

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

**IN THE MATTER OF:**

**Theodore J. Collins, IV**

**and**

**Trust Management Associates, LLC,**

**Respondents.**

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**ORDER TO CEASE AND DESIST**

**File Number 07032**

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. 2007), in or around September 10, 2007, received one or more complaints alleging unlawful securities transactions had occurred in this state involving Theodore J. Collins, IV ("Collins") and Trust Management Associates, LLC ("TMA") (collectively, the "Respondents");

WHEREAS, the information led the Division to open and conduct an investigation into the activities of the Respondents;

WHEREAS, the Act became effective on January 1, 2006.

WHEREAS, the Uniform Securities Act (the "Prior Act"), S.C. Code Ann. §§ 35-1-10 to 35-1-1590 (Supp. 2004), governs all actions or proceedings initiated based on conduct occurring before January 1, 2006;

WHEREAS, during the investigation the Division discovered the Respondents had engaged in one or more securities transactions in this State during the period the Prior Act was effective, and this investigation is ongoing;

NOW THEREFORE, in connection with the investigation, the Division determined that the Respondents have engaged and may be about to engage in acts or practices constituting violations of the Act and Prior 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 either Respondent requests a hearing.

### **FACTUAL HISTORY**

1. Respondent Collins is a Kentucky resident with a last known address of 5101 Olde Creek Way, Prospect, Kentucky 40059.
2. During the time period covered by the facts set forth herein, Respondent TMA was a Kentucky registered limited liability company doing business in South Carolina and Kentucky.
3. During the time period covered by the facts set forth herein, the primary business address for Respondent TMA was 5101 Olde Creek Way, Prospect, Kentucky 40059.
4. Incorporation papers filed with the Kentucky Secretary of State's Office indicate TMA is a manager-managed LLC managed by Respondent Collins and that Respondent Collins is TMA's registered Agent.
5. Respondent Collins also has represented himself as the Managing Director of Respondent TMA.
6. During the time period early 2005 through late summer 2005, Respondents solicited a South Carolina resident ("the Resident") to invest with Respondents in a Bank Secured Private Offering ("BSPO").

7. Respondents represented they had the contractual relationships, sources and abilities to place invested funds in a manner as to promote profits within a sound and secure investment environment through which the invested funds are not placed at risk.
8. Respondents represented returns of thirty-five percent would be achieved on funds invested.
9. Respondents used two known agents, one of whom was Collins, to assist in soliciting the investment from the Resident.
10. At the time the Resident was solicited, Respondents' agents that solicited the investment were not registered in the State of South Carolina to offer or sell securities or otherwise transact securities business in this State.
11. A "Letter of Understanding" prepared by or on behalf of the Respondents states that:
  - a. Monthly interest payments would begin within sixty business days of the receipt of the investment by TMA;
  - b. TMA has totally secured the investment; and
  - c. The duration of the BSPO is one year and thirty days.
12. On or about May 12, 2005, the "Letter of Understanding" was provided to the Resident.
13. Based on representations in the "Letter of Understanding," the Resident invested \$25,500 with Respondents on or about August 25, 2005.
14. At the time of the Resident's investment, Respondents' agents that effected the transaction were not registered in the State of South Carolina to offer or sell securities or otherwise transact securities business in this State.
15. The Resident's investment funds were provided to Respondents by means of a wire transfer on or about August 25, 2005, to JP Morgan Chase Bank account number 696206192.
16. JP Morgan Chase Bank account number 696206192, during the relevant time period, was open and in the name of Trust Management Associates, LLC.

17. As of February 16, 2006, no interest payment had been received by the Resident from the Respondents.
18. The Resident's last communication with the Respondents was on or about February 16, 2006, when the Resident was told by Collins that he would "get an update" for the Resident.
19. At the end of the BSPO period on September 25, 2006, the Resident did not receive the return of his investment from the Respondents.
20. TMA was administratively dissolved by the Kentucky Secretary of State's Office on November 1, 2007.
21. Upon information and belief, the Respondents used the Resident's funds to make payments to other investors.

#### **APPLICABLE LAW**

22. Pursuant to S.C. Code Ann. § 35-1-701(a) of the Act, the Prior Act governs actions or proceedings that are initiated based on conduct occurring before January 1, 2006.
23. Pursuant to S.C. Code Ann. § 35-1-20(15) of the Prior Act, the BSPO constitutes both an "investment contract" and a "security."
24. Pursuant to S.C. Code Ann. § 35-1-810 of the Prior Act, it is unlawful for any person to offer or sell any security in this State unless (a) it is registered under the Prior Act, (b) the security or transaction is exempted under Section 35-1-310 or 35-1-320, or (c) it is a federal covered security.
25. Pursuant to S.C. Code Ann. § 35-1-410 of the Prior Act, it is unlawful for any person to transact business in this State as an agent unless he is registered under the Prior Act or exempt from registration under the Prior Act.
26. Pursuant to S.C. Code Ann. § 35-1-410 of the Prior Act, it is unlawful for any issuer to employ an agent unless the agent is registered or exempt from registration under the Prior

Act.

27. Pursuant to S.C. Code Ann. § 35-1-340 of the Prior Act, the burden of proving an exemption or an exception from a definition is upon the person claiming it.

28. Pursuant to S.C. Code Ann. § 35-1-1210 of the Prior Act, it is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly, to:

- a. Employ any device, scheme, or artifice to defraud;
- b. Make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or
- c. Engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

29. Pursuant to S.C. Code Ann. § 35-1-602(a)(1) of the Act, the Securities Commissioner may conduct public or private investigations within or outside of this State which the Securities Commissioner considers necessary or appropriate to determine whether a person has violated, is violating, or is about to violate the Act or a rule adopted or an order issued under the Act, or to aid in the enforcement of the Act or in the adoption of rules and forms under the Act.

30. Regarding administrative remedies under the Act and Prior Act:

- a. Pursuant to S.C. Code Ann. § 35-1-604(a)(1) of the Act, if the Securities Commissioner determines that a person has engaged, is engaging, or is 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 or that a person has materially aided, is materially aiding, or is about to materially aid an act, practice, or course of business constituting a violation of the Act or a rule adopted or order issued

under the Act, the Securities Commissioner may issue an order directing the person to cease and desist from engaging in the act, practice, or course of business or to take other action necessary or appropriate to comply with the Act.

b. Pursuant to S.C. Code Ann. § 35-1-604(b) of the Act, an order under subsection (a) is effective on the date of issuance. Upon issuance of the order, the Securities Commissioner shall promptly serve each person subject to the order with a copy of the order and a notice that the order has been entered. The order must include a statement of any civil penalty or costs of investigation the Securities Commissioner will seek, a statement of the reasons for the order, and notice that, within fifteen (15) days after receipt of a request in a record from the person, the matter will be scheduled for a hearing.

c. Pursuant to S.C. Code Ann. § 35-1-60 of the Prior Act, the Securities Commissioner may make orders, including cease and desist orders, as are necessary to carry out the Prior Act.

d. Pursuant to S.C. Code Ann. § 35-1-1475 of the Prior Act, the Securities Commissioner may impose and collect an administrative fine against any person found to have violated any provision of the Prior Act, any rule or order promulgated by the Commissioner, or any written agreement entered into with the Commissioner in an amount not exceeding five thousand dollars (\$5,000.00) for each violation.

### **DIVISION'S DETERMINATION**

31. WHEREAS, based on the foregoing, the Division has determined that Respondent Collins and Respondent TMA have engaged, are engaging, or are about to engage in an act, practice, or course of business constituting a violation of the Act or the Prior Act or a rule adopted or order issued under the Act or Prior Act as follows:

- a. From early 2005 through late summer 2005, Respondents solicited, and on or about August 25, 2005, sold a security to a South Carolina resident.
- b. The security was not registered under the Prior Act, which was the securities act in effect at the time of the offer and sale.
- c. The Respondents used two agents, one of which was Respondent Collins, to assist in the solicitation and sale to the Resident.
- d. Neither of the agents used by the Respondents to assist in the solicitation and sale to the Resident were registered in this State as an agent.
- e. Neither Respondent has asserted to the Division any claim of exemption from registration with the Division, either on their own behalf, on behalf of either unregistered agent, or on behalf of the security.
- f. The Respondents violated S.C. Code Ann. § 35-1-810 of the Prior Act when they offered and sold a security in this State which was not registered under the Prior Act, exempted under S.C. Code Ann. § 35-1-310 or 35-1-320 of the Prior Act, or a federal covered security.
- g. The Respondents violated S.C. Code Ann. § 35-1-410 of the Prior Act when Collins, acting on behalf of himself and TMA, acted as an agent and offered and sold a security in this State without the benefit of an agent registration.
- h. The Respondents violated S.C. Code Ann. § 35-1-410 of the Prior Act when they used two unregistered agents to assist in the solicitation and sale to the Resident.
- i. The Respondents violated S.C. Code Ann. § 35-1-1210 of the Prior Act and engaged in securities fraud when they offered and sold a security in the State of South Carolina by use of untrue statements of material fact, including but not limited to the following false statements:

1. Returns of thirty-five percent would be achieved on funds invested;
  2. Monthly interest payments would begin within sixty business days of the receipt of the investment by TMA;
  3. TMA has totally secured the investment; and
  4. The duration of the BSPO is one year and thirty days.
- j. The Respondents violated S.C. Code Ann. § 35-1-1210 of the Prior Act and engaged in securities fraud when they offered and sold a security to a South Carolina resident in the State of South Carolina by omitting to state one or more material facts necessary to make statements made not misleading, including but not limited to the following statements:

1. The Resident's funds would be used to make payments to other investors; and
  2. The Resident's principal would not be repaid.
32. If this order becomes effective by operation of law, the Division seeks civil penalties of \$3,000 each from Collins and TMA. However, if a Respondent seeks a hearing and a hearing officer or any other legal authority resolves this matter, the Division reserves the right to seek an amount not to exceed \$10,000 for each violation of the Act and \$5,000 for each violation of the Prior Act and the actual cost of the investigation against either or both of the Respondents.

### **CEASE AND DESIST ORDER**

33. NOW THEREFORE, pursuant to S.C. Code Ann. § 35-1-604(a)(1) of the Act and S.C. Code Ann. §§ 35-1-60 and 35-1-1475 of the Prior Act, IT IS HEREBY **ORDERED** that Collins and TMA each:



- a. Cease and desist from offering and/or selling securities in this State in violation of S.C. Code Ann. § 35-1-301;
- b. Cease and desist from acting as an agent and employing unregistered agents in this State in violation of S.C. Code Ann. § 35-1-401;
- c. Cease and desist from violating S.C. Code Ann. § 35-1-501 by, in connection with the offer, sale, or purchase of a security, directly or indirectly, (a) employing a device, scheme or artifice to defraud or (b) making an untrue statement of a material fact; and
- d. Pay a civil penalty in the amount of \$3,000.00 each if this Order becomes effective by operation of law, or, if either Respondent seeks a hearing and a hearing officer or any other legal authority resolves this matter, pay a civil penalty and costs in an amount not to exceed \$5,000.00 for each violation of the Prior Act by each Respondent, an amount not to exceed \$10,000.00 for each violation of the Act by each Respondent, and the actual cost of the investigation.

34. It is further **ORDERED** that any exemption to which any Respondent might otherwise be entitled under S.C. Code Ann. § 35-1-401(b)(1)(D) or 35-1-401(b)(1)(F) is hereby revoked.


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

35. The Respondents are hereby notified that each has the right to a hearing on the matters contained herein. To schedule such a hearing, a Respondent must file 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 a written Answer specifically requesting a hearing therein.

36. In the written Answer, the 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.
37. 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 the Respondent of the right to such a hearing. Failure of any 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.
38. 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 UNDER S.C. CODE ANN. § 35-1-508 OF THE ACT.

**IT IS SO ORDERED.**

This 29<sup>th</sup> day of August, 2008

  
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