

**OFFICE OF THE MISSISSIPPI SECRETARY OF STATE
SECURITIES DIVISION**

IN THE MATTER OF:)	
)	
WATKINS DEVELOPMENT, LLC)	Administrative Proceeding
245 E. Capitol Street)	Number: LS-13-0608
Jackson, Mississippi 39201)	
)	
David Watkins, Individually, and)	
as Manager of Watkins Development, LLC)	
)	
<i>Respondents</i>)	

**AMENDED NOTICE OF INTENT TO IMPOSE ADMINISTRATIVE PENALTY
AND ORDER RESTITUTION AND DISGORGEMENT OF PROFIT**

On July 30, 2013, the Secretary of State of Mississippi issued a Notice of Intent to Impose Administrative Penalty and Order Restitution and Disgorgement of Profit (“Notice of Intent” or “NoI”) to Watkins Development, LLC (hereinafter “Watkins Development”) and/or David Watkins (“Watkins”), individually and as manager of Watkins Development. After further investigation and discovery, the Secretary of State of Mississippi, by and through Cheryn Netz, Assistant Secretary of State for the Securities Division (hereinafter “Division”), hereby amends the Notice of Intent to Impose Administrative Penalty and Order Restitution and Disgorgement of Profit to amend the Findings of Fact and Conclusions of Law set forth in the original Notice of Intent and in support hereof, states the following:

I. JURISDICTION

The Mississippi Securities Act, codified at Miss. Code Ann. Section 75-71-101, *et. seq.* (2010) (hereinafter “Act”), gives the authority to the Secretary of State to regulate the sale of securities in Mississippi, including any offer, sale or purchase of securities that involves fraud.

II. FINDINGS OF FACT

1. In August 2010, Watkins, as manager of Watkins Development, formed Retro Metro, LLC (hereinafter “Retro Metro”), a manager-managed Mississippi limited liability company for the sole purpose of revitalizing a portion of the Metrocenter Mall in Jackson, Mississippi. Watkins Development was the manager of Retro Metro until July 2012.
2. In January 2011, the six members of Retro Metro entered into an operating agreement outlining the formation of the company, the member responsibilities, and management of the company.
3. Watkins, as manager of Watkins Development, entered into a development agreement, dated as of February 21, 2011, with Watkins, as manager of RetroMetro, (the “Development Agreement”) to undertake a design-build project at Metrocenter Mall (the “Project”).
4. Based on statements made by Watkins Development as manager of Retro Metro, particularly the Private Placement Memorandum (“PPM”) dated April 5, 2011, the Mississippi Business Finance Corporation (“MBFC”), as a conduit issuer, issued Taxable Revenue Bonds, Series 2011 (Retro Metro, LLC Project) (“Bonds”) in the principal amount of \$5,195,000.00, and, pursuant to a loan agreement with Retro Metro, loaned the proceeds of the Bonds (the “Proceeds”) to Retro Metro for the sole purpose to be used for the revitalization of the first

floor of the “Belk Building” in Metrocenter shopping center in Jackson, Mississippi. The Bonds were issued on April 12, 2011.

5. The PPM does not mention or reference the Development Agreement.
6. Retro Metro has no other business and source of revenue other than the Project and the lease of the Belk Building to the City of Jackson pursuant to a lease entered into by the parties on April 4, 2011.
7. As a part of the bond documents for the issuance of the Bonds (the “Bond Documents”), Watkins, in his capacity as manager of Watkins Development, in its capacity as manager of Retro Metro and on behalf of Retro Metro, executed the above referenced Loan Agreement issued on April 1, 2011 (the “Loan” or “Loan Agreement”) in which Retro Metro represented that Retro Metro was not a party to any other indenture, agreement or other instrument materially and adversely affecting its business, financial or otherwise.
8. In the same capacity as set forth in paragraph 7, Watkins also executed a Closing Certificate on April 12, 2011 representing that the Loan Agreement and other Bond Documents were correct in all material aspects.
9. The Bond Documents do not mention or reference the Development Agreement.
10. The Development Agreement provided for the developer, Watkins Development, to be paid a flat fee of \$500,000.00 and a mobilization fee of 25% of “project cost.” However, the project cost is unknown and has not been disclosed. The Development Agreement did not specify a limit to the project cost, potentially leaving the project cost, and thus also the mobilization fee to be paid to Watkins Development, without a cap.

11. The Bonds were issued pursuant to a Trust Indenture between MBFC and BankPlus, as the trustee (the "Trust Indenture"). BankPlus, as trustee under the Trust Indenture, held the Proceeds in a Construction Fund account for Retro Metro ("Construction Account").
12. Of the total Proceeds of \$5,195,000.00 held in the construction account, Watkins, as manager of Watkins Development, as manager of Retro Metro, with signature authority, over a period of five (5) months, from April 2011 to September 2011, caused \$4,875,043.00 to be transferred from the Construction Account into a checking account held by Retro Metro with BankPlus (the "Retro Metro Account") which account was to be used for the sole purpose of the Project.
13. On April 12, 2011, the same day that the Bonds were issued, Watkins, as manager of Watkins Development filed a "Certificate of Formation" with the Mississippi Secretary of State's Office for Meridian Law Enforcement Center, LLC ("MLEC") for the purpose of purchasing real property in Meridian, Mississippi and leasing the property to the City of Meridian for a police station. Even though the Certificate of Formation was not actually filed with the Secretary of State's Office until April 12, 2011, the Certificate of Formation shows the effective date was intended to be April 1, 2011.
14. On June 8, 2011, Watkins, as manager of Watkins Development, as the manager of Retro Metro, caused \$587,084.34 to be wired from the Retro Metro Account to a real estate closing account for the law firm of Hammack, Barry, Thaggard, and May, LLP of Meridian, Mississippi.
15. The \$587,084.34 wired from the Retro Metro Account was used to purchase real property located at 510 22nd Avenue, Meridian, Mississippi. Said real property is currently owned by MLEC and leased from MLEC to the City of Meridian.

III. APPLICABLE LAW

16. Section 75-71-501 of the Act sets forth:

General Fraud.

It is unlawful for a person, in connection with the offer, sale, or purchase of a security, directly or indirectly:

- (1) To employ a device, scheme, or artifice to defraud;
- (2) To make an 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 were made, not misleading; or
- (3) To engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

17. The Division may employ remedies set out in Miss. Code Ann. Section 75-71-604 of the Act which sets forth:

Administrative enforcement.

(a) Issuance of an order or notice. If the administrator 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 this chapter or a rule adopted or order issued under this chapter 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 this chapter or a rule adopted or order issued under this chapter, the administrator may:

- (1) 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 this chapter;

(2) Issue an order denying, suspending, revoking, or conditioning the exemptions for a broker-dealer under Section 75-71-401(b)(1)(D) or (F) or an investment adviser under Section 75-71-403(b)(1)(C); or

(3) Issue an order:

(A) Under Section 75-71-204;

(B) Imposing a civil penalty in the case of an issuer of registered securities, broker-dealer, investment advisor, agent, investment adviser representative, or other person who violated this chapter;

(C) Barring or suspending the person from association with a broker-dealer or investment advisor registered in this state; or

(D) Requiring the person to pay restitution for any loss or disgorge any profits arising from the violation, including interest.

IV. CONCLUSIONS OF LAW

18. The previous paragraphs are incorporated by reference.

19. Watkins Development's and/or Watkins' failure to disclose in the PPM or Bond Documents any additional obligations of Retro Metro to Watkins Development as set forth in the Development Agreement is a material omission within the meaning of Section 75-71-501(2) of the Act, in connection with the offer and sale of securities and has operated as a fraud upon the purchaser of the securities, i.e., the purchasers of the Bonds (the "Purchasers"). Additionally, Watkins affirmatively represented in the Bond Documents that Retro Metro had no other financial obligations and therefore Watkins' representation in the Bond Documents to that effect was an untrue statement of material fact. The Purchasers were

- deprived of material information, i.e., the undisclosed, unclear, and substantial financial obligation of Retro Metro to Watkins Development, in their decisions to purchase the Bonds.
20. Retro Metro was the conduit borrower of the Bonds, and Watkins Development, as manager of Retro Metro, through its manager Watkins, was responsible for the material misstatements set forth in the Bond Documents which failed to disclose Watkins' and Watkins Development's intent to finance the activities of MLEC with the Proceeds.
21. By failing to disclose their intentions to appropriate and/or convert the Proceeds for the activities of MLEC, Watkins Development and/or Watkins have violated Section 75-71-501 by employing a device, scheme, or artifice to defraud; and/or making an 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 were made, not misleading; and/or engaging in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.
22. Watkins Development's and/or Watkins' failure to disclose in the Bond Documents the intent to use and or convert any portion of the Proceeds to finance the activities of MLEC is a material omission within the meaning of Section 75-71-501(2) of the Act, in connection with the offer and sale of securities and has operated as a fraud upon the Purchasers. Retro Metro's Project has been a tenuous success and the venture remains in danger of default on its debt under the Loan Agreement. The Purchasers were deprived of material information in deciding to purchase the Bonds.
23. Watkins Development's and/or Watkins' act of misuse of the Bond Proceeds to finance the activities of MLEC has undermined the viability of Retro Metro, which is ultimately responsible for the repayment of the debt, constituting a fraud by Watkins Development

and/or Watkins upon his partners in Retro Metro. This fraud is in connection with the offer and sale of securities within the meaning of Section 75-71-501 of the Act because Retro Metro remains responsible for repayment of the debt pursuant to the Loan Agreement, as the conduit borrower.

V. NOTICE OF INTENDED ACTION

The Secretary of State intends to issue an order fining Watkins Development and/or Watkins the maximum penalty of \$25,000.00 for each violation of the Act pursuant to Section 75-71-613(d). Further, the Secretary of State intends to order Watkins Development and/or Watkins to pay restitution to Retro Metro or alternatively to the Purchasers of the Bonds, in the amount of \$587,084.34, plus prejudgment interest at the statutory rate. The Secretary of State intends to order Watkins Development and/or Watkins to disgorge to Retro Metro or alternatively to the Purchasers of the Bonds, all profits made by misuse of the proceeds of the Bonds.

VI. RIGHT TO AN ADMINISTRATIVE HEARING

The original Notice of Intent provided the Respondents an opportunity to submit a request for a hearing, in writing, to Cheryn Netz, Assistant Secretary of State, Securities Division of the Mississippi Secretary of State's Office, Post Office Box 136, Jackson, Mississippi 39205 to contest the allegations set forth above, or offer evidence and arguments to mitigate the allegations. The Respondents have already made such a request within the required thirty (30) days from the date of the original Notice of Intent to Impose Administrative Penalty and Order

Restitution and Disgorgement of Profit. A Hearing Officer has been designated and a hearing date has been set.

VII. PUBLIC INTEREST

The actions taken and proposed to be taken herein by the Secretary of State are in the public interest and are consistent with the purposes set out in Miss. Code Ann. Section 75-71-101, *et seq.* (2010).


VIII. RIGHT TO AMEND

The Secretary of State hereby reserves the right to amend this Notice of Intent to Impose Administrative Penalty and Order Restitution and Disgorgement of Profit, as amended.

ISSUED, this the 23rd day of October 2013.

C. DELBERT HOSEMANN, JR.
Secretary of State

BY:



CHERYN NETZ
Assistant Secretary of State
Securities Division

Cheryn Netz, MSB # 9008
Assistant Secretary of State
Mississippi Secretary of State's Office
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CERTIFICATE OF SERVICE

I, Cheryn Netz, do hereby certify that I have this day mailed, by U.S. Mail and electronic mail, a true and correct copy of the Amended Notice of Intent to Impose Administrative Penalty and Order Restitution and Disgorgement of Profit to the following:

Counsel for David Watkins and Watkins Development, LLC:

J. Brad Pigott
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Honorable Robert Bailess
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rbailess@wsbrlaw.com

This the 23rd day of October 2013.



CHERYN NETZ
Assistant Secretary of State
Securities Division