

ADMINISTRATIVE PROCEEDING

BEFORE THE

SECURITIES COMMISSIONER OF SOUTH CAROLINA

IN THE MATTER OF:

Michael D. Lowery,

Respondent.

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ORDER TO CEASE AND DESIST

File No. 12010

WHEREAS, the Securities Division of the Office of the Attorney General of the State of South Carolina (the "Division"), pursuant to authority granted in the South Carolina Uniform Securities Act of 2005 (the "Act"), S.C. Code Ann. § 35-1-101, et seq. (Supp. 2011), on or about April 13, 2012, received information regarding alleged activities of Michael D. Lowery ("Lowery" or "Respondent") which, if true, would constitute violations of the Act; and

WHEREAS, the information led the Division to open and conduct an investigation of the Respondent pursuant to S.C. Code Ann. § 35-1-602; and

WHEREAS, in connection with the investigation, the Division has determined that evidence exists to support the following findings and conclusions:

1. Lowery is a South Carolina resident with a last known address of 101 Oakfield Avenue, Easley, South Carolina 29640.
2. At all times relevant herein, Lowery conducted business from 101 Oakfield Avenue, Easley, South Carolina 29640.
3. During the time period on or about September 1, 2011 to on or about February 26, 2012, Lowery solicited monetary investments from persons in South Carolina.

4. Lowery represented to the potential investors he solicited that he would use their money to stock ATM machines he owned.
5. Lowery further represented that the ATM machines to be stocked with investor cash were located in high-traffic locations, including but not limited to Clemson's Littlejohn Coliseum, the Greensboro Coliseum, and fairs.
6. Lowery told investors they would receive as profits a percentage of the ATM fees earned on transactions.
7. In one or more instances, Lowery entered into written agreements with investors that indicated specifically a date by which such transaction fees were to be paid and also gave specific time periods within which the principal amount of their investment would be repaid.
8. The ATM transaction fee investment opportunity Lowery offered constitutes a "security" under the Act.
9. Lowery is not now and during the relevant time period was not registered to sell securities in South Carolina or to give any type advice regarding the purchase of securities in South Carolina.
10. The ATM transaction fee investment opportunities offered by Lowery are not now and, at the time of their offer and sale in this State, were not registered or notice filed with the Division.
11. No exemption from registration has been claimed either for Lowery or the investment opportunity.
12. In one or more instances, Lowery did not use investor funds in the manner he represented to the investor(s) the funds would be used.
13. Multiple risks were associated with the ATM transaction fee investment opportunity.

14. Taken as a whole, an investment in the opportunity would correctly be classified as a risky investment, based on numerous factors, including but not limited to the following: the promoter's prior experience and/or lack thereof; the capital structure and financial solvency of the promoter and/or the venture, including the sources and uses of promoter and investor funds; the risk of loss by an investor of a significant amount of or all of the principal invested; the lack of oversight in terms of internal and/or external controls over the promoter regarding his use of investor funds; and the risk of use of investor funds in a manner other than what was represented to the investor.

15. Lowery failed to tell one or more of the investors that investment in the ATM transaction fee security was risky.

16. Additionally, one or more of the risk factors above was misrepresented and/or omitted by Lowery during the solicitation(s) to purchase and sale of the ATM transaction fee security.

WHEREAS, Lowery is and/or has been offering "securities" within the meaning of S.C. Code Ann. § 35-1-102(29), and has done so in this State; and

WHEREAS, Lowery has acted as a broker-dealer, investment adviser, and/or issuer in offering and selling securities in South Carolina; and

WHEREAS, during the time period in which Lowery so acted he was not registered as a broker-dealer or investment adviser under the Act or exempt from registration under the Act; and

WHEREAS, Lowery acted as an agent by effecting and/or attempting to effect sales of securities in South Carolina; and

WHEREAS, Lowery is not registered in South Carolina as an agent or exempt from registration as an agent under the Act; and

WHEREAS, the security Lowery offered and sold in South Carolina was not (i) registered, (ii) federal covered, or (iii) exempt from registration under the Act; and

WHEREAS, in connection with the solicitation of participants described above, Lowery made untrue statements of material fact and/or omitted to state one or more material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and

WHEREAS, based on the foregoing, the Division has determined that Lowery has engaged, is engaging, and/or is about to engage in acts and practices which violate S.C. Code Ann. §§ 35-1-301, 35-1-402(a) and (d), and 35-1-501; and

WHEREAS, based on the foregoing, the Division finds that it is 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 to issue the following Order:

CEASE AND DESIST ORDER

NOW THEREFORE, pursuant to S.C. Code Ann. § 35-1-604(a)(1), IT IS HEREBY ORDERED that Lowery and every successor, affiliate, control person, agent, servant, and employee of Lowery, and every entity owned, operated, or indirectly or directly controlled by or on behalf of Lowery:

- a. Immediately cease and desist from transacting business in this State in violation of the Act, and in particular, S.C. Code Ann. §§ 35-1-301, 35-1-402(a) and (d), and 35-1-501 thereof; and
- b. Pay a civil penalty and investigative costs in the amount of ten thousand dollars (\$10,000.00) if this Order becomes effective by operation of law, or, if Lowery seeks a hearing and any legal authority resolves this matter, pay a civil penalty in an amount not to

exceed ten thousand dollars (\$10,000.00) for each violation of the Act by Lowery, and the actual cost of the investigation or proceeding.

REQUIREMENT OF ANSWER AND NOTICE OF OPPORTUNITY FOR HEARING

Respondent Lowery is hereby notified that he has the right to a hearing on the matters contained herein. To schedule such a hearing, Lowery must file with the Securities Division, Post Office Box 11549, Rembert C. Dennis Building, Columbia, South Carolina 29211-1549, attention: Thresechia Navarro, within thirty (30) days after the date of service of this Order a written Answer specifically requesting that a hearing be held to consider rescinding the Order.

In the written Answer, Lowery, in addition to requesting a hearing, shall admit or deny each factual allegation of the Order, shall set forth specific facts on which he relies, and shall set forth concisely the matters of law and affirmative defenses upon which he relies. If Respondent Lowery is without knowledge or information sufficient to form a belief as to the truth of an allegation, he shall so state.

Failure by Respondent Lowery to file a written request for a hearing in this matter within the thirty (30) day period stated above shall be deemed a waiver by Lowery of his right to such a hearing. Failure of Lowery to file an Answer, including a request for a hearing, shall result in this Order becoming final as to Lowery by operation of law.

CONTINUING TO ENGAGE IN ACTS DETAILED BY THIS ORDER AND/OR SIMILAR ACTS MAY RESULT IN THE DIVISION'S FILING ADDITIONAL ADMINISTRATIVE ACTIONS AND/OR SEEKING FURTHER ADMINISTRATIVE FINES. WILLFUL VIOLATION OF THIS ORDER COULD RESULT IN CRIMINAL PROSECUTION. REGARDING MATTERS DESCRIBED HEREIN, THIS ORDER DOES NOT PRECLUDE THE

FILING OF PRIVATE CAUSES OF ACTION OR THE FILING OF CRIMINAL CHARGES
UNDER S.C. CODE ANN. § 35-1-508 OR ANY OTHER APPLICABLE CODE SECTION.

SO ORDERED, This 29th day of August, 2012.

Tracy Meyers

Tracy A. Meyers
Assistant Deputy Attorney General
Securities Division
Office of the Attorney General
Rembert C. Dennis Building
1000 Assembly Street
Columbia, S. C. 29201

STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL
SECURITIES DIVISION

CERTIFICATE OF SERVICE AND
AFFIDAVIT OF COMPLIANCE
File Number 12010

I hereby certify that I served upon the individual/entity listed below a copy of the document indicated below and dated August 22, 2012 by serving a copy of said document upon the Securities Commissioner of the State of South Carolina and by placing a copy of said document in the United States mail, certified mail, return receipt requested, first class postage prepaid and addressed to:

Mr. Michael D. Lowery
101 Oakfield Avenue
Easley, SC 29640

Document(s): Order to Cease and Desist

Mailed August 22, 2012 from Columbia, South Carolina.

I further hereby certify, swear and affirm that, service of the above-listed entity is in compliance with Section 35-1-611, Code of Laws of South Carolina.

By: Thresechia P. Navarro
Thresechia P. Navarro
South Carolina Attorney General's Office
Securities Division
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-4731

Subscribed and sworn to before me on
this 22nd day of August, 2012.

Josiah H. Callington
Notary Public for South Carolina

My commission expires: 6/30/21