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STATE OF CALIFORNIA
BUSINESS, TRANSPORTATION AND HOUSING AGENCY
DEPARTMENT OF CORPORATIONS

TO: Merchant Capital, LLC
104 Winston Place, Suite 104
Brentwood, Tennessee 37027

Kurt V. Beasley
1311 Glenview Drive
Brentwood, Tennessee 37027

Steven Charles Wyer
116 Maxwell Crossing
Brentwood, Tennessee 37027

James Mead
2947 Fulton Avenue
Sacramento, California 95821

Robert Lane Salamone
3528 Imperial Way
Sacramento, California 95826

Retirement Accounts, Inc.
717 17th Street, Suite 1700
Denver, Colorado 80202-3323

Jeffrey D. Mitchell
National Marketing Solutions, LLC
9986 N. Newport Hwy #378
Spokane, WA 99218

DESIST AND REFRAIN ORDER
(For violations of section 25110, 25210 and 25401 of the Corporations Code)

1 The California Corporations Commissioner finds that::
2

3 1. Merchant Capital, LLC (“Merchant Capital”) is a limited liability company that was
4 filed in Tennessee on July 10, 2001. Its registered office addresses are 104 Winston Place
5 and 104 East Park Drive in Brentwood, Tennessee 37027. A company brochure lists its
6 address as 104 East Park Drive, Suite 104, Brentwood, TN 37027. It maintains a website
7 at www.merchantcapitalpartners.com (“the company website”).
8

9 2. Kurt V. Beasley (“Beasley”) is a principal of, and the registered agent for,
10 Merchant Capital. According to the company website, Beasley’s title is “Manager of
11 Financial and Compliance Oversight.” The company website states that Beasley is a
12 certified public accountant, a member of the Tennessee State Bar, and a founder of the law
13 firm Beasley, Tyson & Altshuler in Brentwood, Tennessee. Beasley resides at 1311
14 Glenview Drive, Brentwood, Tennessee 37027.
15

16 3. Steven C. Wyer (“Wyer”) is a principal of Merchant Capital. According to the
17 company website, Wyer’s title is “Chief Manager.” Wyer’s Central Registration Depository
18 (CRD) number is 1289280. Wyer resides at 116 Maxwell Crossing, Brentwood, Tennessee
19 37027.
20

21 4. James Mead (“Mead”) is licensed by the California Department of Insurance as a
22 life agent, license number 0795694. His business address of record with the Department of
23 Insurance is 2947 Fulton Avenue, Sacramento, California 95821.
24

25 5. Robert Lane Salamone is licensed by the California Department of Insurance as a
26 life agent, license number 0B55552. His business address of record with the Department of
27 Insurance is 3528 Imperial Way, Sacramento, California 95826.
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1
2 6. Retirement Accounts, Inc. is a trade name of First Trust Corporation, a wholly-
3 owned subsidiary of Fiserv, Inc. According to its website,
4 www.firsttrust.com/Corp/corporate.htm, First Trust Corporation is the nation's largest
5 independent trust company for self-directed retirement plans, administering more than
6 217,000 IRAs and business retirement plans with more than \$17.62 billion in assets.

7
8 7. National Marketing Solutions, LLC is a limited liability company that was filed in
9 the State of Washington on August 21, 2001. Its registered office address is 9986 N.
10 Newport Highway #378, Spokane, Washington 99218. Its registered agent is Jeffrey D.
11 Mitchell.

12
13 8. Merchant Capital and its principals Wyer and Beasley are presently issuing and
14 offering investments called "Evergreen High Yield Registered Limited Liability Partnerships"
15 ("Evergreen High Yield RLLPs") in minimum amounts of \$25,000. According to the
16 materials provided to prospective investors, Evergreen High Yield RLLPs are general
17 partnerships which qualify as "registered limited liability partnerships" or "RLLPs" under
18 Colorado state law. The materials state that RLLP status under Colorado state law means
19 that the general partners have total control of their business but limited exposure to liability
20 associated with traditional general partnerships. Merchant Capital and its principals
21 represent that each Evergreen High Yield RLLP includes twenty voting "general" partners
22 and a non-voting Managing General Partner. Merchant Capital purports to serve as the
23 "Organizing General Partner" for each Evergreen High Yield RLLP and "submits its name to
24 the general partners of each RLLP for consideration as Managing General Partner."
25 According to the Partnership Application, "The Organizing General Partner and then the
26 Managing General Partner, once elected, shall have the exclusive authority to bind the
27 RLLP." The company website states:
28

1 Under Colorado Partnership law, only the Partners acting in fact for an RLLP are
2 liable for actions taken on behalf of the RLLP. If the Managing General Partner is the
3 only entity acting for the RLLP, it will be the only entity liable for any misconduct.
4

5 9. Evergreen High Yield RLLPs purportedly engage in the business of purchasing,
6 collecting and reselling delinquent debt, a business which is represented to provide
7 significant returns to each owner. A company brochure states:
8

9 Merchant Capital, LLC offers a unique opportunity in one of the fastest emerging
10 businesses in the United States. By purchasing consumer credit accounts from the
11 nation's largest financial institutions for pennies on the dollar, and successfully
12 collecting a small portion of the value on these accounts, this *distressed debt* can
13 generate both a consistent annual rate of return and an upside potential found in few
14 capital markets today. [italics in original]
15

16 10. Each Evergreen High Yield RLLP purportedly operates for thirty six (36) months.
17 During that period of time, the general partners are promised an annual return of 14.4%,
18 remitted quarterly, with a "bonus" from profits after 36 months, at the time of asset
19 liquidation.
20

21 11. The cover of the Partnership Application for the Evergreen High Yield Registered
22 Limited Liability Partnerships ("Partnership Application") states:
23

24 This document is presented as a Registered Limited Liability Partnership Application,
25 and therefore is not to be considered a security. The Partnership has not been
26 registered with the Securities and Exchange Commissioner nor any state securities
27 department, and Partners are afforded no protection under the Securities Act of 1933
28 or any similar state act relating to the offer and sale of securities.

1 12. Company materials state that participation in an Evergreen High Yield RLLP is
2 not a passive investment but rather requires active participation and involvement. The
3 Registered Application states in paragraph 7.2:

4
5 **Management.** The participation in this RLLP is not a passive involvement. The
6 General Partners themselves will manage the RLLP. Each and every General
7 Partner is required to actively participate in important business decisions affecting the
8 RLLP by exercising its voting privileges. Each General Partner may be required to
9 participate in one or more committees, which shall oversee and conduct important
10 business.

11
12 13. The company website seeks recruiters to sell Evergreen High Yield RLLPs to
13 members of the general public. The website contains a section titled “Become a Recruiter”
14 which seeks “motivated individuals,” including Certified Financial Planners (CFP), Certified
15 Public Accountants (CPA), Registered Representatives and insurance professionals, to
16 serve as “Registered Recruiters.” The website states:

17
18 If you have a background in financial services, enjoy a reputation of integrity in your
19 business affairs and have a desire to achieve, Merchant Capital invites you to apply
20 to become a Registered Recruiter for our fast-growing business.

21
22 14. The company website includes a two-page “Recruiter Application” which includes
23 a line to be filled in with the name of the “Master Recruiter” who has referred each recruiter.

24
25 15. The company website page titled “Become a Recruiter” states:
26
27
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1 As part of our compliance process, we review each state’s specific guidelines for
2 Registered Limited Liability Partnerships. Merchant Capital is currently accepting
3 Partner applications from the states highlighted in blue on the map.

4
5 All fifty states are highlighted in blue on the map.

6
7 16. The Evergreen High Yield RLLP New Business Transmittal Form contains the
8 printed language:

9
10 FAX THIS FORM TO:
11 509-465-5282
12 National Marketing Solutions, LLC

13
14 17. Company materials represent that general partnership investments in Evergreen
15 High Yield RLLPs may be held in self-directed IRA accounts administered by Retirement
16 Accounts, Inc. A Merchant Capital brochure states:

17
18 Evergreen High Yield RLLPs are approved to be funded by all qualified and non-
19 qualified accounts, such as self-directed IRA transfers and 401K and 403B programs.
20 Individuals, corporations, trusts, and partnerships can utilize the RLLP.

21
22 The Evergreen High Yield RLLP New Business Transmittal Form also states:

23
24 Evergreen High Yield RLLPs utilize Retirement Accounts, Inc. (RAI).

25
26 The form indicates that IRA investments in Evergreen High Yield RLLP interests are “made
27 payable to Retirement Accounts, Inc.”

1 18. The website of Retirement Accounts, Inc.,
2 www.retirementaccountsinc.com/DR/raiprodr.htm, states that general partnerships are
3 “Investments Not Permitted in RAI Plans.” Investments in Evergreen High Yield RLLPs are
4 represented to be general partnership investments. The Partnership Agreement Signature
5 page, which must be signed by each investor, states:

6
7 I am a general partner of this partnership and, therefore, my interest herein is not to
8 be considered a security.

9
10 Despite the fact that Retirement Accounts, Inc. purports not to accept general partnership
11 investments in its IRA accounts, and despite the fact that investments in Evergreen High
12 Yield RLLPs are represented to be general partnership investments, Retirement Accounts,
13 Inc. agrees to serve as the IRA custodian for accounts holding Evergreen High Yield RLLPs
14 as IRA investments, and to execute purchases of such interests in IRA accounts under its
15 administration.

16
17 19. The materials of Merchant Capital, including the Partnership Application for
18 Evergreen High Yield RLLPs, the company’s brochures, and the company website, fail to
19 advise prospective investors that holding a general partnership investment in an IRA
20 account may be deemed a prohibited transaction, thereby threatening the IRA’s tax-exempt
21 status.

22
23 20. Mead is a recruiter for Merchant Capital. Mead claims to be a “Certified Senior
24 Advisor,” “A Member of the Society of Certified Senior Advisors” and a “Certified Medicaid
25 Advisor.” His business card lists the business name “Elder American Services” and states
26 that he offers “Elder Advisor Services.” In addition to maintaining an office at 2947 Fulton
27 Avenue in Sacramento, he also uses the business address 2020 Hurley Way, Ste 390,
28 Sacramento, California 95825.

1 21. Salamone also uses a business card with the business name Elder American
2 Services on it, and the address 2947 Fulton Avenue, Sacramento, California 95821.

3
4 22. During mid-June, 2002, Mead and Salamone offered an Evergreen High Yield
5 RLLP to an 82 year old retiree in Livermore, California.

6
7 23. During the week of August 19, 2002, Mead offered an Evergreen High Yield
8 RLLP to a 74 year old retiree in Elk Grove, California.

9
10 24. The Department of Corporations has not issued a permit or any other form of
11 qualification authorizing any person to offer or sell investments in Evergreen High Yield
12 RLLPs in the state of California.

13
14 25. Neither Salamone nor Mead is licensed or authorized to sell securities in
15 California.

16
17 Based upon the foregoing findings, the California Corporations Commissioner is of
18 the opinion that investments in Evergreen High Yield RLLPs are securities that are being
19 offered by James Mead, Robert Lane Salamone, Merchant Capital, LLC, Steve Charles
20 Wyer, Kurt V. Beasley in issuer transactions in California without the sales having been
21 qualified, in violation of Corporations Code section 25110.

22
23 In addition, the Commissioner is of the opinion that the securities are being offered
24 by persons, James Mead and Robert Lane Salamone, who are neither licensed nor
25 otherwise authorized to induce or attempt to induce the purchase of any sale of securities in
26 California, in violation of Corporations Code section 25210.

1 The Commissioner is of the further opinion that the securities are being offered by
2 James Mead, Robert Lane Salamone, Merchant Capital, LLC, Steve Charles Wyer, and
3 Kurt V. Beasley by means of written communications which include untrue statements of
4 material fact in violation of Corporations Code section 25401.

5
6 The Commissioner is also of the opinion that Retirement Accounts, Inc., Jeffrey D.
7 Mitchell and National Marketing Solutions, LLC, are providing substantial assistance to
8 Merchant Capital, LLC, Steven Charles Wyer, Kurt V. Beasley, James Mead and Robert
9 Lane Salamone in violations of sections 25110, 25210 and 25401 of the Corporations Code,
10 and are therefore in violation of those provisions to the same extent as Merchant Capital,
11 LLC, Steven Charles Wyer, Kurt V. Beasley, James Mead and Robert Lane Salamone,
12 pursuant to Corporations Code section 25403(b).

13
14 Therefore, pursuant to Section 25532 of the Corporate Securities Law of 1968,
15 Merchant Capital, LLC, Steven Charles Wyer, Kurt V. Beasley, Steven Charles Wyer,
16 James Mead, Robert Lane Salamone, Retirement Accounts, Inc., Jeffrey D. Mitchell and
17 National Marketing Solutions, LLC and are hereby ordered to desist and refrain from the
18 further offer or sale in the State of California of securities in the form of investments in
19 Evergreen High Yield RLLPs unless and until qualification has been made under the
20 California Securities Law of 1968 or until evidence is offered pursuant to Corporations Code
21 section 25163 to establish that the offer or sale of such securities is exempt from the
22 qualification requirement.

23
24 The Commissioner is of the opinion that This Order is necessary,
25 in the public interest, for the protection of investors and consistent with the purposes,
26 policies, and provisions of the Corporate Securities Law of 1968.

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Dated: September 27, 2002
Sacramento, California

DEMETRIOS A. BOUTRIS
California Corporations Commissioner

By _____
VIRGINIA JO DUNLAP
Supervising Counsel
Enforcement and Legal Services

1 DEMETRIOS A. BOUTRIS
California Corporations Commissioner

2 VIRGINIA JO DUNLAP (142221)
3 Deputy Commissioner
4 KAREN L. PATTERSON (92445)
Senior Corporations Counsel
1515 K Street, Suite 200
5 Sacramento, California 95814
Telephone: (916) 322-6737

6 Attorneys for Complainant

8 BEFORE THE DEPARTMENT OF CORPORATIONS
9 OF THE STATE OF CALIFORNIA

10	In the Matter of the)	OAH No. 2003100469
11	DESIST AND REFRAIN ORDER)	AGENCY CASE No. 38300
12	Issued To:)	
)	CONSENT ORDER
13	Merchant Capital, LLC; Kurt V. Beasley;)	
14	Steven Charles Wyer,)	
15	Respondents.)	

17
18
19 On September 27, 2002, the Commissioner of Corporations issued an order to
20 Respondents Merchant Capital, LLC, Kurt V. Beasley, Steven Charles Wyer, James Mead,
21 Robert Lane Salamone, Retirement Accounts, Inc., Jeffrey D. Mitchell finding that they had
22 engaged in violations of the Corporate Securities Act of 1968 and ordering them to desist
23 and refrain from further violations of Corporations Code sections 25110, 25210 and 25401.
24 On September 25, 2003, Respondents Merchant Capital, LLC, Kurt V. Beasley and Steven
25 Charles Wyer filed a timely written request for a hearing pursuant to Corporations Code
26 section 25532(d).

27 The Commissioner of Corporations and Respondents Merchant Capital, LLC, Kurt V.
28

1 Beasley and Steven Charles Wyer do hereby agree to this Consent Order in settlement of
2 this matter. Respondents Merchant Capital, LLC, Kurt V. Beasley and Steven Charles Wyer
3 neither admit nor deny the findings set forth in the desist and refrain order dated September
4 27, 2002, which are hereby incorporated by reference into this Consent Order.
5

6 **CONSENT ORDER**

7 Based upon the foregoing,

8 IT IS AGREED AND ORDERED that Merchant Capital, LLC, Kurt V. Beasley and
9 Steven Charles Wyer are hereby ordered to desist and refrain from the further offer or sale
10 in the State of California of securities in the form of investments in Evergreen High Yield
11 RLLPs unless and until qualification has been made under the Corporate Securities Law of
12 1968 or until evidence is offered pursuant to Corporations Code section 25163 to establish
13 that the offer or sale of such securities is exempt from the qualification requirement.
14

15 It is further agreed that the Commissioner has jurisdiction to enter this Consent
16 Order. Respondents' agreement to jurisdiction extends to this proceeding only.
17

18 In consideration of this Consent Order, Respondents Merchant Capital, LLC, Kurt V.
19 Beasley and Steve Charles Wyer waive their right to a hearing on this matter and to judicial
20 review of this matter pursuant to Code of Civil Procedure section 1094.5. The
21 Commissioner hereby vacates the desist and refrain order dated September 27, 2002 as to
22 Respondents Merchant Capital, LLC, Kurt V. Beasley and Steve Charles Wyer only, except
23 to the extent that its findings have been incorporated by reference into this Consent Order.
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Dated: November 18, 2003

~~KURT V. BEASLEY~~

Dated: November 18, 2003

~~STEVEN CHARLES WYER~~

Dated: November 26, 2003
Sacramento, California

DEMETRIOS A. BOUTRIS
California Corporations Commissioner

By *for* ~~VIRGINIA JO DUNLAP~~
Deputy Commissioner
Enforcement and Legal Services