

ORIGINAL

NEW APPLICATION



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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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COMMISSIONERS

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AZ CORP COMMISSION
DOCKET CONTROL

NOV 10 2011

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VIR

In the matter of:

THOMAS LAURENCE HAMPTON,
CRD#2470192, and JANE DOE HAMPTON,
husband and wife,

HAMPTON CAPITAL MARKETS, LLC, an
Arizona limited liability company,

Respondents

DOCKET NO. S-20823A-11-0407

TEMPORARY ORDER TO CEASE AND
DESIST AND NOTICE OF
OPPORTUNITY FOR HEARING

NOTICE: THIS ORDER IS EFFECTIVE IMMEDIATELY

EACH RESPONDENT HAS 20 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 and HAMPTON CAPITAL MARKETS, LLC, are engaging in or are about to engage in acts and practices that constitute violations of A.R.S. § 44-1801, *et seq.*, the Arizona Securities Act ("Securities Act"), and that the public welfare requires immediate action.

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 2. At all relevant times, Respondent THOMAS LAURENCE HAMPTON
4 (“HAMPTON”) has been an Arizona resident. On information and belief, HAMPTON has been at
5 all relevant times a married man.

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

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

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14 2009 Registration Application was terminated and/or withdrawn without approval.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

17 6. HCM was organized by HAMPTON as an Arizona limited liability company on or
18 about June 13, 2007.

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

22 8. HAMPTON and HCM may be referred to as “Respondent(s).”
23
24

25 ¹ 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.

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

1 9. On information and belief, at all relevant times Respondent JANE DOE HAMPTON
2 has been an Arizona resident and the spouse of HAMPTON. JANE DOE HAMPTON may be
3 referred to hereafter as “Respondent Spouse.” Respondent Spouse is joined in this action under A.R.
4 S. § 44-2031(C) solely for purposes of determining the liability of HAMPTON and Respondent
5 Spouse’s marital community.

6 10. On information and belief, at all relevant times HAMPTON has been acting for his
7 own benefit, and for the benefit or in furtherance of his marital community with Respondent Spouse.

8 **III.**

9 **FACTS**

10 **A. Respondents’ Securities Trading Business**

11 11. At all relevant times, Respondents have been representing to offerees and/or
12 investors within and from Arizona that: (a) HCM is a hedge fund managed by HAMPTON; and
13 (b) that Respondents are engaged in the business of buying and selling exchange traded funds
14 using a trading strategy developed by HAMPTON (the “Business”).

15 12. An exchange traded fund, or “ETF,” is typically a registered investment company
16 that owns a portfolio of securities that track an underlying benchmark or index, such as the S&P
17 500® equities market index. Shares of an ETF can be traded on a stock exchange like the New
18 York Stock Exchange, similar to stock.

19 13. At all relevant times, the “About Us” page of Respondents’ website at
20 www.hamptoncap.com (“Website”) has included the following representations:

- 21 a. HAMPTON is an experienced securities trader who in 1999 discovered a “market
22 anomaly” that allowed him to profitably engage in ETF trades until 2003 when
23 such market anomalies were no longer present;
- 24 b. In 2009, HAMPTON discovered a new way to make money by trading “leveraged
25 index ETFs” due to pricing discrepancies, or “inefficiencies”;
- 26

- 1 c. HAMPTON generally refers to this discovery as a “low-latency index derivative
- 2 arbitrage” strategy (the “Strategy”);
- 3 d. Because of the evolution in the “electronic trading world,” it is not feasible to
- 4 timely execute the Strategy “manually,” or via paper orders handled by people;
- 5 e. In early 2010, HAMPTON hired a computer software programmer to design a
- 6 computer program that implements Respondents’ Strategy, and that can be used
- 7 by HAMPTON with his securities broker’s computer-based “API (automated
- 8 programming interface)” to buy and sell ETFs; and
- 9 f. The computer program can recognize HAMPTON’s desired market conditions
- 10 and timely send out ETF trade orders per Respondents’ Strategy “in less than 1
- 11 millisecond (1/1000 of a second).”

12 **B. The Hedge Fund Investments**

13 14. From at least October 2011 to the present, Respondents have been offering and/or

14 selling passive investments to the general public to raise a pool of capital to fund Respondents’

15 ETF trading Business (the “Hedge Fund Investment(s)”).

16 15. The Hedge Fund Investments have not been registered by the Commission as

17 securities to be offered and sold within or from Arizona.

18 16. At all relevant times, Respondents have publically offered and advertised the

19 Hedge Fund Investments within or from Arizona, in part, by publishing detailed information

20 regarding the same on the “Trading Strategies” page of the Website (the “Prospectus Page”).

21 17. According to the Prospectus Page, potential Arizona investors can chose one of

22 two types of Hedge Fund Investments returns at the time of investment purchase, including:

- 23 a. A flat “10% Preferred Return,” or interest paid by Respondents on principal
- 24 Hedge Fund Investments at the rate of ten percent per year, with the apparent
- 25 return of the principal investment funds at the conclusion of the investments (the
- 26 “10%” returns); or

1 b. “Trading Participation” profits wherein Respondents and investors equally share
2 in the ETF trading Strategy profits, or “a standard 50/50 trading split (i.e., 50% of
3 the profits to Investor and 50% to Management)” (the “Profit Sharing” returns).

4 The 10% and Profit Sharing returns may be collectively referred to as the “Profit(s)”.

5 18. The Prospectus Page of the Website further provides potential Arizona investors
6 with detailed examples of how Respondents are able to generate Profits using their ETF trading
7 Strategy.

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

10 20. At all relevant times, the “Documents” page of the Website has included a link to
11 a detailed Hedge Fund Investment “Account Application” which, when clicked, opens a PDF
12 formatted document titled “SUBSCRIPTION AGREEMENT.”

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

15 22. The Subscription Agreement states that Respondents are issuing and selling a
16 minimum of ten Hedge Fund Investments, for a “total minimum” investment offering of
17 \$500,000.

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

20 24. The Subscription Agreement states that to purchase a Hedge Fund Investment, an
21 investor has to:

22 a. List the amount of the investor’s desired principal investment amount (*i.e.*,
23 \$50,000+), and select the desired Profits to be received (*i.e.*, 10% interest per
24 annum, or “Profit Sharing” Profits);

25 b. Make their principal investment check payable to HCM;

26

- 1 c. Sign and date the Subscription Agreement, and send it along with the investment
2 funds to Respondents at their Scottsdale, Arizona business address; and
3 d. Complete an attached "ACCREDITED INVESTOR QUESTIONNAIRE"
4 representing to Respondents that the investor believes he or she is an accredited
5 investor, generally defined in the questionnaire as a person who has either a net
6 worth exceeding \$1,000,000, or individual income in excess of \$200,000 in each
7 of the last two years.

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

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

14 27. Neither the Prospectus Page of the Website, nor the Subscription Agreement state
15 that the Hedge Fund Investments have a particular termination date, or a date on which an
16 investor can expect to receive back their principal investment funds and promised Profits.
17 Further, the "Revocation" provision of the Subscription Agreement, states as follows:

18 **6. Revocation**

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

22 **B. The Arizona Offeree**

23 28. In October 2011, an Arizona resident and potential investor (the "AO") viewed all
24 of the pages published on Respondents' Website from Arizona, including the Prospectus Page.
25 The AO also viewed and downloaded the Hedge Fund Investment Subscription Agreement.
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C. General Hedge Fund Investment Allegations

29. At all relevant times, Respondents have been representing to offerees and/or investors that Respondents will manage the essential aspects of the Business, including the implementation of Respondents' ETF trading Strategy and management of Hedge Fund Investment funds.

30. Upon information and belief, the principal investment funds are deposited into Arizona bank accounts owned and controlled by Respondents.

31. Upon information and belief, Respondents cause investor funds to be deposited, pooled, commingled and/or combined in into a single ETF securities trading account owned, managed and controlled by Respondents (the "Trading Account"). Upon information and belief, Respondents use the Trade Account funds to conduct their ETF trading Business.

32. Upon information and belief, Respondents' investors do not have direct access to or control of the Trading Account.

**IV.
VIOLATION OF A.R.S. § 44-1841
(Offer and Sale of Unregistered Securities)**

33. From approximately October 2011 to the present, Respondents have been offering or selling securities in the form of investment contracts, within or from Arizona.

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

35. This conduct violates A.R.S. § 44-1841.

**V.
VIOLATION OF A.R.S. § 44-1842
(Transactions by Unregistered Dealers or Salesmen)**

36. Respondents are offering or selling securities within or from Arizona while not registered as dealers or salesmen pursuant to Article 9 of the Securities Act.

1 37. This conduct violates A.R.S. § 44-1842.

2 **VI.**

3 **TEMPORARY ORDER**

4 **Cease and Desist from Violating the Securities Act**

5 THEREFORE, based on the above allegations, and because the Commission has determined
6 that the public welfare requires immediate action,

7 IT IS ORDERED, pursuant to A.R.S. § 44-1972(C) and A.A.C. R14-4-307, that
8 Respondents, their agents, servants, employees, successors, assigns, and those persons in active
9 concert or participation with Respondents CEASE AND DESIST from any violations of the
10 Securities Act.

11 IT IS FURTHER ORDERED that this Temporary Order to Cease and Desist shall remain in
12 effect for 180 days unless sooner vacated, modified, or made permanent by the Commission.

13 IT IS FURTHER ORDERED that this Order shall be effective immediately.

14 **VII.**

15 **REQUESTED RELIEF**

16 The Division requests that the Commission grant the following relief:

17 1. Order Respondents to permanently cease and desist from violating the Securities
18 Act, pursuant to A.R.S. § 44-2032;

19 2. Order Respondents to take affirmative action to correct the conditions resulting from
20 Respondents' acts, practices, or transactions, including a requirement to make restitution pursuant to
21 A.R.S. § 44-2032;

22 3. Order Respondents to pay the state of Arizona administrative penalties of up to five
23 thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;

24 4. Order that the marital community of HAMPTON and Respondent Spouse is subject
25 to any order of restitution, rescission, administrative penalties, or other appropriate affirmative
26 action pursuant to A.R.S. § 25-215; and

1 5. Order any other relief that the Commission deems appropriate.

2 **VIII.**

3 **HEARING OPPORTUNITY**

4 Each respondent including Respondent Spouse may request a hearing pursuant to A.R.S.
 5 § 44-1972 and A.A.C. Rule 14-4-307. **If a Respondent or Respondent Spouse requests a**
 6 **hearing, the requesting respondent must also answer this Temporary Order and Notice.** A
 7 request for hearing must be in writing and received by the Commission within 20 days after service
 8 of this Temporary Order and Notice. The requesting respondent must deliver or mail the request for
 9 hearing to Docket Control, Arizona Corporation Commission, 1200 West Washington, Phoenix,
 10 Arizona 85007. Filing instructions may be obtained from Docket Control by calling (602) 542-3477
 11 or on the Commission's Internet web site at www.azcc.gov/divisions/hearings/docket.asp.

12 If a request for hearing is timely made, the Commission shall schedule a hearing to begin 10
 13 to 30 days from the receipt of the request unless otherwise provided by law, stipulated by the parties,
 14 or ordered by the Commission. **Unless otherwise ordered by the Commission, this Temporary**
 15 **Order shall remain effective from the date a hearing is requested until a decision is entered.**
 16 After a hearing, the Commission may vacate, modify, or make permanent this Temporary Order,
 17 with written findings of fact and conclusions of law. A permanent Order may include ordering
 18 restitution, assessing administrative penalties, or other action.

19 If a request for hearing is not timely made, the Division will request that the Commission
 20 make permanent this Temporary Order, with written findings of fact and conclusions of law, which
 21 may include ordering restitution, assessing administrative penalties, or other relief.

22 Persons with a disability may request a reasonable accommodation such as a sign language
 23 interpreter, as well as request this document in an alternative format, by contacting Shaylin A.
 24 Bernal, ADA Coordinator, voice phone number 602/542-3931, e-mail sabernal@azcc.gov.
 25 Requests should be made as early as possible to allow time to arrange the accommodation.
 26

IX.

ANSWER REQUIREMENT

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

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

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

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

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

BY ORDER OF THE ARIZONA CORPORATION COMMISSION, this 11th day of November, 2011.



Mark Dinell
Assistant Director of Securities