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**THE NORTH CAROLINA SECURITIES DIVISION,** )

Petitioner, )

vs. )

**JOSEPH MAURICE DEBERRY and** )  
**SWEETWATER CAPITAL MANAGEMENT, LLC.** )

Respondents. )

**TEMPORARY ORDER**

**TO**

**CEASE AND DESIST**

**FILE NO. 11SEC170**

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**THIS CAUSE** coming on to be heard by the undersigned, pursuant to an Administrative Petition filed by the Securities Division of the Department of the Secretary of State (the “Division” or “Petitioner”) under the authority granted by Chapter 78A of the North Carolina General Statutes (the North Carolina Securities Act or “Securities Act”), and the rules promulgated thereunder, in which the Division seeks, among other remedies, a temporary and summary Cease and Desist Order pursuant to the provisions of N.C.G.S. §78A-47(b)(2).

**THE SECURITIES DIVISION** has investigated the activities of **JOSEPH MAURICE DEBERRY and SWEETWATER CAPITAL MANAGEMENT, LLC** (hereinafter, the

“Respondents”) to determine if any one of them have engaged in, or are about to engage in, any act or practice constituting a violation of the Securities Act or any rule or order thereunder.

**THE SECRETARY OF STATE**, acting by and through her duly authorized Deputy Securities Administrator, from the investigation and the information derived therefrom, and for the protection and preservation of the public welfare and in the public interest, makes the following:

### **FINDINGS OF FACT**

1. Respondent **SWEETWATER CAPITAL MANAGEMENT, LLC** (hereinafter “Sweetwater” or Respondent”) was a limited liability company formed on December 13, 2005 in the State of North Carolina. The last annual report filed with the Corporations Division of the North Carolina Department of the Secretary of State on April 2, 2007 indicated that Sweetwater was in the business of real estate development. On December 15, 2010, Sweetwater was administratively dissolved by the North Carolina Department of the Secretary of State for failure to file an annual report. Sweetwater’s last known business address was 310 South Elm Street, Suite C, Greensboro, North Carolina 27401.
2. Respondent **JOSEPH MAURICE DEBERRY** (hereinafter “DeBerry” or “Respondent”) is or was the organizer, manager, and registered agent of Sweetwater. On December 16, 2010, DeBerry was convicted of obtaining property by false pretenses in a Guilford County Superior Court.

### **Investor A**

3. Investor A first met DeBerry in 1976 when they attended school together. Although Investor A and DeBerry had not seen each other in years, they reconnected in 2007 after seeing each other at an athletic event.
4. In November 2009, DeBerry contacted Investor A because DeBerry wanted to schedule a time to meet with Investor A to discuss Respondents’ investment opportunity. On or about

November 29, 2009, DeBerry met with Investor A at the Grandover Resort in Greensboro, North Carolina. DeBerry explained his investment opportunity which consisted of DeBerry working with underfunded historically black colleges to construct dormitory facilities for the colleges. After the completion of the dormitory facilities, DeBerry would lease the dormitory facilities back to the colleges on a thirty year lease agreement.

5. DeBerry told Investor A that DeBerry had partnered with an individual to construct a dormitory at Saint Augustine's College in Raleigh, North Carolina. Additionally, DeBerry told Investor A that DeBerry had recently completed a dormitory construction project at Livingstone College in Salisbury, North Carolina, which was similar to the dormitory construction investment opportunity DeBerry was offering Investor A.

6. DeBerry told Investor A that if Investor A decided to invest with DeBerry and Sweetwater, Investor A's investment money would be used to construct a dormitory at Voorhees College in Denmark, South Carolina. DeBerry promised Investor A a 20% annual rate of return.

7. DeBerry initially requested that Investor A invest \$50,000 in the dormitory construction investment project. However, Investor A did not have \$50,000 to invest at that time. DeBerry then told Investor A that Investor A could invest \$10,000 up front and invest the remaining \$40,000 the next year.

8. Before Investor A invested in the dormitory construction investment project, DeBerry provided Investor A with several documents allegedly showing support of Respondents' dormitory construction investment project at Voorhees College by the Bank of North Carolina and Voorhees College. DeBerry provided Investor A with a two page pro forma, which listed the costs of the dormitory construction investment project.

9. DeBerry provided Investor A with a commitment letter purportedly signed by the Senior Vice President of the Bank of North Carolina, which stated the bank's commitment to make a construction loan to Sweetwater with the proceeds being used to construct a dormitory at Voorhees College.

10. DeBerry provided Investor A with a letter of intent purportedly from Voorhees College signed by the President of Voorhees College which discussed the conclusion of negotiations between Sweetwater and Voorhees College regarding the building of the student residence facility. The letter stated “this letter shall serve as evidence of the intent on the part of Voorhees to occupy the 250 bed Facility upon its completion by Sweetwater Capital.”
11. Additionally, DeBerry provided Investor A with a master lease agreement signed by DeBerry on behalf of Sweetwater, as the Landlord, and purportedly signed by the President of Voorhees College, as the tenant. This master lease agreement stated that Sweetwater would construct a dormitory and multi-purpose facility on the property of Voorhees College. Based on the master lease agreement, Sweetwater would then lease the property to Voorhees College after the construction of the dormitory and multi-purpose facility.
12. DeBerry told Investor A that DeBerry had been informed by the bank funding the dormitory construction project that 10% of the total cost of the dormitory construction project had to be raised and spent before the bank would disburse funds on the construction loan.
13. Investor A did not invest immediately during the November 2009 meeting with DeBerry as Investor A wanted to conduct his own independent research. Investor A researched the dormitory construction project described by DeBerry at Livingstone College in Salisbury, North Carolina and discovered that a dormitory facility had in fact been constructed at that college.
14. After learning that DeBerry had been involved in a dormitory construction project at Livingstone College and being pleased with the interest rate offered by DeBerry, Investor A decided to invest with Respondents. On December 18, 2009, Investor A gave DeBerry a \$10,000 check made payable to “Maurice DeBerry” to be invested in Respondents’ dormitory construction investment project. Investor A and DeBerry agreed that Investor A’s additional \$40,000 investment would be paid to DeBerry in December 2010. Investor A and DeBerry, on behalf of Sweetwater, signed an Investment Agreement describing the terms of their agreement. Pursuant to the Investment Agreement, Respondents agreed to pay Investor A \$25,000 per year as an investment return for 30 years.

15. On February 3, 2010, DeBerry contacted Investor A requesting an additional \$10,000 investment. Pursuant to the Investment Agreement, Investor A was not supposed to pay the remaining \$40,000 of Investor A's investment until December 2010. Therefore, Investor A became suspicious of DeBerry and did not provide Respondents with any additional investment money.

16. Based on Investor A's suspicion, Investor A conducted additional research on DeBerry. During this research, Investor A discovered that DeBerry had filed for bankruptcy several days after receiving Investor A's investment money and that DeBerry had several civil actions that had been initiated against him.

17. After receiving the information about DeBerry's bankruptcy filing and the civil actions, Investor A then contacted the administration at Voorhees College to inquire about the master lease agreement DeBerry provided to Investor A before Investor A invested with Respondents, which was purportedly signed by the President of Voorhees College and DeBerry. A Voorhees College administrator informed Investor A that no agreement had ever been signed between Voorhees College and Respondents.

18. Investor A then contacted the Bank of North Carolina in High Point, North Carolina to inquire about the commitment letter DeBerry showed Investor A before Investor A invested with Respondents, which was purportedly signed by "Randy Carda, Senior Vice President." Upon speaking to Randal Carda ("Carda"), at the Bank of North Carolina in High Point, North Carolina, Investor A learned that Carda neither wrote nor signed a commitment letter regarding the Bank of North Carolina's commitment to make a construction loan to Respondents.

19. After learning that Respondents did not have any agreement with Voorhees College or the Bank of North Carolina for the construction of the dormitory, Investor A requested the full return of his capital investment. DeBerry gave Investor A several excuses as to why DeBerry could not repay Investor A's capital investment. Investor A never received the return of his capital investment.

## Investor B

20. On or about March 25, 2010, Investor B learned that DeBerry was offering an investment opportunity in college dormitory constructions to individuals within North Carolina. Before the end of that month, Investor B met with DeBerry at DeBerry's home in New London, North Carolina. DeBerry told Investor B about DeBerry's investment opportunity investing in the construction of student housing at a privately owned college.
21. DeBerry stated he was going to construct student housing at Voorhees College in Denmark, South Carolina by using DeBerry's own money, money from investors and bank loans.
22. DeBerry further stated that if Investor B wanted to invest, Investor B would receive a 100% rate of return the first year. DeBerry also guaranteed Investor B \$50,000 per year for the next twenty years in interest payments.
23. DeBerry guaranteed that Investor B would not lose his capital investment. DeBerry told Investor B there was no risk involved in the investment opportunity. DeBerry stated that if the student housing project did not materialize, Investor B would receive his money back.
24. DeBerry provided Investor B with a pro forma, which detailed the potential revenue that the dormitory facility would earn. DeBerry also gave Investor B a copy of an unsigned master lease agreement between Sweetwater and Voorhees College for the dormitory construction project.
25. DeBerry told Investor B that Sweetwater had already negotiated an agreement with Voorhees College for the construction of the dormitory facility. DeBerry also told Investor B that DeBerry had a commitment letter from a bank to fund the project. However, DeBerry did not tell Investor B which bank had agreed to fund the dormitory facility.
26. DeBerry told Investor B that DeBerry had just completed a student housing construction project at Livingstone College in Salisbury, North Carolina. Investor B decided not to invest

with Respondents immediately as Investor B wanted to conduct his own research on Respondents' investment opportunity.

27. Investor B conducted research and learned that a dormitory construction project had been completed at Livingstone College. Learning about the dormitory construction project at Livingstone College provided Investor B with assurance that an investment with Respondents in the Voorhees College project would be a safe investment.

28. On April 7, 2010, Investor B met DeBerry in Rocky Mount, North Carolina and gave DeBerry two checks for \$25,000 each, written out to "Joseph Maurice DeBerry DBA Sweetwater Capital Management, LLC." Investor B invested \$50,000 with Respondents in the Voorhees College dormitory construction project. On that same day, Investor B signed an investment agreement called "Assignment of Rents, Leases and Profits." DeBerry, as managing member of Sweetwater, also signed the Assignment of Rents, Leases and Profits investment agreement.

29. Based on the investment agreement, Respondents agreed to repay Investor B's \$50,000 capital investment by April 15, 2011. Additionally, Investor B would start receiving annual distribution investment payments of \$45,000 by August 30, 2011. These annual distribution investment payments would continue for 20 years, totaling \$900,000.

30. On or about April 17, 2011, Investor B contacted DeBerry about the repayment of Investor B's capital investment, which according to the investment agreement signed by Investor B and DeBerry was due April 15, 2011. Investor B asked DeBerry to repay Investor B's \$50,000 capital investment. DeBerry gave Investor B several excuses as to why DeBerry could not send Investor B's capital investment as agreed. Investor B never received the return of his capital investment.

## Offer and Sale of Securities

31. The transactions described by DeBerry in his dormitory construction investment project in paragraphs 3 through 30 constitute investment contracts as defined by N.C.G.S. §78A-2(11) and 18 NCAC 06A.1104 (8).
32. The offer and sale of the investment contracts as found in paragraphs 3 through 30 above constitute the “offer” and “sale” of a “security,” as those terms are defined pursuant to N.C.G.S. §§ 78A-2(8) and 78A-2(11).
33. The investment contracts consisting of the enterprise of investing in the construction of student housing at privately owned colleges described in paragraphs 3 through 30 as offered and sold to North Carolina investors by Respondents were not registered with the Securities Division of the North Carolina Department of the Secretary of State under the provisions of the North Carolina Securities Act prior to being offered and sold in North Carolina, as required by N.C.G.S. §78A-24.
34. At all relevant times complained of herein, DeBerry was not licensed to sell securities in North Carolina as required by N.C.G.S. §78A-36(a).
35. In connection with the offer, sale and purchase of the investment contracts described in paragraphs 3 through 19, DeBerry made willful violations of N.C.G.S. §78A-8(2) in that DeBerry made untrue statements of material facts when DeBerry told Investor A that Sweetwater had received a construction loan from the Bank of North Carolina and DeBerry provided Investor A with a commitment letter purportedly signed by the Senior Vice President of the Bank of North Carolina, which stated the bank’s commitment to make a construction loan to Sweetwater to be used to construct a dormitory at Voorhees College.
36. In connection with the offer, sale and purchase of the investment contracts described in paragraphs 3 through 19, DeBerry made willful violations of N.C.G.S. §78A-8(2) in that DeBerry made untrue statements of material facts when DeBerry told Investor A that Sweetwater and Voorhees College had concluded their negotiations for the construction of the student

residence facility and DeBerry provided Investor A with a letter of intent purportedly from Voorhees College signed by the President of Voorhees College that stated “this letter shall serve as evidence of the intent on the part of Voorhees to occupy the 250 bed Facility upon its completion by Sweetwater Capital.”

37. In connection with the offer, sale and purchase of the investment contracts described in paragraphs 3 through 19, DeBerry made willful violations of N.C.G.S. §78A-8(2) in that DeBerry made untrue statements of material facts when DeBerry told Investor A that Sweetwater and Voorhees College had signed a master lease agreement for the construction of a dormitory and multi-purpose facility on the property of Voorhees College and by providing Investor A with a copy of the master lease agreement signed by DeBerry on behalf of Sweetwater and purportedly signed by the President of Voorhees College.

38. In connection with the offer, sale and purchase of the investment contracts described in paragraphs 20 through 30, DeBerry made willful violations of N.C.G.S. §78A-8(2) in that DeBerry made untrue statements of material facts when DeBerry told Investor B that DeBerry had entered into an agreement with Voorhees College for the construction of a dormitory, when in fact Voorhees College never entered into an agreement with Respondents for the construction of a dormitory.

39. In connection with the offer, sale and purchase of the investment contracts described in paragraphs 20 through 30, DeBerry made willful violations of N.C.G.S. §78A-8(2) in that DeBerry made untrue statements of material facts when DeBerry told Investor B that DeBerry had received a letter of commitment from a bank for a construction loan to be used in the construction of a dormitory at Voorhees College, when in fact no such commitment letter existed.

40. In connection with the offer, sale and purchase of the investment contracts described in paragraphs 3 through 30, DeBerry made untrue statements of material facts when DeBerry guaranteed the investments made to Respondents by Investor A and Investor B in the construction of a dormitory at Voorhees College, when at the time DeBerry guaranteed the investments of Investor A and Investor B, DeBerry knew DeBerry’s description of the

investment opportunity was fictitious because DeBerry did not have a binding agreement with Voorhees College, which was necessary to perform the investment opportunity. This was a willful violation of N.C.G.S. §78A-8(2).

41. In connection with the offer, sale and purchase of the investment contracts described in paragraphs 3 through 30, DeBerry made willful violations of N.C.G.S. §78A-8(2) in that DeBerry omitted to state these material facts relating to the offer and sell of his investment contracts: (a) DeBerry did not tell Investor A or Investor B that he was not licensed to sell securities in North Carolina as required by N.C.G.S. §78A-36(a); and (b) DeBerry did not tell Investor A or Investor B that the investment contracts he offered and sold in North Carolina were not registered as required by N.C.G.S. §78A-24.

42. Sweetwater employed unlicensed salesmen to offer and sell their securities, in violation of N.C.G.S. §78A-36(b).

43. It is in the public interest of the citizens of North Carolina and for the protection of investors that Respondents be prohibited from violating the provisions of the Securities Act in connection with selling or making offers to sell securities, buying or soliciting offers to buy securities.

44. Respondents presently continue to have the ability to offer and sell securities to persons in North Carolina in violation of the provisions of N.C.G.S. §§78A-8, 78A-24 and 78A-36.

45. Respondents' solicitation of investors poses an immediate and significant danger to the public welfare because the securities offered have not been registered with the Division. Proper registration of securities is an essential safeguard serving to protect the public from securities fraud. In addition, the registration as a dealer or salesman, as required by the Securities Act, is essential to ensure that persons transacting business in this State are competent and properly authorized to do so.

46. An immediate Temporary Order to Cease and Desist is necessary and appropriate to address Respondents' violations of the North Carolina Securities Act. Any delay in issuing an

order under N.C.G.S. §78A-47(b)(1) will result in irreparable harm to the public interest by allowing persons to continue to transact business in North Carolina in violation of its laws, and to its citizens in the form of economic loss resulting from investment in securities sold in violation of its laws.

**BASED UPON** the foregoing Findings of Fact, the Administrator makes the following:

### **CONCLUSIONS OF LAW**

1. The Secretary has statutory authority pursuant to N.C.G.S. §78A-47(b)(2) to enter and issue a Temporary Order to Cease and Desist against Respondents.
2. Respondents' offer and sale of the investment in the enterprise of constructing dormitories at privately owned colleges constitutes the "offer" and "sale" of a security, as those terms are defined pursuant to N.C.G.S. §78A-2(8).
3. Respondents' investment opportunity in the enterprise of constructing dormitories at privately owned colleges constituted an investment contract, thus was a security as defined by N.C.G.S. §78A-2(11).
4. DeBerry, by making an untrue statement to Investor A stating that Sweetwater had received a construction loan from the Bank of North Carolina and showing Investor A a commitment letter purportedly signed by the Senior Vice President of the Bank of North Carolina on the bank's commitment to make a construction loan to Sweetwater to be used to construct a dormitory at Voorhees College, when in fact the Bank of North Carolina never made such commitment, engaged in willful violations of the North Carolina Securities Act, specifically N.C.G.S. §78A-8(2).
5. DeBerry, by making an untrue statement to Investor A stating that Sweetwater and Voorhees College had concluded their negotiations for the construction of the student residence facility and providing Investor A with a letter of intent purportedly signed by the President of

Voorhees College, when in fact the President of Voorhees College never signed such a letter, engaged in willful violations of the North Carolina Securities Act, specifically N.C.G.S. §78A-8(2).

6. DeBerry, by making untrue statements to Investor A stating that Sweetwater and Voorhees College had signed a master lease agreement for the construction of a dormitory and multi-purpose facility on the property of Voorhees College and by providing Investor A with a copy of the master lease agreement, when in fact no such agreement ever existed, engaged in willful violations of the North Carolina Securities Act, specifically N.C.G.S. §78A-8(2).

7. DeBerry, by making an untrue statement to Investor B stating that DeBerry had entered into an agreement with Voorhees College for the construction of a dormitory, when in fact Voorhees College never entered into an agreement with Respondents for the construction of a dormitory, engaged in a willful violation of the North Carolina Securities Act, specifically N.C.G.S. §78A-8(2).

8. DeBerry, by making an untrue statement to Investor B stating that DeBerry had received a letter of commitment from a bank for a construction loan to be used in the construction of a dormitory at Voorhees College, when in fact no such commitment letter existed, engaged in a willful violation of the North Carolina Securities Act, specifically N.C.G.S. §78A-8(2).

9. DeBerry, by making untrue statements to Investor A and Investor B by guaranteeing the investments made to Respondents by Investor A and Investor B in the construction of a dormitory at Voorhees College, when at the time DeBerry guaranteed the investments of Investor A and Investor B, DeBerry knew DeBerry's description of the investment opportunity was fictitious because DeBerry did not have a binding agreement with Voorhees College, which was necessary to perform the investment opportunity, engaged in willful violations of the North Carolina Securities Act, specifically N.C.G.S. §78A-8(2).

10. DeBerry, by omitting to tell Investor A and Investor B that Respondents were not registered to sell securities as required and that the investment contracts Respondents offered and sold were not registered, engaged in willful violations of the North Carolina Securities Act, specifically N.C.G.S. §78A-8(2).

11. Respondents, by offering and selling their unregistered securities in the form of investment contracts to persons in and from North Carolina, engaged in willful violations of the North Carolina Securities Act, specifically N.C.G.S. §78A-24.

12. Respondents, by transacting business in North Carolina without being registered as either dealers or as securities salesmen, have engaged in willful violations of the North Carolina Securities Act, specifically N.C.G.S. §78A-36.

13. There is reasonable cause to believe Respondents will continue to commit acts and omissions in violation of the North Carolina Securities Act.

14. It is necessary and appropriate for the protection and preservation of the public interest that Respondents be temporarily and summarily ordered to cease and desist from making offers and sales of securities in violation of the North Carolina Securities Act.

15. The public interest would be irreparably harmed by the delay inherent in issuing an order under the provisions of N.C.G.S. §78A-47(b)(1).

**NOW, THEREFORE, IT IS ORDERED**, pursuant to the authority contained in N.C.G.S. §78A-47(b)(2), that Respondents DeBerry, Sweetwater Capital Management, LLC and their officers, agents, employees, shareholders, directors, partners, members and all other persons or entities affiliated with any one of them, shall immediately cease and desist from:

a. offering for sale, soliciting offers to purchase, or selling, in or from North Carolina, securities of Sweetwater Capital Management, LLC and any security of any issuer, howsoever denominated, unless and until such securities have been registered pursuant to the provisions of the Securities Act;

b. offering for sale, soliciting offers to purchase, or selling, in or from North Carolina, securities of Sweetwater Capital Management, LLC and any security of any issuer, howsoever denominated, unless and until Respondents become registered pursuant to the provisions of the Securities Act as dealers or salesmen; and

- c. making any untrue statement of a material fact or omitting to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made not misleading, in connection with the offer, sale or purchase of any security.

**NOTICE IS HEREBY GIVEN** that Respondents may request a hearing upon this matter by transmitting such request, in writing and within thirty (30) business days of receipt of this document, to David S. Massey, Deputy Securities Administrator, Securities Division, Department of the Secretary of State, Post Office Box 29622, Raleigh, North Carolina 27626-0622. A copy of any such request shall be served by first-class mail upon Dena J. King, Enforcement Attorney, Securities Division, Department of the Secretary of State, Post Office Box 29622, Raleigh, North Carolina 27626-0622. If such a request is made, this matter shall be scheduled for a hearing in accordance with Chapter 150B of the North Carolina General Statutes within twenty (20) days after receipt by the Deputy Securities Administrator of the written request. If no request for a hearing, other responsive pleading, or submission is received by the Deputy Securities Administrator within thirty (30) business days of the receipt of service hereof, this Temporary Order To Cease And Desist shall become final and remain in effect unless it is modified or vacated by the Secretary of State in her capacity as Administrator of the North Carolina Securities Act.

**WITNESS MY HAND AND THE OFFICIAL SEAL** of the North Carolina Department of the Secretary of State, this the 3rd day of January, 2012.

Time of entry: 4:35 P.M.



**ELAINE F. MARSHALL  
SECRETARY OF STATE OF NORTH  
CAROLINA and  
SECURITIES ADMINISTRATOR**

By   
**DAVID S. MASSEY  
DEPUTY SECURITIES ADMINISTRATOR**