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Director

July 24, 2012

BY OVERNIGHT MAIL

Honorable Mumtaz Bari-Brown, ALJ
Office of Administrative Law
33 Washington Street
Newark, NJ 07102

Re: **I/M/O Bverly Investment Management, Inc. et al.**
OAL Docket No. BOS 00783-2012 N

Dear Judge Bari-Brown:

Enclosed please find pursuant to Rule 1:1-19.1(c) of the Uniform Administrative Procedure Rules one original and two copies of a fully executed consent order in the above referenced matter. A self-addressed stamped envelope is enclosed for the Court's convenience in returning a copy of a filed consent order.

Thank you for Your Honor's attention to this matter.

Respectfully submitted,

JEFFREY S. CHIESA
ATTORNEY GENERAL OF NEW JERSEY

By: 
Isabella T. Stempler
Deputy Attorney General

Encls.

Cc: Clerk of Court (by overnight mail)(w/ encls.)
Francis J. Skinner, Esq. (by e-mail)(w/encl.)



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OFFICE OF THE ATTORNEY GENERAL
BUREAU OF SECURITIES
STATE OF NEW JERSEY
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NEWARK, NEW JERSEY 07101

IN THE MATTER OF: :
BYERLY INVESTMENT :
MANAGEMENT INC., :
CRD# 155542 :
AND :
RICHARD H. BYERLY :
CRD# 848070 :
RESPONDENTS. :
_____ :

NEW JERSEY OFFICE OF
ADMINISTRATIVE LAW
OAL DOCKET NO.: BOS 00783-2012 N

ADMINISTRATIVE CONSENT ORDER

This matter was commenced on November 23, 2011 through the issuance of a Summary Order ("Summary Order") by the Chief of the New Jersey Bureau of Securities, Abbe R. Tiger (the "Bureau" or "Bureau Chief"), against Byerly Investment Management Inc. (CRD # 155542) ("Byerly Inc.") and Richard H. Byerly (CRD # 848070) ("Byerly"), which denied the investor adviser registration of Byerly Inc. and revoked the agent registration of Byerly. Byerly and Byerly Inc., through counsel, answered the Summary Order and requested a hearing and, as such, the matter was transmitted by the Bureau to

the Office of Administrative Law ("OAL"). The Bureau, Byerly and Byerly Inc. now desire to settle this matter under the full terms of the settlement in this Administrative Consent Order pursuant to N.J.A.C. 1:1-19.1.

Findings of Facts and Conclusions of Law

The Bureau Chief makes the following findings of facts and conclusions of law, which Byerly neither admits nor denies:

1. Byerly Inc. has a main address in Avalon, New Jersey. Its investment adviser registration status with the Bureau was denied.
2. 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 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 ("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 ("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 generally are not intended for short-term

investing. This activity was inconsistent with 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, 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)

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

21. 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.

22. 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 suspend Byerly's registration as an agent pursuant to N.J.S.A. 49:3-58 (a) (2) (vi).

23. Based upon the foregoing and pursuant to N.J.S.A. 49:3-58(a)(1), the suspension 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)

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

25. 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.

26. 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).

27. 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)

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

29. 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

30. As discussed in detail above, Byerly has engaged in

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

31. Based upon the foregoing and pursuant to N.J.S.A. 49:3-58(a)(1), the suspension 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)

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

33. 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

34. 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).

35. 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 SUSPENSION ORDER OF THE BUREAU CHIEF
N.J.S.A. 49:3-58(a)(1)
N.J.S.A. 49:3-58(a)(2)(v)

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

37. 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

38. As Byerly is the subject of this Administrative Consent Order, 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).

39. 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.

THEREFORE, based on the foregoing findings of facts and conclusions of law,

IT IS on this 24TH day of JULY 2012, **ORDERED AND AGREED THAT:**

40. Byerly's agent registration with the Bureau is suspended for two (2) years to run concurrent with the FINRA suspension, which was effective August 1, 2011;

41. Byerly may reapply to the Bureau for agent registration when the FINRA suspension period is terminated, provided that the FINRA-ordered restitution is paid in full;

42. Byerly's registration with the Bureau at that time is not guaranteed but, if he is registered as an agent, such registration may be subject to, and conditioned upon, a heightened supervisory agreement, the terms of which will be determined at that time by the Bureau;

43. Byerly is assessed a civil monetary penalty of \$5,000 under N.J.S.A. 49:3-70.1, to be paid at the time Byerly reapplies for agent registration in New Jersey with the Bureau, but \$3,500 of the \$5,000 civil monetary penalty will be suspended provided Byerly has fully complied with the FINRA order and has provided the Bureau with written proof of such compliance.

44. Payment shall be made by certified funds or attorney trust account check, payable to the "State of New Jersey, Bureau of Securities," P.O. Box 47029, Newark, New Jersey 07101;

45. The investment adviser registration of Byerly Investment Management Inc. shall remain denied;

46. Counsel for Byerly and Byerly Inc. represent that he is authorized by Byerly and Byerly Inc. to sign this Administrative Consent Order;

47. This Consent Order shall not bind any person not a party thereto;

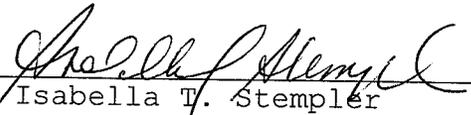
48. No employee or official of, or person representing the Bureau has made any additional promise or representation to Byerly or Byerly Inc. regarding this Consent Order; and

49. Pursuant to N.J.A.C. 1:1-19.1(d), this Administrative Consent Order shall be deemed the final decision as to Byerly and Byerly Inc.



ABBE R. TIGER, CHIEF
NEW JERSEY BUREAU OF SECURITIES

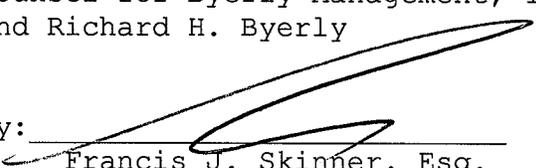
JEFFREY S. CHIESA
ATTORNEY GENERAL OF NEW JERSEY

By: 
Isabella T. Stempler
Deputy Attorney General

DATE: 7/23/12

I HEREBY CONSENT TO THE FORM
AND ENTRY OF THIS ADMINISTRATIVE
CONSENT ORDER:

Francis J. Skinner, Esq.
Skinner & Reiling, PC
52 Newton Avenue
Woodbury, New Jersey 08096
Counsel for Byerly Management, Inc.
and Richard H. Byerly

By: 
Francis J. Skinner. Esq.

DATE: 7/11/12