

STATE OF WASHINGTON

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MIKE KREIDLER  
STATE INSURANCE COMMISSIONER



**DECLARATION OF MAILING**

I declare under penalty of perjury under the laws of the State of Washington that on the date listed below, I mailed or caused delivery of a true copy of this document to parties listed below  
DATED this 31 day of March 2008 at Tumwater, Washington.

OFFICE OF  
INSURANCE COMMISSIONER

HEARINGS UNIT  
Fax: (360) 664-2782

Signed: Wendy Galloway

Patricia D. Petersen  
Chief Hearing Officer  
(360) 725-7105

**FILED**

MAR 28 2008

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In the Matter of the Application for  
Order Granting Exemption of

METALMARK MANAGED FUNDS  
COMPANY,

Applicant.

)  
) NO. G08-0016

)  
) ORDER GRANTING  
) EXEMPTION RELATIVE TO  
) PROPOSED TRANSACTION  
)  
)  
)

TO: John Dembeck  
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**COPY TO:** Mike Kreidler, Insurance Commissioner  
Michael G. Watson, Chief Deputy Insurance Commissioner  
James T. Odiorne, Deputy Commissioner, Company Supervision Division  
Carol Sureau, Deputy Commissioner, Legal Affairs Division  
Thomas P. Rowland, Staff Attorney, Legal Affairs Division  
Ronald J. Pastuch, Holding Company Manager, Company Supervision  
Office of Insurance Commissioner  
PO Box 40255  
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Pursuant to Chapter 48.04 RCW, Chapter 34.05, RCW, and Chapter 48.31B RCW, and after notice to interested parties and persons (see notice detailed below), the above-entitled matter came on regularly for hearing before the Washington State Insurance Commissioner commencing at 9:00 a.m., on March 19, 2008 in the Office of the Insurance Commissioner, 5000 Capitol Blvd., Tumwater, Washington 98501. All persons to be affected by the above-entitled matter were given the right to be present at such hearing, during the giving of testimony, and had reasonable opportunity to inspect all documentary evidence, to examine witnesses and present oral and written statements. The Commissioner appeared pro se, by and through Thomas P. Rowland, Staff Attorney in his Legal Affairs Division. Metalmark Funds were represented by John Dembeck, Esq., of Debevoise & Plimpton LLP of New York City, New York.

**NATURE OF PROCEEDING**

The Applicants in this matter are Metalmark Managed Funds. Metalmark Managed Funds consists of Morgan Stanley Capital Partners III, L.P., MSCP III 892 Investors, L.P., DR Investors, L.P. and DR Investors II, L.P. On May 22, 2007, Metalmark Managed Funds filed a Form A Exemption request, requesting the Commissioner's granting of an exemption from the applicable statutory Form A filing requirements, for reasons stated therein, as detailed below.

**FINDINGS OF FACT**

Having considered the written and oral evidence presented at the hearing, the documents on file herein, and the entire hearing file, the undersigned finds as follows:

1. The hearing was duly and properly convened and all substantive and procedural requirements under the laws of the state of Washington have been satisfied. Further, the undersigned was properly delegated to conduct the proceeding in this matter and to make the final decision herein.
2. The Applicants, Metalmark Managed Funds includes Morgan Stanley Capital Partners III, L.P., MSCP III 892 Investors, L.P., DR Investors, L.P. and DR Investors II, L.P. Direct Response Corporation (Direct Response) is a Delaware stock corporation which owns 100% of the stock of approximately 15 insurance corporations and insurance agencies including National Merit Insurance Company, a Washington insurance corporation.
3. On January 7, 2008, the Insurance Commissioner (OIC) received a letter dated January 4, 2008 from Metalmark Managed Funds, which was considered a Disclaimer of Control and Request for Exemption pursuant to RCW 48.31B.015(5) and other relevant statutory provisions, requesting that it be exempted from any requirement to file and obtain approval of a Form A or equivalent submission in connection with a proposed acquisition of Direct Response by JCF DRC L.P. and J.C. Flowers II, L.P. This Request for Exemption, which was both preceded and followed by other numerous written communications and amendments, all of which are all included in this hearing file and incorporated herein, relates to a proposed acquisition of control of DRC by J.C. Flowers II L.P. and JCF DRC, L.P. (collectively, Flowers) as set forth in detail in the Form A filing made by Flowers. The hearing file relative to said Form A, and the hearing on this Disclaimer of Control and Request for Exemption were held together and as such are all part of a single hearing file and are by this reference incorporated herein.
4. As set forth in said Flowers Form A filing and Metalmark Managed Funds' Disclaimer of Control and Request for Exemption, Flowers proposed to purchase specified shares of common stock of DRC. In particular, if approved, the result would be that Metalmark Managed Funds would own 40.1% of outstanding shares of voting common stock of DRC, 36.8% of voting power fully diluted, second only to Flowers

proposed ownership of 46.4% of the outstanding shares of common stock of Direct Response on an undiluted basis. For this reason, by letter dated January 4, 2008, Metalmark Managed Funds filed a Disclaimer of Control and Request for Exemption by Morgan Stanley Capital Partners III, L.P. MSCP III 892 Investors, L.P., DR Investors, L.P. and DR Investors II, L.P. pursuant to RCW 48.31B.025(11), WAC 284-18-430(1) RCW 48.31B.015 and other relevant sections.

5. In their Request for Exemption, each of the entities which comprise the Metalmark Managed Funds have committed that they will not vote, or execute any stockholder consents with respect to, any shares of common stock or other voting stock of DRC beneficially owned in the aggregate by Metalmark in excess of 9.9% of the outstanding shares of common stock and other voting stock of DRC without the prior written approval of the OIC or until the Metalmark Managed Funds have received prior written approval of an application for acquisition of control of Direct Response. Additionally, on closing the acquisition of Direct Response by Flowers, the shareholders of Direct Response will enter into a new stockholders agreement; under that agreement, Flowers will be entitled to control a majority of the members of the Direct Response board. In contrast, the Metalmark Funds will be entitled to appoint only two Direct Response board seats on an 11-person Direct Response board, or only 18.2% of the Direct Response board voting power. [Testimony of David J. Boudo; Declaration of David J. Boudo.] Further, Metalmark Funds have executed and filed a Letter of Commitment to this effect, which is included in the hearing file as Ex. 14. [Ex. 14; Testimony of David J. Boudo; Declaration of David J. Boudo.]

6. Flowers' Request for Approval of Proposed Acquisition of Direct Response, its Form A filing, was approved on March 27, 2008. [Form A filing.]

7. Metalmark Managed Funds' filing is complete and the proposed transaction has not been made or entered into for the purpose and does not have the effect of changing or influencing the control of a domestic insurer, as contemplated by RCW 48.31B.015(5). [Flowers Form A; Metalmark Managed Funds' Disclaimer of Control and Request for Exemption; Testimony of David J. Boudo; Testimony of Ronald J. Pastuch.]

8. The Notice of Hearing in this matter, which contains information concerning this application and the public hearing thereon, was published in its entirety on the Washington State Insurance Commissioner's website beginning on March 5, 2008 and continuously since that date. This Notice constitutes reasonable and adequate notice to interested parties. [Declaration of Ronald J. Pastuch; Testimony of Ronald J. Pastuch.]

9. As indicated in the subject Notice of Hearing, all interested parties were given the opportunity to submit any comments on, or objections to, this proposed acquisition to the undersigned through March 18, 2008, by fax, U.S. mail, personal delivery or e-mail. All interested parties were also advised in said Notice of Hearing that they would be given the opportunity to present evidence at hearing and to examine and cross-examine witnesses and offer oral and written arguments, and in connection therewith to conduct discovery proceedings. Other than ordinary filings made into the hearing file by the

parties, no comments, questions or objections were received by the Insurance Commissioner [Testimony of Ronald J. Pastuch] or by the undersigned. Because no comments, adverse or otherwise, and no objections, were received from any individual or entity, it is here found that no reasonable objection to this application exists.

10. Based upon the above Findings of Facts, it is here found that the proposed future transaction at issue herein, which may result in Metalmark Managed Funds owning an aggregate of 40.1% of outstanding shares of voting common stock of DRC, 36.8% of voting power fully diluted, and strictly limited by the conditions set forth in the Findings of Facts above, is reasonable under these circumstances and should be granted. [Form A; Testimony of Ronald J. Pastuch; Testimony of David J. Boudo; Declaration of Ronald J. Pastuch; Declaration of David J. Boudo.]

11. Mr. Ronald J. Pastuch, Holding Company Manager in the Company Supervision Division of the Washington State Office of the Insurance Commissioner appeared as the sole witness on behalf of the Washington State Insurance Commissioner. Mr. Pastuch presented his testimony in a detailed and credible manner and exhibited no apparent biases.

12. Mr. David J. Boudo, Principal of Metalmark Subadvisor LLC, appeared as a witness on behalf of Metalmark Managed Funds. Mr. Boudo presented his testimony in a detailed and credible manner and exhibited no apparent biases.

13. The application of Metalmark Managed Funds for an Order Granting Exemption of Metalmark Managed Funds under the terms detailed above is reasonable under the circumstances and should be granted.

### **CONCLUSIONS OF LAW**

1. Pursuant to Title 48 RCW, the Insurance Commissioner has jurisdiction over this matter, and properly convened a hearing to hear and determine the merits of the proposed transaction herein. Further, the undersigned has been at all times pertinent hereto properly delegated the authority to conduct the adjudicative proceeding in this matter and to make the final determination herein.

2. Morgan Stanley Capital Partners III, L.P., MSCP III 892 Investors, L.P., DR Investors, L.P. and DR Investors II, L.P. (collectively Metalmark Managed Funds) properly filed a Disclaimer of Control and Request for Exemption, with attachments, relating to the proposed transaction identified herein, pursuant to RCW 48.31B.025(11) and WAC 284-18-430(1), RCW 48.31B.015(5) and other relevant sections. Said Request for Exemption contains the information required by RCW 48.31B.015(5) and RCW 48.31B.005(2) and sections related thereto.

3. Based upon the Findings of Fact set forth above that the proposed transaction at issue herein is one whereby Metalmark Managed Funds would own 40.1% of outstanding

shares of voting common stock of DRC, 36.8% of voting power fully diluted, together with the fact that Metalmark Managed Funds will strictly comply with the specific terms and conditions identified above, and the Finding of Fact that this proposed transaction is not made or entered into for the purpose or having the effect of changing or influencing the control of a domestic insurer, as contemplated by RCW 48.31B.015(5)(b), together with the Finding of Fact that reasonable notice to interested parties has been given and no reasonable objections exist, Metalmark Managed Funds' Disclaimer of Control and Request for Exemption is reasonable under the circumstances and should be granted.

4. Based upon the above Findings of Fact, the provisions of the Insurance Code of the State of Washington, Chapter 48.31B RCW, and specifically RCW 48.31B.015(5)(b) and RCW 48.31B.005(2) relating to the control of a domestic insurer, have been met and the exemption contemplated by RCW 48.31B.015(5)(b), exempting the Metalmark Managed Funds from the prior notice and approval requirements otherwise required by RCW 48.31B.015(1)-(4) relative to their proposed transaction detailed herein, Metalmark Managed Funds' Request for Exemption is hereby granted.

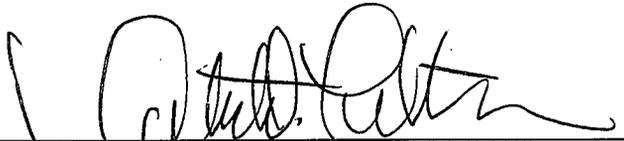
**ORDER**

On the basis of the foregoing Findings of Fact and Conclusions of Law, to the effect that the statutory criteria for approval of this exemption from prior notice and approval otherwise required under RCW 48.31B.015 has been met relative to the proposed transaction detailed above, and to the effect that approval of this request for an exemption should be granted,

**IT IS HEREBY ORDERED** that Metalmark Managed Funds' Request for Exemption relative to its proposed transaction detailed above, and upon the strict terms and conditions set forth in Findings of Facts above and included into evidence in this proceeding, is **GRANTED** effective immediately. Consummation of this transaction may occur at any time beginning on the date of entry of this Order.

This Order is entered pursuant to Title 48 RCW, and specifically RCW 48.31B.015(5)(b), RCW 48.31B.005(2), RCW 48.31B.025(11), Title 34 RCW and regulations applicable thereto.

**ENTERED** at Tumwater, Washington, this 28<sup>th</sup> day of March, 2007.

  
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**PATRICIA D. PETERSEN**  
Chief Hearing Officer  
Presiding Officer