

**ADMINISTRATIVE PROCEEDING**  
**BEFORE THE**  
**SECURITIES COMMISSIONER OF SOUTH CAROLINA**

|  |   |                                  |
|--|---|----------------------------------|
| <b>IN THE MATTER OF:</b>                 | ) |                                  |
|  | ) |                                  |
| <b>Richard P. Krochmal and</b>           | ) | <b>ORDER TO CEASE AND DESIST</b> |
| <b>Mutual Modeling Associates, Inc.,</b> | ) |                                  |
|  | ) |                                  |
| <b>Respondent.</b>                       | ) | <b>File Number 11028</b>         |
| <hr/>                                    | ) |                                  |

WHEREAS, the Securities Division of the Office of the Attorney General of the State of South Carolina (the "Division"), pursuant to authority granted in the South Carolina Uniform Securities Act of 2005 (the "Act"), S.C. Code Ann. §§ 35-1-101 to 35-1-703 (Supp. 2010), on or around April 14, 2011, received information regarding alleged activities involving Richard P. Krochmal, ("Krochmal") and Mutual Modeling Associates, Inc. ("MMA") (collectively, "Respondents") which, if true, would constitute violations of the Act;

WHEREAS, the information led the Division to open and conduct an investigation into the activities of the Respondents pursuant to S.C. Code Ann. § 35-1-602 and this investigation is ongoing;

NOW, THEREFORE, in connection with the investigation, the Division determined that the Respondents have engaged in and may be about to engage in acts or practices constituting violations of the Act and hereby includes in this Order to Cease and Desist ("Order") a statement of the reasons for the Order, a statement of the civil penalty

sought as a result, and a notice that a hearing will be scheduled if a Respondent requests a hearing.

### **FACTUAL HISTORY**

1. Respondent Krochmal is a North Carolina resident with a last known address of 8811 Cotton Press Road, Charlotte, North Carolina 28277.
2. Respondent Krochmal maintains a place of business at 7066 St. Pauli Street, Fort Mill, South Carolina 29715.
3. Prior to December 31, 2009, Respondent Krochmal was registered as an investment adviser representative in New Jersey, but was not registered with the Division at any time relevant herein. Respondent Krochmal did not renew his New Jersey registration as an investment adviser representative following its expiration on December 31, 2009.
4. Respondent MMA is a New Jersey state registered investment adviser. Pursuant to a May 29, 2009, amendment filed by Respondent MMA in the CRD system, Respondent MMA's business address became 7066 St. Pauli Street, Fort Mill, SC 29715. Respondent MMA was not registered with the Division as a South Carolina investment adviser at any time relevant herein.
5. During the time period covered by the facts set forth herein, the Respondents engaged in business from within South Carolina by offering investment advice to individual investors.
6. On or about February 14, 2011, Respondent MMA submitted a Form ADV to the Division which represented that the business name of the investment adviser had changed to Mutual Modeling of the Carolinas, LLC.

7. On or about February 17, 2011, Respondent Krochmal submitted his initial application to become registered as an investment adviser representative to the Division.
8. Respondent MMA made no filings with the Division between May 29, 2009, and its application to become registered in South Carolina on February 14, 2011.
9. Respondent Krochmal made no filings with the Division between May 29, 2009, and his application to become registered in South Carolina on February 17, 2011.
10. On or about October 4, 2002, two investors (“Husband” and “Wife”) executed a contract with the Respondents for Respondent Krochmal to provide investment advisory services.
11. No subsequent contract or contract revision was executed by Husband and Wife.
12. The contract that was executed in 2002 specified the following fees would be charged by the Respondents: for asset values up to \$150,000, the annualized fee was stated to be 1.25%; for asset values from \$150,000 to \$500,000, the annualized fee was stated to be 1.00%; for asset values from \$500,000 to \$750,000, the annualized fee was stated to be .95%; and for asset values from \$750,000 and over, the annualized fee was stated to be .90%.
13. On or about June 5, 2004, Husband and Wife executed agreements with TD Ameritrade to open Individual Retirement Accounts granting trading authority to Respondent MMA and naming Respondent Krochmal as the trading agent for Respondent MMA.

14. Throughout the period January 1, 2009, until on or about March 11, 2011, Respondent Krochmal held powers of attorney to make trades in the accounts of investors Husband and Wife.
15. On or about May 26, 2009, Respondent Krochmal signed an Investment Advisor Application with Trade-PMR, Inc. ("TPMR")
16. The agreement between Respondent Krochmal and TPMR specified in part that "By completing this form you agree that all accounts under the advisor code listed below will be programmed with zero commission charges and that all commissions incurred will be the responsibility of you/your firm."
17. On or about July 6, 2009, Husband and Wife signed New Account Applications with TPMR naming Respondent MMA as the investment adviser for their accounts.
18. Throughout the period relevant herein, Respondent Krochmal made trades in the accounts of Husband and Wife.
19. Throughout the period relevant herein, and despite Husband and Wife's stated preference for a conservative investment strategy, Respondent Krochmal made excessive trades in their accounts.
20. Throughout the period relevant herein, Respondent Krochmal received fees from the accounts of Husband and Wife ranging from 4.10% to 25.24% on an annualized basis.
21. The fees received by Respondent Krochmal were far in excess of the fees disclosed to Husband and Wife at the time they signed the investment advisory agreement with the Respondents, and at no time during the relevant period did

Respondent Krochmal disclose to Husband and Wife the material increase in the fees being charged their accounts.

### **APPLICABLE LAW AND DETERMINATION**

1. The Commissioner has jurisdiction over this matter pursuant to Section 35-1-180 of the Act.
2. In connection with the offer or sale of securities in or from South Carolina, the Respondents violated S.C. Code Ann. §§ 35-1-403 and 35-1-404 by failing to register as an investment adviser or an investment adviser representative prior to transacting business in South Carolina as an investment adviser or investment adviser representative.
3. In connection with the offer or sale of securities in or from South Carolina, the Respondents violated S.C. Code Ann. § 35-1-501 by making untrue statements of material fact.
4. Based on the foregoing, the Division has determined that Respondents have engaged, are engaging, and/or are about to engage in an act, practice, or course of business constituting a violation of the Act or a rule adopted or order issued under the Act.

### **CEASE AND DESIST ORDER**

NOW THEREFORE, pursuant to S.C. Code Ann. § 35-1-604(a)(1) of the Act, IT IS HEREBY **ORDERED** that the Respondents:

- a. Cease and desist from providing investment advice for payment; from soliciting new clients; and from receiving fees in violation of the Act;

- b. Each pay a civil penalty in the amount of ten thousand dollars (\$10,000.00) and investigative costs of two thousand five hundred dollars (\$2,500.00) if this Order becomes effective by operation of law, or, if any Respondent seeks a hearing and a hearing officer or any other legal authority resolves this matter, pay a civil penalty in an amount not to exceed ten thousand dollars (\$10,000.00) for each violation of the Act by that Respondent, plus the actual costs of the investigation and proceeding.

**REQUIREMENT OF ANSWER AND NOTICE OF OPPORTUNITY FOR HEARING**

The Respondents are hereby notified that they have the right to a hearing on the matters contained herein. To schedule such a hearing, a Respondent must file a written Answer specifically requesting a hearing therein with the Securities Division, Post Office Box 11549, Rembert C. Dennis Building, Columbia, South Carolina, 29211-1549, attention: Thresechia Navarro, within thirty (30) days of notification of the issuance of this Order to Cease and Desist.

In the written Answer, a Respondent, in addition to requesting a hearing, shall admit or deny each factual allegation in this Order, shall set forth specific facts on which the Respondent relies, and shall set forth concisely the matters of law and affirmative defenses upon which the Respondent relies. A Respondent without knowledge or information sufficient to form a belief as to the truth of an allegation shall so state.

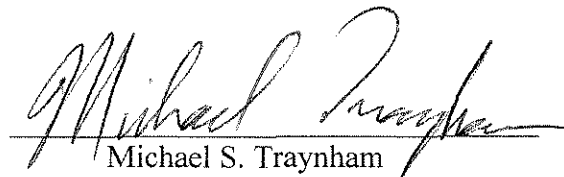
Failure by a Respondent to file a written request for a hearing in this matter within the thirty-day (30) period stated above shall be deemed a waiver by that Respondent of his right to such a hearing. Failure of a Respondent to file an Answer, including a request

for a hearing, shall result in this Order, including the stated civil penalty, becoming final as to that Respondent by operation of law.

**CONTINUING TO ENGAGE IN ACTS DETAILED BY THIS ORDER AND/OR SIMILAR ACTS MAY RESULT IN THE DIVISION'S FILING ADDITIONAL ADMINISTRATIVE ACTIONS AND/OR SEEKING FURTHER ADMINISTRATIVE FINES. WILLFUL VIOLATION OF THIS ORDER COULD RESULT IN CRIMINAL PENALTIES. REGARDING MATTERS DESCRIBED HEREIN, THIS ORDER DOES NOT PRECLUDE THE FILING OF PRIVATE CAUSES OF ACTION OR THE FILING OF CRIMINAL CHARGES.**

**IT IS SO ORDERED.**

This 21<sup>st</sup> day of July, 2011



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