

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

In the matter of: )  
)  
) ORDER NO: 11-708-S  
)  
Arbor Capital Management, Inc., ) ORDER TO CEASE AND DESIST,  
Robert D. Sheldon, and ) ASSESSING CIVIL PENALTY  
Matthew B. Kolesky ) 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

1 1400 West Benson Blvd, Suite 575, Anchorage, AK.

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

5 3. Sheldon first registered as an investment adviser representative for Arbor on February  
6 27, 1997, and works in the Anchorage office. Sheldon’s Central Registration Depository  
7 (“CRD”) number is #4378696.

8 4. Kolesky first registered as an investment adviser representative for Arbor on March 6,  
9 2000, and works in the Anchorage office. Kolesky’s CRD number is #4158264.

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

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

23 7. As a registered federal covered investment adviser, Arbor continued to submit  
24 through the IARD database annual renewal of its federal registration by updating its Form

1 ADV, paying the necessary filing fees and ensuring proper registration of its investment  
2 adviser representatives. Arbor continued to demonstrate its understanding of its requirement  
3 to remain in compliance of filing requirements under the Alaska Securities Act by submitting  
4 its annual updates for its notice filing with the Administrator and continued registration of its  
5 investment adviser representatives.

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

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

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

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

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

23 (b) In a telephone conference with the Administrator, Sheldon and Kolesky on  
24 March 13, 2013, representatives of RIA in a Box and Lexington Compliance acknowledged

1 that since their engagement in February 2011, they prepared and submitted Form ADV  
2 filings that contained errors.

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

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

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

11 c. A website address of [www.arborcapital.net](http://www.arborcapital.net), when the company changed its  
12 website address;

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

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

17 14. Arbor's March 15, 2011 Form ADV failed to disclose Kolesky as an owner of Arbor.

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

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

24 17. On July 19, 2011, Arbor had 145 clients in Alaska. Sheldon and Kolesky, as Arbor's

1 sole owners and employees, continued to provide advice to its clients. In addition, Arbor had  
2 clients in other states, including eight clients in California, three clients each in Illinois and  
3 Colorado, and one client each in Idaho, Maine, Montana, Texas, Utah and Washington.

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

8 19. On July 21, 2011, Arbor submitted, under IARD document number 572362, its  
9 updated part 1a and 2 of its ADV, which included the following incorrect information listing:

- 10 a. Stanley Learman as the President, Chief Compliance Officer, and owner, even  
11 though Mr. Learman was no longer affiliated with the firm after its reorganization in  
12 September 2010;
- 13 b. Offices in Juneau, Alaska and Ann Arbor, Michigan, which were no longer  
14 affiliated with Arbor.

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

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

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

24 23. Arbor, Sheldon and Kolesky have cooperated with the Administrator's investigation,

1 and initiated changes to improve Arbor's compliance program in response to the  
2 Administrator's findings.

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

### 5 III. CONCLUSIONS OF LAW

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

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

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

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

16 5. By offering investment advice without an active registration from January 1, 2011  
17 through July 22, 2011, Sheldon and Kolesky violated the registration requirements of AS  
18 45.55.030(c).

19 6. Arbor violated 3 AAC 08.017, by issuing its Form ADV Part 2, dated October 1,  
20 2010, to its clients without filing the document through the IARD system.

21 7. Arbor violated AS 45.55.160 by including information in its Form ADV, filed with  
22 the Administrator on March 15, 2011, that is untrue and inaccurate as to the ownership of  
23 Arbor, its registered business locations, its chief compliance officer, and the registration of  
24 its investment adviser representatives, and on July 21, 2011, by including information in its

1 Form ADV that was untrue and inaccurate regarding the ownership of Arbor and its  
2 registered business locations. Arbor continued to violate AS 45.55.160 by including in its  
3 subsequent ten (10) Form ADV amendments filed after July 21, 2011 information that was  
4 untrue and inaccurate as to its registered business locations. The foregoing untrue and  
5 inaccurate information made the Form ADVs filed with the Administrator misleading in  
6 violation of AS 45.55.160.

#### 7 **IV. ORDER**

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

10 Respondents:

- 11 1. Cease and desist from unregistered and unnoticed investment adviser activity;
- 12 2. Immediately update, correct and otherwise ensure that all Form ADV, U4 and other  
13 documents are timely filed with the Administrator and/or provided to clients and contain  
14 true, complete and current information;
- 15 3. Robert D. Sheldon pay a civil penalty of \$1,000;
- 16 4. Matthew B. Kolesky pay a civil penalty of \$1,000;
- 17 5. Respondents, jointly and severally, pay a civil penalty in the amount of \$5,000;
- 18 6. Respondents agree that the Division may conduct examinations pursuant to AS  
19 45.55.050, AS 45.55.915 and 3 AAC 08.015(b), for a period of three years, beginning from  
20 the date this Order is executed. The number of examinations conducted during the period  
21 will be solely within the discretion of the Division.
- 22 7. Respondents acknowledge that future violations of Article 2 of the Alaska Securities  
23 Act will constitute a knowing violation under AS 45.55.920(b).
- 24 8. The scope of this Order is limited to the violations of the Alaska Securities Act

1 described herein; further, the entry of this Order in no way waives, in any manner, the  
2 Division's investigative or enforcement authority with regard to any of the Respondents'  
3 activities regulated by the Division.

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

5 IT IS SO ORDERED:

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

8 September 30, 2013

9 Date

/s/ Lorie L. Havonec

Lorie L. Hovanec, Director

Division of Banking and Securities

10  
11 Consent to Entry of Order  
12 (for Arbor Capital Management, Inc.)

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

22 Arbor further assures the Administrator that Arbor and its shareholders, officers,  
23 employees and agents will only engage in activities as a registered federal covered  
24 investment adviser in Alaska in full compliance with the terms of this Order, the Alaska

1 Securities Act (AS 45.55) and Alaska regulations (3 AAC 08).

2 Arbor understands that this Consent Order is a public document.

3

4 09/30/2013  
Date

/s/ Matthew B. Kolesky  
Arbor Capital Management, Inc.

5

By: Matthew B. Kolesky  
Title: President

6

7 SUBSCRIBED AND SWORN TO before me this 30<sup>th</sup> day of September, 2013 at Anchorage,  
Alaska.

8

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

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11

12 Approved to form  
Attorney for Arbor Capital Management, Inc.

13

By: /s/ Ben Spiess

14

Name: Ben Spiess

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Bar No. 1105032

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

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19

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

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1 appropriate action upon discovery of other violations of the Alaska Securities Act, and that I  
2 will fully comply with the terms and conditions stated herein.

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

6 I understand that this Consent Order is a public document.

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

9  
10 SUBSCRIBED AND SWORN TO before me this 20<sup>th</sup> day of September 20<sup>th</sup> at  
Anchorage, Alaska.

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

15 Approved to form  
16 Attorney for Robert D. Sheldon

17 By: /s/ Ben Spiess

18 Name: Ben Spiess

19 Bar No. 1105032

20  
21 Consent to Entry of Order  
(for Matthew B. Kolesky)

22  
23 I, Matthew B. Kolesky, acknowledge that I have read the foregoing Order and that I  
24 know and fully understand the Order's contents; that I have been represented by counsel in

1 this matter; that I acknowledge violating the Alaska Securities Act; that I have been advised  
2 of the right to a hearing; that I voluntarily and without any force or duress, consents to the  
3 entry of this Order, expressly waiving any right to a hearing in this matter; that I understand  
4 that the Administrator reserves the right to take further actions to enforce this Order or to  
5 take appropriate action upon discovery of other violations of the Alaska Securities Act, and  
6 that I will fully comply with the terms and conditions stated herein.

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

10 I understand that this Consent Order is a public document.

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

13 SUBSCRIBED AND SWORN TO before me this 30<sup>th</sup> day of September at Anchorage,  
14 Alaska.

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

18 Approved to form  
19 Attorney for Matthew B. Kolesky

20 By: /s/ Ben Spiess

21 Name: Ben Spiess

22 Bar No. 1105032

23

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STATE OF ALASKA  
DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT  
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