO**

AND AGREES to redraft their "Income Disclosure Form" to include an affirmative statement from each registered agent that such agent is not engaging in the sale of any securities, other than the securities sold through Avalon. If an agent registered with Avalon is engaging in the sale of non-Avalon related securities, then Avalon will require each such agent to identify with specificity each security, not sold through Avalon, including the identity of the issuer of each such security, the product type of each security being sold, the commission structure under which the agent is being compensated and proof of registration of each security or identification of the claimed exemption or exception under which registration for each security is not required. Said redraft shall be completed within thirty (30) days from the date this Consent Order is executed by the Commissioner for the Department of Commerce and Insurance. Avalon Investment & Securities Group, Inc. **IS FURTHER ORDERED AND AGREES** to revise the firm's supervisory procedures to require enhanced written disclosure of any and all activities on the part of its agents which are or may be construed to be regulated under the Act.

3. Respondent, Avalon Investment & Securities Group, Inc. **shall** make a contribution to the Investor Education Fund in the amount of two thousand dollars (\$2,000.00). Said sum shall be due and payable in full upon execution of this document, but in no event later than March 1, 2005. Payment, in the form of a cashier's check, certified bank check or money order, ***made payable to the State of Tennessee, Investor Education Fund***, shall be mailed to:

State of Tennessee
Department of Commerce and Insurance
Securities Division
Attention: Barbara A. Doak, Staff Attorney
500 James Robertson Parkway, 5th Floor

Nashville, Tennessee 37243.

4. Respondent hereby AGREES that failure to comply with all the requirements and prohibitions contained in this Order shall result in further enforcement action by the Division, the Department of Commerce and Insurance, and/or the State of Tennessee in order to enforce the provisions contained herein.

Execution of this Consent Order is due on or before January 26, 2005.

IT IS ORDERED that this Consent Order represents the complete and final resolution of, and discharge with respect to all administrative and civil, claims, demands, actions and causes of action by the Securities Division against Avalon Investment & Securities Group, Inc. for violations of the Tennessee Securities Act as alleged to have occurred with respect to the facts contained herein. Nothing herein may be construed as preventing a separate division of the Department of Commerce and Insurance or a separate entity of the State of Tennessee from taking other appropriate action against the Respondent based on the Findings of Fact and Conclusions of Law enumerated herein or the existence of this executed Consent Order.

This Consent Order is in the public interest and in the best interests of the parties, and represents a compromise and settlement of the controversy between the parties and is for settlement purposes only. By the authorized signature affixed below, Avalon Investment & Securities Group, Inc., affirmatively states that it has freely agreed to the entry of this Consent Order, that it waives the right to a hearing on the matters underlying this Consent Order and to a review of the Findings of Fact and Conclusions of Law contained herein, and that no threats or promises of any kind have been made by the

Commissioner, the Division, or any agent or representative thereof. The parties, by signing this Consent Order, 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 set forth in this Consent Order, are binding upon them.

ENTERED this 7th day of February, 2005.

Paula A. Flowers

Paula A. Flowers, Commissioner
Department of Commerce and Insurance

APPROVED FOR ENTRY:

Kenneth R. Cantrell

Kenneth R. Cantrell
Compliance Officer
Avalon Investment & Security Group, Inc.

Daphne D. Smith

Daphne D. Smith,
Assistant Commissioner for Securities
Department of Commerce and Insurance

Howard H. Lamar III

Howard H. Lamar III (#013859)
Bass, Berry & Sims PLC
Counsel to Avalon Investment & Securities
Group, Inc.

Barbara A. Doak

Barbara A. Doak (#015802)
Staff Attorney – Securities Division
Department of Commerce and Insurance

Corrections Checklist

ERROR CORRECTIONS

Form BD:

1. Schedule A:

- Item #2 - must disclose all individuals connected to Avalon who manage the day-to-day operations of the company, including but not limited to, Ken Cantrell and Neil Morris;
- Item #7 - provide information as needed to complete all fields for all of the individuals from Item #2 above;
- Misc. - the Division understands that the listing of Mr. Ansley (CRD #6281) as CFO and CCO for Avalon was a computer error and has been removed;

2. Schedule E:

- Item #1 - must disclose "other business locations" *i.e.* the business locations of each and every Avalon agent registered in Tennessee [0780-4-3-.01(7)];
- Items #2-11 - all applicable fields must be completed for each "other business location";
- Item #12 - if your "other business locations" do not meet the NASD definition of a "branch office", then mark the "Jurisdiction" box and the NASD branch office fee will not be charged;