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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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APR 28 2014

AZ CORP COMMISSION
DOCKET CONTROL

DOCKETED BY

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

**THIRD 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 TIMOTHY D. MORAN and PATRICK MORAN have engaged in acts, practices, and transactions that constitute violations of A.R.S. § 44-1801, *et seq.*, the Arizona Securities Act ("Securities Act") and/or the Arizona Investment Management Act, A.R.S. § 44-3101 *et seq.* ("IM Act").

I.

JURISDICTION

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

1 17. From at least September 2010 to October 2011, Hampton and HCM offered and
2 sold passive investments to the general public to raise a pool of capital to fund Hampton's ETF
3 trading business (the "Hedge Fund Investment(s)").

4 18. An exchange traded fund, or "ETF," is typically a registered investment company
5 that owns a portfolio of securities that track an underlying benchmark or index, such as the S&P
6 500® equities market index. Shares of an ETF can be traded on a stock exchange like the New
7 York Stock Exchange, similar to stock.

8 19. During the relevant time, TIM and/or his various entities provided financial
9 planning, securities, and/or investment advisory services to clients from an office located in
10 Scottsdale, Arizona.

11 20. Sometime after January 2010, Hampton began to conduct his Business from TIM's
12 Scottsdale office.

13 21. The Arizona Hedge Fund Investment investors were introduced to Hampton by TIM
14 and PAT. Most of the investors were existing clients of TIM or friends and acquaintances of PAT.

15 22. Hampton conducted some, if not all, of the trading activity from a computer setup
16 located in TIM's business office.

17 23. Beginning in September 2010, PAT offered and sold the Hedge Fund Investments to
18 Arizona residents. PAT also supplied the HCM investment paperwork to an Arizona investor.

19 24. Beginning in September 2010, TIM offered and sold the Hedge Fund Investments to
20 Arizona residents and to certain investment clients. For example:

21 a) In September 2010, TIM offered and/or sold the Hedge Fund Investment to
22 an Arizona resident. TIM contacted the Arizona resident and discussed and described the Hedge
23 Fund Investment and the Arizona resident invested \$50,000 as a result.

24 b) In January 2011, TIM offered and/or sold the Hedge Fund Investment to an
25 Arizona resident. TIM stated to the Arizona resident that he had "found gold," explained the
26 Hedge Fund Investment, and the Arizona resident invested \$50,000 as a result.

1 c) In October 2010, TIM offered and/or sold \$100,000 of the Hedge Fund
2 Investment to an Arizona resident. TIM stated to the Arizona resident that he had personally
3 invested in the Hedge Fund Investment and felt it was a good alternative investment. In April
4 2011, at a quarterly meeting with TIM to discuss the Arizona resident's investment portfolio, TIM
5 asked the investor if he wanted to invest again due to the success the fund was experiencing and as
6 a result the investor invested another \$100,000.

7 25. In May 2011, an entity owned and/or controlled by TIM made a \$25,000 purchase
8 of the Hedge Fund Investment on behalf of an Arizona resident who was an investment client of
9 TIM's. The disbursement to HCM in the memo or comment field referenced the investment
10 client's name.

11 26. Certain investors also met with Hampton, sometimes in TIM's office, and Hampton
12 discussed and/or emphasized to investors that the Hedge Fund Investment would be highly liquid
13 because HCM rarely held positions overnight.

14 27. Certain investors received and executed Subscription Agreements.

15 28. The Subscription Agreement stated that HCM would issue and sell a minimum of
16 ten Hedge Fund Investments, for a "total minimum" investment offering of \$500,000.

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

19 30. The Subscription Agreement states that Hedge Fund Investment purchases will be
20 documented by: (a) Hampton's signature on an executed Subscription Agreement on behalf of
21 HCM as its "Managing Director; and (b) "a certificate representing the investment amount"
22 prepared and delivered to the investor by Hampton.

23 31. Certain investors were provided with documents from Hampton describing the low-
24 latency index derivative arbitrage strategy, which included a chart, which compares the HCM
25 investment to the S&P 500® from October 2010 to July 2011.

26

1 32. The chart states that for each month, from October 2010 to July 2011, the HCM
2 investment returned 1%, 2.41%, 0.90%, 3.58%, 1.47%, 5.90%, 1.80%, 3.73%, 0.16%, and 2.10%,
3 respectively. In reality, the HCM investments lost money almost every month.

4 **Trading Account #1**

5 33. In January 2010, to conduct the ETF trading Strategy, Hampton opened a securities
6 trading account with Interactive Brokers, LLC, ("IB") that permitted the trading of options, forex,
7 futures, and related securities products (Trading Account #1). The account was funded with
8 \$50,000.

9 34. Between the periods of February 2010 to September 2010, Hampton incurred fees
10 and trading losses each month in Trading Account #1. The IB monthly statements reveal that the
11 account net asset value changed by -28.69%, -22.72%, -10.14%, -89.94%, -1.00%, -1.83%, -
12 92.77%, -25.71%, respectively, on a month-to-month basis. By September 2010, the ending
13 balance of Trading Account #1 was \$130.

14 35. In October 2010, Hampton deposited \$435,000 of investor funds into Trading
15 Account #1.

16 36. The IB monthly statement revealed that the account net asset value for November
17 2010 changed by -46.40%.

18 37. Hampton failed to disclose to investors that he had incurred losses and/or decreases
19 in the net asset value in the preceding months, as a result of his trading Strategy.

20 38. Between October 2010 to September 2011, Hampton deposited \$1,290,000 from
21 investors into Trading Account #1.

22 39. By November 2011, Trading Account #1 had an ending balance of approximately
23 \$44,000.

1 **Trading Account #2**

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

5 41. Hampton was the authorized trader on Trading Account #2, and managed and
6 controlled the funds. Investors did not have direct access to or control of Trading Account #2.

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

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

9 44. In August 2011, HCM deposited \$1,600,000 of investor funds into Trading Account
10 #2.

11 45. In September 2011, HCM deposited \$80,000 of investor funds into Trading Account
12 #2 and withdrew \$200,000 to HCM.

13 46. Between the periods of June 2011 to October 2011, Hampton incurred fees and
14 trading losses. The IB monthly statements revealed that the account net asset value changed by -
15 0.07%, -5.73%, 36.19%, -92% and -26.92%, respectively, on a month-to-month basis.

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

19 48. Between May 2011 to October 2011, Hampton deposited \$2,705,000 from investors
20 into Trading Account #2.

21 49. By November 2011, Trading Account #2 had an ending balance of approximately
22 \$63,000.

23 **Joint Allegations**

24 50. During TIM's association with FSC, TIM effected securities transactions (the HCM
25 Hedge Fund Investments) that were not recorded on the records of his employing broker/dealer
26 firm who he was registered with at the time of the transactions.

1 51. Between the periods of September 2010 to October 2011, approximately 72
2 investors purchased the Hedge Fund Investments for a total amount of at least \$4,741,332.

3 52. Between the periods of September 2010, to September 2011, Hampton and/or HCM
4 disbursed approximately \$313,475 to PAT, or an entity controlled by PAT, as commissions or fees
5 related to the Hedge Fund Investments. On numerous disbursements to PAT, or an entity
6 controlled by PAT, the memo field read, "finder's fees," "solicitation fees," or "client referral."

7 53. Between the periods of April 2011, to September 2011, Hampton and/or HCM
8 disbursed approximately \$409,857 to TIM, or an entity controlled by TIM, related to the Hedge
9 Fund Investments. Upon information and belief, this sum represents payments made by Hampton
10 and/or HCM for commissions, fees, rent, and development costs related to the Hedge Fund
11 Investments.

12 **Hampton's Consent Order**

13 54. On January 7, 2014, in Decision No. 74240, Thomas L. Hampton and Hampton
14 Capital Markets, LLC entered into an Order to Cease and Desist, For Administrative Penalties, and
15 Consent to Same ("Consent Order"). Respondent Spouse Stephanie Yager was dismissed as part of
16 the Consent Order.¹

17 **Timothy D. Moran FINRA Action and Bar**

18 55. On September 27, 2013, the self-regulatory organization ("SRO") Financial Industry
19 Regulatory Authority ("FINRA") department of enforcement filed a disciplinary proceeding
20 complaint No. 2012031023301, against Timothy D. Moran. The complaint charged that TIM: (1)
21 engaged in private securities transactions without providing his employer FSC, with prior written
22 notice, in violation of NASD Conduct Rule 3040 and FINRA Conduct Rule 2010; (2) failed to
23 respond to FINRA requests for information, in violation of FINRA Procedural Rule 8210 and Conduct

24 ¹ Hampton and HCM admitted, only for purposes of this proceeding and any other proceeding in which the
25 Commission or any other agency of the state of Arizona is a party, the Findings of Fact and Conclusions of
26 Law contained in the Consent Order. No finding of fact or conclusion of law contained in the Consent
Order was deemed binding against any Respondent under this Docket Number who had not consented to the
entry of the Consent Order. Thomas L. Hampton and HCM were ordered to be, jointly and severally liable,
for an administrative penalty in the amount of \$50,000.

1 Rule 2010; (3) provided false information to FINRA in response to a Rule 8210 request, in violation
2 of FINRA Procedural Rule 8210 and Conduct Rule 2010; and (4) failed to disclose a tax lien on a
3 Uniform Application for Securities Industry Registration or Transfer (Form U4), in violation of
4 FINRA Rules 1122 and 2010, NASD IM-1000-1, and Article V, Section 2(c) of the FINRA By-laws.

5 56. TIM did not answer or otherwise respond to the FINRA complaint. Consequently, on
6 December 1, 2013, FINRA's department of enforcement filed a motion for entry of default decision
7 ("Default Motion"). TIM did not file a response to the Default Motion.

8 57. On February 5, 2014, the hearing officer found TIM in default, granted FINRA
9 department of enforcement's Default Motion, and permanently barred TIM from associating with any
10 FINRA member firm in any capacity. In addition to the permanent bar, TIM was also ordered to
11 disgorge \$200,000 in ill-gotten gains in that matter. The FINRA decision was served on TIM via
12 overnight courier and first-class mail.

13 58. Pursuant to FINRA Rule 9311, TIM was required to file a written notice of appeal
14 within 25 days after service of the decision.

15 59. In addition, pursuant to FINRA Rule 9269(d), (d) Final Disciplinary Action of FINRA;
16 Effectiveness of Sanctions, if a default decision is not appealed pursuant to Rule 9311 or called for
17 review pursuant to Rule 9312 within 25 days after the date the Office of Hearing Officers serves it on
18 the Parties, the default decision shall become the final disciplinary action of FINRA for purposes of
19 SEA Rule 19d-1(c)(1). Unless otherwise provided in the default decision, the sanctions shall become
20 effective on a date to be determined by FINRA staff, except that a bar or expulsion shall become
21 effective immediately upon the default decision becoming the final disciplinary action of FINRA.

22 60. Tim did not file an appeal within the timeframe required and the FINRA decision
23 became final on March 2, 2014.

1 IV.

2 VIOLATION OF A.R.S. § 44-1841

3 (Offer or Sale of Unregistered Securities)

4 61. From on or about September 2010 to September 2011, Respondent PAT offered or
5 sold securities in the form of investment contracts, within or from Arizona.

6 62. The securities referred to above were not registered pursuant to Articles 6 or 7 of the
7 Securities Act.

8 63. This conduct violates A.R.S. § 44-1841.

9 V.

10 VIOLATION OF A.R.S. § 44-1842

11 (Transactions by Unregistered Dealers or Salesmen)

12 64. PAT offered or sold securities within or from Arizona while not registered as dealers or
13 salesmen pursuant to Article 9 of the Securities Act.

14 65. This conduct violates A.R.S. § 44-1842.

15 VI.

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

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

19 66. Respondent TIM's conduct is grounds to revoke his registration as a securities
20 salesman with the Commission pursuant to A.R.S. § 44-1962. Specifically, Respondent TIM has:

21 a) Engaged in dishonest or unethical practices within the meaning of A.R.S. §
22 44-1962(A)(10) as defined by A.A.C. R14-4-130(A)(17), by effecting securities transactions that
23 were not recorded on the records of the dealer with whom he was registered at the time of the
24 transactions; and

25 b) TIM is subject to an order of an SRO (FINRA) suspending or revoking his
26 membership or registration for at least six months, within the meaning of A.R.S. § 44-1962(A)(8).

VII.

REMEDIES PURSUANT TO A.R.S. § 44-3201

(Denial, Revocation, or Suspension of Investment Adviser or Investment Adviser Representative License; Restitution, Penalties, or other Affirmative Action)

103. Respondent TIM's conduct is grounds to revoke or suspend his license as an investment adviser representative with the Commission pursuant to A.R.S. § 44-3201. Specifically, revocation or suspension of TIM's license application would be in the public interest, and TIM is subject to an order of an SRO (FINRA) suspending or revoking his membership or registration for at least six months, within the meaning of A.R.S. § 44-3201(A)(10).

VIII.

REQUESTED RELIEF

The Division requests that the Commission grant the following relief:

1. Order Respondents to permanently cease and desist from violating the Securities Act and IM Act, pursuant to A.R.S. §§ 44-2032, 44-1962, and 44-3201;
2. Order Respondents to take affirmative action to correct the conditions resulting from Respondents' acts, practices, or transactions, including a requirement to make restitution pursuant to A.R.S. § 44-2032, 44-1962, and 44-3201;
3. Order Respondents, as applicable, to pay the state of Arizona administrative penalties of up to five thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;
4. Order Respondents, as applicable, to pay the state of Arizona administrative penalties of up to one thousand dollars (\$1,000) for each violation of the IM Act, pursuant to A.R.S. § 44-3296;
5. Order the revocation or suspension of Respondent TIM's registration as a securities salesman pursuant to A.R.S. § 44-1962;

1 Additional information about the administrative action procedure may be found at
2 <http://www.azcc.gov/divisions/securities/enforcement/AdministrativeProcedure.asp>

3 X.

4 ANSWER REQUIREMENT

5 Pursuant to A.A.C. R14-4-305, if a Respondent or a Respondent Spouse requests a hearing,
6 the requesting respondent must deliver or mail an Answer to this Notice of Opportunity for Hearing
7 to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona
8 85007, within 30 calendar days after the date of service of this Notice. Filing instructions may be
9 obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site
10 at <http://www.azcc.gov/divisions/hearings/docket.asp>.

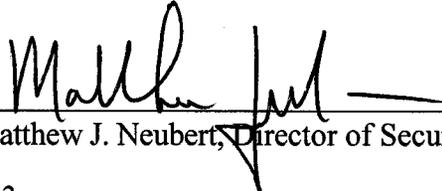
11 Additionally, the answering respondent must serve the Answer upon the Division. Pursuant
12 to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-delivering a
13 copy of the Answer to the Division at 1300 West Washington, 3rd Floor, Phoenix, Arizona, 85007,
14 addressed to Phong (Paul) Huynh.

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

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

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

24 Dated this 28 day of Apr. 1, 2014.

25
26 
Matthew J. Neubert, Director of Securities