STATE OF SOUTH CAROLINA

OFFICE OF THE ATTORNEY GENERAL

SECURITIES DIVISION

IN THE MATTER OF:	)	
	)	
Richard P. Krochmal,	)	**FINAL ORDER**
Mutual Modeling Associates, Inc.,	)	
and Mutual Modeling Associates	)	
of the Carolinas, LLC.,	)	
	)	
Respondents.	)	**File Number 11028**
	)	

This matter comes before the Securities Commissioner upon the Report and Recommendation of the Hearing Officer (the "Report and Recommendation"), issued by the duly appointed Hearing Officer, Warren V. Ganjehsani. The Hearing Officer conducted a public hearing on this matter on October 28, 2011, and left the record open for a period of time for the submission of additional materials. Following the hearing and having received no additional materials from either party, the Hearing Officer issued his Report and Recommendation on March 28, 2012. The Report and Recommendation sets forth the Hearing Officer's Findings of Fact and Conclusions of Law in detail.

As Securities Commissioner, I hereby adopt the Report and Recommendation in its entirety, including all Findings of Fact and Conclusions of Law set forth therein, with the exception of the Hearing Officer's recommendations regarding the scope of relief and assessment of costs, which are hereby modified as set forth herein.

NOW THEREFORE, based on my Findings of Fact and Conclusions of Law, IT IS HEREBY ORDERED THAT:

(1) Richard P. Krochmal ("Krochmal"); Mutual Modeling Associates, Inc. ("MMA"); Mutual Modeling Associates of the Carolinas, LLC ("MMA-LLC"), which is the same entity as MMA; every successor, affiliate, control person, agent, servant, employee, or former employee of Krochmal, MMA, or MMA-LLC; and every entity owned, operated, or indirectly or directly controlled by or on behalf of Krochmal, MMA, or MMA-LLC:

a. Immediately cease and desist from transacting business in South Carolina; and

b. Immediately cease and desist from (i) soliciting new accounts in or from South Carolina, (ii) offering any other securities in or from South Carolina, (iii) providing investment advice in or from South Carolina, and (iv) collecting fees in or from South Carolina.

(2) Krochmal pay a civil penalty totaling $20,000.00, which consists of three separate penalties of $5,000.00 each for violating S.C. CODE ANN. §§ 35-1-403 and 35-1-404 and a penalty of $5,000.00 for violating S.C. CODE ANN. §§ 35-1-501, as set forth in the Report and Recommendation.

(3) MMA/MMA-LLC pay a civil penalty totaling $40,000.00, which consists of three separate penalties of $10,000.00 each for violating S.C. CODE ANN. §§ 35-1-403 and 35-1-404 and a penalty of $10,000.00 for violating S.C. CODE ANN. §§ 35-1-501, as set forth in the Report and Recommendation.

(4) MMA/MMA-LLC is to reimburse the Securities Division the sum of $2,500.00 for investigative costs.

(5) Krochmal is to reimburse the Securities Division the sum of $2,500.00 for

investigative costs.

IT IS FURTHER ORDERED THAT the provisions of this Order are hereby effective and enforceable immediately.

AND IT IS SO ORDERED.

Alan Wilson
South Carolina Securities Commissioner

Columbia, South Carolina
4-11-12, 2012

BEFORE THE SECURITIES COMMISSIONER OF SOUTH CAROLINA

IN THE MATTER OF	)	
	)	
Richard P. Krochmal and Mutual Modeling Associates, Inc.,	)	File No. 11028
	)	
	)	
Respondents.	)	

REPORT & RECOMMENDATION OF THE HEARING OFFICER

PROCEDURAL BACKGROUND

This matter came before me as a result of a written request for a hearing made by Richard P. Krochmal ("Krochmal") regarding the Order to Cease and Desist ("Order") that the Securities Division of the South Carolina Attorney General's Office ("Securities Division") issued against him and Mutual Modeling Associates, Inc. ("MMA") on July 21, 2011.[1] The Order prohibited Krochmal and MMA from engaging in certain conduct ("Conduct") set forth therein and ordered each of them to pay a $10,000 (ten thousand dollar) civil penalty for each violation of the South Carolina Uniform Securities Act of 2005 ("Securities Act" or "Act"),[2] plus investigative costs if the Order "bec[ame] effective by operation of law."[3] By letter dated September 14, 2011, Securities Commissioner Alan Wilson ("Commissioner") appointed the undersigned to serve as a hearing officer in this matter.

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[1] It is not clear from the record when Krochmal and MMA were first served with notice of the Order's issuance pursuant to S.C. CODE ANN. § 35-1-604(b). The Securities Division did not allege that Krochmal's request for a hearing was untimely. Therefore, his right to challenge the Order has not been waived.

[2] S.C. CODE ANN. § 35-1-101, *et seq.*

[3] Order at Page 6, ¶ b.

Pursuant to S.C. CODE ANN. §§ 35-1-604 and 35-1-605, a public hearing was conducted at the South Carolina Attorney General's Office in Columbia, South Carolina, on October 28, 2011. Krochmal appeared *pro se*. MMA did not submit a request for a hearing and no attorney appeared on its behalf. As set forth in detail below, MMA of the Carolinas, LLC ("MMA-LLC") was on notice that the Order applied to it as well, but it likewise did not request a hearing or have an attorney appear on its behalf. The record was kept open for a period of time following the hearing to allow the parties an opportunity to submit additional materials,[4] but neither party elected to do so. After consideration of the evidence, I find and conclude as follows:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. Krochmal is a South Carolina resident who submitted documents to the Securities Division between 2009 and 2011 in which he identified St. Pauli Street, Fort Mill, South Carolina as his residential and business address.[5] Krochmal never registered as an investment adviser or investment adviser representative ("IAR") in South Carolina. Krochmal acknowledged acting as an investment adviser and "financial planner" to the two investors ("Investors")[6] referenced in the Order, but he maintained that he never registered as an investment adviser or IAR in South Carolina because he had no clients located here.[7] Krochmal testified that the only financial planning services he performed

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4 Tr. at 96:4–97:11; 106:2–6.

5 Tr. at 7:25–8:1; 51:1–4; 55:18–56:22.

6 The Investors were identified in the Order as "Husband" and "Wife."

7 Tr. at 15:1–6; 16:18–17:5.

in South Carolina were for family members, though he admitted he was not related to the Investors.[8]

2. MMA was identified by the parties as a corporation that is or was at one time an investment adviser registered in the State of New Jersey.[9] MMA has never been registered as an investment adviser or IAR in South Carolina. Krochmal is the founder and president of MMA and was at all times relevant herein in control of MMA, which he referred to as "[his] business."[10]

3. MMA-LLC was formed as a South Carolina limited liability company on May 21, 2010, as reflected in the official records of the South Carolina Secretary of State's Office ("Secretary of State"). Krochmal acknowledged that in May 2009 he changed MMA's business address in the Central Registration Depository ("CRD")[11] database maintained by the Financial Industry Regulatory Authority ("FINRA")[12] to 7066 St. Pauli Street, Fort Mill, South Carolina ("Fort Mill address") – the same address that he later listed on MMA-LLC's application to the Secretary of State. Krochmal also admitted submitting a document to the Securities Division in February 2011 in which he represented that MMA had changed its business name to MMA-LLC.[13] Furthermore,

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[8] Tr. at 16:18–19; 44:18–45:13.

[9] Order at ¶ 4. No evidence was introduced by the parties as to whether MMA was, in fact, incorporated anywhere in the United States or ever registered as an investment adviser in New Jersey.

[10] Tr. at 12:15–23; 15:8–16.

[11] CRD is the central licensing and registration system for the United States securities industry and its regulators. *See* <http://www.finra.org/Industry/Compliance/Registration/CRD>.

[12] FINRA is the largest non-governmental regulator for all securities firms doing business with the public. *See* <http://brokercheck.finra.org/Support/TermsAndConditions.aspx>.

[13] Respondent's Exhibit No. 1 at ¶ 6.

Krochmal operated MMA at the Fort Mill address and he testified that MMA was the same entity as "Mutual Modeling Associates of the Carolinas, LLC."[14]

4. The absence of a specific reference to MMA-LLC in the Order does not preclude MMA-LLC from being bound thereby, inasmuch as the "misnomer of a corporation in a notice, summons, or other step in a judicial proceeding is immaterial if it appears the corporation could not have been, or was not, misled." Griffin v. Capital Cash, 310 S.C. 288, 292, 423 S.E.2d 143, 146 (Ct. App. 1992). Moreover, "[a] corporation may be known by several names in the transaction of its general business," and the fact that a corporation is "sued in a name under which it transacts business . . . will ordinarily be sufficient to bring it before the court." McCall v. IKON, 363 S.C. 646, 652-653, 611 S.E.2d 315 (Ct. App. 1995). In Krochmal's written response to the Order, he specified that the Order's reference to MMA's business name becoming "Mutual Modeling of the Carolinas, LLC" should more accurately reflect that MMA's business name had changed to "MMA of the Carolinas, LLC."[15] Therefore, I find that MMA-LLC was not and could not have been misled by the Order's caption referencing only MMA or the Order's text slightly misidentifying MMA-LLC.

5. For the foregoing reasons, I find that (1) MMA-LLC was another name by which MMA conducted business, (2) both MMA and MMA-LLC are properly before the Commissioner in this proceeding, and (3) both MMA and MMA-LLC should be bound by the Commissioner's decision accordingly.

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[14] Tr. at 12:12–23.

[15] Order at ¶ 6; Respondent's Exhibit No. 1 at ¶ 6.

6. On or about October 4, 2002, the Investors executed a contract ("2002 Agreement") with MMA to provide them investment advisory services. The Investors were residents of the State of Oregon at the time they executed the 2002 Agreement.[16]

7. The 2002 Agreement specified an annualized fee payable to MMA ranging from 0.90% to 1.25%, depending on the amount of the Investors' asset value.

8. On or about June 5, 2004, the Investors opened retirement accounts ("IRAs") with TD Ameritrade, granted trading authority to MMA, and named Krochmal as MMA's trading agent for the IRAs. Throughout the time period relevant herein, Krochmal and MMA made trades in the Investors' IRAs.

9. Krochmal introduced a document dated April 25, 2009 ("2009 Memo"), that he claimed to have sent to the Investors on or around that date.[17] In the 2009 Memo, Krochmal gave the Investors detailed advice regarding investment strategy and forecasted how he intended to manage their funds.[18] This document reflected that it originated from MMA's office at the Fort Mill address and that it was sent "[f]rom the desk of Richard P. Krochmal."[19] The 2009 Memo's signature block identified MMA as an "RIA," which is a common abbreviation for a registered investment adviser.

10. On or about May 26, 2009, Krochmal executed an "Investment Advisor Application" with Trade-PMR, Inc. ("TPMR"). Thereafter, on or about July 6, 2009, the Investors executed agreements with TPMR naming MMA as the investment adviser for

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16 *See* State's Exhibit No. 1.

17 Tr. at 85:2–24. The Securities Division questioned whether this document was ever sent to the Investors.

18 *See* Respondent's Exhibit No. 3.

19 *Id.*

their accounts.[20] Throughout the time period relevant herein, Krochmal and MMA made trades in the Investors' TPMR accounts.

11. On or about July 6, 2009, an agreement ("2009 Agreement") between "Richard P. Krochmal/Mutual Modeling Associates, Inc." and the Investors was purportedly executed.[21] This document specifically identified MMA and Krochmal as parties thereto, represented that MMA was a "Registered Investment Advisor" doing business at the Fort Mill address, and changed the fee cap from 1.25% (as specified under the 2002 Agreement) to 5%. Krochmal relied upon the 2009 Agreement in the course of his attempt to defend himself at the hearing, and he is bound in his individual capacity by its contents. 29A AM. JUR. 2D *Evidence* § 1041 (recognizing that the "recitals of an instrument introduced in evidence may be considered as evidence against the parties to the instrument").

12. The Investors terminated their business relationship with Krochmal and MMA/MMA-LLC in or around February 2011, and they filed a complaint ("Complaint") against him with the Securities Division in April 2011. The Investors were residents of the State of Oregon at the time they filed their Complaint.[22]

13. Securities Division auditor Sandra Matthews' review of the Investors' account statements and associated documents led her to opine that the fees Krochmal and MMA/MMA-LLC charged to the Investors "substantially exceeded" what the 2002 and

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20 Order at ¶ 17.

21 The Securities Division questioned the validity of the Investors' signatures on this document.

22 *See* State's Exhibit No. 4.

2009 Agreements provided for and that the activity on the accounts indicated that Krochmal had been "churning"[23] them.[24]

14. Krochmal admitted charging the Investors higher fees than what was provided for in the 2002 Agreement. He claimed his fee structure was "changed many, many years ago," but that he "d[id]n't have copies of th[e] files" reflecting such changes or increased fees because the wife of his former business partner "threw out" the only computer containing the aforementioned files.[25]

15. Krochmal also admitted that the fees charged to the Investors pursuant to the 2009 Agreement should not have gone above 5%, but he could not convincingly reconcile this concession with the Securities Division's conclusion that the fees had surpassed this pre-set limit on numerous occasions.[26]

16. The Securities Act declares it unlawful for a person "to transact business in this State as an investment adviser unless the person is registered under [the Act] as an investment adviser or is exempt from registration as an investment adviser." S.C. CODE ANN. § 35-1-403(a).

17. The Securities Act defines "investment adviser" as someone who receives compensation for "advising others, either directly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing, or selling

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[23] "Churning" occurs when a broker engages in excessive buying and selling of securities in a customer's account chiefly to generate commissions that benefit the broker. *See* <http://www.sec.gov/answers/churning.htm>.

[24] Tr. at 34:1–35:12; 59:10–60:11; 79:25–80:4, 23–25; State's Exhibit No. 5.

[25] Tr. at 93:6–15.

[26] Tr. at 34:2–35:12.

securities or that, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities." S.C. CODE ANN. § 35-1-102(15). "Investment adviser" also includes "a financial planner or other person that, as an integral component of other financially related services, provides investment advice regarding securities to others for compensation as part of a business" or that "holds itself out as providing investment advice regarding securities to others for compensation." *Id.*

18. The exemptions to the investment adviser registration requirements contained in the Act are only available to "a person **without** a place of business in this State." S.C. CODE ANN. § 35-1-403(b) (emphasis added).

19. The Securities Act declares it unlawful for a person "to transact business in this State as an investment adviser representative unless the individual is registered under [the Securities Act] as an investment adviser representative or is exempt from registration as an investment adviser representative." S.C. CODE ANN. § 35-1-404(a).

20. The Act defines an "[i]nvestment adviser representative" as an individual who is

> employed by or associated with an investment adviser or federal covered investment adviser and who makes any recommendations or otherwise gives investment advice regarding securities, manages securities accounts or portfolios of clients, determines which recommendation or advice regarding securities should be given, provides investment advice regarding securities or holds herself or himself out as providing investment advice regarding securities, receives compensation to solicit, offer, or negotiate for the sale of or for selling investment advice regarding securities, or supervises employees who perform any of the foregoing.

S.C. CODE ANN. § 35-1-102(16).

21. A person must be "employed by or associated with an investment adviser that is exempt from registration under [the Act]" to qualify for an exemption from registering as an IAR. S.C. CODE ANN. § 35-1-404(b).

22. The 2009 Memo constitutes documentary evidence that Krochmal and MMA were furnishing investment advice to the Investors from the Fort Mill address. Although Krochmal offered the 2009 Memo in support of his claim that he notified the Investors of the reason their trading fees increased, the document's principal significance is that it reveals Krochmal and MMA to have provided investment advice to the Investors from a "place of business" in South Carolina. S.C. CODE ANN. § 35-1-102(21)(B) (defining an investment adviser's "place of business" as any "location that is held out to the general public as a location at which . . . brokerage or investment advice" is provided or where an investment adviser "solicits, meets with, or otherwise communicates with customers or clients"); 29A AM. JUR. 2D *Evidence* § 1040 (observing that a party "introducing documentary proof bearing upon an issue generally is bound by its recitals" and "is not allowed to impeach or contradict it, or to accept that part which is in his or her favor and repudiate another part which is opposed to his or her claim or defense").

23. Similarly, the 2009 Agreement is documentary evidence that Krochmal and MMA began transacting business in or from South Carolina at some point in 2009. This evidence is augmented by the fact that Krochmal submitted documentation bearing the Fort Mill address to the Securities Division during the relevant period herein, updated the CRD database in 2009 to show MMA as doing business at the Fort Mill address, and formed MMA-LLC as a South Carolina limited liability company in 2010 to carry on the business of MMA at the Fort Mill address. Although Krochmal claimed that he never

completed the registration process with the Securities Division because he decided not to keep his business going,[27] his testimony does not explain why he nevertheless continued to transact business with the Investors from South Carolina until early 2011.

24. I find that the Conduct identified in the Order and described herein constituted activity for which registration as an investment adviser or IAR was required under the Act, and at no time relevant herein were Krochmal and MMA/MMA-LLC so registered. Therefore, I find that Krochmal and MMA/MMA-LLC violated S.C. CODE ANN. §§ 35-1-403 and 35-1-404 by failing to register as an investment adviser or IAR prior to transacting business in or from South Carolina during the years 2009, 2010, and 2011.

25. Furthermore, Krochmal and MMA represented in the 2009 Agreement and 2009 Memo that MMA was doing business at the Fort Mill address as a "Registered Investment Advisor" and "RIA," respectively. These representations conveyed the false impression that MMA was registered as an investment adviser in South Carolina and that Krochmal was registered in South Carolina as an IAR who was functioning in that capacity for MMA.[28] Consequently, I find that Krochmal and MMA/MMA-LLC violated S.C. CODE ANN. § 35-1-501 by making untrue statements of material facts or omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

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[27] Tr. at 15:5–19.

[28] *See* State's Exhibit No. 4 at Page 5.

26. Based on the foregoing, I find that Krochmal and MMA/MMA-LLC engaged in acts and practices which violated S.C. CODE ANN. §§ 35-1-403, 35-1-404, and 35-1-501.

27. I find that it was necessary and appropriate, in the public interest, for the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act for the Securities Division to have issued the Order.

RECOMMENDATION

I. MMA/MMA-LLC

Although Krochmal is the president of MMA/MMA-LLC, his presence at the hearing did not constitute an appearance on MMA/MMA-LLC's behalf because he is not admitted to practice law in South Carolina. Renaissance Enterprises, Inc. v. Summit Teleservices, Inc., 334 S.C. 649, 653, 515 S.E.2d 257, 259 (1999) (holding that "a corporation may appear *pro se* only in magistrate's court"). MMA/MMA-LLC therefore waived the right to challenge the Order, which has become effective by operation of law.

Accordingly, I find that MMA/MMA-LLC committed the violations set forth below and should be assessed the following penalties and costs:

(1) a $10,000 penalty for violating S.C. CODE ANN. §§ 35-1-403 and 35-1-404 by failing to register as an investment adviser or IAR in 2009;

(2) a $10,000 penalty for violating S.C. CODE ANN. §§ 35-1-403 and 35-1-404 by failing to register as an investment adviser or IAR in 2010;

(3) a $10,000 penalty for violating S.C. CODE ANN. §§ 35-1-403 and 35-1-404 by failing to register as an investment adviser or IAR in 2011;

(4) a $10,000 penalty for violating S.C. CODE ANN. § 35-1-501 based upon the representations or omissions identified herein; and

(5) assessment of investigative costs in the amount of $2,500, as provided in the Order.

II. KROCHMAL

Krochmal's chief purpose in challenging the Order appears to focus on justifying his Conduct in light of the allegedly favorable returns he produced on the Investors' accounts, irrespective of whether the Securities Act was violated. State law provides for imposition of "a civil penalty in an amount not to exceed ten thousand dollars for each violation" of the Act. S.C. CODE ANN. § 35-1-603(b)(2)(C). The South Carolina Supreme Court has observed that even where a state agency's assessment of a statutory penalty is "within the maximum amount allowed by law," each penalty must nevertheless "be analyzed individually to determine if it is appropriate under the circumstances." Midlands Utility, Inc. v. South Carolina Dept. of Health and Environmental Control, 313 S.C. 210, 212, 437 S.E.2d 120, 121 (1993).

Although the Securities Act is silent on what factors can or should be considered in determining the amount of any penalty that may be levied once a violation has been found, "our courts look for guidance to cases interpreting the federal [securities] statute[s]" when construing the Act. McGaha v. Mosley, 283 S.C. 268, 273, 322 S.E.2d 461, 464 (Ct. App. 1984). Federal courts consider the following factors when calculating civil penalties in securities matters: (1) the degree of scienter involved; (2) the isolated or recurrent nature of the infraction; (3) the defendant's recognition of the wrongful nature of his conduct; (4) the likelihood, because of the defendant's professional occupation, that

future violations might occur; and (5) the sincerity of the defendant's assurances against future violations. S.E.C. v. CMKM Diamonds, Inc., 635 F.Supp.2d 1185, 1192 (D. Nev. 2009).

Before turning to the merits of this case, a determination must be made regarding the admissibility of the proffered evidence about Krochmal's involvement with investment accounts for a relative ("Third Investor") of one of the Investors. Krochmal expressed surprise when the Securities Division raised the issue of the Third Investor, as he was under the impression that the hearing only involved the Conduct described in the Order. Krochmal specifically remarked that he had not had "any advance notice" in this regard and felt like he was being "blind-sided" by questions about the Third Investor.[29]

The South Carolina Constitution provides that "[n]o person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard." S.C. Const. art. I § 22. Whether Krochmal violated the Securities Act in his dealings with other individuals (such as the Third Investor) would be relevant in determining if the Conduct was of an "isolated or recurrent nature," thereby factoring into the amount of the penalty that could be imposed.

The record reveals that the Order was issued *prior to* the Securities Division's receipt of the Third Investor's complaint, and the Securities Division never issued an amended Order to include the Third Investor's allegations.[30] Accordingly, I find that Krochmal did not have adequate notice that the Securities Division would attempt to introduce evidence concerning the Third Investor at the hearing, which ostensibly was

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[29] Tr. at 35:1–36:12; 107:4–5.

[30] Tr. at 107:4–16.

confined to the matters set forth in the Order. It follows that consideration of the Third Investor's allegations against Krochmal in this proceeding would run afoul of his due process rights, and I find that such evidence therefore should not be admitted for any purpose.

Turning to an analysis of the appropriate penalty to impose in this case, I note that Krochmal considered himself retired and expressed no interest in "keeping [his] business going," so it appears he no longer intends to perform securities-related services for others.[31] As a result, it seems unlikely that he will be in a position to commit future violations of the Act.

Notwithstanding the foregoing circumstances militating against assessment of the maximum penalty, Krochmal does not dispute key provisions of the Securities Division's Order. Although Krochmal expressed surprise at the fact that the Investors initiated a complaint against him with the Securities Division,[32] culpability is not a required element of an administrative fraud claim. *See* S.C. CODE ANN. § 35-1-501, Comment 6 (providing that "no culpability is required to be pled or proven" in civil or administrative enforcement actions under S.C. CODE ANN. § 35-1-604). It is also noteworthy that Krochmal never expressed any contrition at the hearing for his Conduct. Instead, he repeatedly underscored his belief that the Investors were receiving favorable returns on their investments, that they had no legitimate reason for questioning his handling of their

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31 Tr. at 12:18.

32 Tr. at 102:13–16.

accounts, and that their Complaint against him was "outlandish" and "ridiculous."[33]

Based on the totality of the circumstances, I find that penalties and costs are warranted and recommend that they be assessed as follows:

(1) a $5,000 penalty for violating S.C. CODE ANN. §§ 35-1-403 and 35-1-404 by failing to register as an investment adviser or IAR in 2009;

(2) a $5,000 penalty for violating S.C. CODE ANN. §§ 35-1-403 and 35-1-404 by failing to register as an investment adviser or IAR in 2010;

(3) a $5,000 penalty for violating S.C. CODE ANN. §§ 35-1-403 and 35-1-404 by failing to register as an investment adviser or IAR in 2011;

(4) a $5,000 penalty for violating S.C. CODE ANN. § 35-1-501 based upon the representations or omissions identified herein; and

(5) assessment of the actual costs of the Securities Division's investigation and this proceeding.

III. SCOPE OF RELIEF AGAINST MMA/MMA-LLC AND KROCHMAL

Pursuant to S.C. CODE ANN. § 35-1-604(a)(1), I recommend that the Commissioner order that (1) MMA/MMA-LLC and Krochmal; (2) every successor, affiliate, control person, agent, servant, and employee of MMA/MMA-LLC and Krochmal; and (3) every entity owned, operated, or indirectly or directly controlled by or on behalf of MMA/MMA-LLC and Krochmal:

a. Immediately cease and desist from transacting business in South Carolina; and

b. Cease and desist (i) soliciting new accounts in or from South Carolina, (ii) offering any securities in or from South Carolina, (iii) providing investment

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[33] Tr. at 89:13–15; 92:18–23.

advice in or from South Carolina, and (iv) collecting fees in or from South Carolina.

Furthermore, I recommend that the Commissioner assess civil penalties and costs as follows:

(1) MMA/MMA-LLC: a civil penalty totaling $40,000, which consists of three separate penalties of $10,000 each for violating S.C. CODE ANN. §§ 35-1-403 and 35-1-404, a penalty of $10,000 for violating S.C. CODE ANN. § 35-1-501, and $2,500 in investigative costs as set forth in the Order;

(2) Krochmal: a civil penalty totaling $20,000, which consists of three separate penalties of $5,000 each for violating S.C. CODE ANN. §§ 35-1-403 and 35-1-404, a penalty of $5,000 for violating S.C. CODE ANN. § 35-1-501, and the actual costs of the Securities Division's investigation, plus the costs of this proceeding.

Finally, if the Commissioner determines that imposing costs against Krochmal is appropriate, I recommend that the Securities Division be directed to prepare an affidavit setting forth all costs associated with its investigation and all expenses incurred over the course of this proceeding.

Warren V. Ganjehsani
Hearing Officer

March 28, 2012