



3. Benchmark Capital, Inc., Benchmark Capital Investment, LLC, and related companies Cornerstone Mortgage and Southern Bankers (collectively “the Entities Involved”) were corporations owned in whole or in part by Charles D. Candler of Knoxville, Tennessee.
4. Respondent Charles L. Smith was, at all times relevant, a resident of the State of South Carolina with a last known address of 117 Smith Road, Landrum, South Carolina, 29356.
5. Charles L. Smith was an owner and the manager of Benchmark Capital Investment, LLC.
6. Charles L. Smith was designated in the South Carolina Secretary of State’s records as agent for service of process for Benchmark Capital Investment, LLC during a portion of the relevant time period.
7. Charles L. Smith served as the local agent for Charles D. Candler and the Entities Involved, including Benchmark Capital Investment, LLC.
8. Charles L. Smith met with clients on behalf of Benchmark Capital Investment, LLC, and the other Entities Involved.
9. Charles L. Smith signed documents given to South Carolina residents who were sold investment products through Benchmark Capital Investment, LLC.
10. Neither Charles L. Smith, Charles D. Candler, Benchmark Capital Investment, LLC nor any of the other Entities Involved were licensed to sell insurance products in the State of South Carolina.
11. Neither Charles L. Smith, nor Charles D. Candler or Benchmark Capital Investment, LLC was licensed to sell securities in the State of South Carolina.
12. The investment products offered and sold by Charles L. Smith, Charles D. Candler and Benchmark Capital Investment, LLC were not registered or notice filed with the Division, nor has any exemption been claimed.

13. Respondent Smith on behalf of himself and Respondent Benchmark Capital Investment, LLC offered and sold products that he represented to be “annuities” to five or more South Carolina residents during the years 2002 to 2011.
14. In making the representations, Respondent Smith provided potential investors with “annuity applications,” contracts, and other documentation that appeared to be authentic.
15. The documents provided to investors were not issued by a legitimately capitalized and/or organized insurance company. Simply put, the documents were fabricated and fraudulent.
16. In connection with the offer and sale of the so-called “annuities,” Respondents told potential investors the products would pay a guaranteed annual rate of interest to the South Carolina residents.
17. To get the promised rate of return, no effort was required by an investor. The investment was passive.
18. In one or more cases, South Carolina residents took out mortgages on their primary residences to purchase the “annuities.”
19. The products represented to be annuities by Respondents were not legitimate insurance products.
20. The products represented to be annuities by Respondents were not issued or backed by a licensed insurance company.
21. Upon information and belief, the money invested by the South Carolina residents was not used to buy annuities or other investment products, but was instead converted to personal use by Charles D. Candler and/or one or more of his agents.
22. The products represented to be “annuities” by Respondents constitute “securities,” and more specifically, investment contracts, which are subject to regulation under the Act.

23. Benchmark Capital, Inc. and the other Entities Involved are now in bankruptcy.

WHEREAS, the investment products Respondents offered are “securities” within the meaning of S.C. Code Ann. § 35-1-102(29); and

WHEREAS, the securities were not registered, federal covered, or otherwise exempt from registration; and

WHEREAS, Respondents acted as agents in offering and selling the securities in South Carolina; and

WHEREAS, Respondents, in connection with the offer and sale of the securities did not disclose that the securities were not properly registered for sale in South Carolina; and

WHEREAS, Respondents in connection with the offer and sale of the securities:

(a) employed a device, scheme, or artifice to defraud;

(b) made untrue statements of material facts and/or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and/or

(c) engaged in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person; and

WHEREAS, based on the foregoing, the Division has determined that Respondents have engaged, are engaging, and/or are about to engage in acts and practices which violate S.C. Code Ann. §§ 35-1-301, 35-1-402 and 35-1-501; and

WHEREAS, after due deliberation, the Division finds that it is necessary and appropriate, in the public interest, for the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act to issue the following Order:

## **CEASE AND DESIST ORDER**

NOW THEREFORE, pursuant to S.C. Code Ann. § 35-1-604(a)(1), IT IS HEREBY ORDERED that Respondents and every successor, affiliate, control person, agent, servant, and employee of Respondents, and every entity owned, operated, or indirectly or directly controlled by or on behalf of Respondents:

- a. Immediately cease and desist from transacting business in this State in violation of the Act, and in particular, S.C. Code Ann. §§ 35-1-301, 35-1-402 and 35-1-501 thereof; and
- b. Pay a civil penalty in an amount not to exceed \$10,000 for each violation of the Act committed by that Respondent, and the actual cost of the investigation and proceedings. In the alternative, if a Respondent chooses to let this Order become effective by operation of law, that Respondent shall pay a civil penalty of \$50,000 for violating the Act as detailed in this Order.

### **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 with the Securities Division, Post Office Box 11549, Rembert C. Dennis Building, Columbia, South Carolina, 29211-1549, attention: Thresechia Navarro, within thirty (30) days after the date of service of this Order to Cease and Desist a written Answer specifically requesting a hearing. If a Respondent requests a hearing, the Division, within fifteen (15) days after receipt of a request in a record from a Respondent, will schedule the hearing.

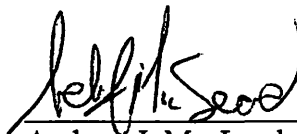
In the written Answer, the Respondent, in addition to requesting a hearing, shall admit or deny each factual allegation in this Order, shall set forth specific facts on which the Respondent

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.

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 the 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 and any assessed fees, 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 PROSECUTION. REGARDING MATTERS DESCRIBED HEREIN, THIS ORDER DOES NOT PRECLUDE THE FILING OF PRIVATE CAUSES OF ACTION OR THE FILING OF CRIMINAL CHARGES UNDER S.C. CODE ANN. § 35-1-508 OR ANY OTHER APPLICABLE CODE SECTION.

SO ORDERED, This 5<sup>th</sup> day of July, 2013.



Andrew J. MacLeod  
Assistant Attorney General  
Securities Division  
Office of the Attorney General  
Rembert C. Dennis Building  
1000 Assembly Street  
Columbia, S. C. 29201