STATE OF NEW JERSEY
BUREAU OF SECURITIES
P.O. Box 47029
Newark, New Jersey 07101
(973) 504-3600

IN THE MATTER OF:

Byerly Investment Management Inc.,
CRD # 155542

And

Richard H. Byerly
CRD # 848070.

SUMMARY ORDER

Byerly Investment Management Inc.
Avalon, NJ

Richard H. Byerly
Chester Springs, PA

Pursuant to the authority granted to the Chief of the New Jersey Bureau of Securities ("Bureau") by the Uniform Securities Law, as amended, L. 1997, c. 276, N.J.S.A. 49:3-47 et seq., ("Law"), more particularly, N.J.S.A. 49:3-58, and after careful review and due consideration of Bureau's investigation, the Order Accepting Offer Of Settlement, FINRA Department of Enforcement v. Richard H. Byerly (CRD No. 848070), Disciplinary Proceeding No. 2009017492201 ("Order") dated July 21, 2011, other records presented to the Bureau, and the Bureau's records, the Bureau Chief has determined that the investment adviser registration of Byerly Investment Management Inc. shall be **DENIED** and the agent registration of Richard H. Byerly shall be **REVOKED** for the reasons that follow:

1. Byerly Investment Management Inc. ("Byerly Inc.") (CRD # 155542) has a main address in Avalon, New Jersey. Its investment adviser registration status with the Bureau is currently pending.

2. Richard H. Byerly (CRD # 848070) ("Byerly"), residing in Chester Springs, Pennsylvania, had been registered with the Bureau from August 1983 to October 2010 as an agent of several broker-dealers. His most recent registration with the Bureau was as an agent of Boenning & Scattergood, Inc. (CRD # 100) from November 2009 to October 2010. Previously, Byerly was registered as an agent of RBC Capital Markets Corporation (CRD #31194) from September 2003 to November 2009. Byerly is the President and CEO of Byerly Investment Management Inc.

3. In a complaint dated October 26, 2010, FINRA charged Byerly with violations of NASD Conduct Rules 2310, 2510 and 2110, IM-2310-2 and FINRA Rules 8210 and 2010. Byerly submitted an Offer of Settlement ("Offer") to FINRA dated June 27, 2011, in which Byerly consented to findings without admitting or denying the allegations set forth in the complaint. FINRA and its National Adjudicatory Council ("NAC"), a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs accepted the uncontested Offer and an Order Accepting Offer of Settlement was issued on July 21, 2011 ("Order").

4. The findings in the Order state that Byerly, from in or about February 2006 through in or about November 2008, engaged in unsuitable, excessive trading in the accounts of two elderly customers. Both were retirees with conservative investment objectives living on fixed income who suffered collective losses of approximately $390,000 during the period of Byerly's excessive trading activity while Byerly received tens of thousands of dollars in

commissions. Byerly exercised discretion in these accounts as well as in the accounts of 12 other customers without written authorization from the customers or written acceptance of the accounts as discretionary from his member firm.

5. Notwithstanding the use of discretion in customer accounts, Byerly continuously misrepresented to his member firm in an annual compliance questionnaire over a three-year period that he did not maintain any accounts in which he had discretion.

6. Byerly, in response to a written request from FINRA staff seeking information from him regarding a customer complaint, submitted a letter to FINRA in which he misrepresented that he had received the customer's prior approval for all trades in the customer's account.

7. This conduct violated NASD Conduct Rules 2310, 2510 and 2110, IM-2310-2 and FINRA Rules 8210 and 2010.

8. Byerly consented to imposition of sanctions suspending him for two years from association with any FINRA member in any capacity, and ordering disgorgement of a portion of his ill-gotten gains and payment of partial restitution to the two elderly customers in the amount of $30,000.

9. The Bureau's own investigation revealed that Byerly engaged in dishonest or unethical conduct with regard to the accounts of his clients.

10. Byerly engaged in discretionary trading in the accounts of clients without first obtaining written authorization from the clients.

11. While registered as an agent of RBC Capital Markets Corporation (CRD #31194) ("RBC"), Byerly exercised discretion without prior written authorization in the accounts of at

least fourteen clients. Further, Byerly exercised discretion for the majority of the transactions in the accounts of eight of the fourteen clients.

12. While registered as an agent of Boenning & Scattergood, Inc., Byerly exercised discretion without prior written authorization in the accounts of at least three clients.

13. The investigation further revealed that Byerly engaged in active trading in the accounts of at least one elderly client for whom active trading did not fit their investment goals and objectives.

14. Client A was seventy-one (71) years old when he transferred an individual account and an IRA account to RBC in September 2003 with Byerly as the agent of record. Each of these accounts listed his investment objective as focusing on generating long-term capital growth. The total value of these accounts upon opening with RBC was approximately $613,000.

15. Byerly knew that Client A was retired and dependent on social security and a monthly $3,000.00 withdrawal from these investment accounts to live on.

16. Although listed as the agent of record on Client A's individual and IRA accounts at RBC since inception, Byerly allowed another RBC agent to make recommendations and execute discretionary authority in the accounts for the period in or around September 2003 through in or around June 2007.

17. From in or about July 2007 through in or about October 2008, Byerly engaged in approximately 119 transactions in Client A's accounts. Further, Byerly exercised discretion in these accounts without prior written authorization.

18. Among these transactions, Byerly recommended and effected purchases and sales of closed-end mutual funds in Client A's accounts resulting in short-term holding periods and commissions. Closed-end mutual funds are generally not intended for short-term investing. This activity was inconsistent Client A's investment objectives.

19. For example, in Client A's individual account, Byerly recommended and effected a 1,000 share purchase of a Nicholas Applegate closed-end fund on April 18, 2008. On July 14, 2008, or less than three months after the purchase, Byerly recommended and effected the sale of the Nicholas Applegate shares. This transaction was not suitable and resulted in a $3,723.74 loss for Client A's individual account.

RICHARD H. BYERLY IS THE SUBJECT OF AN ORDER BY A SELF-REGULATORY ORGANIZATION SUSPENDING HIM FROM A NATIONAL SECURITIES ASSOCIATION
N.J.S.A. 49:3-58(a)(1)
N.J.S.A. 49:3-58(a)(2)(vi)

1. The preceding paragraphs are incorporated by reference as though set forth verbatim herein.

2. Pursuant to N.J.S.A. 49:3-58(a):

> The bureau chief may by order deny, suspend, or revoke any registration if he finds: (1) that the order is in the public interest; and (2) that the applicant or registrant...(vi)...is the subject of an order of a...self-regulatory organization...suspending or expelling him from a...national securities or commodities association.

3. Having consented to a suspension from association with any FINRA member, Byerly has been suspended from a national securities association. Accordingly, the Bureau has proper grounds to revoke Byerly's registration as an agent pursuant to N.J.S.A. 49:3-58 (a)(2)(vi).

4. Based upon the foregoing and pursuant to N.J.S.A. 49:3-58 (a)(1), the revocation of Byerly's agent registration is in the public interest.

BYERLY INVESTMENT MANAGEMENT INC.'S OFFICER, DIRECTOR OR PERSON CONTROLLING BYERLY INVESTMENT MANAGEMENT INC. IS THE SUBJECT OF AN ORDER BY A SELF- REGULATORY ORGANIZATION SUSPENDING HIM FROM A NATIONAL SECURITIES ASSOCIATION
N.J.S.A. 49:3-58(a)(1)
N.J.S.A. 49:3-58(a)(2)(vi)

1. The preceding paragraphs are incorporated by reference as though set forth verbatim herein.

2. Pursuant to N.J.S.A. 49:3-58(a):

> The bureau chief may by order deny, suspend, or revoke any registration if he finds: (1) that the order is in the public interest; and (2) that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person controlling the broker-dealer or investment adviser: ...(vi)...is the subject of an order of a...self-regulatory

organization...suspending or expelling him from a...national securities or commodities association.

3. Having consented to a suspension from association with any FINRA member, Byerly, as President and CEO of Byerly Inc., has been suspended from a national securities association. Accordingly, the Bureau has proper grounds to deny Byerly Inc.'s registration as an investment adviser pursuant to N.J.S.A. 49:3-58 (a)(2)(vi).

4. Based upon the foregoing and pursuant to N.J.S.A. 49:3-58 (a)(1), the denial of Byerly Inc.'s registration is in the public interest.

RICHARD H. BYERLY HAS ENGAGED IN DISHONEST OR UNETHICAL PRACTICES IN THE SECURITIES BUSINESS
N.J.S.A. 49:3-58(a)(1)
N.J.S.A. 49:3-58(a)(2)(vii)

1. The preceding paragraphs are incorporated by reference as though set forth verbatim herein.

2. Pursuant to N.J.S.A. 49:3-58(a)(2)(vii): The bureau chief may by order deny, suspend, or revoke any registration if he finds: (1) that the order is in the public interest; and (2) that the applicant or registrant... (vii) has engaged in dishonest or unethical practices in the securities . . . business . . .

3. As discussed in detail above, Byerly has engaged in dishonest or unethical practices in the securities business and the Bureau has grounds to revoke Byerly's agent registration pursuant to N.J.S.A. 49:3-58(a)(2)(vii).

4. Based upon the foregoing and pursuant to N.J.S.A. 49:3-58(a)(1), the revocation of Byerly's agent registration is in the public interest.

BYERLY INVESTMENT MANAGEMENT INC.'S OFFICER, DIRECTOR, OR PERSON CONTROLLING BYERLY INVESTMENT MANAGEMENT INC. HAS ENGAGED IN DISHONEST OR UNETHICAL PRACTICES IN THE SECURITIES BUSINESS
N.J.S.A. 49:3-58(a)(1)
N.J.S.A. 49:3-58(a)(2)(vii)

1. The preceding paragraphs are incorporated by reference as though set forth verbatim herein.

2. Pursuant to N.J.S.A. 49:3-58(a)(2)(vii):

> The bureau chief may by order deny, suspend, or revoke any registration if he finds: (1) that the order is in the public interest; and (2) that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person controlling the broker-dealer or investment adviser: ...(vii) has engaged in dishonest or unethical practices in the securities . . . business . . .

3. As discussed in detail above, Byerly engaged in dishonest or unethical practices in the securities business and the Bureau has grounds to deny Byerly Inc.'s investment adviser registration pursuant to N.J.S.A. 49:3-58(a)(2)(vii).

4. Based upon the foregoing and pursuant to N.J.S.A. 49:3-58(a)(1), the denial of Byerly Inc.'s investment adviser registration is in the public interest.

BYERLY INVESTMENT MANAGEMENT INC.'S OFFICER, DIRECTOR OR PERSON CONTROLLING BYERLY INVESTMENT MANAGEMENT INC. IS THE SUBJECT OF AN EFFECTIVE REVOCATION ORDER OF THE BUREAU CHIEF

N.J.S.A. 49:3-58(a)(1)
N.J.S.A. 49:3-58(a)(2)(v)

1. The preceding paragraphs are incorporated by reference as though set forth verbatim herein.

2. Pursuant to N.J.S.A. 49:3-58(a)(2)(v):

> The bureau chief may by order deny, suspend, or revoke any registration if he finds: (2) that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person controlling the broker-dealer or investment adviser: .....(v) is the subject of an effective order of the bureau chief denying, suspending, or revoking registration as an...agent...

3. As Byerly is the subject of an effective order of the Bureau Chief, the Bureau Chief may deny Byerly Inc.'s registration as an investment adviser pursuant to N.J.S.A. 49:3-58 (a)(2)(v).

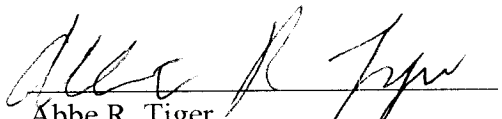
4. Based upon the foregoing and pursuant to N.J.S.A. 49:3-58 (a) (1), the denial of Byerly Inc.'s registration is in the public interest.

CONCLUSION

For the reasons stated above, it is on this 23rd day of NOVEMBER 2011

a. **ORDERED** that the investment adviser registration of Byerly Investment Management Inc. be **DENIED;**

b. And further **ORDERED** that Richard H. Byerly's registration as an agent registrant be **REVOKED.** Byerly may not reapply to the Bureau in any capacity until the restitution is paid pursuant to the FINRA Order.



Abbe R. Tiger
Chief, Bureau of Securities

NOTICE OF RIGHT TO HEARING

Pursuant to the Uniform Securities Law (1997), N.J.S.A. 49:3-47 et seq., specifically, N.J.S.A. 49:3-58(c), the Bureau Chief shall entertain on no less than three days notice, a written application to lift the summary denial and revocation on written application of the applicant or registrant and in connection therewith may, but need not, hold a hearing and hear testimony, but shall provide to the applicant or registrant a written statement of the reasons for the summary suspension.

This matter will be set down for a hearing if a written request for such a hearing is filed with the Bureau within 15 days after the respondent receives this Order. A request for a hearing must be accompanied by a written response, which addresses specifically each of the allegations set forth in the Order. A general denial is unacceptable. At any hearing involving this matter, an individual respondent may appear on his/her own behalf or be represented by an attorney.

Orders issued pursuant to this subsection to suspend or revoke any registration shall be subject to an application to vacate upon 10 days notice, and a preliminary hearing on the order to suspend or revoke any registration shall be held in any event within 20 days after it is requested, and the filing of a motion to vacate the order shall toll the time for filing an answer and written request for a hearing.

If no hearing is requested, the Order shall be entered as a Final Order and will remain in effect until modified or vacated. If a hearing is held, the Bureau Chief shall affirm, vacate or modify the order in accord with the findings made at the hearing.

NOTICE OF OTHER ENFORCEMENT REMEDIES

You are advised that the Uniform Securities Law provides several enforcement remedies, which are available to be exercised by the Bureau Chief, either alone or in combination. These remedies include, in addition to this action revoking your registration, the right to seek and obtain injunctive and ancillary relief in a civil enforcement action, N.J.S.A. 49:3-69, and the right to seek and obtain civil penalties in an administrative or civil action, N.J.S.A. 49:3-70.1.

You are further advised that the entry of the relief requested does not preclude the Bureau Chief from seeking and obtaining other enforcement remedies against you in connection with the claims made against you in this action.