

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

06-81080

CASE NO.

SECURITIES AND EXCHANGE COMMISSION,)

Plaintiff,)

v.)

MERCER CAPITAL, INC.,)
MERCER CAPITAL MANAGEMENT, INC.,)
TRI-STATE ENERGY GROUP, LLC,)
TRI-STATE ENERGY GROUP I, LTD.,)
TRI-STATE ENERGY GROUP II, LTD., and)
ROBERT L. FLICKINGER II,)

Defendants.)

CIV-MIDDLEBROOKS

MAGISTRATE JUDGE

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CLERK U.S. DISTRICT
COURT
S.D. OF FLA. - MIA

COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

Plaintiff Securities and Exchange Commission alleges:

I. INTRODUCTION

1. The Commission brings this action to enjoin the Defendants from continuing to defraud investors through three securities offerings, two in purported oil and gas companies and one in a former commodities broker-dealer. From at least 2004 to the present, Defendant Robert L. Flickinger II and sales agents he directs have raised at least \$2 million from investors for interests in oil and gas limited partnerships and investments in a private placement of Defendant Mercer Capital, Inc., a company Flickinger controls.

2. From December 2005 to the present, Flickinger and Defendant Mercer Capital Management, Inc. have been selling limited partnership interests in two oil and gas companies, Tri-State Energy Group I, Ltd. and Tri-State Energy Group II, Ltd. (collectively "the Tri-State Companies"). In connection with those offerings, the Tri-State Companies, Mercer Capital

Management, and Flickinger have made material misrepresentations and omissions to potential investors. First, they have falsely claimed the Tri-State Companies have business relationships and contracts with well-established oil and gas companies. Second, these Defendants have misrepresented the prior investment performance and rates of return of those unrelated oil and gas companies as the Tri-State Companies' own. Third, these Defendants have begun paying investors what they falsely represent to be returns on investments, even though the Tri-State Companies' purported revenue-generating deals simply do not exist.

3. The third offering is a private placement in Mercer Capital, a former commodities broker. In connection with this offering, Mercer Capital and Flickinger have made numerous material misrepresentations and omissions. First, they have grossly overstated Mercer Capital's earnings and assets to potential investors. Second, based on the false figures, the Defendants have made baseless price projections for Mercer Capital's stock in a subsequent proposed resale of approximately one million of its shares. Third, Flickinger and Mercer Capital have omitted disclosing they have an extensive disciplinary history with regulatory agencies.

4. Finally, in attempting to trade Mercer Capital's stock publicly on the Over-the-Counter Bulletin Board ("Bulletin Board"), Flickinger and Mercer Capital have filed fraudulent registration and amended registration statements with the Commission, making them available to the public on the Internet through the Commission's Electronic Data Gathering, Analysis, and Retrieval system ("EDGAR"). These registration statements have misrepresented and omitted material facts regarding Mercer Capital's regulatory history and registration status, even after the Commission specifically requested Mercer Capital to address such issues in the statements.

5. Through their conduct, the Defendants each have violated Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. §§ 77e(a), 77e(c), and 77q(a);

and Section 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5. Based on the ongoing nature of their violations and the scienter the Defendants have demonstrated through their willful and wanton disregard for the federal securities laws, the Defendants have shown they will continue to violate the law unless the Court grants the injunctive relief the Commission seeks, including a temporary restraining order, a preliminary injunction, an order freezing assets, and the appointment of a receiver.

II. JURISDICTION AND VENUE

6. This Court has jurisdiction over this action pursuant to Sections 20(b), 20(d), and 22(a) of the Securities Act, 15 U.S.C. §§ 77t(b), 77t(d), and 77v(a); and Sections 21(d), 21(e), and 27 of the Exchange Act, 15 U.S.C. §§ 78u(d), 78u(e), and 78aa.

7. The Court has personal jurisdiction over the Defendants and venue is proper in the Southern District of Florida because many of the Defendants’ acts and transactions constituting violations of the Securities Act and the Exchange Act occurred in the Southern District of Florida. In addition, the principal places of business of Mercer Capital and Mercer Capital Management are in the Southern District of Florida, and Flickinger resides in the Southern District of Florida.

8. In connection with the conduct alleged in this Complaint, the Defendants, directly and indirectly, singly or in concert with others, have made use of the means or instrumentalities of interstate commerce, the means or instruments of transportation and communication in interstate commerce, and the mails.

III. DEFENDANTS

9. Mercer Capital is a Delaware corporation incorporated in December 1999 with its principal places of business in Boca Raton, Florida and Portland, Oregon. Mercer Capital was

registered as a commodities broker with the Commodities Futures Trading Commission (“CFTC”) until 2004, when it withdrew its registration after entering a settlement with the National Futures Association (“NFA”) arising from disciplinary proceedings. Since at least September 2004, Mercer Capital has offered and sold its own private placement investments, and it has been attempting to conduct a resale of its existing common stock since March 2006.

10. Mercer Capital Management is a Florida corporation incorporated in July 2004 with its principal places of business in Boca Raton, Florida and Portland, Oregon. It is a wholly-owned subsidiary of Mercer Capital. Mercer Capital Management has been registered as a commodities broker with the CFTC, although it withdrew its CFTC registration and NFA membership effective in October 2006. It has been offering and selling investments in the Tri-State Companies since December 2005.

11. Tri-State Energy Group I is a Wyoming limited partnership formed on July 31, 2006 with its purported principal place of business in Casper, Wyoming. Since December 2005, Tri-State Energy Group I has offered oil and gas limited partnership investments to investors.

12. Tri-State Energy Group II represents itself as a Wyoming limited partnership. Since May 2006, Tri-State Energy Group II has issued purported oil and gas limited partnership investments to investors.

13. Tri-State Energy Group, LLC (“Tri-State Group”) is a Wyoming limited liability company formed in October 2005 with its purported principal place of business in Casper, Wyoming. Tri-State Group is the general partner of Tri-State Energy Group I and Tri-State Energy Group II.

14. Flickinger, 38, resides in Pompano Beach, Florida. He is the president and majority shareholder of Mercer Capital and a director of Mercer Capital Management.

Flickinger is “Governing Person” of Tri-State Group, and Executive Vice President and Chief Operating Officer of Tri-State Energy Group I and Tri-State Energy Group II.

IV. OVERVIEW OF MERCER CAPITAL AND MERCER CAPITAL MANAGEMENT

A. Mercer Capital and Its Regulatory History

15. In June 2000, Mercer Capital began operating as a CFTC-registered introducing broker-dealer, conducting a limited futures and commodities business. In March 2003, the NFA issued a complaint against Mercer Capital, Flickinger, and others alleging numerous sales practice violations in connection with their commodities business.

16. In September 2004, after completing a one-year review period imposed under a settlement of the NFA complaint, Flickinger withdrew Mercer Capital’s CFTC registration and NFA membership.

17. One month later, the Pennsylvania Securities Commission issued a Summary Order to Cease and Desist against Mercer Capital for fraudulent sales practices and conducting an unregistered securities offering to unaccredited investors through fraudulent sales calls.

B. Mercer Capital Management and Its Regulatory History

18. Flickinger created Mercer Capital Management in September 2004, registered it with the NFA and CFTC, and based the majority of the firm’s operations in Boca Raton, Florida.

19. In December 2005, the NFA informed Flickinger it was again investigating him, as well as alleged sales practice violations at Mercer Capital Management. Pursuant to NFA rules, Mercer Capital Management was then required to tape record all investor calls.

20. Flickinger sought to withdraw his and Mercer Capital Management’s NFA membership and CFTC registration in January 2006, but the NFA initially refused this request as

to Mercer Capital Management because of its pending investigation. Flickinger therefore withdrew only his personal NFA membership and CFTC registration in January 2006.

21. On August 30, 2006, the NFA filed another complaint against Mercer Capital, Mercer Capital Management, Flickinger and others, charging them with making deceptive, misleading and high-pressure sales solicitations, committing books-and-records violations, and failing to maintain an adequate anti-money laundering program. This action is still pending.

22. The NFA finally allowed Mercer Capital Management to withdraw its NFA membership and CFTC registration in October 2006.

V. THE FRAUDULENT TRI-STATE COMPANIES' OFFERINGS

A. The Offerings

1. The Initial Tri-State Energy Group I Offering

23. Starting in December 2005, Mercer Capital Management and Flickinger sought to raise \$20 million through an offering of unregistered limited partnership interests in Tri-State Energy Group I, a purported oil and gas property acquisition company.

24. Under Flickinger's direction, Mercer Capital Management has advertised its services as a discount commodities broker through cold calls, direct mailings, and the Internet. Through websites such as *www.futuresource.com*, Mercer Capital Management asks prospective investors to complete a form or call for free information on commodities, futures, and options investments.

25. When prospective investors request the free information, sales agents Flickinger directs cold call and quickly push on investors one of a series of unregistered fraudulent offerings by Mercer Capital or Mercer Capital Management, including the Tri-State Energy Group I offering. Sometimes sales agents use lead lists to cold call individuals who have not

requested information from the websites, hype a security to the victims, and send them related offering materials.

26. In this manner, Mercer Capital Management, Flickinger, and sales agents solicit investments in Tri-State Energy Group I at \$20,000 per unit. They tell investors that Tri-State Energy Group I has acquired oil and gas producing properties, and has contracts with an established energy company to operate the partnership properties. They promise investors profits of 40 to 50 percent annually.

27. Flickinger and sales agents then send prospective investors a Private Placement Memorandum (“PPM”) and other offering documents for the Tri-State Energy Group I offering, and often contact the investors with additional sales pitches.

28. Tri-State Energy Group I’s December 2005 PPM and the other offering documents state the company will be using Five States Energy Company, an unrelated Texas firm, to operate its properties.

29. The December 2005 PPM explains that Five States Energy is an established oil and gas investment company with years of experience in the industry, and includes information about Five States Energy’s board of directors and key management personnel. The same offering documents include a summary of Five States Energy’s prior oil and gas projects, and its past investment returns. The December 2005 PPM indicates the Tri-State Energy Group I offering will continue through December 2006.

2. The New Tri-State Energy Group I and II Offerings

30. In May 2006, the Defendants created new PPMs for a second Tri-State Energy Group I offering, and a new offering for Tri-State Energy Group II, which Mercer Capital Management, the Tri-State Companies, Flickinger, and sales agents have sent to investors.

31. Each of these offerings is for \$40 million, and their material terms, investment objectives and the price of the securities are almost identical those of the first Tri-State Energy Group I offering and each other. The Defendants contact and solicit investors using the same methods they used for the initial offering.

32. Mercer Capital Management's sales agents tell investors they can reasonably expect 40 to 50 percent annual profits because another unrelated energy firm with which the Tri-State Companies had contracted, BASA Resources, Inc., had earned similar returns for their investors on prior projects. Sales agents also tell investors Tri-State has an agreement to purchase 300 producing oil wells from another unrelated energy company, Kerr-McGee Corporation ("Kerr-McGee"), a subsidiary of Anadarko Petroleum Corp., one of the world's largest independent oil and gas exploration and production companies, located just outside of Dallas, Texas.

33. The May 2006 PPMs assert the Tri-State Group has elected to work with BASA Resources and Kerr-McGee in obtaining and operating the partnerships' properties. They also each attach a purported operating agreement with BASA Resources.

34. These PPMs contain detailed information concerning BASA Resources and Kerr-McGee including: 1) information about Kerr-McGee and BASA Resources' boards of directors and management; 2) detailed "investment summaries" for those firms; and 3) descriptions of BASA Resources and Kerr-McGee's oil and gas production, investment, and exploration portfolios.

35. These PPMs also contain an appendix called "Prior Activities," consisting of a one-page chart entitled "Cash Distributions as a Percentage of Original Equity," that lists prior

investment returns for 18 oil and gas projects since 1999 that achieved annual investment returns as high as 138%, with average returns of 40%.

36. Beginning in October 2006, the Tri-State Companies began reporting small investment returns on investors' online and paper statements and sending investors payments for those amounts. When investors inquire about these payments, Flickinger or sales agents he directs tell them they are early investment proceeds, and later returns will be higher or will rise on a quarterly basis. Flickinger and sales agents also are now sending investors statements supposedly showing the properties generating these profits.

**B. Fraudulent Misrepresentations and Omissions
in the Tri-State Energy Group I and II Offerings**

37. The Defendants, through their sales pitches and offering documents, have been misleading investors regarding the Tri-State Companies' business relationships, operations, and profitability.

1. Misrepresented Business Relationships

38. Contrary to the Defendants' representations in both Tri-State Companies' offerings, there were no agreements or business relationships with any of the energy companies discussed in the PPMs or sales pitches to investors. Five States Energy, BASA Resources, and Kerr-McGee have never had contracts or business arrangements with the Tri-State Companies. In fact, these energy companies have specifically disclaimed any relationship with the Tri-State Companies, which the Defendants have failed to disclose.

39. For example, after viewing the December 2005 PPM, Five States Energy sent a cease-and-desist letter on March 15, 2006 to the Tri-State Companies demanding the Defendants stop referring to any purported contract, agreement or business relationship with Five States Energy, and stop using Five States Energy's proprietary documents in offering materials. The

next day, Tri-State Energy Group I agreed in writing not to represent to investors the Tri-State Companies had any affiliation with Five States Energy. Rather than disclose this to investors, Flickinger and the other Defendants started the new Tri-State Energy Group I and II offerings, and began misrepresenting *other* relationships, namely with BASA Resources and Kerr-McGee.

40. Not only have the Defendants misrepresented the relationship between BASA Resources and the Tri-State Companies, they have never told investors BASA Resources rejected their one ambiguous attempt to do business. On June 7, 2006, Tri-State Energy Group I sent BASA Resources a check for \$875,000 for an unspecified future investment. Three months later, BASA Resources returned the funds, plus interest, never using any of that money in its projects and never establishing any sort of business relationship with the Defendants.

41. In addition, on June 28, 2006, BASA Resources sent Mercer Capital Management and Tri-State Group a cease-and-desist letter demanding the Tri-State Companies stop using its name and proprietary or copyrighted information in its offering. Even after receiving this letter, however, the Defendants continue to misrepresent they have contractual relationships with BASA Resources, as well as with the other companies, as part of the Tri-State Companies' sales pitch.

42. In sales pitches to prospective investors, Flickinger and sales agents have stated Tri-State Energy Group I has acquired producing oil and gas properties that Five States Energy would operate, or that Tri-State Energy Group I has agreements to purchase three hundred producing oil wells from Kerr-McGee, which BASA Resources has agreed to operate. Sales agents have also stated Tri-State Energy Group II has arranged to purchase oil wells from Kerr-McGee, which BASA Resources would operate. All these statements are false.

2. Misrepresented Investment Returns

43. The 40 to 50 percent rates of return the Defendants are pitching are groundless, because they are all based on the returns generated by Five States and BASA Resources, and assume these companies will manage or be working with the Defendants' projects. As discussed above, there are no such relationships. In addition, the Tri-State Companies have no apparent experience in oil and gas projects.

44. For example, the performance figures provided in the May 2006 PPMS actually were BASA Resources figures for projects unrelated to the Tri-State Companies. Tri-State Energy Group I did not even formally exist as a Wyoming entity until July 2006, and Tri State Energy Group II does not formally exist as the Defendants have represented – none of which the Defendants have told investors.

45. The Defendants also have not disclosed to investors that the payments they have begun receiving from the Tri-State Companies could not be returns on the deals represented in the PPMs and sales pitches, because those deals simply do not exist. The Defendants do not have in place any of the oil and gas development agreements they have represented to investors in PPMs and sales calls, and are therefore misrepresenting the payments as legitimate profits from the promised ventures.

VI. MERCER CAPITAL'S FRAUDULENT OFFERING

A. The Mercer Capital Offering

46. Starting no later than September 2004, Mercer Capital, Flickinger, and sales agents Flickinger directs began offering shares of Mercer Capital stock in a private placement. Using the same sales and solicitation methods Mercer Capital Management uses for the Tri-State

Companies' offerings, Mercer Capital Management and Flickinger have raised at least \$1.3 million from more than 100 investors.

47. In sales calls to potential investors, Flickinger and Mercer Capital sales agents claim Mercer Capital is a licensed commodity brokerage firm, online discount broker, and money management firm operating since 1999, with more than \$150 million under management. They also tout the company's financial condition, the "pre-IPO" nature of the private offering, and the potential for substantial future profits once the stock trades publicly.

48. During this time, Mercer Capital, Flickinger, and sales agents have been sending prospective investors Mercer Capital PPMs and additional offering materials by courier or mail. Mercer Capital's initial undated PPM offered shares of its common stock for \$0.50 per share, while its September 1 and September 30, 2004 PPMs offer investments at \$2.00 per share. All three PPMs tout Mercer Capital as a CFTC-registered introducing broker and an NFA member, referring several times to the strict regulatory and compliance requirements of those entities and state agencies.

49. Mercer Capital's September 1 and September 30, 2004 PPMs show that in 2004, Mercer Capital had \$18.2 million in assets, \$900,000 in liabilities, and \$8.2 million in income.

50. Flickinger and sales agents have been contacting investors by telephone and e-mail, and soliciting them to buy Mercer Capital shares through statements about the sale price of shares, the alleged quickly approaching "IPO" or public trading date, the value of the shares, expected share prices and returns on the investment, and Mercer Capital's strong profits and income.

51. For example, on September 9, 2004, Flickinger unwittingly cold-called a Pennsylvania Securities Commission undercover investigator posing as an unaccredited potential

investor, and asked him to buy shares of Mercer Capital for \$0.50 per share. Flickinger told the investigator Mercer Capital shares were available to the general public on a limited basis and should start publicly trading in January 2005. Flickinger also boasted about future prices, claiming Mercer Capital's stock could be trading at \$3.00 to \$5.00 in about a year. A few days later, the undercover investigator received a package containing, among other things, Flickinger's business card and Mercer Capital offering documents.

52. Flickinger again called to pitch Mercer Capital's offering to the undercover investigator on September 20 and 29, 2004, stating the Mercer Capital offering could double his money in six months. Flickinger also told the investigator Mercer Capital was about to conduct a second offering of private placement stock at \$2.00 per share, which, for a limited time, he could purchase at \$.50 per share, and that unaccredited investors could buy Mercer Capital stock but were limited in the number of shares they could buy.

53. Sales agents under Flickinger's direction are following his pattern, falsely representing that Mercer Capital is generating profits and preparing for a fast-approaching IPO, and stating the stock is available for \$.50 or \$2.00 per share and will sell for \$5 to \$12 per share after the IPO.

54. Mercer Capital's sales agents also have told investors that Mercer Capital had profits of \$8 million and assets of \$18.2 million, would close its IPO deal in less than a month, would be listed on the NASDAQ stock exchange, and would generate a 50 percent return within several months and a dividend payment.

B. Fraudulent Misrepresentations and Omissions in the Mercer Capital Offering

55. Flickinger and Mercer Capital have made false and misleading statements through Mercer Capital offering documents and communications with investors, because they knew, or

were reckless in not knowing, that Mercer Capital's financial condition, regulatory history, and anticipated future profit potential, made their representations about Mercer Capital materially false and misleading.

1. Misstatements of Mercer Capital's Financial Condition

56. The representations in the September 1 and September 30, 2004 PPMs, and by Flickinger and his sales agents, regarding Mercer Capital's financial condition are fiction. Mercer Capital is anything but the profitable firm with significant assets and minor liabilities the Defendants have been depicting.

57. As described in more detail in Section VII below, in an attempt to register its stock, Mercer Capital filed one Form SB-2 and four SB-2/A registration statements with the Commission. The audited financial statements included with these filings show Mercer Capital had only \$186,095 in assets and a net loss of \$24,033 in 2004, as compared with the figures of \$18.2 million in assets and \$8.2 million in income the Defendants have been representing. Mercer Capital's 2005 audited financials included in the same filings with the Commission reported assets and net income of only \$425,174 and \$152,668, respectively.

2. Misrepresentations about Mercer Capital's Regulatory History

58. Flickinger and Mercer Capital have also misrepresented Mercer Capital's status with the CFTC and the NFA. Far from being an NFA member and CFTC-registered broker complying with applicable regulatory requirements, Mercer Capital withdrew its NFA membership and CFTC registration in October 2004 after settling an NFA disciplinary complaint against it. In addition, the NFA began investigating Mercer Capital again in December 2005, and filed another complaint in August 2006.

59. The Defendants also have not revealed to investors that Mercer Capital settled a regulatory action for fraudulent sales practices and soliciting an unaccredited investor with the Pennsylvania Securities Commission, in which Mercer Capital had to pay an assessment and fees.

60. Similarly, the Defendants have not disclosed that Flickinger, one of Mercer Capital's principals and its majority shareholder, withdrew his NFA membership and CFTC registration, was subject to the same NFA proceedings as Mercer Capital, and also settled one of the NFA actions in 2004.

3. Misstatements of Mercer Capital's Potential Profitability

61. Flickinger and Mercer Capital's statements to investors regarding Mercer Capital's future "IPO" share price are also baseless and misleading. The Defendants know, or are reckless in not knowing, the financial information they give investors in support of Mercer Capital's future share price is grossly overstated and contradicted by Mercer Capital's own audited financial statements.

VII. MERCER CAPITAL'S FRAUDULENT REGISTRATION STATEMENTS

A. Mercer Capital's Registration Statements

62. On March 30, 2006, Mercer Capital filed a Form SB-2 registration statement with the Commission, seeking to register one million shares of common stock sold in its private placement offering to trade publicly on the Bulletin Board. Mercer Capital has since filed four separate Forms SB-2/A amended registration statements on May 11, 2006, June 23, 2006, July 17, 2006, and August 1, 2006, respectively.

63. Mercer Capital's registration statements are publicly available on the internet through EDGAR, linked at <http://www.sec.gov>. None of Mercer Capital's registration statements have become effective.

64. Mercer Capital's registration statements declare that Mercer Capital and Mercer Capital Management are registered with the CFTC and are NFA members, while emphasizing the firm's core business as a full-service, discount commodity, futures, and options brokerage requires it to be registered with the CFTC and an NFA member.

65. The initial registration statement makes no mention of any Defendant's regulatory history. The Commission's Division of Corporation Finance reviewed Mercer Capital's initial registration, and on April 26, 2006 issued comments requiring Mercer Capital to disclose whether the firm had ever been the target of any regulatory actions. Mercer Capital then filed amended registration statements declaring it has not been subject to any regulatory action, despite its extensive history to the contrary.

66. Flickinger signed all of Mercer Capital's registration statements as Mercer Capital's Principal Executive, Financial, and Accounting Officer, and as one of its directors. All of Mercer Capital's registration statements list Flickinger as the company's President, and the location of its principal executive offices as Boca Raton, Florida.

B. Misrepresentations and Omissions in Mercer Capital's Registration Statements

67. Instead of disclosing Mercer Capital's regulatory history as the Commission had requested, Flickinger and Mercer Capital lied in each of four subsequent amended registration statements. All of them, signed by Flickinger, falsely state, "[W]e have not been the subject of any regulatory actions"

68. Mercer Capital also has failed to amend its most recent registration statement to disclose the NFA's August 2006 complaint against itself, Mercer Capital Management and Flickinger.

69. Mercer Capital's registration statements also misrepresent both Mercer Capital and its subsidiary, Mercer Capital Management, as registered with the CFTC and as NFA members. Mercer Capital and Flickinger know, or are reckless in not knowing, that Mercer Capital and Flickinger have withdrawn their CFTC registrations and NFA memberships, and that Mercer Capital Management had sought to withdraw its CFTC registration and NFA membership. Although the defendants know their own regulatory and registration withdrawal histories, none of Mercer Capital's registration statements refer to these histories or to the withdrawal of their CFTC registrations and NFA memberships.

70. Mercer Capital has also not amended its registration statement to disclose that Mercer Capital Management withdrew its CFTC registration and NFA membership effective October 2006.

VIII. CLAIMS FOR RELIEF

COUNT I

Sales of Unregistered Securities in Violation of Sections 5(a) and 5(c) of the Securities Act

71. The Commission repeats and realleges paragraphs 1 through 70 of its Complaint.

72. No registration statement was filed or in effect with the Commission pursuant to the Securities Act with respect to the securities and transactions described in this Complaint, and no exemption from registration exists with respect to the securities and transactions described in this Complaint.

73. Starting no later than September 2004 as to Defendants Flickinger and Mercer Capital, and starting no later than December 2005 as to Defendants Mercer Capital Management, Tri-State Group, Tri-State Energy Group I, and Tri-State Energy Group II, the Defendants, directly and indirectly, have been: (a) making use of the means or instruments of transportation or communication in interstate commerce or of the mails to sell securities, through the use or medium of a prospectus or otherwise; (b) carrying securities or causing such securities to be carried through the mails or in interstate commerce, by any means or instruments of transportation, for the purpose of sale or delivery after sale; or (c) making use of the means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise, without a registration statement having been filed or being in effect with the Commission as to such securities.

74. By reason of the foregoing, the Defendants have violated, and, unless enjoined, will continue to violate Sections 5(a) and 5(c) of the Securities Act, 15 U.S.C. §§ 77e(a) and 77e(c).

COUNT II

Fraud in Violation of Section 17(a)(1) of the Securities Act

75. The Commission repeats and realleges paragraphs 1 through 70 of its Complaint.

76. Starting no later than September 2004 as to Defendants Flickinger and Mercer Capital, and starting no later than December 2005 as to Defendants Mercer Capital Management, Tri-State Group, Tri-State Energy Group I, and Tri-State Energy Group II, the Defendants directly and indirectly, by use of the means or instruments of transportation or communication in interstate commerce and by use of the mails, in the offer or sale of securities, as described in this

Complaint, have been knowingly, willfully or recklessly employing devices, schemes or artifices to defraud.

77. By reason of the foregoing, the Defendants, directly and indirectly, have violated and, unless enjoined, will continue to violate Section 17(a)(1) of the Securities Act, 15 U.S.C. § 77q(a).

COUNT III

Fraud in Violation of Sections 17(a)(2) and 17(a)(3) of the Securities Act

78. The Commission repeats and realleges paragraphs 1 through 70 of its Complaint.

79. Starting no later than September 2004 as to Defendants Flickinger and Mercer Capital, and starting no later than December 2005 as to Defendants Mercer Capital Management, Tri-State Group, Tri-State Energy Group I, and Tri-State Energy Group II, the Defendants, directly and indirectly, by use of the means or instruments of transportation or communication in interstate commerce and by the use of the mails, in the offer or sale of securities, have been: (a) obtaining money or property by means of untrue statements of material facts and omissions to state material facts necessary to make the statements made, in the light of the circumstances under which they were made, not misleading; or (b) engaging in transactions, practices and courses of business which are now operating and will operate as a fraud or deceit upon purchasers and prospective purchasers of such securities.

80. By reason of the foregoing, the Defendants, directly and indirectly, have violated and, unless enjoined, will continue to violate Sections 17(a)(2) and 17(a)(3) of the Securities Act, 15 U.S.C. §§ 77q(a)(2) and 77q(a)(3).

COUNT IV

Fraud in Violation of Section 10(b) and Rule 10b-5 of the Exchange Act

81. The Commission repeats and realleges paragraphs 1 through 70 of its Complaint.

82. Starting no later than September 2004 as to Defendants Flickinger and Mercer Capital, and starting no later than December 2005 as to Defendants Mercer Capital Management, Tri-State Group, Tri-State Energy Group I, and Tri-State Energy Group II, the Defendants, directly and indirectly, by use of the means and instrumentality of interstate commerce, and of the mails in connection with the purchase or sale of securities, have been knowingly, willfully or recklessly: (a) employing devices, schemes or artifices to defraud; (b) making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or (c) engaging in acts, practices and courses of business which have operated, are now operating and will operate as a fraud upon the purchasers of such securities.

83. By reason of the foregoing, the Defendants have directly or indirectly violated and, unless enjoined, will continue to violate Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 240.

RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that the Court:

I.

Declaratory Relief

Declare, determine and find that the Defendants have committed the violations of the federal securities laws alleged herein.

II.

Temporary Restraining Order, Preliminary Injunction and Permanent Injunction

Issue a Temporary Restraining Order, a Preliminary Injunction and a Permanent Injunction, restraining and enjoining the Defendants, their officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, and each of them, from violating Sections 5(a), 5(c), and 17(a) of the Securities Act, and Section 10(b) and Rule 10b-5 of the Exchange Act, as indicated above.

III.

Asset Freeze and Sworn Accountings

Issue an Order freezing the assets of all Defendants until further Order of the Court and requiring the Defendants to file with this Court sworn written accountings.

IV.

Appointment of a Receiver

Issue an Order appointing a receiver over all assets held in the name of Defendants Mercer Capital, Mercer Capital Management, Tri-State Group, Tri-State Energy Group I, and Tri-State Energy Group II to (1) preserve the status quo, (2) ascertain the financial condition of each of these Defendants, (3) prevent further dissipation of the property and assets of each of these Defendants to prevent loss, damage and injury to investors, (4) preserve the books, records and documents of each of these Defendants, and (5) be available to respond to investor inquiries.

V.

Records Preservation

Issue an Order requiring the Defendants to preserve any records related to the subject matter of this lawsuit that are in their custody or possession or subject to their control.

VI.

Disgorgement

Issue an Order directing the Defendants to disgorge all ill-gotten gains, including prejudgment interest, resulting from the acts or courses of conduct alleged in this Complaint.

VII.

Penalties

Issue an Order directing all Defendants to pay civil money penalties pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d).

VIII.

Penny Stock Bar

Issue an order barring Defendant Flickinger from participating in any offering of penny stock, pursuant to Section 20(g) of the Securities Act, 15 U.S.C. § 77t(g), and Section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d), for the violations alleged herein.

IX.

Officer and Director Bar

Issue an Order pursuant to Section 20(e) of the Securities Act, 15 U.S.C. § 77t(e), and Section 21(d)(2) of the Exchange Act, 15 U.S.C. § 78u(d)(2), barring Defendant Flickinger from serving as an officer or director of a public company.

X.

Further Relief

Grant such other and further relief as may be necessary and appropriate.

XI.

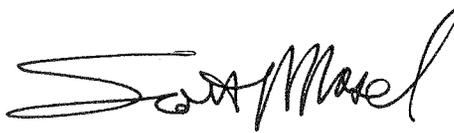
Retention of Jurisdiction

Further, the Commission respectfully requests that the Court retain jurisdiction over this action in order to implement and carry out the terms of all orders and decrees that it may enter, or to entertain any suitable application or motion by the Commission for additional relief within the jurisdiction of this Court.

November 21, 2006

Respectfully submitted,

By:



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