
*
IN THE MATTER OF: *
*
SAFE HARBOUR LLC *
CRD NO. 300265 *
*
ROBERT WILLIAM BRINKMAN *
CRD NO. 1511170 *
*

CONSENT ORDER

NO. CO-19-8416-S

WHEREAS, the Banking Commissioner (“Commissioner”) is charged with the administration of Chapter 672a of the General Statutes of Connecticut, the Connecticut Uniform Securities Act (“Act”), and Sections 36b-31-2 to 36b-31-33, inclusive, of the Regulations of Connecticut State Agencies (“Regulations”) promulgated under the Act;

WHEREAS, the Commissioner, through the Securities and Business Investments Division (“Division”) of the Department of Banking, has conducted an investigation pursuant to Sections 36b-8 and 36b-26 of the Act into the activities of Safe Harbour LLC (“Safe Harbour”), an applicant for investment adviser registration, and Robert William Brinkman (“Brinkman”), an applicant for investment adviser agent registration, to determine if either has violated, is violating or is about to violate provisions of the Act or Regulations (“Investigation”);

WHEREAS, on March 1, 2019, Safe Harbour, a Connecticut limited liability company with a principal place of business located at 1000 Bridgeport Avenue, Suite 2D, Shelton, Connecticut 06484, filed with the Commissioner an application for registration as an investment adviser pursuant to Sections 36b-7 and 36b-32 of the Act;

WHEREAS, on April 8, 2019, Brinkman, an individual residing in Trumbull, Connecticut, filed with the Commissioner an application for registration as an investment adviser agent of Safe Harbour pursuant to Sections 36b-7 and 36b-32 of the Act;

WHEREAS, Brinkman was registered under the Act as an investment adviser agent at various times between March 2003 and October 2004, and registered as a broker-dealer agent at various times between May 1994 and September 1, 2005;

WHEREAS, Safe Harbor Retirement LLC (“Safe Harbor Retirement”) is a Connecticut limited liability company with a principal place of business located at 1000 Bridgeport Avenue, Suite 2D, Shelton, Connecticut. Safe Harbor Retirement has never been registered in any capacity under the Act;

WHEREAS, Sarah Ann Degan (“Degan”), Brinkman’s wife, is the managing member and president of Safe Harbor Retirement. Degan has never been registered in any capacity under the Act;

WHEREAS, Horter Investment Management, LLC (CRD No. 119880) (“Horter”), located at 11726 Seven Gables Road, Symmes Township, Cincinnati, Ohio has been an investment adviser registered with the Securities and Exchange Commission (SEC No. 801-67471) since January 12, 2007, and has filed the notice required by Section 36b-6(e) of the Act since August 25, 2009;

WHEREAS, at no time has Brinkman been an officer, director or employee of Horter or a person subject to Horter’s supervision and control and is thus not a “supervised person” as defined in Section 202(a)(25) of the Investment Advisers Act of 1940;

WHEREAS, the Commissioner, as a result of the Investigation, has obtained evidence that, over a three year period, from approximately January 2016 to approximately January 2019, Brinkman transacted business as an investment adviser agent of Horter absent registration under the Act. Specifically, Brinkman, solicited investment advisory clients on behalf of Horter and received significant compensation indirectly from Horter, through payment to Safe Harbor Retirement, in connection with such solicitation activity;

WHEREAS, from approximately January 2016 to approximately July 2019, on a website created and controlled by Brinkman (Safeharbourretirement.com), Brinkman held himself out as “Advisor for 31 years”, which statement was false and misleading;

WHEREAS, from approximately January 2016 to approximately January 2019, Brinkman failed to disclose to the investment advisory clients that he solicited for Horter that he (Brinkman) was receiving significant compensation for such solicitation;

WHEREAS, as a result of such Investigation, the Division believes that a basis exists under Section 36b-27 of the Act for, *inter alia*, the entry of an order to cease and desist and the imposition of a fine against Brinkman;

WHEREAS, as a result of such Investigation, the Division believes that a basis exists under Sections 36b-15(a)(2)(B) and 36b-15(a)(2)(H) of the Act for restricting or imposing conditions on the securities or investment advisory activities that Safe Harbour and Brinkman may perform in and from Connecticut;

WHEREAS, as a result of such Investigation, the Division believes that a basis exists under Sections 36b-15(a)(2)(B) and 36b-15(a)(2)(H) of the Act and Sections 36b-31-15c(a)(8) and 36b-31-15d(a)(3) of the Regulations for denying the investment adviser registration of Safe Harbour and the investment adviser agent registration of Brinkman;

WHEREAS, Section 36b-31(a) of the Act, provides, in relevant part, that “[t]he commissioner may from time to time make . . . such . . . orders as are necessary to carry out the provisions of sections 36b-2 to 36b-34, inclusive”;

WHEREAS, Section 36b-31(b) of the Act, provides, in relevant part, that “[n]o . . . order may be made . . . unless the commissioner finds that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of sections 36b-2 to 36b-34, inclusive”;

WHEREAS, an administrative proceeding initiated under Sections 36b-27 and Section 36b-15 of the Act would constitute a “contested case” within the meaning of Section 4-166(4) of the General Statutes of Connecticut;

WHEREAS, Section 4-177(c) of the General Statutes of Connecticut and Section 36a-1-55(a) of the Regulations provide that a contested case may be resolved by consent order, unless precluded by law;

WHEREAS, Safe Harbour and Brinkman expressly consent to the Commissioner’s jurisdiction under the Act and to the terms of this Consent Order;

AND WHEREAS, the issuance of this Consent Order is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of the Act.

CONSENT TO WAIVER OF PROCEDURAL RIGHTS

WHEREAS, Safe Harbour and Brinkman, through their execution of this Consent Order, each voluntarily waive the following rights:

1. To be afforded notice and an opportunity for a hearing within the meaning of Sections 36b-27 and 36b-15(f) of the Act and Section 4-177(a) of the General Statutes of Connecticut;
2. To present evidence and argument and to otherwise avail themselves of Sections 36b-27 and 36b-15(f) of the Act and Section 4-177c(a) of the General Statutes of Connecticut;
3. To present their respective positions in a hearing in which each is represented by counsel;
4. To have a written record of the hearing made and a written decision issued by a hearing officer; and
5. To seek judicial review of, or otherwise challenge or contest the matters described herein, including the validity of this Consent Order.

ACKNOWLEDGEMENT OF THE COMMISSIONER’S ALLEGATIONS

WHEREAS, Safe Harbour and Brinkman, through their execution of this Consent Order, acknowledge the following allegations of the Commissioner:

1. From approximately January 2016 to approximately January 2019, Brinkman violated Section 36b-6(c) of the Act by transacting business as an investment adviser agent while unregistered;

2. From approximately January 2016 to approximately January 2019, Brinkman violated Section 36b-5 of the Act based on the disclosure inaccuracies and omissions described above;

3. A basis exists under Section 36b-27 of the Act for the entry of an order to cease and desist and the imposition of a fine against Brinkman; and

4. A basis exists under Sections 36b-15(a)(2)(B) and 36b-15(a)(2)(H) of the Act and Sections 36-31-15c(a)(8) and 36-31-15d(a)(3) of the Regulations for denying the investment adviser registration of Safe Harbour and the investment adviser agent registration of Brinkman;

CONSENT TO ENTRY OF SANCTIONS AND REMEDIAL MEASURES

WHEREAS, Safe Harbour and Brinkman, through their execution of this Consent Order and without admitting or denying the foregoing allegations, consent to the Commissioner's entry of a Consent Order imposing on them the following sanctions and remedial measures:

1. No later than the date this Consent Order is entered by the Commissioner, Brinkman shall remit to the department by cashier's check, certified check or money order made payable to "Treasurer, State of Connecticut" the sum of twenty thousand four hundred fifty dollars (\$20,450), twenty thousand dollars (\$20,000) of which shall constitute an administrative fine and four hundred fifty dollars (\$450) of which shall represent reimbursement for past due registration fees;

2. Brinkman shall cease and desist from engaging in conduct constituting or which would constitute a violation of the Act or any regulation or order under the Act including, without limitation, transacting business as an investment adviser agent absent registration in violation of Section 36b-6(c) of the Act;

3. As a precondition to the registration of Safe Harbour and Brinkman as an investment adviser and investment adviser agent, respectively, under the Act, for a period of two (2) years, Safe Harbour shall retain a regulatory consultant ("Consultant") sufficiently experienced in state and federal investment advisory legal and compliance issues and not unacceptable to the Assistant Division Director to perform on-site compliance reviews of Safe Harbour and its investment advisory personnel, including Brinkman. Safe Harbour shall not retain as the Consultant a person who is or was ever engaged by Safe Harbour in an advocacy capacity, either directly or through the person's employing firm. Brinkman shall identify such Consultant in writing to the Assistant Division Director prior to the date this Consent Order is entered by the Commissioner. The Consultant's on-site reviews shall include an evaluation of the investment advisory activities of Safe Harbour, Brinkman and any investment advisory personnel, to ensure that they are in compliance with this Consent Order, the Act and the Regulations thereunder, including, without limitation, all applicable registration requirements. The Consultant shall perform the on-site reviews quarterly or more frequently should the Consultant deem additional reviews necessary. The first of the on-site reviews shall occur within ninety (90) days following the entry of this Consent Order. No later than thirty (30) days following each on-site review, Brinkman shall file with the Assistant Division Director a sworn affidavit, signed by Brinkman, verifying compliance with the provisions of this paragraph and with this Consent Order and verifying that the Consultant's recommendations were implemented;

4. For a period of two (2) years, Safe Harbour and Brinkman shall notify the Assistant Division Director, through timely amendments to the CRD and IARD systems and by letter to the Assistant Division Director, of any (a) securities-related complaints, actions or proceedings, including arbitrations, involving Safe Harbour and/or Brinkman; (b) any updates to such complaints, actions or proceedings; and (c) dispositional information concerning such complaints, actions or proceedings;

5. No later than thirty (30) days following the entry of this Consent Order by the Commissioner, Brinkman shall furnish proof to the Assistant Division Director that he has mailed (via certified mail, return receipt requested) an informational letter to those clients to whom he rendered investment advisory services while unregistered as an investment adviser agent in Connecticut about the existence of this Consent Order, and shall include a paper copy of this Consent Order. Such letter shall be preapproved as to form by the Assistant Division Director before it is mailed to clients;

6. Safe Harbour shall pay the cost of one or more examinations to be conducted by the Division within fifteen (15) months following the entry of this Consent Order by the Commissioner. Such expenses shall be in accordance with state travel regulations, and shall not exceed the reasonable and customary costs of an examination;

7. For two (2) years following the Commissioner's execution of this Consent Order, neither Safe Harbour nor Brinkman shall exercise discretionary trading authority with respect to client accounts; and

8. For two (2) years following the Commissioner's entry of this Consent Order, neither Safe Harbour nor Brinkman shall have custody or control of client funds or securities.

CONSENT ORDER

NOW THEREFORE, the Commissioner enters the following:

1. The Sanctions and Remedial Measures set forth above be and are hereby entered;
2. Entry of this Consent Order by the Commissioner is without prejudice to the right of the Commissioner to take enforcement action against Safe Harbour or Brinkman based upon a violation of this Consent Order or the matters underlying its entry if the Commissioner determines that compliance with the terms herein is not being observed or if any representation made by Safe Harbour or Brinkman set forth herein or in connection with their applications is subsequently determined to be untrue;
3. Nothing in this Consent Order shall be construed as limiting the Commissioner's ability to take enforcement action against Safe Harbour or Brinkman based upon evidence of which the Division was unaware on the date hereof relating to a violation of the Act or any regulation, rule or order adopted or issued under the Act;
4. Neither Safe Harbour nor Brinkman shall take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any allegation referenced in this Consent Order or create the impression that this Consent Order is without factual basis;
5. Neither Safe Harbour nor Brinkman shall take any position in any proceeding brought by or on behalf of the Commissioner, or to which the Commissioner is a party, that is inconsistent with any part of this Consent Order. However, nothing in this Consent Order affects Safe Harbour's or Brinkman's testimonial obligations or right to take any legal or factual position in litigation, arbitration, or other legal proceedings in which the Commissioner is not a party;
6. Nothing in this Consent Order shall be construed to restrict or prohibit any criminal law enforcement agency from reviewing, investigating or prosecuting any matter within its

jurisdiction;

7. Contemporaneously with the entry of this Consent Order, the name “Safe Harbour LLC” shall be and is hereby entered on the register of investment advisers pursuant to Section 36b-8 of the Act;
8. Contemporaneously with the entry of this Consent Order, the name “Robert William Brinkman” shall be and is hereby entered on the register of investment advisers agents pursuant to Section 36b-8 of the Act; and
9. This Consent Order shall become final when entered.

So ordered at Hartford, Connecticut,
this 27th day of September 2019.

_____/s/_____
Jorge L. Perez
Banking Commissioner

CONSENT TO ENTRY OF ORDER

I, Robert William Brinkman, state on behalf of Safe Harbour LLC (“Safe Harbour”), that I have read the foregoing Consent Order; that I know and fully understand its contents; that I am authorized to execute this Consent Order on behalf of Safe Harbour; that Safe Harbour agrees freely and without threat or coercion of any kind to comply with the terms and conditions stated herein; and that Safe Harbour consents to the entry of this Consent Order.

Safe Harbour LLC

By: _____/s/_____
Robert William Brinkman
President

State of: Connecticut

County of: Fairfield ss. Fairfield

On this 20th day of Sept. 2019, before me, the undersigned officer, personally appeared Robert William Brinkman, who acknowledged himself to be the President of Safe Harbour LLC, and that he, as such President, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of Safe Harbour LLC by himself as President.

In witness whereof I hereunto set my hand.

_____/s/_____
Notary Public
Date Commission Expires: Jul. 31, 2022

CONSENT TO ENTRY OF ORDER

I, Robert William Brinkman, state that I have read the foregoing Consent Order, that I know and fully understand its contents; that I agree freely and without threat or coercion of any kind to comply with the terms and conditions stated herein; and that I consent to the entry of this Consent Order.

_____/s/_____
Robert William Brinkman

State of: Connecticut

County of: Fairfield ss. Fairfield

On this 20th day of Sept. 2019, before me, the undersigned officer, personally appeared Robert William Brinkman, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

In witness whereof I hereunto set my hand.

_____/s/_____

Notary Public
Date Commission Expires: Jul. 31, 2022