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**STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
SECURITIES DIVISION**

IN THE MATTER OF DETERMINING) Order No.: S-11-0770-11-SC01
Whether there has been a violation of the)
Securities Act of Washington by:) STATEMENT OF CHARGES AND NOTICE OF INTENT
) TO ENTER ORDER TO CEASE AND DESIST, TO CHARGE
Mulligan Capital, Inc.;) COSTS, AND TO IMPOSE FINES
Mulligan Capital Management, LLC;)
Mulligan Partners, ERISA, LP)
John Mulligan)

Respondents.

THE STATE OF WASHINGTON TO: Mulligan Capital, Inc.
Mulligan Capital Management, LLC
Mulligan Partners, ERISA, LP
John Mulligan

STATEMENT OF CHARGES

Please take notice that the Securities Administrator of the State of Washington has reason to believe that Respondents, Mulligan Capital, Inc., Mulligan Capital Management, LLC, Mulligan Partners, ERISA, LP, and John Mulligan have each violated the Securities Act of Washington. The Securities Administrator believes those violations justify the entry of an order against Respondents to cease and desist from such violations and to charge costs pursuant to RCW 21.20.390, and, under RCW 21.20.395, to impose a fine. The Securities Administrator finds as follows:

TENTATIVE FINDINGS OF FACT

Respondents

1. Mulligan Capital, Inc. ("MCI") is an Oregon corporation with its principal place of business at 7185 SW Sandburg Street, Suite 115, Tigard, Oregon 97223. MCI offers discretionary asset management services and hourly financial planning. On May 10, 2010, MCI applied for registration as an investment adviser with the Securities Division. As of the date of this Statement of Charges, that application is pending.

1 2. Mulligan Capital Management, LLC (“MCM, LLC”) is a Delaware limited liability company
2 with its principal place of business at 7185 SW Sandburg Street, Suite 115, Tigard, Oregon 97223. On May
3 10, 2010, MCM, LLC applied for registration as an investment adviser with the Securities Division. As of
4 the date of this Statement of Charges, that application is pending.

5 3. Mulligan Partners, ERISA, LP (“MP, LP”) is a Delaware limited partnership with its principal
6 place of business at 7185 SW Sandburg Street, Suite 115, Tigard, Oregon 97223.

7 4. John Mulligan (“Mulligan”) is an Oregon resident. Mulligan is the sole owner of MCI and
8 MCM, LLC, the president of MCI, the managing member of MCM, LLC, and a salesperson of MP, LP.

9
10 Nature of the Conduct

11 *Provision of Investment Advisory Services by Mulligan Capital, Inc.*

12 5. Prior to March, 2007, MCI was located and registered as an investment adviser in Oregon. In
13 March, 2007, MCI relocated to Nebraska where it registered as an investment adviser. In October, 2010,
14 MCI returned to Oregon.

15 6. The Securities Division conducted a pre-licensing examination of MCI in April, 2011. During
16 this examination, Mulligan provided the Securities Division a list of Washington clients who had executed
17 investment advisory contracts with MCI between 2000 and April, 2011.

18 7. This list indicated that, by 2003, MCI had entered into investment advisory contracts with at
19 least six Washington residents who were not investment advisers registered under RCW chapter 21.20,
20 federal covered advisers, broker-dealers, banks, savings institutions, trust companies, insurance companies,
21 investment companies as defined in the Investment Company Act of 1940, employee benefit plans with
22 assets of not less than one million dollars, or governmental agencies or instrumentalities. Furthermore, at
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1 least six such Washington clients of MCI renewed investment advisory contracts with MCI during the first
2 quarter of 2011.

3 *Offer and Sale of Securities by Mulligan Partners, ERISA, LP*

4 8. MP, LP is a pooled investment vehicle that seeks to “generate consistently high risk-adjusted
5 returns in a manner that seeks capital appreciation through value style and equity yield.” According to MP,
6 LP’s offering materials, the offering is limited to “qualified persons as defined in Rule 501(h) of Regulation
7 D,” and was made pursuant to Regulation D, Rule 506.

8 9. MCM, LLC is MP, LP’s general partner. The offering materials represent that all investment
9 decisions will be made exclusively by MCM, LLC, in its sole and absolute discretion. However, MCM, LLC
10 entered into a sub-advisory agreement with MCI under which MCI acts as a subadviser to MP, LP. Pursuant
11 to this agreement, MCI was making all recommendations and directing MCM, LLC to execute trades. MCM,
12 LLC shared the management fee it collected with MCI for this service. This sub-advisory agreement was not
13 disclosed to investors in MP, LP’s offering materials.

14 10. Beginning no later than January, 2000, MP, LP has sold its limited partnership interests to at
15 least thirty investors in five states. MP, LP has sold at least \$748,000 of its interests to at least ten
16 Washington residents. At least six Washington investors were unaccredited when they purchased their
17 interest in MP, LP. Furthermore, at least six Washington investors were not “qualified clients” as defined in
18 Rule 205-3 of the Investment Advisers Act of 1940 at the time of their initial purchase.

19 11. Most of these Washington investors were clients of MCI and were solicited to invest in MP,
20 LP through their relationship with MCI. One investor was not a client of MCI and learned of MP, LP from
21 her husband who was a client of MCI and an investor in MP, LP.
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1 12. Mulligan sold interests in MP, LP to such Washington residents. Mulligan is not currently
2 registered as a securities salesperson or broker-dealer in the State of Washington and has not previously been
3 so registered.

4 13. Prior to May 7, 2010, MP, LP advertised its offering through a link entitled “Mulligan
5 Partners” on the website www.mulliganpartners.com. The advertisement discussed MP, LP’s investment
6 objective and a brief description of its investment strategy. The advertisement was readily accessible to the
7 general public.

8 14. On April 14, 2011, the Securities Division received a Notice of Exempt Offering of Securities
9 filed on behalf of MP, LP pursuant to Section 18(b)(4)(D) of the Securities Act of 1933 and WAC 460-44A-
10 506. Pursuant to WAC 406-44A-506, MP, LP was required to comply with the conditions of Regulation D.

11
12 *Investment Advisory Agreements between Non-qualified Clients and Mulligan Capital Management, LLC*

13
14 15. In or around January, 2000, Washington residents began signing MP, LP’s limited partnership
15 agreement, granting investment advisory authority over their investments in MP, LP to MCM, LLC.

16 16. The limited partnership agreement provided that MCM, LLC would charge a monthly
17 management fee at the end of each month equal to .10% of the net asset value of each investor’s book capital
18 account.

19 17. The limited partnership agreement also provided that MCM, LLC would be entitled to an
20 “incentive allocation” if MCM, LLC satisfied certain requirements. This incentive allocation was equal to
21 twenty percent of the “[n]et [n]ew [a]ppreciation...during that [f]iscal [y]ear, if any, achieved with respect to
22 the [b]ook [c]apital [a]ccount” of each investor.

1 18. This performance-based compensation plan was included in the limited partnership
2 agreements signed by the six Washington investors who were not qualified clients as defined in Rule 205-3
3 of the Investment Advisers Act of 1940.

4 19. Prior to approximately April, 2011, MCM, LLC did not maintain statements documenting the
5 advisory fees actually charged to its Washington clients. Because MCM, LLC did not maintain these records,
6 it cannot calculate the performance-based fees paid, if any, by Washington investors who were not qualified
7 clients as defined in Rule 205-3 of the Investment Advisers Act of 1940.

8 *False or Misleading Filings*

9 20. On or around December 10, 2010, the Nebraska Department of Banking and Finance
10 (“NDBF”) entered Findings of Fact, Conclusions of Law, and Order to Show Cause (the “NDBF order”)
11 against MCM, LLC, MCI, and Mulligan. The NDBF alleged, among other things, that MCM, LLC and MCI
12 had each filed documents with the NDBF that were false or misleading in a material respect, that MCM,
13 LLC had custody of client funds and/or securities but failed to submit audited financial statements to the
14 NDBF, and that both MCM, LLC and MCI failed to maintain required books and records, all in violation of
15 Nebraska securities laws or regulations.
16

17 21. The NDBF, MCM, LLC, MCI, and Mulligan settled the NDBF order by Consent Order on
18 September 16, 2011.

19 22. Between March 23, 2011 and August 4, 2011, MCM, LLC and MCI each filed five
20 amendments to their Forms ADV with the Investment Advisor Registration Depository (“IARD”) that did
21 not reflect the NDBF order.

22 23. Beginning April 22, 2011, the Securities Division requested in writing, on five occasions, that
23 MCM, LLC and MCI amend the responses to item 11.G on their Forms ADV Part 1 to reflect the NDBF
24 order. MCM, LLC and MCI never reported the NDBF order as a pending proceeding on their Forms ADV
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1 Part 1 during the period beginning thirty days after the NDBF order was served upon them and ending on
2 September 8, 2011 when MCM, LLC and MCI amended the responses to item 11.D(2) on their Forms ADV
3 Part 1 to reflect the Consent Order.
4

5 CONCLUSIONS OF LAW

6 Based upon the above Findings of Fact, the following Conclusions of Law are made:

7 1. MCI violated RCW 21.20.040(3) by entering into investment advisory agreements with at
8 least six Washington residents who were not investment advisers registered under RCW chapter 21.20,
9 federal covered advisers, broker-dealers, banks, savings institutions, trust companies, insurance companies,
10 investment companies as defined in the Investment Company Act of 1940, employee benefit plans with
11 assets of not less than one million dollars, or governmental agencies or instrumentalities while not registered
12 as an investment adviser or exempt from such registration in the State of Washington.

13 2. MCM, LLC violated RCW 21.20.030(1) by entering into at least six performance-based
14 compensation arrangements that did not comply with Securities and Exchange Commission Rule 205-3
15 under the Investment Advisers Act of 1940.
16

17 3. The offer or sale of limited partnership interests by MP, LP described above constitutes the
18 offer or sale of a security as defined at RCW 21.20.005(14) and (17).

19 4. The internet advertising discussed above violates the prohibition of general solicitation and
20 general advertising of 17 CFR 230.502(c). Therefore, MP, LP failed to meet the requirements necessary to
21 claim the exemption available under Rule 506 of the Securities Act of 1933 and WAC 460-44A-506.

22 5. The offer or sale of said securities is in violation of RCW 21.20.140 because no registration
23 for such offer or sale is on file with the Securities Administrator and no valid claim of exemption under
24 WAC 460-44A-506 exists.
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1 6. Mulligan violated RCW 21.20.040 by offering or selling said securities while not registered or
2 exempt from registration as a securities salesperson or broker-dealer in the State of Washington.

3 7. The offer or sale of said securities is in violation of RCW 21.20.010 because, as described in
4 paragraph nine of the Tentative Findings of Fact, MP, LP made misstatements of material facts or omitted to
5 state material facts necessary in order to make the statements made, in light of the circumstances under
6 which they were made, not misleading.

7 8. Pursuant to RCW 21.20.050, 21.20.450, and WAC 460-24A-047, the filings made by MCI
8 and MCM, LLC with IARD constitute filings with the director for purposes of RCW 21.20.350. MCI and
9 MCM, LLC each violated RCW 21.20.350 by making five filings with IARD after the entry of the NDBF
10 order that did not reflect the NDBF order.

11 **NOTICE OF INTENT TO CHARGE COSTS**

12 Pursuant to RCW 21.20.390, and based upon the Tentative Findings of Fact and Conclusions of Law,
13 the Securities Administrator intends to order that Mulligan Capital, Inc., Mulligan Capital Management,
14 LLC, and Mulligan Partners, ERISA shall be liable for and shall pay investigative costs of \$2,500.

15 **NOTICE OF INTENT TO IMPOSE FINES**

16 Pursuant to RCW 21.20.395, and based upon the above Tentative Findings of Fact and Conclusions
17 of Law, the Securities Administrator intends to order that Respondents Mulligan Capital, Inc., Mulligan
18 Capital Management, LLC, and Mulligan Partners, ERISA, LP shall each be liable for and shall each pay a
19 separate fine of \$5,000.
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21 **NOTICE OF INTENT TO ORDER THE RESPONDENTS TO CEASE AND DESIST**

22 Pursuant to RCW 21.20.390(1) and based upon the above Tentative Findings of Fact and Conclusions
23 of Law, the Securities Administrator intends to order that Mulligan Capital, Inc., its agents and employees,
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1 each shall cease and desist from violations of RCW 21.20.040 and RCW 21.20.350, that Mulligan Capital
2 Management, LLC, its agents and employees each shall cease and desist from violations of RCW 21.20.030
3 and 21.20.350, that Mulligan Partners, ERISA, LP, its agents and employees each shall cease and desist from
4 violations of RCW 21.20.010 and 21.20.140, and that John Mulligan, his agents and employees each shall
5 cease and desist from violations of RCW 21.20.010, 21.20.040, and 21.20.140.

7 **AUTHORITY AND PROCEDURE**

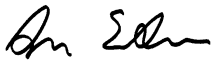
8 This Statement of Charges is entered pursuant to the provisions of Chapter 21.20 RCW and is subject
9 to the provisions of Chapter 34.05 RCW. The respondents, Mulligan Capital, Inc., Mulligan Capital
10 Management, LLC, and Mulligan Partners, ERISA, LP, and John Mulligan may each make a written request
11 for a hearing as set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR
12 HEARING accompanying this Order. If a respondent does not make a hearing request in the time allowed,
13 the Securities Administrator intends to adopt the above Tentative Findings of Fact and Conclusions of Law
14 as final and to enter a permanent order to cease and desist as to that respondent, to impose any fines sought
15 against that respondent, and to charge any costs sought against that respondent.
16

Signed and Entered this 30th day of January 2012.



William M. Beatty
Securities Administrator

Approved by:



Suzanne Sarason
Chief of Enforcement

Presented by:



Edward R. Thunen
Enforcement Attorney

Reviewed by:



Charles E. Clark
Financial Legal Examiner Supervisor