STATE OF ALASKA
DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT
DIVISION OF BANKING AND SECURITIES

In the matter of: )
) ) ORDER NO: 11-708-S
) ) ORDER TO CEASE AND DESIST,
) ) ASSESSING CIVIL PENALTY
) ) AND
) ) CONSENT TO ORDER
)
) )
) ) Respondents.
)

The Director of the Department of Commerce, Community, and Economic
Development, Division of Banking and Securities (the "Administrator"), has conducted an
investigation into certain business activities of Arbor Capital Management, Inc. ("Arbor"),
Robert D. Sheldon, individually ("Sheldon"), and Matthew B. Kolesky, individually
("Kolesky"), collectively the "Respondents", and has determined that the Respondents
violated certain provisions of AS 45.55 (the "Alaska Securities Act") by conduct as a federal
covered investment adviser or a registered investment adviser representative in Alaska.

The Respondents agree that the Administrator has jurisdiction over the Respondents
and these matters pursuant to the Alaska Securities Act.

The Respondents wish to resolve and settle this matter with the Administrator. As
evidenced by the authorized signatures on this Order, the Respondents consent to the entry of
this Order assessing a civil penalty based on the Conclusions of Law and Order. Each
Respondent waives its right of appeal under AS 45.55.920(d).

I. FINDINGS OF FACT

1. Arbor is a corporation organized under the laws of the state of Alaska, under entity
number 59494D, with a date of incorporation on November 14, 1996. Arbor is located at
1400 West Benson Blvd, Suite 575, Anchorage, AK.

2. Arbor is a registered federal covered investment adviser with the United States Securities and Exchange Commission (“SEC”). The Investment Adviser Registration Depository (“IARD”) number for Arbor is #111362.

3. Sheldon first registered as an investment adviser representative for Arbor on February 27, 1997, and works in the Anchorage office. Sheldon’s Central Registration Depository (“CRD”) number is #4378696.

4. Kolesky first registered as an investment adviser representative for Arbor on March 6, 2000, and works in the Anchorage office. Kolesky’s CRD number is #4158264.

5. The CRD and the IARD are national databases that the securities industry and state regulators use as the sole repository for filing and review of registration and other documents required for registration and notice purposes. In 1999, the Administrator adopted the CRD and IARD databases as the sole repository to accept all filings, including initial registration and renewal filings, by broker-dealers, broker-dealer agents, investment advisers, and investment adviser representatives. Respondents are required to submit all filings through the IARD database, including amendments or renewals.

6. As a registered federal covered investment adviser, Arbor must submit a notice filing with each state where it conducts business. Arbor filed its notice filing, including its Form ADV, with the Administrator, through the IARD database, as a federal covered investment adviser pursuant to AS 45.55.040(h) on March 17, 2000. Arbor filed renewal notice filings with the Administrator annually through December 2009. In addition to Alaska, Arbor noticed filed in the state of Michigan.

7. As a registered federal covered investment adviser, Arbor continued to submit through the IARD database annual renewal of its federal registration by updating its Form
ADV, paying the necessary filing fees and ensuring proper registration of its investment adviser representatives. Arbor continued to demonstrate its understanding of its requirement to remain in compliance of filing requirements under the Alaska Securities Act by submitting its annual updates for its notice filing with the Administrator and continued registration of its investment adviser representatives.

8. On or about October 1, 2010, Arbor sent its clients a letter stating that Stanley Learman was no longer a shareholder and principal of the firm, and that Kolesky was promoted to principal and became a shareholder. In addition, the letter notified its clients that their consent for assignment of the account was required, due to the change of ownership. Enclosed with the letters to clients were copies of Arbor’s October 1, 2010 Form ADV Part 2 and its Privacy Policy. Arbor did not file its October 1, 2010 Form ADV Part 2 through the IARD database.

9. On December 9, 2010, Arbor filed a Notice of Change of Officers or Directors with the Alaska Division of Corporations and Professional Licensing, changing its registered owners from Stanley Learman and Sheldon to Sheldon and Kolesky. The Administrator received no filings indicating any change to Arbor’s Form ADV.

10. On January 1, 2011, Arbor failed to renew its notice filing with the Administrator.

11. Neither Arbor, Sheldon, nor Kolesky renewed Sheldon’s or Kolesky’s investment adviser representative registrations on January 1, 2011.

12. (a) Arbor entered into an agreement with RIA in a Box and Lexington Compliance on February 20, 2011, to provide compliance services. Arbor filed its Form ADV filings through RIA in a Box and Lexington Compliance beginning on February 20, 2011.

(b) In a telephone conference with the Administrator, Sheldon and Kolesky on March 13, 2013, representatives of RIA in a Box and Lexington Compliance acknowledged
that since their engagement in February 2011, they prepared and submitted Form ADV filings that contained errors.

13. Arbor amended its ADV on March 15, 2011, and made that ADV available to its clients. The March 15, 2011, ADV contained the following errors and misrepresentations:

   a. Stanley Joseph Learman as the president and chief compliance officer, with a contact address of 2232 S. Main Street, Suite 371, Ann Arbor, Michigan, even though Mr. Learman was not affiliated with Arbor;

   b. Other offices at 3155 Pioneer Avenue, Juneau, Alaska and 2232 South Main Street, Suite 371, Ann Arbor, Michigan, even though the offices were no longer affiliated with Arbor;

   c. A website address of www.arborcapital.net, when the company changed its website address;

   d. Stanley Joseph Learman as a direct owner and executive officer, even though Mr. Learman was no longer affiliated with Arbor; and

   e. Stating that Sheldon and Kolesky are its registered investment adviser representatives when they no longer were registered.


15. On July 14, 2011, the Division became aware that Arbor was still conducting business in Alaska although Arbor failed to renew its notice filing on January 1, 2011 in both Alaska and Michigan.

16. On July 19, 2011, two examiners reviewed the IARD database filings and, during a meeting at Arbor’s Anchorage office, notified Arbor its March 15, 2011 ADV contained the errors, misrepresentations and disclosure failures listed in Findings 12 and 13.

17. On July 19, 2011, Arbor had 145 clients in Alaska. Sheldon and Kolesky, as Arbor’s
sole owners and employees, continued to provide advice to its clients. In addition, Arbor had clients in other states, including eight clients in California, three clients each in Illinois and Colorado, and one client each in Idaho, Maine, Montana, Texas, Utah and Washington.

18. Arbor submitted its notice filing through the IARD database on July 21, 2011, to comply with the notice filing provision of a federal covered investment adviser, and it became effective in Alaska and California. Arbor did not submit a notice filing for the state of Michigan.

19. On July 21, 2011, Arbor submitted, under IARD document number 572362, its updated part 1a and 2 of its ADV, which included the following incorrect information listing:
   a. Stanley Learman as the President, Chief Compliance Officer, and owner, even though Mr. Learman was no longer affiliated with the firm after its reorganization in September 2010;
   b. Offices in Juneau, Alaska and Ann Arbor, Michigan, which were no longer affiliated with Arbor.

20. On July 22, 2011, the registrations of Sheldon and Kolesky as investment adviser representatives became effective in CRD for Alaska and California.

21. Arbor continued to file amendments to its ADV after July 21, 2011, and make them available to existing and potential clients. Arbor submitted through the IARD database ten amendments to its ADV between July 21, 2011 and February 14, 2013, each amendment continued to list offices in Juneau, Alaska and Ann Arbor, Michigan.

22. Since the time Arbor became subject to regulation in Alaska as a federal covered investment adviser on February 27, 1997, the Administrator has not taken an enforcement action against Arbor, Kolesky or Sheldon.

23. Arbor, Sheldon and Kolesky have cooperated with the Administrator’s investigation,
and initiated changes to improve Arbor’s compliance program in response to the Administrator’s findings.

24. Arbor’s current, filed Form ADV, with regard to Finding of Fact 13 and 14 of this Order, is correct and accurate.

III. CONCLUSIONS OF LAW

1. Because Arbor is SEC registered and provides investment advisory services to clients in and from Alaska for compensation, it is required to file a notice with the Administrator before acting as a federal covered investment adviser pursuant to AS 45.55.040.

2. Sheldon and Kolesky continued to act as investment adviser representatives by rendering advice to and managing the accounts of clients in and from Alaska without renewing their registration with the Administrator pursuant to AS 45.55.040(a).

3. Arbor violated AS 45.55.040 and 3 AAC 08.014 by failing to timely renew its notice filing.

4. Arbor, Sheldon and Kolesky violated AS 45.55.040 and 3 AAC 08.014 by failing to timely renew the registrations of Arbor’s investment adviser representatives.

5. By offering investment advice without an active registration from January 1, 2011 through July 22, 2011, Sheldon and Kolesky violated the registration requirements of AS 45.55.030(c).

6. Arbor violated 3 AAC 08.017, by issuing its Form ADV Part 2, dated October 1, 2010, to its clients without filing the document through the IARD system.

7. Arbor violated AS 45.55.160 by including information in its Form ADV, filed with the Administrator on March 15, 2011, that is untrue and inaccurate as to the ownership of Arbor, its registered business locations, its chief compliance officer, and the registration of its investment adviser representatives, and on July 21, 2011, by including information in its
Form ADV that was untrue and inaccurate regarding the ownership of Arbor and its registered business locations. Arbor continued to violate AS 45.55.160 by including in its subsequent ten (10) Form ADV amendments filed after July 21, 2011 information that was untrue and inaccurate as to its registered business locations. The foregoing untrue and inaccurate information made the Form ADVs filed with the Administrator misleading in violation of AS 45.55.160.

IV. ORDER

Pursuant to AS 45.55.920 and on the basis of the Findings of Fact, Conclusions of Law and Respondents’ consent to the entry of this Order, the Administrator ORDERS that

1. Cease and desist from unregistered and unnoticed investment adviser activity;

2. Immediately update, correct and otherwise ensure that all Form ADV, U4 and other documents are timely filed with the Administrator and/or provided to clients and contain true, complete and current information;

3. Robert D. Sheldon pay a civil penalty of $1,000;

4. Matthew B. Kolesky pay a civil penalty of $1,000;

5. Respondents, jointly and severally, pay a civil penalty in the amount of $5,000;

6. Respondents agree that the Division may conduct examinations pursuant to AS 45.55.050, AS 45.55.915 and 3 AAC 08.015(b), for a period of three years, beginning from the date this Order is executed. The number of examinations conducted during the period will be solely within the discretion of the Division.

7. Respondents acknowledge that future violations of Article 2 of the Alaska Securities Act will constitute a knowing violation under AS 45.55.920(b).

8. The scope of this Order is limited to the violations of the Alaska Securities Act
described herein; further, the entry of this Order in no way waives, in any manner, the
Division’s investigative or enforcement authority with regard to any of the Respondents’
activities regulated by the Division.

9. All civil penalties are due and payable in full at the time of entry of the Order.

IT IS SO ORDERED:

SUSAN BELL, Commissioner
Department of Commerce, Community and Economic Development

September 30, 2013   /s/  Lorie L. Havonec
Date Lorie L. Hovanec, Director
Division of Banking and Securities

Consent to Entry of Order
(for Arbor Capital Management, Inc.)

I, Matthew B. Kolesky, as the authorized representative of Arbor, acknowledge that I
have read the foregoing Order and that I know and fully understand the Order’s contents; that
Arbor has been represented by counsel in this matter; that Arbor acknowledges violation of
the Alaska Securities Act; that Arbor has been advised of the right to a hearing; that Arbor
voluntarily and without any force or duress, consents to the entry of this Order, expressly
waiving any right to a hearing in this matter; that Arbor understands that the Administrator
reserves the right to take further actions to enforce this Order or to take appropriate action
upon discovery of other violations of the Alaska Securities Act, and that Arbor will fully
comply with the terms and conditions stated herein.

   Arbor further assures the Administrator that Arbor and its shareholders, officers,
employees and agents will only engage in activities as a registered federal covered
investment adviser in Alaska in full compliance with the terms of this Order, the Alaska
Securities Act (AS 45.55) and Alaska regulations (3 AAC 08).

Arbor understands that this Consent Order is a public document.

09/30/2013
Date

/s/ Matthew B. Kolesky
Arbor Capital Management, Inc.
By: Matthew B. Kolesky
Title: President

SUBSCRIBED AND SWORN TO before me this 30th day of September, 2013 at Anchorage, Alaska.

/s/ Susan L. Flanders
Notary Public in and for Alaska
Susan L. Flanders
Notary Printed Name
My commission expires: 09/11/2015

Approved to form
Attorney for Arbor Capital Management, Inc.
By: /s/ Ben Spiess
Name: Ben Spiess
Bar No. 1105032

Consent to Entry of Order
(for Robert D. Sheldon)

I, Robert D. Sheldon, acknowledge I have read the foregoing Order and that I know and fully understand the Order’s contents; that I have been represented by counsel in this matter; that I acknowledge violating the Alaska Securities Act; that I have been advised of the right to a hearing; that I voluntarily and without any force or duress, consents to the entry of this Order, expressly waiving any right to a hearing in this matter; that I understand that the Administrator reserves the right to take further actions to enforce this Order or to take
appropriate action upon discovery of other violations of the Alaska Securities Act, and that I
will fully comply with the terms and conditions stated herein.

I will only engage in activities as a registered investment adviser representative in
Alaska in full compliance with the terms of this Order, the Alaska Securities Act (AS 45.55)
and Alaska regulations (3 AAC 08).

I understand that this Consent Order is a public document.

September 20, 2013 /s/ Robert D. Sheldon
Date Robert D. Sheldon, Individually

SUBSCRIBED AND SWORN TO before me this 20th day of September 20th at
Anchorage, Alaska.

/s/ Susan L. Flanders
Notary Public in and for Alaska
Susan L. Flanders
Notary Printed Name
My commission expires: 09/11/2015

Approved to form
Attorney for Robert D. Sheldon

By: /s/ Ben Spiess
Name: Ben Spiess
Bar No. 1105032

Consent to Entry of Order
(for Matthew B. Kolesky)

I, Matthew B. Kolesky, acknowledge that I have read the foregoing Order and that I
know and fully understand the Order’s contents; that I have been represented by counsel in
this matter; that I acknowledge violating the Alaska Securities Act; that I have been advised
of the right to a hearing; that I voluntarily and without any force or duress, consents to the
entry of this Order, expressly waiving any right to a hearing in this matter; that I understand
that the Administrator reserves the right to take further actions to enforce this Order or to
take appropriate action upon discovery of other violations of the Alaska Securities Act, and
that I will fully comply with the terms and conditions stated herein.

I will only engage in activities as a registered investment adviser representative in
Alaska in full compliance with the terms of this Order, the Alaska Securities Act (AS 45.55)
and Alaska regulations (3 AAC 08).

I understand that this Consent Order is a public document.

September 30, 2013 /s/ Matthew B. Kolesky
Date Matthew B. Kolesky, Individually

SUBSCRIBED AND SWORN TO before me this 30th day of September at Anchorage, Alaska.

/s/ Susan L. Flanders
Notary Public in and for Alaska

Susan L. Flanders
Notary Printed Name
My commission expires: 09/11/2015

Approved to form
Attorney for Matthew B. Kolesky
By: /s/ Ben Spiess

Name: Ben Spiess
Bar No. 1105032
Contact Person:
Roger W. Prince
Securities Examiner
(907) 269-8144