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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING AND SECURITIES 2014 SEP -8 AM 9:42

PA DEPARTMENT OF
BANKING AND SECURITIES

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING AND
SECURITIES, BUREAU OF SECURITIES
LICENSING, COMPLIANCE AND
EXAMINATIONS

Docket No. : 14 0031 (SEC-OSC)

v.

GARY R. MILES

NOTICE TO ANSWER AND REQUEST A HEARING

You, Gary R. Miles, have the right to challenge the attached Order to Show Cause ("Order") by filing an Answer, in writing, with the Banking and Securities Commission ("Commission") **within 30 days** of the date of this Order as required by 1 Pa. Code § 35.37. **If you do not file an Answer within 30 days, then you will waive your right to a hearing and the Commission may enter a final order against you.**

Your Answer must be in writing, specifically admit or deny the allegations in the Order, set forth the facts you rely upon and state concisely the law you rely upon. General denials of the allegations set forth in the Order are not sufficient; you must support your denials with specific facts. Failure to support your denials with specific facts may cause the Commission to deem the facts in the Order as admitted and to enter a final order against you, without a hearing.

The Answer and any other documents must be filed with:

Linnea Freeberg, Docket Clerk
Department of Banking and Securities
17 N. Second Street, Suite 1300
Harrisburg, PA 17101

Further, you must serve a copy of the Answer and any other documents on the person who signed the Order by providing a copy to his or her counsel indicated below:

John Chiappetta
Assistant Counsel
Office of the Chief Counsel
Attorney ID # 62902

FOR: Commonwealth of Pennsylvania
Department of Banking and Securities
301 5th Avenue, Suite 290
Pittsburgh, PA 15222
(412) 565-5084

Once you file your Answer, you will be notified of pertinent information such as the name of the presiding officer designated by the Commission to hear this matter and, if a hearing is scheduled, the date, time and location of the hearing. You have the right to be represented by an attorney.

All procedural matters will be governed by the Pennsylvania Administrative Agency Law, 2 Pa. C.S. §§ 501-508, 701-704, and the General Rules of Administrative Practice and Procedure, 1 Pa. Code §§ 31.1.-35.251.

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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING AND
SECURITIES, BUREAU OF SECURITIES
LICENSING, COMPLIANCE AND
EXAMINATIONS

Docket No. : 14-0037 (SEC-OSC)

v.
GARY R. MILES

ORDER TO SHOW CAUSE

You, **GARY R. MILES**, are notified that the Department of Banking and Securities (“Department”) through the Bureau of Securities Licensing, Compliance and Examinations (“Bureau”) hereby **ORDERS YOU TO SHOW CAUSE** why the Banking and Securities Commission (“Commission”) should not impose the sanctions and remedies described below. Specifically, this proceeding is instituted pursuant to 1 Pa. Code § 35.14 to determine:

- (1) whether the allegations set forth below are true; and
- (2) if these allegations are true, whether there has been a violation of the Pennsylvania Securities Act of 1972 (“1972 Act”) or of the regulations promulgated thereunder; and
- (3) if so, whether the sanctions and remedies proposed by the Bureau should be imposed by the Commission.

The Bureau alleges the following facts and violations of law for the purpose of tentatively framing the issues for consideration by the Commission. The Commission may consider this matter directly, or may designate a hearing officer to issue a recommended decision prior to the Commission issuing a final order.

**STATEMENT OF THE PARTICULARS AND MATTERS
CONCERNING WHICH THE BUREAU IS INQUIRING**

PARTIES

1. The Department is the Commonwealth of Pennsylvania's administrative agency authorized and empowered to administer and enforce the 1972 Act.
2. The Bureau is primarily responsible for administering and enforcing the 1972 Act for the Department.
3. The Bureau operates from the Department's main office located at 17 North Second Street, Suite 1300, Harrisburg, PA 17101.
4. Gary R. Miles ("Miles") CRD #846108, was, at all times material herein, an individual with an address at 11530 East Lake Road, North East, Pennsylvania 16428.

BACKGROUND

5. From in or about April 2, 2002 to March 31, 2007, Miles was registered as an "agent" pursuant to Section 301 of 1972 Act, 70 P.S. § 1-301 with U.S. Brokerage, Inc. ("USB"), CRD #39307.
6. On or about March 31, 2007, Miles was terminated by USB for "failure to comply with supervisory rules by selling away from the firm without prior approval."
7. On or about November 20, 2007, the former Pennsylvania Securities Commission ("PSC") issued Findings of Fact, Conclusions of Law and Order against Miles, finding that Miles violated Section 301(b) of the 1972 Act by simultaneously representing more than one broker-dealer or issuer and also engaging in dishonest and unethical practices in the securities business pursuant to Section 305.019(c)(2)(ii) by effecting securities transactions

not recorded on the books and records of the broker-dealer which he represented and without written authorization from the broker-dealer (“PSC Order”). Under the PSC Order, Miles was ordered to comply with the 1972 Act and regulations adopted thereunder in the future.

8. From in or about June 8, 2009 to June 30, 2010, Miles was registered as an “agent” pursuant to Section 301 of 1972 Act, 70 P.S. § 1-301 for MidAmerica Financial Services, Inc. (“MidAmerica”), CRD #47351.
9. On or about June 30, 2010, Miles voluntarily resigned his “agent” registration with MidAmerica.
10. From in or about June 27, 2012 to December 2, 2013, Miles again registered as an “agent” pursuant to Section 301 of 1972 Act, 70 P.S. § 1-301 for MidAmerica.
11. On or about December 2, 2013, Miles voluntarily resigned his “agent” registration with MidAmerica.

FACTUAL ALLEGATIONS

Sale of Intellamed Inc. Stock

12. On or about February 8, 2007, Miles purchased North American Company for Life and Health Insurance Roth IRA Equity Index Annuity #8000060486 (“NA Annuity #60486”) on behalf of PD, a Pennsylvania resident (“PA Resident”) and client of Miles, in the amount of \$64,505.38 which also included a premium bonus of \$6,450.54.
13. On or about June 4, 2009, Miles instructed PD to surrender \$7,563.03 of the NA Annuity #60486 (NA Annuity Surrender 1) and use the proceeds to purchase 3,000 shares of Intellamed Inc. stock (“IT Stock”).

14. On or about June 4, 2009, PD endorsed the check he received from NA Annuity Surrender 1 in the amount of \$7,563.03 over to Miles for the purchase of 3,000 shares of IT Stock.
15. In the offer and sale of the IT Stock to PD, Miles stated that:
 - a. PD would earn a 50% greater return from the IT Stock than he (PD) would from NA Annuity #60486.
 - b. The investment in the IT Stock was a sound investment that would be better than the investment in NA Annuity #60486.
 - c. The IT Stock would produce a high yield for PD's retirement.
16. The IT Stock described above was a "security" within the meaning of Section 102(t) of the 1972 Act, 70 P.S. § 1-102(t).
17. Miles was a "person" offering for sale the IT Stock in Pennsylvania within the meaning of Section 102(n) of the 1972 Act, 70 P.S. § 1-102(n).
18. The IT Stock was (a) not registered under Section 201 of the 1972 Act, 70 P.S. § 1-201; (b) not exempt from registration under Section 202 of the 1972 Act, 70 P.S. § 1-202; (c) not a federally covered security; and further, the securities transactions relating to the IT Stock were not exempt from registration under Section 203 of the 1972 Act, 70 P.S. § 1-203.
19. In the offer and sale of the IT Stock, Miles failed to provide the PA Resident with any disclosure documents regarding the IT Stock, which disclosure would have been material for a reasonable investor to make an informed decision. To the extent that Miles did not have disclosure documents, Miles failed to disclose their nonexistence, which would have been material for a reasonable investor to make an informed investment decision.

20. In the offer and sale of the IT Stock, Miles omitted to state the following material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading:
- a. That Miles was the owner of the IT Stock.
 - b. That the shares of the IT Stock were privately held and subject to restrictions on transferability and resale.
 - c. That the IT Stock was highly speculative in nature.
 - d. That the IT Stock was only suitable for accredited investors who could afford the risk of the total loss of their investment and who have no need for liquidity.
 - e. That Miles was no longer registered as an agent under Section 301 of the 1972 Act.
 - f. That the per share value at which Miles sold the IT Stock was arbitrary.
21. Miles failed to disclose the following material information to the PA Resident, including, but not limited to:
- a. The financial condition of Intellamed.
 - b. The financial risk of investing in the IT Stock.
 - c. The identity and relevant background of the corporate officers of Intellamed.
 - d. The operating history of Intellamed.
 - e. That the IT Stock was not registered in Pennsylvania pursuant to Section 201 of the 1972 Act, 70 P.S. § 201.

Sale of Netgate Co. Rights to Intellamed, Inc. Shares

22. On or about August 13, 2010, Miles instructed PD to surrender \$46,649.97 from NA Annuity #60486 (NA Annuity Surrender 2) and use the proceeds to purchase twenty two

- thousand eight hundred and fifty-seven (22,857) “Netgate Co. Rights to Intellamed, Inc.” shares (“NG Share Rights”).
23. As part of NA Annuity Surrender 2, PD incurred surrender charges in the amount of \$5,939.79 and an interest adjustment of \$710.18.
 24. PD was not aware of the surrender charge or the interest adjustment resulting from NA Annuity Surrender 2 and Miles did not disclose them to PD.
 25. As part of PD’s purchase of the NG Share Rights, Miles provided PD with a stock certificate with the handwritten note that stated “9-1-10 Bought 22,857 Shares for \$40,000 \$1.75 Shares” which was signed by Miles.
 26. On or about September 8, 2010, Miles instructed DD, also a PA Resident and the spouse of PD, to purchase ten thousand (10,000) shares of NG Share Rights for \$17,500 dollars.
 27. Miles instructed DD to make the check out for the purchase of the NG Stock to Miles.
 28. In the offer and sale of the NG Share Rights to PD and DD, Miles stated that:
 - a. PD and DD would earn a 50% greater return from the NG Share Rights than they (PD & DD) would earn from NA Annuity #60486.
 - b. The investment in the NG Share Rights was a “sound investment” that would be better than the investment in NA Annuity #60486.
 - c. The NG Share Rights would produce a high yield for PD’s and DD’s retirement.
 29. The NG Share Rights described above were “securities” within the meaning of Section 102(t) of the 1972 Act, 70 P.S. § 1-102(t).
 30. Miles was a “person” offering for sale the NG Share Rights in Pennsylvania within the meaning of Section 102(n) of the 1972 Act, 70 P.S. § 1-102(n).

31. The NG Share Rights were (a) not registered under Section 201 of the 1972 Act, 70 P.S. § 1-201; (b) not exempt from registration under Section 202 of the 1972 Act, 70 P.S. § 1-202; (c) not federally covered securities; and further, the securities transactions relating to the NG Share Rights were not exempt from registration under Section 203 of the 1972 Act, 70 P.S. § 1-203.
32. In the offer and sale of the NG Share Rights, Miles failed to provide the PA Residents with any disclosure documents regarding the NG Share Rights, which disclosure would have been material for a reasonable investor to make an informed decision. To the extent that Miles did not have disclosure documents, Miles failed to disclose their nonexistence, which would have been material for a reasonable investor to make an informed investment decision.
33. In the offer and sale of the NG Share Rights, Miles omitted to state the following material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading:
 - a. That Miles was the owner of the NG Share Rights.
 - b. That the NG Share Rights were subject to restrictions on transferability and resale.
 - c. That the NG Share Rights were highly speculative in nature.
 - d. That the NG Share Rights were only suitable for accredited investors who can afford the risk of the total loss of their investment and who have no need for liquidity.
 - e. That Miles was no long registered as an agent under Section 301 of the 1972 Act.
 - f. That the per share value at which Miles sold the NG Share Rights was arbitrary.
 - g. That there was no market the NG Share Rights.

34. Miles failed to disclose the following material information concerning some or all of the following to the PA Residents including, but not limited to:
- a. The financial condition of Netgate.
 - b. The financial condition of Intellamed.
 - c. The financial risk of investing in the NG Share Rights.
 - d. The identity and relevant background of the corporate officers of Netgate.
 - e. The operating history of Netgate.
 - f. The identity and relevant background of the corporate officers of Intellamed.
 - g. The operating history of Intellamed.
 - h. That the NG Share Rights were not registered in Pennsylvania pursuant to Section 201 of the 1972 Act, 70 P.S. § 201.

COUNTS

Violation of Section 201 of the 1972 Act, 70 P.S. §1-201

35. Paragraphs 1 through 34 are incorporated herein by reference as if set forth in their entirety.
36. By engaging in the acts and conduct set forth in paragraphs 13 through 18 and 22 through 31 of the Factual Allegations, Miles offered and sold the IT Stock and the NG Share Rights in wilful violation of Section 201 of the 1972 Act, 70 P.S. §1-201.

Violation of Section 401(a) of the 1972 Act, 70 P.S. §1-401(a)

37. Paragraphs 1 through 36 are incorporated herein by reference as if set forth in their entirety.
38. By engaging in the acts and conduct set forth in paragraphs 12 through 34 of the Factual Allegations, Miles has, in connection with the offer, sale or purchase of a security in the

State, directly or indirectly employed a device, scheme or artifice to defraud, in wilful violation of Section 401(a) of the 1972 Act, 70 P.S. § 401(a).

Violation of Section 401(b) of the 1972 Act, 70 P.S. §1-401(b)

39. Paragraphs 1 through 38 are incorporated herein by reference as if set forth in their entirety.
40. By engaging in the acts and conduct set forth in paragraphs 12 through 34 of the Factual Allegations, Miles has, in connection with the offer, sale or purchase of a security in the State, directly or indirectly, made untrue statements of material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, in wilful violation of Section 401(b) of the 1972 Act, 70 P.S. §1-401(b).

Violation of Section 401(c) of the 1972 Act, 70 P.S. §1-401(c)

41. Paragraphs 1 through 40 are incorporated herein by reference as if set forth in their entirety.
42. By engaging in the acts and conduct set forth in paragraphs 12 through 34 of the Factual Allegations, Miles has, in connection with the offer, sale or purchase of a security in the State, engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon any person, in wilful violation of Section 401(c) of the 1972 Act, 70 P.S. §1-401(c).

Violation of Section 512(a) of the 1972 Act, 70 P.S. §1-512(a)

43. Paragraphs 1 through 42 are incorporated herein by reference as if set forth in their entirety.

44. By engaging in the acts and conduct set forth in paragraphs 7 of the Background and 12 through 34 of the Factual Allegations, Miles has wilfully violated a PSC Order.

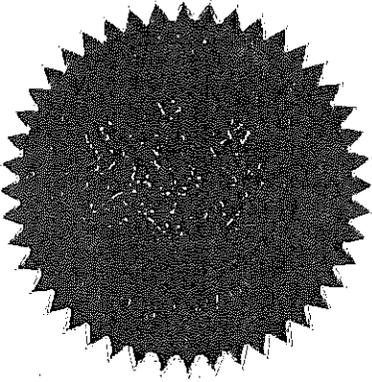
SANCTIONS AND REMEDIES

WHEREAS, the Bureau respectfully requests the penalties and relief pursuant to its authority under the 1972 Act:

1. That an order be issued pursuant to Section 512 of the 1972 Act, 70 P.S. § 1-512, permanently barring Miles from:
 - a. Representing an issuer offering or selling securities in this State;
 - b. Acting as a promoter, officer, director or partner of an issuer (or an individual occupying a similar status or performing similar functions) offering or selling securities in this State or of a person who controls or is controlled by such issuer;
 - c. Being registered as a broker-dealer, agent, investment adviser or investment adviser representative under Section 301 of the 1972 Act, 70 P.S. § 1-301;
 - d. Being an affiliate of any person registered under Section 301 of the 1972 Act; or
 - e. Relying upon an exemption from registration contained in Section 202, 203 or 302 of the 1972 Act, 70 P.S. § 1-202, 203 or 302;
2. That an order be issued revoking the agent registration of Miles;
3. That Miles be ordered to effect a rescission offer pursuant to Section 513 of the 1972 Act, 70 P.S. § 1-513
4. That Miles be ordered to pay the costs of the investigation pursuant to Section 602.1 (b) of the 1972 Act, 70 P.S. § 1-602.1 (b); and

5. That Miles be ordered to pay an administrative assessment of up to \$100,000 for each act or omission constituting a wilful violation of the 1972 Act, pursuant to Section 602.1(c) of the 1972 Act, 70 P.S. § 1-602.1 (c).

IT IS SO ORDERED.



FOR THE COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING AND SECURITIES
BUREAU OF SECURITIES LICENSING, COMPLIANCE
AND EXAMINATIONS

James Klutinoty, Chief, Western Region
Bureau of Securities Licensing, Compliance and ~~E~~xaminations

Date:

9/4/2014

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Docket No. : 14 0037 (SEC-OSC)

v.

GARY R. MILES

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing Order upon the parties below, who constitute the only parties of record in this proceeding, in accordance with the requirements of 1 Pa. Code §§ 33.35, 33.36 and 33.37:

BY CERTIFIED AND FIRST CLASS MAIL

Gary R. Miles
11530 East Lake Road
North East, Pennsylvania 16428

Dated this 8th day of September, 2014

Fran Beers, Administrative Officer
Office of Chief Counsel
FOR: Commonwealth of Pennsylvania
Department of Banking and Securities
Market Square Plaza
17 North Second Street, Suite 1300
Harrisburg, PA 17101
717-787-1471