

ADMINISTRATIVE PROCEEDING
BEFORE THE
MARYLAND SECURITIES COMMISSIONER

IN THE MATTER OF: *

Moreland Associates, LLC, CRD # 297818 * Docket No. 2021-0123

and *

Richard T. Moreland, CRD # 2842925 *

Respondents *

* * * * * * * * * * * *

CONSENT ORDER

WHEREAS, the Securities Division of the Office of the Maryland Attorney General (the “Division”), pursuant to the authority granted in section 11-701 of the Maryland Securities Act, Title 11, Corporations and Associations Article, Annotated Code of Maryland (2014 Repl. Vol. and Supp. 2021) (the "Securities Act"), undertook an investigation into the securities-related activities of Moreland Associates, LLC (“MA LLC” or “Respondent MA LLC”) and Richard T. Moreland (“Moreland” or “Respondent Moreland”) (collectively, “Respondents”); and

WHEREAS, on the basis of that investigation the Maryland Securities Commissioner (the “Commissioner”) determined that the Respondents may have engaged in acts or practices constituting violations of the registration, anti-fraud, and dishonest and unethical provisions of the Securities Act; and

WHEREAS, the Commissioner and Respondents have reached an agreement in this action whereby, without admitting or denying any findings of fact or conclusions of law except to admit to the jurisdiction of the Commissioner in this matter and over them in this matter, Respondents consent to the terms of this Consent Order; and

WHEREAS, Respondents waive their right to a hearing and any rights they may have to seek judicial review or otherwise challenge or contest the terms and conditions of this Consent Order; and

WHEREAS, the Commissioner has determined that it is in the public interest to issue this Consent Order;

NOW, THEREFORE, THE COMMISSIONER FINDS, CONCLUDES, AND ORDERS:

I. JURISDICTION

1. The Commissioner has jurisdiction in this proceeding pursuant to section 11-801 of the Securities Act.

II. RESPONDENTS

2. Moreland maintains a place of business and residence in Monkton, MD. Moreland is the Chief Executive Officer and majority owner of MA LLC.

3. MA LLC is a Maryland limited liability company with a place of business in Monkton, MD. MA LLC is owned by Moreland.

III. FINDINGS OF FACT

Unregistered Investment Adviser Representatives

4. On or about June 10, 2018, Moreland filed with the Division an application for investment adviser registration on behalf of MA LLC.

5. MA LLC's application for investment adviser registration was made effective on November 5, 2018.

6. At the time of MA LLC's initial registration, Moreland was the sole principal and owner of MA LLC and the only person providing investment advice on behalf of MA LLC; thus, MA LLC was not required to register Moreland as an investment adviser representative.

7. The effective letter sent to MA LLC, however, advised MA LLC and Moreland of the requirement to register its investment adviser representatives in the event additional persons joined the firm:

Because this adviser is a sole proprietor or the essential equivalent of a sole proprietor (an "equivalent"), this registration **does not** include the registration of any person as an investment adviser representative of this adviser in Maryland. The Division does not require a sole proprietor or an equivalent to register as a representative if the proprietor or the equivalent is the **only** person giving investment advice or otherwise acting as an investment adviser representative on behalf of the adviser, and the proprietor or the equivalent is the sole owner, officer, director, principal and professional of the adviser.

If that situation changes by the addition of any person who will act as a representative of the adviser, or the addition of additional owner(s), the firm must amend its Form ADV, and register the proprietor and any additional persons acting as representatives, **before** that person performs any act that requires registration as an investment adviser representative. See Section 11-101 (i) of the Maryland Securities Act, Corporations and Associations Article, Title 11, Annotated Code of Maryland (2014 Repl. Vol. & Supp. 2018) for the definition of investment adviser representative. **It is the adviser's responsibility to file the appropriate documents and fees to ensure that all persons acting as representatives are properly registered before they begin any activity requiring registration.**

8. On or about November 4, 2019, Matthew Gelfand ("Gelfand") joined MA LLC as a managing director and as an investment adviser representative for MA LLC.

9. Although MA LLC no longer qualified as a sole proprietor or sole proprietor equivalent with the addition of Gelfand, MA LLC and Moreland failed to submit applications to register Moreland and Gelfand as investment adviser representatives in Maryland.

10. In or about July 2020, the Division sent MA LLC and Moreland an email informing the firm that it no longer was operating as a sole proprietorship or sole proprietorship equivalent, and asking them to explain why investment adviser representative registrations were not submitted on behalf of Moreland and Gelfand.

11. MA LLC and Moreland subsequently filed with the Division applications to register Moreland and Gelfand as investment adviser representatives. Moreland's investment adviser representative registration was made effective on July 31, 2020, and Gelfand's investment adviser representative registration was made effective on August 10, 2020.

12. From approximately November 4, 2019 to the dates of effectiveness of their investment adviser representative registrations, Moreland and Gelfand acted as unregistered investment adviser representatives for MA LLC.

Prohibited Borrowings from Advisory Clients

13. Section 11-302(a)(3) of the Securities Act makes it unlawful for an investment adviser or investment adviser representative to engage in dishonest and unethical practices. Code of Maryland Regulations 02.02.05.03B(6) sets forth specific examples of dishonest and unethical practices including borrowing monies from a client unless the client is a broker-dealer, an affiliate of the investment adviser, or a financial institution engaged in the business of loaning funds or securities.

14. According to Respondents, several years ago MA LLC's principals began discussing the establishment of a new non-advisory business.

15. According to Respondents, two of their advisory clients, husband and wife TD and MD, became aware of the new business venture, and twice expressed an interest in investing in the new business venture.

16. Respondent Moreland agreed to accept funding from TD and MD through the form of unsecured notes.

17. According to Respondent Moreland, at the time of the execution of the notes, a separate entity had not yet been established for the new business venture and, thus, the loans were made to him in his personal capacity.

18. On or about July 28, 2020, TD entered into a Personal Loan Agreement (“PLA”) with Moreland.

19. Under the PLA, TD agreed to loan Moreland \$9,000 at a “rate of ten percent (10%) simple interest per annum.”

20. Moreland agreed to pay TD \$9,900 on the one year anniversary of the PLA.

21. The PLA was unsecured.

22. On or about July 30, 2020, a wire in the amount of \$9,000 was wired from TD and deposited into the personal bank account of Moreland and his wife.

23. Moreland used those funds for his personal benefit.

24. Later in the year, TD and MD loaned an additional \$20,000 to Moreland.

25. On December 8, 2020, \$20,000 was withdrawn from MD’s brokerage account, an advisory account managed by MA LLC, and wired to the personal bank account held in the name of Moreland and his wife.

26. On or about December 14, 2020, the loan was memorialized when TD and MD entered into a convertible note with Moreland.

27. Under the convertible note, TD and MD agreed to loan Moreland \$20,000 at a rate of ten percent (10%) simple interest per annum.”

28. The convertible note contained a clause that gave the parties the option of discussing the convertibility of the note into equity in MA LLC: “Beginning on December 1, 2021, the Parties may enter into discussion as to whether Lender’s interest in the Agreement is to be converted into equity in Moreland Associates, LLC, (“Moreland”) an LLC organized in June, 2018, under the laws of the State of Maryland.”

29. In the event the agreement was not converted into equity in MA LLC, the convertible note provided that \$10,000 in principal plus simple interest of 10% would be due and payable on or before December 31, 2021, and the remaining \$10,000 in principal plus 10% simple interest would be due and payable on or before March 31, 2022.

30. The convertible note was unsecured.

31. Once the \$20,000 was deposited into Moreland’s bank account, Moreland used the funds for his personal benefit.

32. According to Moreland, although a separate entity had not been established for the new business venture, he had spent approximately three years developing the new business venture, and the funds received from MD and TD represented compensation to him for the time and effort he had devoted to developing the new business venture over those years.

33. A separate legal entity was not established for the business venture until July 13, 2021, subsequent to the Division’s inquiry into the loans.

34. Contrary to Moreland’s representations, TD recollects approaching Moreland about investing in MA LLC, not another business venture, which is consistent with the language in the \$20,000 note that references MA LLC.

35. Having learned about MA LLC through several discussions with Moreland, TD believed it was a good idea to get in on the ground floor of MA LLC, a business he believed had

great potential. According to TD, he and his wife understood that their funds would be used for personal compensation.

Omissions in Connection with the Offer and Sale of a Security and Providing Investment Advice

36. The Securities Act defines a security to include, among other things, a “note” or “evidence of indebtedness.”

37. The two loan agreements executed between Moreland and his advisory clients MD and TD were securities in the form of notes and/or evidences of indebtedness, with one of the agreements potentially convertible into an equity interest.

38. No written disclosures were provided to MD and TD in connection with their investments.

39. Neither MA LLC nor Moreland disclosed to MD and TD that the borrowing of monies from an advisory client is a dishonest and unethical practice.

40. Neither MA LLC nor Moreland disclosed to MD and TD the inherent conflict of interest in borrowing monies from an advisory client.

Failure to Comply with Custody Requirements

41. Section 11-302(f) of the Securities Act prohibits an investment adviser from taking or having custody of any funds or securities of any client if the Commissioner by rule prohibits custody.

42. COMAR 02.02.05.04 and 02.02.05.17 make it unlawful for an investment adviser to take or have custody of securities or funds of a client unless the investment adviser complies with the requirements set forth in the rules.

43. Moreland took custody of funds belonging to advisory clients MD and TD, including assets held in an advisory account managed by Respondents MA LLC and Moreland.

44. The funds were deposited into a personal account in the name of Moreland and his wife.

45. Although Respondents had custody of clients' funds, Respondent MA LLC did not notify the Commissioner that they had custody of clients' funds, did not segregate the clients' funds from those of their own, and did not engage an independent accountant to perform a surprise examination of the funds over which Respondents had custody, as required by COMAR 02.02.05.04.

46. Although Respondents had custody of clients' funds, Respondent MA LLC did not engage an independent CPA to audit the balance sheet of the adviser for calendar year 2020, as required by COMAR 02.02.05.17.

Failure to Timely Disclose Outside Business Activity

47. Section 11-411(d) of the Securities Act requires a registrant to promptly file a correcting amendment if the information contained in any document filed with the Commissioner is or becomes inaccurate or incomplete in any material respect. COMAR 02.02.05.12 provides that an investment adviser representative has a continuing obligation to update information required by Form U4 within thirty days of the event requiring the amendment.

48. Item 13 of Form U4 requires an investment adviser representative to amend his or her Form U4 to disclose whether the investment adviser representative is "currently engaged in any other business either as a proprietor, partner, officer, director, employee, trustee, agent or otherwise" and, if so, requires the investment adviser representative to provide details relating to the outside business activity.

49. On July 31, 2020, Moreland filed with the Division a Form U4 that disclosed that he had no outside business activities.

50. However, according to Moreland, at the time of the filing of his Form U4, he had already begun the development stages of his new business venture and received compensation in connection with his services in this business venture.

51. Moreland did not amend his Form U4 to disclose this outside business activity until August 10, 2021, which disclosure inaccurately listed the start date for this outside business activity as July 2021.

Maintenance and Enforcement of Compliance Policies and Procedures

52. As discussed above, MA LLC had custody of the funds of advisory clients TD and MD.

53. MA LLC's compliance manual addressed the circumstances under which MA LLC may have custody as well as the regulatory requirements that came along with having custody.

54. According to MA LLC's policies and procedures relating to custody, MA LLC would not "accept, hold, or maintain, directly or indirectly, custody of client funds or securities, or have any authority to obtain possession of them" and "no employee or supervised person of Moreland shall knowingly accept actual possession of any client funds or securities."

55. MA LLC's custody policies and procedures also set forth the regulatory requirements associated with having custody of client assets, including the requirement of segregating client funds in separate accounts under the client's name, engaging an independent CPA or accountant to annually perform a surprise examination of the client assets over which the adviser has custody, and engaging an independent CPA to conduct an audit of the adviser's balance sheet.

56. Although MA LLC had custody of MD's and TD's funds, MA LLC failed to comply with the custody-related requirements set forth in their compliance manual.

57. Additionally, MA LLC's compliance manual does not include procedures that address the registration requirements under Maryland law, the inclusion and enforcement of which may have prevented Respondents' failure to timely register its investment adviser representatives.

58. Further, MA LLC's compliance manual does not include procedures that address the requirement for its investment adviser representatives to amend their Form U4s to disclose material events, including outside business activities, the inclusion and enforcement of which may have prevented Moreland's failure to timely amend his Form U4 to disclose his outside business activity.

59. Respondent MA LLC has filed with the Division a Form ADV-W to withdraw its investment adviser registration in Maryland.

IV. CONCLUSIONS OF LAW

The Commissioner concludes that:

60. Respondents violated sections 11-301(2) and (3) of the Securities Act by failing to disclose to MD and TD, among other things, that borrowing funds from advisory clients was a dishonest and unethical practice.

61. Respondents violated sections 11-302(a)(2), (a)(3), (c) and (f) of the Securities Act and COMAR 02.02.05.03, 02.02.05.04 and 02.02.05.17 by failing to comply with the custody requirements set forth under COMAR 02.02.05.04 and 02.02.05.17, borrowing monies from advisory clients, and failing to disclose to MD and TD, among other things, that borrowing funds from advisory clients is a dishonest and unethical practice.

62. Respondent Moreland violated section 11-401(b) of the Securities Act by acting as an unregistered investment adviser representative.

63. Respondents violated section 11-402(b) of the Securities Act by employing unregistered investment adviser representatives.

64. Respondent Moreland violated section 11-411(d) and COMAR 02.02.05.12 by failing to timely disclose an outside business activity.

65. Respondent MA LLC violated section 11-411(c) and COMAR 02.02.05.13 by failing to enforce written supervisory guidelines reasonably designed to prevent MA LLC's related persons from borrowing funds from advisory clients, and failing to include procedures designed to prevent the adviser or its supervised persons from engaging in unregistered activities or undisclosed outside business activities.

66. Respondents violated sections 11-301(2) and (3), 11-302(a)(2), (a)(3), (c) and (f), 11-401(b), 11-402(b), and 11-411(c) and (d) of the Securities Act and COMAR 02.02.05.03, 02.02.05.04, 02.02.05.12, 02.02.05.13 and 02.02.05.17, and grounds exist to sanction Respondents and to revoke their investment adviser or investment adviser representative registrations.

V. SANCTIONS

NOW THEREFORE, IT IS HEREBY ORDERED, and Respondents expressly consent and agree:

67. Each Respondent shall permanently cease and desist from violating sections 11-301(2) and (3), 11-302(a)(2), (a)(3), (c), and (f), 11-401(b), 11-402(b), and 11-411(c) and (d) of the Securities Act and COMAR 02.02.05.03, 02.02.05.04, 02.02.05.12, 02.02.05.13, and 02.02.05.17.

68. Respondents, jointly and severally, are assessed a civil monetary penalty in the amount of \$10,000 for the violations set forth in this Order. Payment of the penalty shall be made

contemporaneously with the issuance of this Consent Order. Payment of the penalty shall be by check made payable to the "Office of the Attorney General."

69. Prior to the issuance of this Consent Order, Respondents have provided proof satisfactory to the Division that Respondents and/or entities controlled by Respondents have conducted a rescission offer with full disclosure of all material facts to the two investors/advisory clients to whom promissory notes were sold. Respondents have further provided evidence that the two investors/advisory clients have declined to accept the offer.

70. Respondents shall cease and desist from borrowing monies from advisory clients.

71. Prior to soliciting or raising funds from investors in the future, Respondents shall consult with and obtain the advice of competent securities counsel that said activities are fully in compliance with the Securities Act and the regulations promulgated thereunder.

72. Respondent MA LLC's registration is withdrawn as of the date of this Order.

73. If Respondent MA LLC applies for registration with the Division as an investment adviser or Respondent Moreland submits an application on behalf of another investment adviser (the "Applicant"), the registration of the Applicant shall be subject to conditions including, but not limited to, the following:

a. Applicant shall be required to retain an Independent Consultant approved by the Commissioner (the "Independent Consultant") to review and, if necessary, revise Applicant's supervisory guidelines to ensure compliance with the Securities Act. The Independent Consultant shall be retained no later than thirty (30) days from the date of the approval of the Applicant's registration in Maryland.

b. The Independent Consultant shall audit Applicant's advisory practice, no later than ninety (90) days after the Independent Consultant establishes or amends Applicant's supervisory guidelines, to verify that Applicant is operating in compliance with the Securities Act. Subsequently, the Independent Consultant shall annually audit Applicant's advisory practice for two (2) consecutive calendar years.

c. The Independent Consultant shall promptly report to the Division any discrepancies or deficiencies found during the audits, and report to the Division plans for correction necessary to address the discrepancies and deficiencies.

d. Applicant and Respondents shall implement any plans for correction recommended by the Independent Consultant to address any discrepancies or deficiencies.

74. For five (5) years following the date of this Order, Respondents shall provide a written report to the Division of any customer complaints, whether written or oral, within fifteen (15) days of receipt of the complaint. Respondents shall provide to the Division a written summary of any oral complaint.

75. Each Respondent shall comply fully with the Securities Act and the regulations promulgated thereunder.

VI. JURISDICTION RETAINED

76. Jurisdiction shall be retained by the Commissioner for such further orders and directions as may be necessary or appropriate for the construction or enforcement of this Consent Order.

77. If a Respondent fails to comply with any term of this Consent Order, the Commissioner may institute administrative or judicial proceedings against that Respondent to enforce this Consent Order and/or to sanction that Respondent for violating an Order of the Commissioner, and may take any other action authorized under the Securities Act or under any other applicable law, including the issuance of fines or penalties as provided by the Securities Act. In any such proceeding, the Division may also seek other sanctions for the violations that initiated this matter. For the purpose of determining those sanctions, the Findings of Fact and violations of the Securities Act set forth in this Consent Order shall be deemed admitted, and may be introduced into evidence against that Respondent.

78. In the event that judicial intervention in this matter is sought by the Commissioner or Respondents, subject matter jurisdiction will lie in the Circuit Court for Baltimore City pursuant to section 11-702 of the Securities Act. The Circuit Court for Baltimore City will have personal jurisdiction over Respondents pursuant to section 6-103(b) of the Courts and Judicial Proceedings Article, Title 6, Annotated Code of Maryland (2013 Repl. Vol. and 2020 Supp.). Venue will be properly in that Court pursuant to section 6-201(a) and 6-202(11) of that article.

79. The terms of this Consent Order may be vacated or modified only by a subsequent order issued by the Commissioner.

SO ORDERED:

**Commissioner’s Signature on File
w/Original Document**

Date: May 23 _____, 2022

Melanie Senter Lubin
Securities Commissioner

BY CONSENT:

Richard T. Moreland

Moreland Associates, LLC

by: Richard T. Moreland, CEO

_____, 2022

_____, 2022

Date

Date

Subscribed and sworn to before me
this _____ day of _____, 2022.

Subscribed and sworn to before me
this _____ day of _____, 2022.

Notary Public
My Commission expires _____

Notary Public
My Commission expires _____