



**BEFORE THE COMMISSIONER OF COMMERCE AND INSURANCE
FOR THE STATE OF TENNESSEE**

TENNESSEE SECURITIES DIVISION,)
)
 Petitioner,)
)
 v.) **TSD No.: 19-024**
)
)
 KARMEL CAPITAL FOUNDERS FUND)
 II, LP,)
)
 Respondent.)

CONSENT ORDER

The Securities Division of the Tennessee Department of Commerce and Insurance (“Division”) and Karmel Capital Founders Fund II, LP (“Respondent”), by and through undersigned counsel, agree to the entry of this Consent Order in accordance with Tennessee Code Annotated (“Tenn. Code Ann.”) § 48-1-116 of the Tennessee Securities Act of 1980 (“Act”), as amended, and Tennessee Code Annotated §§ 48-1-101 to 48-1-201, subject to the approval of the Commissioner of the Department (“Commissioner”).

I. PARTIES

1. The Respondent is a pooled investment fund and issuer, with a principal place of business located at: 8910 University Center Lane, Suite 400, San Diego, CA 92122.
2. The Division is the lawful agent through which the Commissioner discharges the administration of the Act pursuant to Tenn. Code. Ann. § 48-1-115.

II. GENERAL STIPULATIONS

3. 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.

4. It is expressly understood that this Consent Order is in the public interest, necessary for the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act.

5. This Consent Order is executed by the Commissioner, the Division, and the Respondent to avoid further administrative action with respect to the findings of fact described herein. 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 or resolution of these proceedings.

6. The Respondent fully understands that this Consent Order will in no way preclude additional proceedings by the Commissioner against it for acts and/or omissions not specifically addressed in this Consent Order nor for facts and/or omissions that do not arise from the facts or transactions herein.

7. The Respondent fully understands that this Consent Order will in no way preclude proceedings by state government representatives, other than the Commissioner, for acts or omissions addressed specifically in this Consent Order, violations of law under statutes, rules, or regulations of the State of Tennessee that arise out of the facts, acts, or omissions contained in this Consent Order, or acts or omissions addressed specifically herein that result from the execution of this Consent Order.

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

III. FINDINGS OF FACT

9. On October 9, 2018, the Respondent effectuated its first sale of a security to a Tennessee investor, totaling seventy-five thousand dollars (\$75,000), without registering it with the Division, claiming an exemption, or providing the requisite notice filing and fee for a covered security.

10. On January 9, 2019, the issuer provided a filing to the Division that asserted it was a covered security under 17 C.F.R. § 230.506(b). In order to claim this covered security status under § 230.506(b), the issuer must comply with 17 C.F.R. § 230.502, which states “neither the issuer nor any person acting on its behalf shall offer or sell the securities by any form of general solicitation or general advertising[.]”

11. After receiving this filing, the Division examined the Respondent’s website and found that it engaged in general solicitation and general advertising via its website: www.karmelcapital.com. After such a finding, the Division notified the Respondent that it failed to meet the requirements of a covered security. Additionally, the Division requested that the Respondent provide it with any exemption from registration for which the Respondent qualified under Tenn. Code Ann. § 48-1-103.

12. In response, on August 2, 2019, the Respondent informed the Division that it was exempt from registration pursuant to Tenn. Code Ann. § 48-1-103(b)(14), which is also known as

the “accredited investor exemption,” and provided the Division with the requisite documentation and payment for the notice filing.

13. However, when an issuer asserts this accredited investor exemption, the issuer shall file a notice filing with the Division no later than fifteen (15) days after the first sale pursuant to Tenn. Code Ann. § 48-1-103(b)(14)(H).

14. Since the Respondent sold a security to Tennessee investor on October 9, 2018, the notice filing fee for the accredited investor exemption was due by October 24, 2018; however, the Respondent provided the Division with the requisite notice filing and payment approximately nine (9) months after it was due.

IV. CONCLUSIONS OF LAW

15. Pursuant to Tenn. Code Ann. § 48-1-115(a), the responsibility for the administration of the Act is vested in the Commissioner. The Division is the lawful agent through which the Commissioner discharges this responsibility pursuant to Tenn. Code Ann. § 48-1-115(b).

16. Tenn. Code Ann. § 48-1-116 provides that the Commissioner may make, promulgate, amend, and rescind such orders as are necessary to carry out the provisions of the Act upon a finding that such order is in the public interest, necessary for the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act.

17. Tenn. Code Ann. § 48-1-104(a)(1)-(3) provides that it is unlawful for any person to sell any security in this state unless: it is registered; exempt under Tenn. Code Ann. § 48-1-103; or it is a covered security.

18. Tenn. Code Ann. § 48-1-103(b)(14) sets forth the accredited investor exemption, if the required elements in Tenn. Code Ann. § 48-1-103(b)(14)(A) – (H) are met.

19. Tenn. Code Ann. § 48-1-103(b)(14)(H) requires the following: “[n]o later than fifteen (15) days after the first sale in this state, the issuer shall file with the [Commissioner a notice of transaction, on a form adopted by the [C]ommissioner, accompanied by a consent to service of process, a copy of the general announcement, if one is made regarding the proposed offering, and a nonrefundable filing fee of five hundred dollars (\$500)[.]”

20. The Findings of Fact detailed above show that the Respondent sold a security in this state without registering, or timely notice filing pursuant to Tenn. Code Ann. § 48-1-103(b)(14)(H). On October 9, 2018, the Respondent effectuated its first sale of a security to a Tennessee investor, totaling seventy-five thousand dollars (\$75,000); therefore, its notice filing was due no later than October 24, 2018. However, the Respondent did not properly notice file with the Division until August 2, 2019, approximately nine (9) months after the filing’s due date.

21. As such, the Respondent violated Tenn. Code Ann. § 48-1-104, which authorizes the assessment of civil penalties under Tenn. Code. Ann. § 48-1-104(b) “in an amount not to exceed ten thousand dollars (\$10,000) per violation, or in an amount not to exceed twenty thousand dollars (\$20,000) per violation if an individual who is a designated adult is a victim.”

22. The Commissioner finds the following relief appropriate, in the public interest, and necessary for the protection of investors.

V. ORDER

NOW, THEREFORE, based on the foregoing, including the Respondent’s waiver of the right to a hearing and appeal under the Act and the Tennessee Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-101 *et seq.*, and the Respondent’s admission to the jurisdiction of the Commissioner, the Commissioner finds that the Respondent agrees to the entry of this Consent Order to settle this matter as evidenced by the Respondent’s signature.

IT IS ORDERED, pursuant to Tenn. Code Ann. § 48-1-116(a), that the Respondent shall:

1. **COMPLY** with the Act, as amended, and all rules promulgated thereunder; and
2. **PAY A CIVIL PENALTY** to the State of Tennessee of five-hundred dollars (\$500.00) on behalf of the Respondent. The payment of such civil penalty shall be made by check payable to the Tennessee Department of Commerce and Insurance. Page one (1) of this Consent Order must accompany the payment for reference. Payment shall be remitted within thirty (30) days after entry of this Consent Order, mailed to the attention of:

**State of Tennessee
Department of Commerce and Insurance
Attn: Virginia Smith
Davy Crockett Tower
500 James Robertson Parkway
Nashville, Tennessee 37243**

3. The Respondent's failure to comply with the terms of this Consent Order, including the manner and method of payment of the civil penalty described above, shall result in further administrative disciplinary actions, which may include the assessment of additional civil penalties.

4. **IT IS FURTHER ORDERED** that this Consent Order represents the complete and final resolution of, and discharge of all administrative and civil claims, demands, actions, and causes of action by the Commissioner against the Respondent for violations of the Act with respect to the transactions involved in the above-referenced facts. However, excluded from and not covered by this paragraph, are any claims by the Division arising from or relating to the enforcement of the Consent Order provisions contained herein.

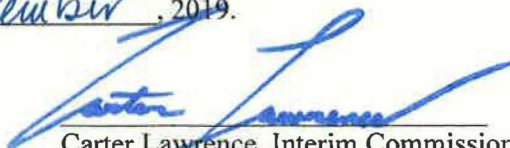
5. This Consent Order is in the public interest and the best interests of the Parties. It represents a settlement of the controversy between the Parties and is for settlement purposes only. By the signatures affixed below, or in two (2) or more counterparts, the Respondent affirmatively states the following: the Respondent freely agrees to the entry of this Consent Order; the

Respondent waives the right to a hearing on, or a review of, the matters, the Findings of Fact, and the Conclusions of Law underlying this Consent Order; and the Respondent encountered no threats or promises of any kind by the Commissioner, the Division, or any agent or representative thereof.

6. By signing this Consent Order, the Commissioner, Division, and the Respondent 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 as set forth in this Consent Order, are binding upon them.

7. This Consent Order may be executed in two (2) or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same document. The facsimile, email or other electronically delivered signatures of the parties shall be deemed to constitute original signatures, and facsimile or electronic copies shall be deemed to constitute duplicate originals.

ENTERED this 24 day of September, 2019.



Carter Lawrence, Interim Commissioner
Department of Commerce and Insurance

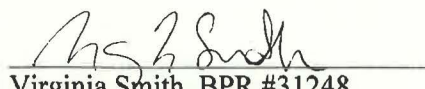
APPROVED FOR ENTRY:



Tony Wise on behalf of Karmel
Attorney for the Respondent
Karmel Capital Founders Fund II, LP



Elizabeth Bowling
Assistant Commissioner for Securities
Department of Commerce and Insurance



Virginia Smith, BPR #31248
Associate General Counsel for Securities
Department of Commerce and Insurance