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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING AND SECURITIES

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BANKING AND SECURITIES

COMMONWEALTH OF PENNSYLVANIA	:	
DEPARTMENT OF BANKING AND	:	
SECURITIES, BUREAU OF SECURITIES	:	
LICENSING, COMPLIANCE AND	:	Docket No. : 140037 (SEC-CAO)
EXAMINATIONS	:	
	:	
	:	
v.	:	
	:	
GARY R. MILES	:	

CONSENT AGREEMENT AND ORDER

The Commonwealth of Pennsylvania, acting through the Department of Banking and Securities ("Department"), Bureau of Securities Licensing, Compliance and Enforcement ("Bureau") has conducted an investigation of the business practices of Gary R. Miles ("Miles" or the "Respondent"). Based on the results of its investigation, the Bureau has concluded that Miles violated certain provisions of the Pennsylvania Securities Act of 1972, 70 P.S. § 1-101 et. seq. ("1972 Act") in connection with the offer and sale of securities in the Commonwealth of Pennsylvania. Miles, in lieu of litigation and without admitting or denying the allegations herein, and intending to be legally bound, hereby agrees to the terms of this Consent Agreement and Order ("Order").

BACKGROUND

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. 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.

4. 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.

5. 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."

6. 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 Regulation 305.019(c)(2)(ii), 10 Pa. Code § 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.

7. 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.

8. On or about June 30, 2010, Miles voluntarily resigned his "agent" registration with MidAmerica.

9. 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.

10. On or about December 2, 2013, Miles voluntarily resigned his “agent” registration with MidAmerica.

FACTUAL ALLEGATIONS

Sale of Intellamed Inc. Stock

11. 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.

12. 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”).

13. 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.

14. 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.

15. 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).

16. 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.

17. 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.

18. 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.

19. 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

20. 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”).

21. 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.

22. 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.

23. 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.

24. 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.

25. Miles instructed DD to make the check out for the purchase of the NG Stock to Miles.

26. 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.

27. 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).

28. 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.

29. 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.

30. 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 for the NG Share Rights.

31. 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.

VIOLATIONS

32. By engaging in the acts and conduct set forth in paragraphs 12 through 16 and 20 through 28 above, the Department finds that 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.

33. By engaging in the acts and conduct set forth in paragraphs 12 through 31 above, the Department finds that 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).

34. By engaging in the acts and conduct set forth in paragraphs 12 through 31 above, the Department finds that 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).

35. By engaging in the acts and conduct set forth in paragraphs 6 and 12 through 31 above, the Department finds that Miles has wilfully violated a PSC Order.

AUTHORITY

36. The Department has the authority to suspend or revoke a registration for a wilful violation of the 1972 Act or any order issued thereunder, pursuant to Section 305 (a)(v) of the 1972 Act, 70 P.S. § 1-305 (a)(v).

37. The Department has the authority in Section 512(a) of the 1972 Act to issue a statutory bar when it determines that a person willfully violated the 1972 Act or any rule or order thereunder, see 70 P.S. § 1-512(a) and 70 P.S. § 1-102(w).

38. The Department has the authority to order the payment of costs of an investigation for violations of Section 201 of the 1972 Act, 70 P.S. § 1-201, Section 305(a)(v) of the 1972 Act, 70 P.S. § 1-305 (a)(v) and Section 401 of the 1972 Act, 70 P.S. § 1-401 , *see* 70 P.S. § 1-602.1(b).

RELIEF

39. The Department hereby permanently REVOKES the agent registration of Miles pursuant to Section 305(a) of the 1972 Act, 70 P.S. § 1-305(a).

40. Pursuant to Section 512 (a) of the 1972 Act, 70 P.S. § 1-512(a), the Department hereby permanently BARS Miles from:

- a. Representing an issuer offering or selling securities in the Commonwealth of Pennsylvania;
- b. Acting as a promoter, officer, director or partner of an issuer (or individual occupying a similar status or performing similar functions), offering or selling securities in the Commonwealth of Pennsylvania 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;
- d. Being an affiliate of any person registered under Section 301; and/or

e. Relying upon any exemption from registration contained in Sections 202, 203, or 302.

41. Miles, contemporaneously with the submission of an executed Order, shall pay a portion of the Departments' investigative and legal costs in the amount of \$1,000. Payment shall be made by certified check or money order made payable to the "Department of Banking and Securities" and shall be mailed or delivered in person, to the Bureau of Securities Licensing, Compliance and Enforcement located at 17 N. Second Street, Suite 1300, Harrisburg, PA 17101.

42. Should Miles fail to pay the costs set forth in paragraph above, the sanctions set forth elsewhere in this Order shall continue in full force and effect until payment is made in full. However, this provision shall not be construed as affording Miles the option of either paying the costs or being indefinitely subjected to the sanctions.

43. Miles is ORDERED to comply with the 1972 Act and the Regulations adopted by the Department, and in particular Section 201 of the 1972 Act, 70 P.S. § 1-201, Section 305 of the 1972 Act, 70 P.S. § 1-305 and Section 401 of the 1972 Act, 70 P.S. § 1-401.

44. Should Miles fail to comply with any and all provisions of this Order, the Department may impose additional sanctions and costs and seek other appropriate relief subject to their right to a hearing pursuant to the 1972 Act.

FURTHER PROVISIONS

45. Consent. The Respondent hereby knowingly, willingly, voluntarily and irrevocably consents to the entry of this Order pursuant to the Bureau's authority under the 1972 Act and agrees that he understands all of the terms and conditions contained herein. The Respondent, by

voluntarily entering into this Order, waives any right to a hearing or appeal concerning the terms, conditions and/or penalties set forth in this Order.

46. Entire Agreement. This Order contains the entire agreement between the Department and the Respondent. There are no other terms, obligations, covenants, representations, statements, conditions, or otherwise, of any kind whatsoever concerning this Order. This Order may be amended in writing by mutual agreement by the Department and the Respondent.

47. Binding Nature. The Department and the Respondent, and all officers, owners, directors, employees, heirs and assigns of the Respondent intend to be and are legally bound by the terms of this Order.

48. Counsel. This Order is entered into by the parties upon full opportunity for legal advice from legal counsel.

49. Effectiveness. The Respondent hereby stipulate and agree that the Order shall become effective on the date that the Bureau executes the Order ("Effective Date").

50. Other Enforcement Action.

(a) The Department reserves all of its rights, duties, and authority to enforce all statutes, rules and regulations under its jurisdiction against the Respondent in the future regarding all matters not resolved by this Order.

(b) The Respondent acknowledges and agrees that this Order is only binding upon the Department and not any other local, state or federal agency, department or office regarding matters within this Order.

51. Authorization. The parties below are authorized to execute this Order and legally bind their respective parties.

52. Counterparts. This Order may be executed in separate counterparts, by facsimile and by PDF.

53. Titles. The titles used to identify the paragraphs of this document are for the convenience of reference only and do not control the interpretation of this document.

54. Finding. The Department finds that it is necessary and appropriate in the public interest and for the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the 1972 Act to issue this Order.

WHEREFORE, in consideration of the foregoing, including the recital paragraphs, the Commonwealth of Pennsylvania, Department of Banking and Securities, Bureau of Securities Licensing, Compliance and Enforcement and Gary R. Miles, intending to be legally bound, do hereby execute this Consent Agreement and Order.

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

James A. Klutinoty
Chief, Western Region
Department of Banking and Securities

Date: 3/13/15

GARY R. MILES



(Signature)

Gary R. Miles

(Print Name)

Date: 3-3-15