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E. WALLY KINNEY
MEMBER

SOAH DOCKET NO. 312-10-1757 SSB DOCKET NO. IC10-01

IN THE MATTER OF THE
INVESTMENT ADVISER
REGISTRATION OF
TRITON FINANCIAL, LLC;
TRITON ACQUISITION, LP D/B/A
TRITON INSURANCE, LP;
CAPVEST, LLC; AND
TRITON OPPORTUNITY FUND, LLC

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Order No. IC10-REV-09

CONSENT ORDER

Be it remembered that Triton Financial, LLC (“Respondent Triton”), Triton Acquisition, LP d/b/a Triton Insurance, LP (“Respondent Triton Insurance”), Capvest, LLC (“Respondent Capvest”), and Triton Opportunity Fund, LLC (“Respondent Opportunity Fund”)(collectively “Respondents”), by and through Steven A. Harr, the court appointed Receiver, appeared before the Securities Commissioner of the State of Texas (“Securities Commissioner”) and, without admitting or denying any of the Findings of Fact and Conclusions of Law herein, consented to the entry of this order (“Order”).

FINDINGS OF FACT

1. Respondent Triton is a Texas limited liability company whose last known business address as shown by records of the Texas State Securities Board is 12117 Bee Caves Road, Suite 100, Austin, TX 78738. On or about June 28, 2006, Respondent Triton registered with the Securities Commissioner as an investment adviser. This registration is currently effective.
2. Respondent Triton Insurance is a Texas limited partnership whose last known business address as shown by records of the Texas State Securities Board is 12117 Bee Caves Road, Suite 100, Austin, TX 78738. Respondent Triton Insurance was formed on or about July 16, 2008. Respondent Triton Insurance’s General Partner is Tvest Group, LLC, a wholly owned Respondent Triton subsidiary.

3. Respondent Capvest is a Texas limited liability company whose last known business address as shown by records of the Texas State Securities Board is 12117 Bee Caves Road, Suite 100, Austin, TX 78738. Respondent Capvest was formed on or about July 18, 2006.
4. Respondent Opportunity Fund is a Delaware limited liability company whose last known business address as shown by records of the Texas State Securities Board is 12117 Bee Caves Road, Suite 100, Austin, TX 78738. Respondent Opportunity Fund's managing member is a Texas limited liability company, Triton Services, LLC d/b/a Triton Realty ("Triton Realty"). Triton Realty is wholly owned Respondent Triton subsidiary.

I. General Background

5. Since at least 2004, Respondent Triton sponsored dozens of investment opportunities and raised over \$50 million for these ventures. Triton-sponsored investment opportunities included interests in the following entities, among many others: Triton Athletic Center, LP; Triton Sports Center, LP; Triton Golf, LP; Boyce Lane, LP; Grant Villa Apartments, LP; Triton Plaza, LP; Triton Center, LP; Rundberg, LP; and Triton Bridge Fund, LP.
6. Respondent Triton and the sponsored partnerships used broker-dealers and Respondent Triton's own salesmen, including prominent former National Football League ("NFL") players and Heisman Trophy winners, to sell these opportunities to investors and market the partnerships' businesses.
7. Respondent Triton often told investors in the limited partnerships to expect quarterly distributions, usually 7% of the principal investment (annualized). In 2009, the distributions became infrequent and Respondent Triton received numerous questions from investors. Respondent Triton used new investor funds to provide distributions and return of principal to previous investors.

II. Sale of Interests in Triton Insurance

A. The Offering

8. From July 2008 through October 2009, the Triton Insurance Respondents¹ sold limited partnership interests in Respondent Triton Insurance ("Triton Insurance LP Interests"). Approximately \$8.4 million was raised through the sale of these limited partnership interests.
9. The Triton Insurance LP Interests are "securities" as defined by Section 4.A of the Texas Securities Act.

¹ For purposes of this Order, the "Triton Insurance Respondents" are Respondent Triton Insurance and Respondent Triton.

10. The primary disclosure document for this offering was the Triton Insurance, LP Confidential Investment Memorandum ("CIM"). The CIM stated that the offering size was \$12 million dollars, composed of 240 investor units at \$50,000 per unit.
11. The CIM specified that Respondent Triton Insurance would use most of the funds from the offering to acquire 7% cumulative convertible preferred stock issued by an affiliate, Triton Holdings, LP. ("Triton Holdings").
12. The CIM further stated that Triton Holdings' first acquisition would be National States Insurance Company ("NSIC"), an insurance company based in St. Louis, Missouri. The CIM further stated that Triton Holdings had entered into a Letter of Intent to purchase NSIC. Notably, the majority of the CIM discussed specific financial and operational details about NSIC.

B. Sales of Triton Insurance Interests before any Acquisition

13. From July 2008 through January 22, 2009, over \$6 million was raised through the sale of Triton Insurance LP Interests. The investors were provided the CIM that stated Respondent Triton Insurance would use the proceeds of the offering primarily for the purchase of NSIC through Triton Holdings.
14. In or about October 2008, Respondent Triton and Mr. Barton decided that the first acquisition by Triton Holdings would be a Nebraska-based equipment leasing company, Axis Capital, Inc. ("Axis")
15. However, the funds raised through the sale of Triton Insurance LP Interests were not held in escrow or otherwise maintained in Respondent Triton Insurance's account. Instead, the funds were diverted to Respondent Triton's affiliates and Kurt Branham Barton, Respondent Triton's former Managing Member. For example:
 - a. On August 19, 2008, Respondent Triton Insurance received two investor deposits totaling approximately \$200,000 in connection with the sale of limited partnership interests. Prior to these deposits, the balance in Respondent Triton Insurance's bank account was \$2,000. On August 20, 2008, \$110,000 was transferred from Respondent Triton Insurance to an account for Triton Athletic Center, LP.
 - b. By October 20, 2008, the Triton Insurance Respondents had raised millions of dollars through the sale of Triton Insurance LP Interests. On October 20, 2008, \$465,000 was transferred from Respondent Triton Insurance to Respondent Triton. Subsequently, \$250,000 was transferred from Respondent Triton to Mr. Barton's personal bank account.
16. Furthermore, investor funds from the sale of Triton Insurance LP Interests were used to provide returns to previous investors in other Triton-sponsored investments. For example:

- a. Through two separate transfers on August 28 and 29, 2008, \$335,000 of investor funds was moved from Respondent Triton Insurance's account to an account for Respondent Capvest. Prior to these deposits, Respondent Capvest's account balance was about \$1,200. An investor in a promissory note issued by Respondent Capvest was paid \$324,067.50 with the funds transferred from Respondent Triton Insurance.
 - b. On September 5, 2008, \$232,000 of investor funds was transferred from Respondent Triton Insurance to Respondent Triton's account. Prior to this transfer, the balance in Respondent Triton's account was under \$55,000. On September 5, 2008, \$216,000 was transferred from Respondent Triton's account to Respondent Capvest. On September 5, 2008, this \$216,000 was then wired to an investor who had purchased previously a promissory note issued by Respondent Capvest.
17. The Triton Insurance Respondents intentionally failed to disclose the following material facts to investors in Triton Insurance LP Interests:
 - a. Investment proceeds would be transferred to Respondent Triton's affiliates, to Mr. Barton, or to previous investors in other Triton-sponsored investments; and
 - b. Funds from previous investors had been transferred to Respondent Triton's affiliates, to Mr. Barton, or to previous investors in other Triton-sponsored investments.

C. Purchase of Axis Capital

18. In or about February 2009, Triton Holdings acquired Axis. Despite having raised over \$6 million through the sale of Triton Insurance LP Interests, Respondent Triton Insurance had only \$6,505 in its bank account as of January 27, 2009.
19. In order to fund the Axis acquisition, the Triton Insurance Respondents raised additional funds from investors, primarily through the issuance of promissory notes. Between January 29, 2009 and February 4, 2009, the Triton Insurance Respondents raised approximately \$2 million through the sale of promissory notes to investors.

D. Sales of Triton Insurance after Axis Acquisition

20. After the Axis acquisition, the Triton Insurance Respondents continued to sell Triton Insurance LP Interests. From February 10, 2009 through October 9, 2009, over \$2.4 million was raised through the sale of these limited partnership interests.
21. However, even after the Axis acquisition, the Triton Insurance Respondents continued to provide the CIM that represented Triton Holdings' first acquisition would be NSIC.

22. The Triton Insurance Respondent intentionally failed to amend the CIM to disclose material facts such as: the Axis purchase; the equipment leasing business; and risks associated with an investment in an equipment leasing company.
23. Furthermore, after the Axis acquisition, the Triton Insurance Respondents continued to divert investor funds to Mr. Barton, Respondent Triton's affiliates, and previous investors in other investments sold by Respondent Triton and Mr. Barton.
24. After the Axis acquisition, the Triton Insurance Respondents intentionally failed to disclose the following material facts to investors in the Triton Insurance LP Interests:
 - a. Respondent Triton Insurance had issued over \$2 million in promissory notes, which were outstanding;
 - b. Funds from previous investors had been transferred to Respondent Triton's affiliates, to Mr. Barton, or to previous investors in other Triton-sponsored investments; and
 - c. Investment proceeds would be transferred to Respondent Triton's affiliates, to Mr. Barton, or to previous investors in other Triton-sponsored investments.

III. Fraudulent Representations Related to Promissory Notes

25. On or about February 2, 2009, Respondent Capvest sold a \$1,000,000 promissory note issued by Respondent Capvest to an investor in Texas ("Investor A"). Respondent Capvest represented to Investor A that the funds invested in this promissory note would be used by Respondent Capvest to make a business loan to an entity named Heries, LP.
26. The Capvest promissory note sold to Investor A is a "security" as defined by Section 4.A of the Texas Securities Act.
27. In connection with the promissory note investment, Investor A was instructed to provide Capvest \$400,000 in funds. Mr. Barton represented that the additional \$600,000 investment would come from Investor A's previous investment in Triton Bridge Fund, LP.
28. Respondent Capvest did not use the \$400,000, or the \$600,000 previously invested by Investor A, to make a business loan to an entity named Heries, LP.
29. Instead, Respondent Capvest used most of the \$400,000 to fund Triton Holdings' acquisition of Axis.

30. On or about February 2, 2009, two checks totaling \$400,000 from Investor A were deposited into an account for Respondent Capvest. Prior to this deposit, the balance in that account was approximately \$12,700. The next day, Respondent Capvest transferred \$370,000 from Respondent Capvest to Respondent Triton. After the transfer, but still on February 3, 2009, Respondent Triton transferred the \$370,000 to Respondent Triton Insurance, which then used the funds in connection with the Axis acquisition.
31. On or about March 4, 2009, Respondent Capvest sold a \$500,000 promissory note issued by Respondent Capvest to a married couple living in California ("Investor B"). As with the note sold to Investor A, Respondent Capvest represented that the funds from this promissory note would be used by Respondent Capvest to make a business loan to an entity named Heries, LP.
32. The Capvest promissory note sold to Investor B is a "security" as defined by Section 4.A of the Texas Securities Act.
33. Respondent Capvest did not use the \$500,000 invested by Investor B to make a business loan to an entity named Heries, LP.
34. Instead, Respondent Capvest diverted the funds invested by Investor B to Respondent Triton's affiliates.
35. On March 6, 2009, Investor B's \$500,000 was deposited in Respondent Capvest's bank account. Prior to this deposit, Respondent Capvest's account balance was approximately \$66. Between March 6, 2009 and March 12, 2009, all of the funds invested by Investor B were transferred to Respondent Triton's account. From there, Respondent Triton transferred the money to various affiliates. For example, on March 6, 2009, Respondent Triton transferred \$300,000 to an account for Triton Athletic Center, LP.
36. Respondent Capvest represented that the promissory notes sold by Respondent Capvest to Investors A and B were collateralized by commercial and residential property and an E*Trade brokerage account belonging to Heries, LP and/or its supposed general partner.
37. In connection with the sale of the promissory note, Respondent Capvest provided Investors A and B certain documents, which Respondent Capvest represented were deeds of trust associated with specific residential and commercial property in Houston. These deeds of trust listed addresses that either do not exist and/or are not properties owned by a Heries, LP or its supposed general partner.

IV. Unauthorized Transfer of Client Assets and Related Fraud

38. Investor B entered into an investment advisory relationship with Respondent Triton. Based on this relationship, Respondent Triton was given some limited powers to transfer assets held in Investor B's brokerage account. However,

Respondent Triton was required to obtain authorization from Investor B before transferring any funds.

39. On May 27, 2009, Respondent Triton transferred or caused someone else to transfer \$188,632.06 from Investor B's brokerage account to Respondent Triton Insurance's bank account.
40. Investor B did not authorize this transfer, and was not aware of the transfer until Investor B reviewed the account records on or about May 30, 2009. Respondent Triton had not received prior authorization from Investor B.
41. The funds withdrawn from Investor B's account were diverted to Mr. Barton and a previous investor in a Triton-sponsored investment opportunity. Specifically:
 - a. Prior to the \$188,632.06 deposit, the balance in Respondent Triton Insurance's account on May 27, 2009 was approximately \$2,800.
 - b. On May 27, 2009, after the deposit of Investor C's funds, \$15,000 was transferred from Respondent Triton Insurance to one of Mr. Barton's personal accounts.
 - c. Furthermore, on May 27, 2009, \$175,000 was transferred to Respondent Triton's account. Prior to this transfer, Respondent Triton's account value was approximately \$68,000.
 - d. On May 27, 2009, Respondent Triton transferred \$105,000 to Respondent Capvest, which then transferred the \$105,000 to a previous investor in a Triton-sponsored investment opportunity.

V. Triton Opportunity Fund (TOF)

42. Respondent Opportunity Fund was purportedly formed to acquire real estate properties, which would then be managed by Triton Realty.
43. The TOF Respondents² sold interests in Respondent Opportunity Fund to investors through a network of broker-dealers that entered into agreements to sell the interests. Over \$3.5 million was raised through the sale of Triton Opportunity Fund interests.
44. The Triton Opportunity Fund interests are "securities" as defined by Section 4.A of the Texas Securities Act.
45. In connection with the sale of Triton Opportunity Fund interests, the TOF Respondents provided investors a "Confidential Private Placement Memorandum" dated April 23, 2008 and a "First Supplement to the Confidential Private Placement Memorandum" dated July 3, 2008. The TOF Respondents

² For purposes of this Order, the "TOF Respondents" include Respondent Opportunity Fund and Respondent Triton.

also provided the PPM and First Supplement to other broker-dealers that offered and sold interests in the Triton Opportunity Fund.

46. The TOF Respondents attached a document to the July 3, 2008 Supplement, and represented the document as an unaudited balance sheet for Respondent Triton. This document stated that, as of May 31, 2008, Respondent Triton had cash or cash equivalents of \$6,317,249.73.
47. Respondent Triton did not have cash or cash equivalents of \$6,317,249.73 as of May 31, 2008. The TOF Respondents knew or should have known that Respondent Triton did not have cash or cash equivalents of that amount.

VI. Responses to Texas State Securities Board

48. During the course of the Staff's investigation, the Staff requested that Respondent Triton provide certain accounting records reflecting investments in Triton-sponsored investments.
49. In response, Respondent Triton provided the Staff with documents reflecting information about investors and their investments in partnerships affiliated with Respondent Triton. Some of these documents were inaccurate. Respondent Triton knew or should have known that these documents were inaccurate.
50. For example, Respondent Triton provided the Staff with at least one document that indicated a significant "return of capital" to Investor A. However, Investor A never received the stated return of capital.
51. During the course of the Staff's investigation, the Staff also requested all promissory notes issued by Respondent Triton or entities affiliated with Respondent Triton.
52. Respondent Triton provided the Staff multiple documents purporting to be the promissory notes issued by Respondent Capvest.
53. Prior to submitting the purported promissory notes to the Staff, Mr. Barton altered the actual promissory notes or otherwise caused the notes to be altered by employees of Respondent Triton. Respondent Triton did not tell the Staff about the alterations made to the notes.
54. For example, Respondent Triton provided the Staff with a document that purported to be the \$1,000,000 February 2, 2009 promissory note Respondent Capvest sold to Investor A. However, the document provided to the Staff was not the actual promissory note, as the document had been altered to remove any reference to the purported collateral provided to Investor A.

CONCLUSIONS OF LAW

1. The Triton Insurance Respondents' intentional failures to disclose material facts in the sale of the Triton Insurance LP Interests constitute fraudulent practices in the sale of securities and fraudulent business practices.
2. Respondent Capvest's misrepresentations about the use of funds invested by Investors A and B were misrepresentations of a relevant fact, and constitute fraudulent practices in the sale of securities and are fraudulent business practices.
3. Respondent Capvest's misrepresentations about the purported collateral for the investments by Investors A and B in promissory notes were misrepresentations of relevant facts, and constitute fraudulent practices in the sale of securities and fraudulent business practices.
4. The unauthorized transfer of funds from Investor B's account by Respondent Triton constitutes a fraudulent practice with respect to rendering services as an investment adviser.
5. The TOF Respondents' misrepresentation of Respondent Triton's assets is a misrepresentation of a relevant fact, and constitutes a fraudulent practice in the sale of securities and a fraudulent business practices.
6. Respondent Triton's submission of inaccurate and altered documents to the Staff constitutes a fraudulent business practice.
7. Pursuant to Section 14.A(3) of the Texas Securities Act, the fraudulent business practices described above are bases for revoking the registrations of Respondent Triton with the Securities Commissioner.
8. Pursuant to Section 23.A of the Texas Securities Act, Respondents' fraudulent practices in the sale of securities are bases for the issuance of an Order requiring Respondents to cease and desist from engaging in fraudulent conduct in the sale of securities.

ORDER

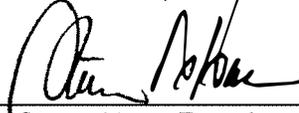
1. It is hereby ORDERED that the registration of Triton Financial, LLC is REVOKED.
2. It is further ORDERED that Triton Financial, LLC, Triton Acquisition, LP d/b/a Triton Insurance, LP, Capvest, LLC, and Triton Opportunity Fund, LLC CEASE AND DESIST engaging in fraudulent conduct in the sale of securities.

SIGNED AND ENTERED BY THE SECURITIES COMMISSIONER this 16th
day of March, 2010.

Denise Voigt Crawford
DENISE VOIGT CRAWFORD
Securities Commissioner

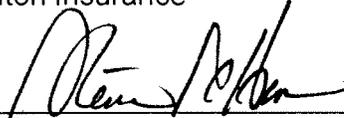
Respondents:

Triton Financial, LLC



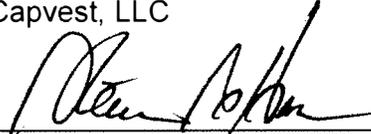
By: Steve Harr, Receiver

Triton Acquisition, LP d/b/a
Triton Insurance



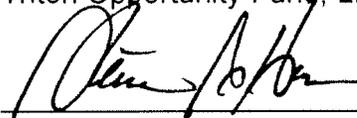
By: Steve Harr, Receiver

Capvest, LLC



By: Steve Harr, Receiver

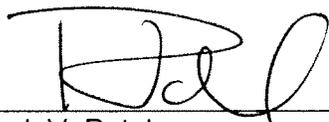
Triton Opportunity Fund, LLC



By: Steve Harr, Receiver

Approved as to Form:


Benette L. Zivley
Director
Inspections and Compliance Division


Ronak V. Patel
Attorney
Inspections and Compliance Division

ACKNOWLEDGMENT

On the 8th day of March, 2010, Triton Financial, LLC ("Respondent Triton"), by and through Steve Harr, the Receiver, personally appeared before me, executed the foregoing Order, and acknowledges that:

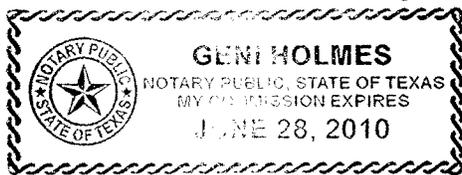
1. Steve Harr is duly authorized to enter into the foregoing Order on behalf of Respondent;
2. Steve Harr has read the foregoing Order;
3. Respondent Triton has been fully advised of its rights under the Texas Securities Act and the Administrative Procedure Act;
4. Respondent Triton knowingly and voluntarily consents to the entry of the foregoing Order and the Findings of Fact and Conclusions of Law contained therein; and,
5. Respondent Triton, by consenting to the entry of the foregoing Order, has knowingly and voluntarily waived its rights as set forth therein.

[affix notary seal here]

Geni Holmes

Notary Public in and for
the State of Texas

My commission expires on: 6/28/10



ACKNOWLEDGMENT

On the 8th day of March, 2010, Triton Acquisition, LP d/b/a Triton Insurance, LP ("Respondent Triton Insurance"), by and through Steve Harr, the Receiver, personally appeared before me, executed the foregoing Order, and acknowledges that:

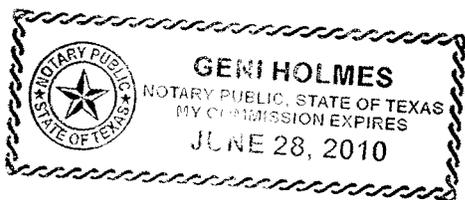
1. Steve Harr is duly authorized to enter into the foregoing Order on behalf of Respondent;
2. Steve Harr has read the foregoing Order;
3. Respondent Triton Insurance has been fully advised of its rights under the Texas Securities Act and the Administrative Procedure Act;
4. Respondent Triton Insurance knowingly and voluntarily consents to the entry of the foregoing Order and the Findings of Fact and Conclusions of Law contained therein; and,
5. Respondent Triton Insurance, by consenting to the entry of the foregoing Order, has knowingly and voluntarily waived its rights as set forth therein.

Geni Holmes

Notary Public in and for
the State of Texas

My commission expires on: 10/28/10

[affix notary seal here]



ACKNOWLEDGMENT

On the 8th day of March, 2010, Capvest, LLC ("Respondent Capvest"), by and through Steve Harr, the Receiver, personally appeared before me, executed the foregoing Order, and acknowledges that:

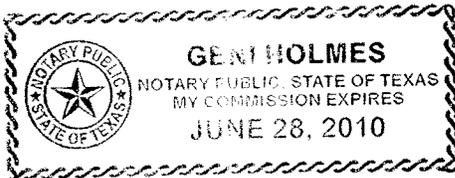
1. Steve Harr is duly authorized to enter into the foregoing Order on behalf of Respondent;
2. Steve Harr has read the foregoing Order;
3. Respondent Capvest has been fully advised of its rights under the Texas Securities Act and the Administrative Procedure Act;
4. Respondent Capvest knowingly and voluntarily consents to the entry of the foregoing Order and the Findings of Fact and Conclusions of Law contained therein; and,
5. Respondent Capvest, by consenting to the entry of the foregoing Order, has knowingly and voluntarily waived its rights as set forth therein.

Geni Holmes

Notary Public in and for
the State of Texas

My commission expires on: 6/28/10

[affix notary seal here]



ACKNOWLEDGMENT

On the 8th day of March, 2010, Triton Opportunity Fund, LLC ("Respondent Opportunity Fund"), by and through Steve Harr, the Receiver, personally appeared before me, executed the foregoing Order, and acknowledges that:

1. Steve Harr is duly authorized to enter into the foregoing Order on behalf of Respondent;
2. Steve Harr has read the foregoing Order;
3. Respondent Opportunity Fund has been fully advised of its rights under the Texas Securities Act and the Administrative Procedure Act;
4. Respondent Opportunity Fund knowingly and voluntarily consents to the entry of the foregoing Order and the Findings of Fact and Conclusions of Law contained therein; and,
5. Respondent Opportunity Fund, by consenting to the entry of the foregoing Order, has knowingly and voluntarily waived its rights as set forth therein.

[affix notary seal here]

Genitt Holmes

Notary Public in and for
the State of Texas

My commission expires on: 10/28/10

