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BEFORE THE ARIZONA CORPORATION C

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Arizona Corporation Commission

2012 JUL 12 P 4: 39 DOCKETED

COMMISSIONERS

GARY PIERCE, Chairman  
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AZ CORP COMMISSION  
DOCKET CONTROL

JUL 12 2012

DOCKETED BY

TJM

In the matter of:  
THOMAS LAURENCE HAMPTON,  
CRD#2470192, and STEPHANIE YAGER,  
husband and wife,  
TIMOTHY D. MORAN, CRD#2326078, and  
PATRICIA MORAN, husband and wife,  
PATRICK MORAN, CRD#1496354, and  
KELLY MORAN, husband and wife,  
HAMPTON CAPITAL MARKETS, LLC, an  
Arizona limited liability company,  
Respondents

DOCKET NO. S-20823A-11-0407

**AMENDED NOTICE OF OPPORTUNITY  
FOR HEARING REGARDING PROPOSED  
ORDER TO CEASE AND DESIST, ORDER  
FOR RESTITUTION, ORDER FOR  
ADMINISTRATIVE PENALTIES, ORDER OF  
REVOCATION, AND ORDER FOR OTHER  
AFFIRMATIVE ACTION**

**NOTICE: EACH RESPONDENT HAS 10 DAYS TO REQUEST A HEARING**

**EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER**

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that respondents THOMAS LAURENCE HAMPTON, TIMOTHY D. MORAN, PATRICK MORAN, and HAMPTON CAPITAL MARKETS, LLC, have engaged in acts, practices, and transactions that constitute violations of A.R.S. § 44-1801, *et seq.*, the Arizona Securities Act ("Securities Act").

**I.**

**JURISDICTION**

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Securities Act.

1 **II.**

2 **RESPONDENTS**

3 1. At all relevant times, Respondent THOMAS LAURENCE HAMPTON  
4 (“HAMPTON”) has been an Arizona resident.

5 2. At all relevant times, HAMPTON has been offering and/or selling the hedge fund  
6 investments discussed below on behalf Respondent HAMPTON CAPITAL MARKETS, LLC  
7 (“HCM”) as its member, “Managing Director,” and securities salesman or dealer.

8 3. HAMPTON, CRD# 2470192,<sup>1</sup> was registered as a securities salesman (*i.e.*, registered  
9 representative) by the Financial Industry Regulatory Authority (“FINRA”)<sup>2</sup>, Illinois, Kansas, and  
10 Missouri state securities agencies from approximately 1994 to 1995.

11 4. In January 2009, HAMPTON applied with both the Commission and FINRA to  
12 become registered as a securities salesman (the “2009 Registration Application”). HAMPTON’s 2009  
13 Registration Application was terminated and/or withdrawn without approval. As a result, at all  
14 relevant times, HAMPTON has not been registered by the Commission as a securities salesman or  
15 dealer.

16 5. At all relevant times, Respondent TIMOTHY D. MORAN (“TIM”) has been an  
17 Arizona resident.

18 6. Beginning May 27, 1993, to December 2, 2011, TIM, CRD# 2326078, was registered  
19 in Arizona as a securities salesman. From May 26, 2010, to December 2, 2011, TIM was associated  
20 with FSC Securities Corporation (“FSC”), CRD# 7461.

21 7. From the period of October 1, 2007, to the present, TIM has been licensed in Arizona  
22 as an investment advisor representative.

23  
24  
25 <sup>1</sup> CRD is an acronym for the “Central Registry Depository.” The CRD is a computerized database that can be used by  
26 securities regulators to locate, for instance, complaints filed against or disciplinary history regarding registered  
securities salesman or dealers. Potential investors may ask their state securities regulators like the Commission for  
information contained in the CRD.

<sup>2</sup> FINRA is a self-regulatory organization that regulates financial service firms that deal with the public in the United  
States.

1           8.       At all relevant times, Respondent PATRICK MORAN (“PAT”) has been an Arizona  
2 resident. PAT (CRD# 1496354) has not been registered in Arizona as a securities salesman since  
3 November 2004.

4           9.       HCM was organized by HAMPTON as an Arizona limited liability company on or  
5 about June 13, 2007.

6           10.       At all relevant times, HCM has maintained a place of business in Scottsdale, Arizona  
7 and it has been issuing, offering, and/or selling the hedge fund investments discussed below within or  
8 from Arizona. HCM has not been registered by the Commission as a securities dealer.

9           11.       HAMPTON, TIM, PAT, and HCM may be referred to collectively as “Respondents.”

10          12.       At all relevant times STEPHANIE YAGER has been an Arizona resident and the  
11 spouse of HAMPTON.

12          13.       At all relevant times PATRICIA MORAN has been an Arizona resident and the  
13 spouse of TIM.

14          14.       At all relevant times KELLY MORAN has been an Arizona resident and the spouse of  
15 PAT.

16          15.       STEPHANIE YAGER, PATRICIA MORAN, and KELLY MORAN may be referred  
17 to hereafter as “Respondent Spouses.” Respondent Spouses are joined in this action under A.R.S.  
18 § 44-2031(C) solely for purposes of determining the liability of Respondents’ and Respondent  
19 Spouses’ marital communities.

20          16.       At all relevant times Respondents HAMPTON, TIM, and PAT have been acting for  
21 their own benefit, and for the benefit or in furtherance of their marital communities with Respondent  
22 Spouses.

1 **III.**

2 **FACTS**

3 **A. General Allegations**

4 17. In or around 2009, TIM met HAMPTON, who represented to TIM that he was a  
5 former Chicago Board of Trade floor trader and an index-arbitrage trader.

6 18. HAMPTON represented that he intended to engage in an index derivative arbitrage  
7 program that sought to obtain profits by taking advantage of price imbalances or inefficiencies in  
8 the markets; however, HAMPTON did not have the capital to pay for a software programmer,  
9 programming costs, equipment or trading development costs.

10 19. HAMPTON and TIM entered into an agreement whereby TIM agreed to pay for  
11 development and equipment costs so that HAMPTON could fund a brokerage account and, through  
12 actionable code, effectuate near-immediate orders to capture price imbalances or inefficiencies in  
13 the markets. TIM and HAMPTON were to share equally in the trading profits.

14 20. In or around January 2010, TIM provided HAMPTON with \$50,000 for use in his  
15 trading activities.

16 21. TIM and PAT introduced certain individuals to HAMPTON, to whom HAMPTON  
17 offered and/or sold securities to.

18 22. HAMPTON, within and from Arizona, represented to offerees and/or investors that:  
19 (a) HCM is a hedge fund managed by HAMPTON; and (b) that HAMPTON and/or HCM is  
20 engaged in the business of buying and selling exchange traded funds using a trading strategy  
21 developed by HAMPTON (the "Business").

22 23. An exchange traded fund, or "ETF," is typically a registered investment company  
23 that owns a portfolio of securities that track an underlying benchmark or index, such as the S&P  
24 500<sup>®</sup> equities market index. Shares of an ETF can be traded on a stock exchange like the New  
25 York Stock Exchange, similar to stock.

26

1           24.    From at least September 2010 to October 2011, Respondents have been offering  
2 and/or selling passive investments to the general public to raise a pool of capital to fund  
3 HAMPTON's ETF trading business (the "Hedge Fund Investment(s)").

4           25.    HAMPTON discussed and/or emphasized to investors that the Hedge Fund  
5 Investment would be highly liquid because HCM rarely held positions overnight.

6           26.    Certain investors received and executed Subscription Agreements.

7           27.    The Subscription Agreement states that HCM is issuing and selling a minimum of  
8 ten Hedge Fund Investments, for a "total minimum" investment offering of \$500,000.

9           28.    Regarding Hedge Fund Investment sales commissions, the Subscription Agreement  
10 states that a "5% fee will be paid to introducing solicitor upon receipt of funds."

11          29.    The Subscription Agreement states that to purchase a Hedge Fund Investment, an  
12 investor has to:

- 13          a.    List the amount of the investor's desired principal investment amount (*i.e.*,  
14               \$50,000+), and select the desired Profits to be received (*i.e.*, 10% interest per  
15               annum, or "Profit Sharing" Profits);
- 16          b.    Make their principal investment check payable to HCM;
- 17          c.    Sign and date the Subscription Agreement, and send it along with the investment  
18               funds to Respondents at their Scottsdale, Arizona business address; and
- 19          d.    Complete an attached "ACCREDITED INVESTOR QUESTIONNAIRE"  
20               representing to Respondents that the investor believes he or she is an accredited  
21               investor, generally defined in the questionnaire as a person who has either a net  
22               worth exceeding \$1,000,000, or individual income in excess of \$200,000 in each of  
23               the last two years.

24          30.    Also attached to the Subscription Agreement is a four page W-9 tax form to be  
25 completed by the investor.

26

1           31.     The Subscription Agreement states that Hedge Fund Investment purchases accepted  
2 by Respondents will be documented by: (a) HAMPTON's signature on an executed Subscription  
3 Agreement on behalf of HCM as its "Managing Director; and (b) "a certificate representing the  
4 investment amount" prepared and delivered to the investor by HAMPTON.

5           32.     In addition, HAMPTON and HCM also maintained a website at  
6 [www.hamptoncap.com](http://www.hamptoncap.com) ("Website"), which was available from approximately February 2011 to  
7 approximately November 2011.

8           33.     The "About Us" page of HCM's Website included the following representations:

- 9           a.     HAMPTON is an experienced securities trader who in 1999 discovered a "market  
10 anomaly" that allowed him to profitably engage in ETF trades until 2003 when such  
11 market anomalies were no longer present;
- 12           b.     In 2009, HAMPTON discovered a new way to make money by trading "leveraged  
13 index ETFs" due to pricing discrepancies, or "inefficiencies";
- 14           c.     HAMPTON generally refers to this discovery as a "low-latency index derivative  
15 arbitrage" strategy (the "Strategy");
- 16           d.     Because of the evolution in the "electronic trading world," it is not feasible to timely  
17 execute the Strategy "manually," or via paper orders handled by people;
- 18           e.     In early 2010, HAMPTON hired a computer software programmer to design a  
19 computer program that implements Respondents' Strategy, and that can be used by  
20 HAMPTON with his securities broker's computer-based "API (automated  
21 programming interface)" to buy and sell ETFs; and
- 22           f.     The computer program can recognize HAMPTON's desired market conditions and  
23 timely send out ETF trade orders per Respondents' Strategy "in less than 1  
24 millisecond (1/1000 of a second)."
- 25  
26

1           34.     HCM publicly offered and advertised the Hedge Fund Investments within or from  
2 Arizona, in part, by publishing detailed information regarding the same on the “Trading Strategies”  
3 page of the Website (the “Prospectus Page”).

4           35.     According to the Prospectus Page, potential investors can chose one of two types of  
5 Hedge Fund Investments returns at the time of investment purchase, including:

6           a.     A flat “10% Preferred Return,” or interest paid by HCM and/or HAMPTON on  
7 principal Hedge Fund Investments at the rate of ten percent per year, with the  
8 apparent return of the principal investment funds at the conclusion of the  
9 investments (the “10%” returns); or

10          b.     “Trading Participation” profits wherein HCM and/or HAMPTON and investors  
11 equally share in the ETF trading Strategy profits, or “a standard 50/50 trading split  
12 (i.e., 50% of the profits to investor and 50% to Management)” (the “Profit Sharing”  
13 returns). The 10% and Profit Sharing returns may be collectively referred to as the  
14 “Profit(s)”.

15          36.     The Prospectus Page of the Website further provides potential investors with  
16 detailed examples of how HCM and/or HAMPTON are able to generate Profits using their ETF  
17 trading Strategy.

18          37.     According to the Prospectus Page, the minimum Hedge Fund Investment purchase  
19 price is \$50,000.

20          38.     At all relevant times, the “Documents” page of the Website has included a link to a  
21 detailed Hedge Fund Investment “Account Application” which, when clicked, opens a PDF  
22 formatted document of the Subscription Agreement, discussed above.

23          39.     The Hedge Fund Investment Subscription Agreement can be accessed, reviewed,  
24 printed or downloaded from the Website by an Arizona resident without restriction.

25          40.     Neither the Prospectus Page of the Website, nor the Subscription Agreement state  
26 that the Hedge Fund Investments have a particular termination date, or a date on which an investor

1 can expect to receive back their principal investment funds and promised Profits. Further, the  
2 “Revocation” provision of the Subscription Agreement, states as follows:

3 **6. Revocation**

4 The Investor agrees that he or she shall not cancel, terminate or revoke this  
5 Subscription Agreement or any agreement of the Investor made hereunder, and that  
6 this Subscription Agreement shall survive the death, disability or incompetence of  
7 the Investor. (emphasis in original)

8 41. Investors submitted checks and wire transfers to HAMPTON, which generally  
9 named HCM as the payee or beneficiary. The funds were deposited into Arizona bank accounts  
10 owned and controlled by HAMPTON.

11 42. Certain investors were provided with documents from HAMPTON describing the  
12 low-latency index derivative arbitrage strategy, which included a chart, which compares the HCM  
13 investment to the S&P 500® from October 2010 to July 2011.

14 43. The chart states that for each month, from October 2010 to July 2011, the HCM  
15 investment returned 1%, 2.41%, 0.90%, 3.58%, 1.47%, 5.90%, 1.80%, 3.73%, 0.16%, and 2.10%,  
16 respectively.

17 **Trading Account #1**

18 44. In January 2010, to conduct the ETF trading Strategy, HAMPTON opened a  
19 securities trading account with Interactive Brokers, LLC, (“IB”) that permitted the trading of  
20 options, forex, futures, and related securities products (Trading Account #1).

21 45. HAMPTON is the authorized trader on Trading Account #1, and managed and  
22 controlled the funds. Investors do not have direct access to or control of Trading Account #1.

23 46. On or about January 27, 2010, Trading Account #1 was funded with \$50,000.

24 47. Between the periods of February 2010 to September 2010, HAMPTON incurred  
25 fees and trading losses every month in Trading Account #1. The IB monthly statements reveal that  
26 the account net asset value changed by -28.69%, -22.72%, -10.14%, -89.94%, -1.00%, -1.83%, -  
92.77%, -25.71%, respectively, on a month-to-month basis.



1 48. In September 2010, the ending balance of Trading Account #1 was \$130.

2 49. The Hedge Fund Investment investors were introduced to HAMPTON by TIM and  
3 PAT. Most of the investors were existing clients of TIM or PAT.

4 50. In October 2010, HAMPTON deposited \$435,000 of investor funds into Trading  
5 Account #1.

6 51. The IB monthly statement reveals that the account net asset value for November  
7 2010 changed by -46.40%.

8 52. HAMPTON failed to disclose to investors that he had incurred losses and/or  
9 decreases in the net asset value in the preceding months, as a result of his trading Strategy.

10 53. Between October 2010 to September 2011, HAMPTON deposited \$1,290,000 from  
11 investors into Trading Account #1.

12 54. As of November 2011, Trading Account #1 had an ending balance of approximately  
13 \$44,000.

14 **Trading Account #2**

15 55. In or around May 2011, to conduct the ETF trading Strategy, HAMPTON opened a  
16 second securities trading account in the name of HCM with IB that permitted the trading of  
17 options, forex, futures, and related securities products (Trading Account #2).

18 56. HAMPTON is the authorized trader on Trading Account #2, and managed and  
19 controlled the funds. Investors do not have direct access to or control of Trading Account #2.

20 57. In May 2011, HCM deposited \$850,000 of investor funds into Trading Account #2.

21 58. In July 2011, HCM deposited \$160,000 of investor funds into Trading Account #2.

22 59. In August 2011, HCM deposited \$1,600,000 of investor funds into Trading Account  
23 #2.

24 60. In September 2011, HCM deposited \$80,000 of investor funds into Trading Account  
25 #2 and withdrew \$200,000 to HCM.

26

1           61.     Between the periods of June 2011 to October 2011, HAMPTON incurred fees and  
2 trading losses. The IB monthly statements reveal that the account net asset value changed by -  
3 0.07%, -5.73%, 36.19%, -92% and -26.92%, respectively, on a month-to-month basis.

4           62.     HAMPTON failed to disclose to investors that, in multiple preceding months, he  
5 had already incurred trading losses and/or decreases in the net asset value as a result of his trading  
6 Strategy.

7           63.     Between May 2011 to October 2011, HAMPTON deposited \$2,705,000 from  
8 investors into Trading Account #2.

9           64.     As of November 2011, Trading Account #2 had an ending balance of approximately  
10 \$63,000.

11     **Joint Allegations**

12           65.     Between the periods of September 2010 to October 2011, approximately 72  
13 investors entered into the Hedge Fund Investments for a total amount of at least \$4,741,332.

14           66.     Investors also received monthly statements from HCM ("HCM Statements"). The  
15 HCM Statements were signed by HAMPTON, as the managing director of HCM and included the  
16 investors' initial investment deposit amount, the year-to-date distribution amount, and the income  
17 accumulation amount for the month.

18           67.     HAMPTON misrepresented to certain investors in their HCM Statements that their  
19 investments accumulated a profit or earned interest on certain months and/or paid out alleged  
20 profits to investors.

21           a)     For example, an Arizona investor received monthly statements from the  
22 periods of February 2011 to September 2011, reflecting a fixed amount of income  
23 accumulation/profit of .83% (or 10% annualized return) for each month; however, HAMPTON  
24 experienced trading losses and/or decreases in the net asset value in the IB trading accounts in  
25 multiple months in that time period; and

26



1 V.

2 VIOLATION OF A.R.S. § 44-1842

3 (Transactions by Unregistered Dealers or Salesmen)

4 76. Respondents HAMPTON, HCM, and PAT offered or sold securities within or from  
5 Arizona while not registered as dealers or salesmen pursuant to Article 9 of the Securities Act.

6 77. This conduct violates A.R.S. § 44-1842.

7 VI.

8 VIOLATION OF A.R.S. § 44-1991

9 (Fraud in Connection with the Offer or Sale of Securities)

10 78. In connection with the offer or sale of securities within or from Arizona, Respondents  
11 directly or indirectly: (i) employed a device, scheme, or artifice to defraud; (ii) made untrue statements  
12 of material fact or omitted to state material facts that were necessary in order to make the statements  
13 made not misleading in light of the circumstances under which they were made; or (iii) engaged in  
14 transactions, practices, or courses of business that operated or would operate as a fraud or deceit upon  
15 offerees and investors. Respondents' conduct includes, but is not limited to, the following:

16 a) HAMPTON and HCM failed to disclose to investors that, in multiple preceding  
17 months, he had already incurred trading losses and/or decreases in the net asset value as a result of his  
18 trading Strategy; and

19 b) HAMPTON and HCM misrepresented to certain investors, in their HCM  
20 Statements, that their investments accumulated a profit or earned interest on certain months and/or  
21 paid out alleged profits to investors.

22 79. This conduct violates A.R.S. § 44-1991.

23 VII.

24 REMEDIES PURSUANT TO A.R.S. § 44-1962

25 (Denial, Revocation, or Suspension of Registration of Salesman; Restitution, Penalties, or other  
26 Affirmative Action)



1 for Hearing. The requesting respondent must deliver or mail the request to Docket Control, Arizona  
2 Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007. Filing instructions may be  
3 obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at  
4 <http://www.azcc.gov/divisions/hearings/docket.asp>.

5 If a request for a hearing is timely made, the Commission shall schedule the hearing to begin  
6 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the  
7 parties, or ordered by the Commission. If a request for a hearing is not timely made the Commission  
8 may, without a hearing, enter an order granting the relief requested by the Division in this Notice of  
9 Opportunity for Hearing.

10 Persons with a disability may request a reasonable accommodation such as a sign language  
11 interpreter, as well as request this document in an alternative format, by contacting Shaylin A.  
12 Bernal, ADA Coordinator, voice phone number 602/542-3931, e-mail [sabernal@azcc.gov](mailto:sabernal@azcc.gov).  
13 Requests should be made as early as possible to allow time to arrange the accommodation.  
14 Additional information about the administrative action procedure may be found at  
15 <http://www.azcc.gov/divisions/securities/enforcement/AdministrativeProcedure.asp>

16 **X.**

17 **ANSWER REQUIREMENT**

18 Pursuant to A.A.C. R14-4-305, if a Respondent or a Respondent Spouse requests a hearing,  
19 the requesting respondent must deliver or mail an Answer to this Notice of Opportunity for Hearing  
20 to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona  
21 85007, within 30 calendar days after the date of service of this Notice. Filing instructions may be  
22 obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site  
23 at <http://www.azcc.gov/divisions/hearings/docket.asp>.

24 Additionally, the answering respondent must serve the Answer upon the Division. Pursuant  
25 to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-delivering a  
26


1 copy of the Answer to the Division at 1300 West Washington, 3<sup>rd</sup> Floor, Phoenix, Arizona, 85007,  
2 addressed to Phong (Paul) Huynh.

3 The Answer shall contain an admission or denial of each allegation in this Notice and the  
4 original signature of the answering respondent or respondent's attorney. A statement of a lack of  
5 sufficient knowledge or information shall be considered a denial of an allegation. An allegation not  
6 denied shall be considered admitted.

7 When the answering respondent intends in good faith to deny only a part or a qualification  
8 of an allegation, the respondent shall specify that part or qualification of the allegation and shall  
9 admit the remainder. Respondent waives any affirmative defense not raised in the Answer.

10 The officer presiding over the hearing may grant relief from the requirement to file an  
11 Answer for good cause shown.

12 Dated this 12 day of July, 2012.

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15 Matthew J. Neubert  
16 Director of Securities  
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