

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

IN THE MATTER OF

Richard H. Byerly
(CRD# 848070); and

Byerly Investment Management Inc.
(CRD# 155542),

Respondents.

ADMINISTRATIVE CONSENT ORDER

BEFORE LAURA H. POSNER, BUREAU CHIEF

The New Jersey Bureau of Securities (the "Bureau") is the State agency with the responsibility to administer and enforce the Uniform Securities Law (1997), N.J.S.A. 49:3-47 et seq. ("Securities Law"). The Bureau Chief, Laura H. Posner ("Bureau Chief"), pursuant to N.J.S.A. 49:3-67 is authorized to issue such Orders as are necessary to carry out the provisions of the Securities Law, upon a finding that the action is necessary and appropriate in the public interest, for the protection of investors, or consistent with the purposes fairly intended by the provisions of the Securities Law.

Pursuant to the authority granted to the Bureau Chief under the Securities Law, and after investigation, careful review, and due consideration of the facts, and statutory provisions set forth herein, the Bureau Chief hereby finds that there is good cause, it is in the public interest, and it will preserve resources to enter into an Administrative Consent Order ("Consent Order") with Richard H. Byerly ("Byerly") (CRD# 848070) and Byerly Investment Management Inc. also transacting as Byerly Investment Management ("Byerly Inc.") (CRD# 155542) (collectively

“Respondents”), and Respondents hereby agree to resolve any and all issues in controversy regarding the specific conduct described herein on the terms set forth in this Consent Order.

The Bureau Chief makes the following findings of fact and conclusions of law, which Byerly and Byerly Inc. neither admit nor deny:

FINDINGS OF FACT

Respondents

1. Byerly Inc. is an investment adviser that maintains a principal office at 5 Great Valley Parkway, Suite 210, Malvern, Pennsylvania. Byerly Inc. has never been registered as an investment adviser in New Jersey. Byerly Inc.’s investment adviser registration was denied by the Bureau on November 23, 2011 pursuant to a Summary Order (“2011 Summary Order”), and reaffirmed by a Consent Order dated July 24, 2012 (“Consent Order”).

2. Byerly, residing in Avalon, New Jersey, is not currently registered with the Bureau in any capacity. He was registered with the Bureau from June 1986 to October 2010 as an agent of several broker-dealers. Byerly has not been registered in New Jersey in any capacity since October 4, 2010. He is currently an investment adviser representative of Byerly Inc. Byerly is Byerly Inc.’s President and only investment adviser representative.

Relevant Non-Party

3. Coastal Equities, Inc. (“Coastal”) (CRD# 23769) has been registered with the Bureau as a broker-dealer since July 2007, and maintains a principal address at 1201 N. Orange Street, Suite 729, Wilmington, Delaware.

Byerly’s Disciplinary History

4. In a complaint dated October 26, 2010, the Financial Industry Regulatory Authority (“FINRA”) charged Byerly with violations of NASD Conduct Rules 2310, 2510 and 2110, IM-2310-2 and FINRA Rules 8210 and 2010 (“FINRA Complaint”). 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 FINRA 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 (“FINRA Order”).

5. The findings in the FINRA Order state that, from in or about February 2006 through in or about November 2008, Byerly engaged in unsuitable, excessive trading in the accounts of two elderly customers. Byerly exercised discretion in these two retiree accounts, as well as in the accounts of twelve other customers, without written authorization from the customers or written acceptance of the accounts as discretionary from his member firm.

6. 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.

7. 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 complaining customer’s prior approval for all trades in the customer’s account.

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

9. 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.

10. Separately, the Bureau conducted its own investigation into Byerly. The investigation revealed that Byerly engaged in dishonest or unethical conduct with regard to the accounts of his clients. On November 23, 2011, based on the FINRA Order and the Bureau's own investigation, the then Bureau Chief entered the 2011 Summary Order against Byerly and Byerly Inc., which denied Byerly Inc.'s application for registration as an investment adviser and revoked Byerly's agent registration in New Jersey.

11. In July 2012, the Bureau and Byerly entered into the Consent Order resolving Byerly's contestation of the 2011 Summary Order. Byerly's counsel, Francis Skinner Esq., consented to the form, content and entry of the Consent Order on behalf of Byerly. Skinner is now the Chief Legal Officer of Coastal.

12. In the Consent Order, the then Bureau Chief made findings of fact which Byerly neither admitted nor denied. The findings of fact included the following:

a. while registered as an agent of RBC Capital Markets Corporation (CRD #31194), Byerly exercised discretion without prior written authorization in the accounts of at least fourteen clients;

b. Byerly exercised discretion for the majority of the transactions in the accounts of eight of the fourteen clients;

c. while registered as an agent of Boenning & Scattergood, Inc. (CRD# 100), Byerly exercised discretion without prior written authorization in the accounts of at least three clients; and

d. Byerly had engaged in active trading in the accounts of at least one elderly client for whom active trading did not fit the client's investment goals and objectives.

13. The Bureau Chief also made conclusions of law in the Consent Order, which Byerly neither admitted nor denied. The conclusions of law included findings that Byerly had engaged in several dishonest or unethical practices in the securities business.

14. Under the Consent Order, Byerly Inc.'s application for registration as an investment adviser remained denied by the Bureau. In addition, under the Consent Order, Byerly's agent registration with the Bureau was suspended for two years to run concurrent with the consensual FINRA suspension. Thereafter, Byerly could reapply to become registered as an agent of a broker-dealer with the Bureau provided that: (i) Byerly paid in full the restitution required by the FINRA Order; and (ii) Byerly paid the penalty assessed by the Bureau in the Consent Order. To date, Byerly has not re-applied to be registered as an agent with the Bureau.

Byerly Inc. Acted as an Unregistered Investment Adviser and Byerly Acted as an Unregistered Investment Adviser Representative in New Jersey

15. While Byerly Inc. became registered in Pennsylvania as an investment adviser on May 20, 2011, as set forth above in paragraph 1, Byerly Inc. has never been registered as an investment adviser in New Jersey. However, since at least October 2010, Byerly Inc. has conducted investment advisory business in and from New Jersey with Byerly acting as its sole investment adviser representative without registration with the Bureau.

16. Indeed, throughout the pendency of Byerly Inc.'s application to become registered as an investment adviser in New Jersey, the Bureau's investigation resulting in the entry of the 2011 Summary Order, and the negotiation of the July 2012 Consent Order, Byerly Inc. and Byerly were violating the Securities Law.

17. Specifically, since at least October 2010 through 2014, Byerly Inc. and Byerly had at least nine New Jersey clients for whom they provided investment advisory services for compensation.

18. Byerly Inc., through Byerly, entered into investment advisory contracts with each of these clients. Under the terms of the investment advisory contracts, Byerly Inc. agreed to manage the client accounts for an annual fee.

19. The clients' assets managed by Byerly Inc. under the terms of the investment advisory contract were and continue to be held at Coastal, in accounts in clients' names. Byerly Inc., through Byerly, executed and continues to execute trades on behalf of these clients through Coastal.

20. In 2014, the Bureau served Byerly and Byerly Inc. with an investigative subpoena. Thereafter, Byerly and Byerly Inc. represented to the Bureau that they reduced the number of their New Jersey clients to five clients.

CONCLUSIONS OF LAW

BYERLY INC. ACTED AS AN INVESTMENT ADVISER WITHOUT REGISTRATION IN VIOLATION OF N.J.S.A. 49:3-56(a) and (i)

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

22. Byerly Inc. from, to or in New Jersey, for direct or indirect compensation, engaged in the business of advising others as to the value of securities and/or as to the advisability of investing in, purchasing, selling or holding securities. Thus, Byerly Inc. acted as an investment adviser, as defined in N.J.S.A. 49:3-49(g), without being registered with the Bureau.

23. Byerly Inc. violated N.J.S.A. 49:3-56(i), which requires, among other things, that only persons registered with the Bureau may lawfully act as investment advisers. Byerly Inc. was required to be registered with the Bureau because it had at least nine New Jersey clients.

24. Each violation of N.J.S.A. 49:3-56(i) by Byerly Inc. is a separate violation and is cause for the imposition of a civil monetary penalty for each separate violation pursuant to N.J.S.A. 49:3-70.1.

**BYERLY ACTED AS AN INVESTMENT ADVISER REPRESENTATIVE
WITHOUT REGISTRATION IN VIOLATION OF N.J.S.A. 49:3-56(a)**

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

26. Byerly from, to or in New Jersey, acted as an unregistered investment adviser representative in New Jersey, as defined in N.J.S.A. 49:3-49(s).

27. Byerly violated N.J.S.A. 49:3-56(a), which requires, among other things, that only persons registered with the Bureau may lawfully act as investment advisers.

28. Each violation of N.J.S.A. 49:3-56(a) by Byerly is a separate violation and is cause for the imposition of a civil monetary penalty for each separate violation pursuant to N.J.S.A. 49:3-70.1.

**BYERLY INC. EMPLOYED BYERLY AS AN INVESTMENT
ADVISER REPRESENTATIVE WITHOUT
REGISTRATION IN VIOLATION OF N.J.S.A. 49:3-56(i)**

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

30. Byerly, on behalf of Byerly Inc. and without being registered, from, to or in New Jersey, acted as an investment adviser representative, as defined in N.J.S.A. 49:3-49(s).

31. Byerly Inc. violated N.J.S.A. 49:3-56(j), which requires, among other things, that "it shall be unlawful for any investment adviser required to be registered . . . to employ an investment adviser representative, unless that investment adviser representative is also registered."

32. Each violation of N.J.S.A. 49:3-56(j) by Byerly Inc. is a separate violation and is cause for the imposition of a civil monetary penalty for each separate violation pursuant to N.J.S.A. 49:3-70.1.

IT IS on this 15th day of August, 2016 ORDERED AND AGREED that:

33. Richard H. Byerly and Byerly Inc. shall **CEASE AND DESIST** from further violations of the Securities Law, including N.J.S.A. 49:3-56(i); N.J.S.A. 49:3-56(a); and N.J.S.A. 49:3-56(j);

34. Richard H. Byerly and Byerly Inc. are **DENIED** all exemptions contained in N.J.S.A. 49:3-50, subsection (a), paragraph 9, 10, 11, and subsection (b);

35. The exemptions to the registration requirements provided by N.J.S.A. 49:3-56(b), N.J.S.A. 49:3-56(c), and N.J.S.A. 49:3-56(g) are hereby **REVOKED** as to Richard H. Byerly and Byerly Inc.

36. Respondent Byerly Inc. shall not and agrees not to apply for registration with the Bureau in any capacity for a period of ten years commencing from the date of entry of this Consent Order.

37. Respondent Richard H. Byerly shall not and agrees not to apply for registration with the Bureau in any capacity for a period of ten years commencing from the date of entry of this Consent Order.

38. Respondent Byerly Inc. shall establish a dedicated office located outside of New Jersey in a state where it is registered ("Non-NJ Office") from which Byerly Inc.'s advisory business shall be solely and/or exclusively conducted.

39. Respondents Byerly and Byerly Inc. may conduct business with the clients listed in Appendix A ("Appendix A Clients") as long as such business is not transacted from New Jersey and clients meet and execute any agreements and/or transactions while physically outside of New Jersey. However, Respondent Byerly may accept telephone calls in New Jersey initiated by clients when Byerly is not present at his Non-NJ Office. Appendix A Clients shall also certify in writing that they understand that Respondent Richard H. Byerly cannot meet or otherwise conduct business with them in New Jersey because he is not registered to do so. Appendix A Clients shall also certify in writing that they are fully aware and have been informed of Respondents' regulatory disciplinary history and the terms and conditions of this Consent Order and have been provided a copy of this Consent Order. A copy of the signed certifications by the Appendix A Clients shall be provided to the Bureau within ten days of entry of this Consent Order.

40. A civil monetary penalty may be imposed on Respondents pursuant to N.J.S.A. 49:3-70.1 for each violation of the registration provisions of the Securities Law of not more than \$10,000.00 for the first violation and not more than \$20,000.00 for each subsequent violation. In view of the specific facts of this case including, but not limited to, the statements and/or representations, whether sworn or unsworn, directly or indirectly made to the Bureau by Respondents at any time, including during settlement negotiations regarding the Respondents' finances, all of which are material to the Bureau Chief in entering into this Consent Order and assessing the civil monetary penalties, the civil monetary penalties are reduced. Respondents Richard H. Byerly and Byerly Inc. are jointly and severally assessed civil monetary penalties pursuant to N.J.S.A. 49:3-70.1 in the amount of \$100,000.00 for violations of N.J.S.A. 49:3-56(i); N.J.S.A. 49:3-56(a); and N.J.S.A. 49:3-56(j). In the event that:

(i) Respondents make each of the civil monetary penalties payments set forth in ¶ 41 below to the Bureau Chief in a timely manner; and (ii) a Triggering Event does not occur as set forth in ¶ 44, then \$67,500.00 of the civil monetary penalties will be considered suspended and not collected by the Bureau Chief.

41. The civil monetary penalties shall be paid, unless accelerated pursuant to this Consent Order, as follows:

- a. \$10,000.00, within 90 days of entry of this Administrative Consent Order;
- b. \$15,000.00 on or before December 31, 2016; and
- c. \$7,500.00 on or before June 30, 2017.

The penalty payments shall be deposited into the Securities Enforcement Fund, pursuant to N.J.S.A. 49:3-66.1. Payment shall be made in accordance with the provisions in this Consent Order.

42. All payments shall be made by certified check, bank check or an attorney trust account check payable to the "State of New Jersey, Bureau of Securities," and delivered to the Bureau of Securities, 153 Halsey Street, 6th Floor, Newark, NJ 07102, to the attention of the Bureau Chief.

43. Upon any Triggering Event defined in ¶44, the Bureau and/or Bureau Chief may:

- a. declare to Respondents that the unpaid portion of the civil monetary penalties is immediately due and payable; and/or

- b. take any action permitted by law.

44. A "Triggering Event" is defined to include the following circumstances:

- a. A violation or breach of this Consent Order by Respondents;

- b. Respondents' failure to make timely payments of the civil monetary penalties as set forth in ¶ 41;
- c. Respondents' failure to cooperate with the Bureau as set forth in ¶ 45;
- d. The failure of Respondents to establish a dedicated office outside New Jersey from which Byerly Inc.'s advisory business shall be solely and /or exclusively conducted;
- e. The failure of Respondents to provide the Bureau with signed certifications by the Appendix A Clients as set forth in ¶ 39; and/or
- f. The discovery by the Bureau Chief of the falsity of any material representations made by Respondents as set forth in ¶ 40.

45. Respondents shall cooperate with the Bureau in on-going matters, which are material to the Bureau. Respondents' cooperation shall include, but not be limited to: (a) Respondents voluntarily and promptly responding to the Bureau's requests for documents or evidence; (b) Respondents voluntarily and promptly attending any meetings requested by the Bureau, testifying at any deposition, hearing or trial; and (c) waiving any alleged privileges held by the Respondents with respect to: (i) BDIA Compliance LLC including, but not limited to, its principals and employees; (ii) Coastal Equities Inc.; and (iii) Skinner and Reiling, P.C. including, but not limited to, Frank Skinner and Charles Reiling.

ADDITIONAL PROVISIONS

46. Respondents agree that for purposes of this matter or future proceedings to enforce this Consent Order that this Consent Order shall have the same effect as if proven and ordered after a full hearing pursuant to N.J.S.A. 52:14B-1 et seq.

47. New Jersey law shall govern this Consent Order and enforcement thereof.

48. Nothing contained herein shall in any manner be construed to limit or affect any position that the Bureau or any other governmental agency, or any person may take in any future or pending action not specifically encompassed herein.

49. This Consent Order shall not bind any person not a party hereto, except as provided herein.

50. Respondents have read this Consent Order, understand it, and agree to be bound by its terms.

51. This Consent Order is fully integrated and contains the entire settlement terms between Respondents and the Bureau. No employee, attorney, official or representative of the Bureau or the State of New Jersey has made any additional promise or representation to Respondents regarding this Consent Order.

52. This Consent Order shall be deemed the final decision as to Respondents.

53. Respondents consent to the entry of this Consent Order and voluntarily waive an opportunity for a hearing after reasonable notice within the meaning of N.J.S.A. 49:3-58(c)(2).

54. Respondents voluntarily waive any right to assert any defense or to raise any challenge that they otherwise may have had to this Consent Order.

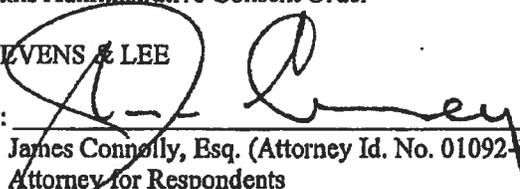
55. This Consent Order may be signed in counterparts and/or by facsimile, each of which shall be deemed an original.

NEW JERSEY BUREAU OF SECURITIES


LAURA H. POSNER
BUREAU CHIEF

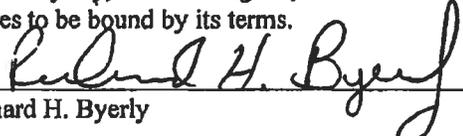
Consent to the Form, Content and Entry
of this Administrative Consent Order

STEVENS & LEE

By: 
James Connolly, Esq. (Attorney Id. No. 01092-1999)
Attorney for Respondents
Richard H. Byerly and
Byerly Investment Management Inc.

Dated: 8-4-2016

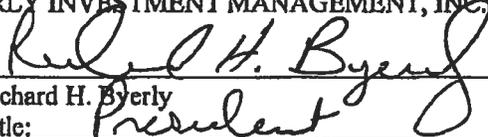
Byerly, the undersigned, has read this Administrative Consent Order, understands it, and
agrees to be bound by its terms.


Richard H. Byerly

Date: 8/8/16

Consent to the Form, Content
and Entry of this Administrative Consent Order:

BYERLY INVESTMENT MANAGEMENT, INC.

By: 
Richard H. Byerly
Title: President

Dated: 8/8/16

I/M/O Richard H. Byerly and Byerly Investment Management Inc.

APPENDIX A

James & Lyn K [REDACTED]

Michael M [REDACTED]

Fred & Janis D [REDACTED]

Judith & John B [REDACTED]

Joseph T [REDACTED]