

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 66828 / April 18, 2012

INVESTMENT ADVISERS ACT OF 1940
Release No. 3398 / April 18, 2012

INVESTMENT COMPANY ACT OF 1940
Release No. 30038 / April 18, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-14852

In the Matter of

**MidSouth Capital, Inc. and
Mark D. Hill,**

Respondents.

**ORDER INSTITUTING ADMINISTRATIVE AND
CEASE-AND-DESIST PROCEEDINGS PURSUANT
TO SECTIONS 15(b) AND 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, SECTION 203(f) OF THE
INVESTMENT ADVISERS ACT OF 1940 AND
SECTION 9(b) OF THE INVESTMENT COMPANY
ACT OF 1940, MAKING FINDINGS AND IMPOSING
REMEDIAL SANCTIONS AND A CEASE-AND-
DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against Respondents MidSouth Capital, Inc. (“MidSouth”) and Mark D. Hill (“Hill”) and pursuant to Section 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”) and Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”) against Hill.

II.

In anticipation of the institution of these proceedings, Respondents have submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over them and the subject matter of these proceedings, which are

admitted, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings pursuant to Sections 15(b) and 21C of the Exchange Act, Section 203(f) of the Advisers Act and Section 9(b) of the Investment Company Act, Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order.

III.

On the basis of this Order and Respondents' Offer, the Commission finds that:¹

SUMMARY

1. These proceedings arise out of MidSouth's failures to comply with its net capital obligations under Section 15(c)(3) of the Exchange Act and Rule 15c3-1 thereunder. Beginning in 2008 and continuing through August 2011, MidSouth, a registered broker-dealer, continued to effect transactions in securities on multiple occasions when it did not have the required net capital. In October 2011, despite being notified by both Financial Industry Regulatory Authority ("FINRA") and Commission staff that it should cease effecting transactions while not in net capital compliance, MidSouth continued to do so in violation of Commission rules, while also not timely providing the required notifications of its violations. Throughout this time period, Respondent Hill was MidSouth's Chairman, largest shareholder and CEO. During a part of 2011, including time periods when MidSouth was in violation of its net capital obligations yet continued to effect transactions in securities, Hill also served as MidSouth's Financial and Operations Principal ("FinOp").

2. By effecting transactions in securities without sufficient net capital, MidSouth willfully violated Section 15(c)(3) of the Exchange Act and Rule 15c3-1 thereunder. In addition, by failing to provide notifications to the Commission of its net capital deficiencies and failing to create and maintain accurate books and records, MidSouth violated Section 17(a)(1) of the Exchange Act and Rules 17a-11 and 17a-3 thereunder. Hill, as MidSouth's principal owner, chief executive and FinOp, willfully aided and abetted and caused the foregoing violations.

RESPONDENTS

3. MidSouth is a registered introducing broker-dealer based in Atlanta, Georgia. MidSouth was also a registered investment adviser in several states. MidSouth filed a Form BDW on January 25, 2012, which is not yet effective, seeking to withdraw its registration as a broker-dealer. On June 15, 2010, MidSouth settled a regulatory action with FINRA in which it consented, without admitting or denying the allegations, to findings that it had failed to maintain sufficient net capital as of December 31, 2008 while engaging in securities business. Pursuant to that settlement, MidSouth agreed to a censure and a \$5,000 fine.

¹ The findings herein are made pursuant to Respondents' Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

4. Hill has been, for all relevant time periods, the Chairman and largest shareholder of MidSouth. For all relevant time periods until November 9, 2011, Hill was the CEO of MidSouth. Between April 2011 and November 9, 2011, Hill also served as MidSouth's FinOp.

MIDSOUTH REPEATEDLY VIOLATED THE NET CAPITAL, NOTIFICATION AND
BOOKS AND RECORDS REQUIREMENTS

5. The Exchange Act and rules thereunder require a broker-dealer, among other things, to maintain a certain minimum net capital at all times while effecting transactions in securities. As an introducing broker that does not clear or carry customer accounts, and does not engage in other activities that require higher minimum net capital requirements, MidSouth was required at all relevant times to maintain a minimum net capital of the greater of 6 2/3 percent of its aggregate indebtedness or \$5,000.

6. On seven occasions between December 2008 and October 2011, MidSouth violated its net capital requirements by effecting transactions in securities while failing to maintain the minimum required net capital. The majority of these violations were discovered by FINRA or Commission staff during examinations of MidSouth.

7. During certain of these times, FINRA and/or the Commission specifically notified MidSouth that continuing to effect transactions in securities while non-compliant with Rule 15c3-1 would violate Section 15(c)(3) of the Exchange Act and Rule 15c3-1 thereunder. Despite these notices, MidSouth failed to cease its broker-dealer operations during the time periods when it was not in compliance with Rule 15c3-1.

8. MidSouth also repeatedly failed to file on a timely basis the requisite notifications with the Commission and FINRA of its net capital deficiencies.

9. The seventh and most recent violation was discovered after Commission staff commenced an on-site examination of MidSouth on September 14, 2011. Based on the information provided during the exam, the Commission staff advised MidSouth that, contrary to MidSouth's conclusion, the firm's net capital and net capital deficiency as of September 30, 2011 were (\$24,262) and (\$49,036), respectively.

10. This deficiency arose because MidSouth had improperly included an aged unsecured receivable from an affiliated entity as an allowable asset for net capital purposes. MidSouth included this asset in its net capital based on the advice of Hill and because the receivable was from a broker-dealer. The receivable should not have been included in computing MidSouth's net capital.

11. By letter dated and sent by fax and mail on Monday, October 24, 2011, FINRA notified MidSouth and Hill that, given the improper inclusion of the receivable in the firm's net capital, MidSouth was non-compliant with its minimum net capital requirement. That letter also advised MidSouth that, pursuant to FINRA's rules, "a member shall suspend all business operations during any period in which it is not in compliance with the Net Capital Rule" and

further advised MidSouth of its obligations to file a Rule 17a-11 notification with FINRA and the Commission.

12. On October 26, 2011, after MidSouth failed to file its own Rule 17a-11 notification with FINRA and the Commission, FINRA made such notification on MidSouth's behalf. In that notification, FINRA stated:

FINRA staff left messages with FINOP Mark Hill on 10/24, 10/25 and 10/26 advising him that we need to discuss the firm's treatment of this receivable. He was advised that this was not an allowable asset and he should file a 17a-11 notification. On October 24, 2011, Hill was advised by FINRA staff via written notification that pursuant to FINRA Rule 4110(b)(1) the member should suspend all business operations during any period in which the firm is not in compliance with the net capital rule. As of the time of this filing [October 26, 2011], there has been no response from Hill regarding this matter.

13. On October 24, 2011, Commission staff orally advised MidSouth that it appeared not to be in compliance with its minimum net capital requirements as of September 30, 2011 and that continuing its broker-dealer operations while out of compliance would violate Rule 15c3-1 of the Exchange Act. On October 26, 2011, Commission staff called and sent by fax, email and regular mail a letter to MidSouth and Hill advising MidSouth of its net capital deficiency. That letter further advised that MidSouth should provide the required Rule 17a-11 notification and reminded MidSouth and Hill that "conducting a securities business and securities transactions without the minimum required net capital under Rule 15c3-1 is considered a violation of the rule."

14. Notwithstanding these warnings, MidSouth continued its broker-dealer securities business by effecting transactions in securities between September 30, 2011 and October 28, 2011.

HILL WILLFULLY AIDED AND ABETTED
AND CAUSED MIDSOUTH'S VIOLATIONS

15. Hill was aware of and had primary responsibility to address MidSouth's net capital obligations, remedy past deficiencies and ensure future compliance. Indeed, MidSouth's website stated that Hill oversaw "all areas of the firm" and three of the deficiency notifications from FINRA were sent directly to Hill, who had become MidSouth's FinOp as of in or about April 2011.

16. Hill acted intentionally, or, at a minimum, with severe recklessness in aiding and abetting and causing MidSouth to violate its net capital obligations. As a result of MidSouth's multiple past failures, Hill was fully aware of MidSouth's net capital problems. However, notwithstanding this knowledge, as well as being specifically advised by FINRA and the Commission of MidSouth's obligations, Hill intentionally, or with severe recklessness, permitted and caused MidSouth to fail in keeping accurate books and records, in providing appropriate Rule 17a-11 notifications, and in ceasing to effect transactions while not in net capital compliance. By such conduct, Hill willfully aided and abetted and caused MidSouth's net capital violations.

17. As a result of the conduct described above, MidSouth willfully violated Section 15(c)(3) of the Exchange Act and Rule 15c3-1 thereunder that require a broker-dealer to maintain a certain minimum net capital at all times while effecting transactions in securities and prohibit a broker-dealer from effecting such transactions while not in compliance with this net capital obligation.

18. As a result of the conduct above, Hill willfully aided and abetted and caused MidSouth's violations of Section 15(c)(3) of the Exchange Act and Rule 15c3-1 thereunder.

19. As a result of the conduct described above, MidSouth willfully violated Section 17(a)(1) of the Exchange Act and Rule 17a-11 thereunder that require that a broker-dealer notify FINRA and the SEC, via a Rule 17a-11 notification, of its net capital deficiency the "same day" of the occurrence of such deficiency, which obligation applies even if the broker or dealer "does not agree that it is, or has been, in violation of" its net capital obligations.

20. As a result of the conduct described above, Hill willfully aided and abetted and caused MidSouth's violations of Section 17(a)(1) of the Exchange Act and Rule 17a-11 thereunder.

21. As a result of the conduct described above, MidSouth willfully violated Section 17(a)(1) of the Exchange Act and Rule 17a-3 thereunder that require registered brokers and dealers to make and keep current accurate books and records relating to their brokerage business, including, under Rule 17a-3(a)(11), an accurate computation of net capital.

22. As a result of the conduct described above, Hill willfully aided and abetted and caused MidSouth's violations of Section 17(a)(1) of the Exchange Act and Rule 17a-3 thereunder.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondents' Offer.

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act, Section 203(f) of the Advisers Act and Section 9(b) of the Investment Company Act, it is hereby ORDERED that:

- A. MidSouth is censured;
- B. MidSouth cease and desist from committing or causing any violations and any future violations of Sections 15(c)(3) and 17(a)(1) of the Exchange Act and Rules 15c3-1, 17a-11 and 17a-3 thereunder;
- C. Hill cease and desist from willfully aiding and abetting and causing any violations and any future violations of Sections 15(c)(3) and 17(a)(1) of the Exchange Act and Rules 15c3-1, 17a-11 and 17a-3 thereunder;

D. Hill be, and hereby is, suspended from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization for a period of six (6) months, effective on the second Monday following the entry of this Order;

E. Hill is prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter for a period of six (6) months, effective on the second Monday following the entry of this Order.

F. Hill shall, within one hundred and eighty (180) days of the entry of this Order, pay a civil money penalty in the amount of \$15,000 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Such payment shall be: (a) made by United States postal money order, certified check, bank cashier's check or bank money order; (b) made payable to the Securities and Exchange Commission; (c) hand-delivered or mailed to the Securities and Exchange Commission, Office of Financial Management, 100 F St., NE, Stop 6042, Washington, DC 20549; and (d) submitted under cover letter that identifies Mark D. Hill as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to William P. Hicks, Securities and Exchange Commission, 950 East Paces Ferry Road, N.E., Suite 900 Atlanta, Georgia 30326-1382

By the Commission.

Elizabeth M. Murphy
Secretary