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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

SECURITIES AND EXCHANGE COMMISSION, **Plaintiff,** **v.** **OTTO SAM FOLIN, BENCHMARK ASSET MANAGERS LLC, AND HARVEST MANAGERS LLC,** **Defendants.**	**11 4447** **C.A. No. __-____ (__)** **COMPLAINT**

A TRUE COPY CERTIFIED FROM THE RECORD
DATED: JUL 12 2011
ATTEST: Steve Torres
DEPUTY CLERK, UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

I. SUMMARY

1. From approximately 2002 through approximately October 2010, Otto Sam Folin ("Folin") through his registered investment adviser, Benchmark Asset Managers LLC ("Benchmark") and its parent company, Harvest Managers LLC ("Harvest") (collectively referred to as "Defendants"), defrauded investors, obtaining their money by, among other things, making material misrepresentations and omissions regarding how investors' funds would be used, including assuring investors that all of their the funds would be invested in "socially responsible investments." Instead, the Defendants misappropriated certain new investments to pay other investors; as well as to sustain the operations of Benchmark and Harvest, which included paying Folin's salary and other expenses.

2. Over the course of eight years, the Defendants misappropriated, at least, $8.7 million from advisory clients, friends, and family through the issuance of several different securities, including interests in Safe Haven Investment Portfolios, LLC, a group of pooled investment vehicles created, managed, and advised by Benchmark.

3. As a result of the conduct described in this Complaint, all of the defendants have violated, and unless restrained and enjoined will continue to violate, Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)], Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)], and Rule 10b-5 [17 C.F.R. § 240.10b-5], thereunder.

4. In addition, as a result of the conduct described in this Complaint, defendants Folin and Benchmark violated, and unless restrained and enjoined will continue to violate, Sections 206(1), 206(2), and 206(4) of the Investment Advisers Act of 1940 ("Advisers Act") [15 U.S.C. §§ 80b-6(1), 80b-6(2), and 80b-6(4)] and Rule 206(4)-8 thereunder [17 C.F.R. §275.206(4)-8].

II. JURISDICTION AND VENUE

5. The Commission brings this action pursuant to Section 20(b) of the Securities Act [15 U.S.C. § 77t(b)], Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)], and Sections 209(d) and (e) of the Advisers Act [15 U.S.C. §§ 80b-9(d) and (e)], to enjoin such acts, transactions, practices, and courses of business; obtain disgorgement and civil penalties; and for other appropriate relief.

6. This Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)], Sections 21(e) and 27 of the Exchange Act [15 U.S.C. §§ 78u(e) and 78aa], and Section 214 of the Advisers Act [15 U.S.C. § 80b-14].

7. Certain of the defendants are inhabitants of, and certain of the acts, transactions, practices, and courses of business constituting the violations alleged herein occurred within, the Eastern District of Pennsylvania.

8. In connection with the conduct alleged in this Complaint, the defendants directly or indirectly made use of the means or instruments of transportation or communication in interstate

commerce, or the means or instrumentalities of interstate commerce, or the mails, or the facilities of a national securities exchange.

III. DEFENDANTS

9. Otto Sam Folin, age 62, is a resident of Philadelphia, Pennsylvania. He is a Chartered Financial Analyst. At all relevant times, Folin was the managing director, Chief Compliance Officer, and a 33% owner of Benchmark. He also was the President, Chief Executive Officer, and majority owner of Harvest. At all relevant times, Folin, as Benchmark's principal, was in the business of providing investment advice to Benchmark clients and the Safe Haven Portfolios, LLC for compensation.

10. Benchmark is located in Philadelphia, Pennsylvania. It has been registered with the Commission as an investment adviser since May 9, 2003. Benchmark is Harvest's subsidiary, and Harvest and Folin each own 33% of Benchmark. Benchmark is the manager of, and investment adviser to, the Safe Haven Investment Portfolios LLC, as well as several other advisory clients.

11. Harvest Managers, LLC, is a Pennsylvania limited liability company formed by Folin in 2000. Folin and his wife own a majority interest in Harvest. Harvest has no employees and no operations and, at all relevant times, Benchmark, through periodic dividends, provided Harvest's only significant source of income.

IV. THE SAFE HAVEN PORTFOLIOS

12. The Safe Haven Portfolios, LLC (the "Safe Haven Portfolios") is a Pennsylvania limited liability company formed by Folin in 2004 which, over time, included several pooled investment vehicles, including the following portfolios: Private Fixed Income ("Private Fixed Income"), Hedged Equity SRI ("Hedged Equity"), High Impact ("High Impact"), Green Real Estate ("Green Real Estate"), and Sustainable Enhanced Cash ("Enhanced Cash"). During the relevant

period, Benchmark was the manager of, and investment adviser to, the Safe Haven Investment Portfolios.

V. FACTS

13. At all relevant times, defendant Folin controlled defendants Harvest and Benchmark, and defendants Harvest and Benchmark acted by and through defendant Folin.

14. In 1999, Folin created an investment adviser to advise a pooled investment vehicle that he formed for the purpose of making investments in post-apartheid South Africa. He further created a second entity for the purpose of making micro-finance loans in South Africa with funds that he raised from various religious organizations and individuals through the issuance of promissory notes. These investment activities, collectively referenced herein as the "South African Investments," were unsuccessful.

15. Rather than have investors recognize losses from the failed South African Investments, Folin formed Harvest in 2000 as a vehicle through which he could repay those investors (the "South African Debt"). Despite having no operations or significant source of income, Folin caused Harvest to record the South African Debt on its books as outstanding obligations.

16. Thus began the fraudulent scheme described herein, by which Folin, through his co-defendants, continuously attempted to generate funds to repay the South African Debt through the issuance of various securities. Through a sales pitch touting socially responsible investments with above-market returns, Folin formed, and sold securities of, Harvest, Benchmark, and the Safe Haven Portfolios, using a portion of the funds raised from new investors to pay off prior investors; other pre-existing debt; and to sustain the operations of Benchmark and Harvest, which included paying Folin's salary and other expenses.

17. In connection with the omissions described herein, each Defendant charged with failing to disclose information had a duty to disclose that information.

18. At all relevant times, the Defendants had the ultimate authority over the content of the misrepresentations and omissions that they made to investors and advisory clients, including whether and how to communicate with those investors and advisory clients.

19. Over an eight year period, the Defendants defrauded investors of, at least, $8.7 million.

Folin and Harvest Made Material Misrepresentations and Omissions in Connection with the Offer and Sale of Harvest Notes

20. Beginning in 2000, Folin and Harvest raised approximately $1.132 million from clients, friends, and family through the sales of Harvest "notes," which purported to carry guaranteed above-market interest rates (the "Harvest Notes").

21. The Harvest Notes are securities.

22. Folin and Harvest defrauded purchasers of the Harvest Notes by inducing them to purchase the notes through misrepresentations and omissions of material fact.

23. Specifically, in both written investment documentation provided to investors, and orally, Folin and Harvest represented to investors that the money raised through the Harvest Notes was to be used by Harvest to make "investments" in socially responsible ventures and that their investments would generate guaranteed above-market returns. Instead, Folin and Harvest used these funds to repay the South African Debt, as well as to pay interest on other outstanding Harvest Notes, and to support Folin, Benchmark, and Harvest.

24. These misrepresentations and omissions were material, and they were made in connection with the solicitation of investments and continued investments in the Harvest Notes.

25. Folin and Harvest knowingly or recklessly made these material misrepresentations, and failed to disclose or omitted this material information, in order to induce investors to invest or continue to invest in the Harvest Notes.

26. As of March 2011, Harvest owes approximately $1.5 million in principal and accrued interest to holders of the Harvest Notes.

Benchmark

27. In 2002, Folin established Benchmark, purportedly to offer investment advisory services to high net worth individuals and non-profit organizations with an interest in socially responsible investing.

28. At all relevant times, Folin exercised actual control over Benchmark and made all decisions on behalf of Benchmark and its advisory clients.

29. Folin held Benchmark out to the public as a "low cost" adviser, with comparatively low advisory fees.

30. In fact, however, Benchmark's advisory fees were insufficient to cover its operations. Accordingly, by 2005, Benchmark had accumulated significant debt mainly attributable to the issuance of notes to advisory clients, friends, family and other investors. Benchmark and Folin did not disclose the lack of sufficient revenue or the accumulation of debt to clients. At the end of 2005, following a period during which Benchmark resisted making its balance sheet available to its clients, Folin caused Benchmark to "clean up its balance sheet" by transferring all its debt to Harvest's books, thereby hiding from client scrutiny its large accumulated outstanding debt.

The Benchmark Notes

31. From 2005 through at least 2007, Folin and Benchmark raised at least $340,000 from Benchmark clients, friends, and family in the form of "notes" which purported to carry guaranteed above-market interest rates (the "Benchmark Notes").

32. The Benchmark Notes are securities.

33. Benchmark and Folin defrauded purchasers of the Benchmark Notes by inducing them to purchase the notes through misrepresentations and omissions of material fact.

34. In both written investment documentation provided to investors, and orally, Folin and Benchmark represented to investors that the money raised through the Benchmark Notes was to be used by Benchmark to make "investments" in socially responsible ventures and that their investment would generate guaranteed above-market returns. Instead, however, Folin and Benchmark used these funds to pay the South African Debt, interest and principal payments to holders of Harvest and Benchmark Notes, and disbursements to support Folin, Benchmark, and Harvest.

35. Folin and Benchmark perpetuated the fraud by sending to holders of the Benchmark Notes false investment statements reflecting the purported value of principal investments and steadily accruing interest. The balances reflected on the statements were false.

36. In at least one instance, Folin and Benchmark assured an existing Harvest noteholder that an investment of additional money in Benchmark would be used to "make the world a better place" and that an investment in Benchmark was "safe" and "conservative." The investor invested additional money in a Benchmark Note.

37. At the time of this solicitation, Folin knew that Benchmark had no means to repay the note or the guaranteed rate of interest. He also knew that, as with the other Benchmark

Notes, the Defendants would use the invested funds to repay the South African Debt, Harvest and Benchmark noteholders, and to sustain the operations of Benchmark and Harvest.

38. The Defendants' misrepresentations and omissions of fact described above, including those relating to the use of funds invested in the Benchmark Notes, the safety and security of the investments, and the value of the investments were material, and they were made in connection with the solicitation of investments and continued investments in the Benchmark Notes.

39. The Defendants knowingly or recklessly made these material misrepresentations in order to induce investors to invest or continue to invest in the Benchmark Notes.

40. As of March 2011, Benchmark owes approximately $486,000 in principal and accrued interest to Benchmark noteholders which it does not, at this time, have the ability to pay.

The ARF Notes

41. In addition to notes in the name of Benchmark and Harvest, the Defendants issued securities of Harvest and Benchmark in other names while continuing to describe such investments as socially responsible ventures with above-market returns.

42. For example, in 2004, Folin and Benchmark raised approximately $550,000 from clients, friends, and family, under the guise of Absolute Return Fund Notes ("ARF Notes"), distributing to prospective investors a private placement memorandum ("PPM") entitled "Absolute Return Fund of Funds." Folin and Benchmark initially recorded the ARF Notes as obligations of Benchmark but later transferred the debt to the books of Harvest.

43. The ARF Notes are securities.

44. The Defendants defrauded purchasers of the ARF Notes by inducing them to purchase the notes through knowing or reckless misrepresentations and omissions of material fact.

45. As with other Benchmark Notes, the PPM for the ARF Notes indicated that funds invested in the ARF Notes were to be used to support socially responsible ventures. It further indicated that investments in the ARF Notes would be investments in an Absolute Return Fund and that the "ingredients of an absolute return fund of funds will vary somewhat over time but ordinarily will include . . . convertible arbitrage, distressed securities, equity market neutral, equity market neutral arbitrage, event-driven, fixed income arbitrage, fixed income mortgage backed, and merger arbitrage risk arbitrage." According to the PPM, capital investments would be backed by a zero coupon note and further secured by Benchmark's interest in the Absolute Return Fund.

46. In soliciting investments in the ARF Notes, Folin orally assured at least some investors that their funds would be invested in an Absolute Return Fund and that their investments would yield an 8% guaranteed annual return.

47. In fact, neither Folin nor Benchmark created an Absolute Return Fund or any other pooled investment vehicle such as that described in the ARF Note PPM, and investor funds did not yield an 8% annual return. In addition, neither Folin nor Benchmark secured ARF Notes with zero coupon notes, and there was no Benchmark ownership interest in an ARF Fund. Instead, Folin and Benchmark used funds invested in the ARF Notes to sustain Harvest's and Benchmark's operations, and to repay prior investors in Harvest, Benchmark, and the South African Investments. Moreover, in 2005, the Defendants caused the ARF Note debt to be transferred to Harvest, which had no independent means by which to repay this debt.

48. Meanwhile, the Defendants regularly provided to clients false investment statements that described their investments in the ARF Notes as "Benchmark 8% ARF," "Harvest Managers ARF" or "HM Note," and valuing the investments at the amount invested plus accrued interest at 8%, thereby lulling the investors into a false sense of security as to their investments' existence and growth.

The Progression of the Scheme – Diversion of Investments From the Safe Haven Portfolios

49. In August 2004, Folin formed the Safe Haven Portfolios which included several individual pooled investment vehicles including the following portfolios: Private Fixed Income, Hedged Equity, High Impact, Green Real Estate, and Enhanced Cash.

50. The investments in these individual portfolios were investments in securities.

51. At all relevant times, Folin and Benchmark, for a quarterly advisory fee, managed and advised the Safe Haven Portfolios.

52. At all relevant times, most of the Safe Haven Portfolios' investors were Benchmark advisory clients.

53. Each portfolio of the Safe Haven Portfolios has a private placement memorandum ("PPM") that details its respective strategy and objectives. In general, each portfolio purports to have a particular "socially responsible" focus.

54. For instance, the Enhanced Cash PPM indicates that the Enhanced Cash portfolio's investment strategy is to invest primarily in debt securities that meet certain investment and social criteria, such as short-term debt securities offered by governments and social enterprises that are funding community development and/or poverty alleviation, certain credit unions, infrastructure bonds, and affordable housing bonds. The PPM further provides that the portfolio's objective is current income, with a secondary objective of stability of principal. Indeed, on quarterly statements

sent to Enhanced Cash investors, Folin and Benchmark described the Enhanced Cash portfolio as a "money market" alternative.

55. At all relevant times, both Folin and Benchmark acted as investment advisers to Benchmark advisory clients and had fiduciary duties to Benchmark advisory clients to deal in the utmost good faith and to provide full and fair disclosure of material facts.

56. Notwithstanding these duties, Folin and Benchmark defrauded investors in the Safe Haven Portfolios by soliciting investments and continued investments in the Safe Haven Portfolios through multiple misrepresentations and omissions regarding, among other things, purported "development costs" paid, and loans made, by certain of the portfolios.

57. These misrepresentations and omissions, including those set forth below, were material and they were made in connection with the solicitation of investments and continued investments in the Safe Haven Portfolios.

58. Folin and Benchmark knowingly or recklessly, and in violation of duties owed to Benchmark advisory clients, made the material misrepresentations and omitted the material information described below in order to induce investors to invest and continue to invest in the Safe Haven Portfolios.

Misrepresentations and Omissions in Connection with "Development Costs" Paid by the Safe Haven Portfolio to Harvest and Benchmark

59. Between 2006 and 2009, Folin and Benchmark caused the Safe Haven Portfolios to pay more than $1.7 million in "development costs" to Benchmark and Harvest.

60. Folin and Benchmark defrauded investors in the Safe Haven Portfolios by misrepresenting and omitting material information concerning, among other things, the nature of the "development costs," their true purpose, and certain conflicts of interest created by the development costs.

61. Despite the obligation to provide financial information regarding the portfolios to investors on an annual basis, Folin and Benchmark never disclosed to investors that the Safe Haven Portfolios paid over $1.7 million under the guise of "development costs" to Benchmark and Harvest.

62. Certain of the Safe Haven Portfolios' PPMs disclosed that the portfolios would incur "offering" and "organizational" costs in addition to advisory fees. In some instances, a specific portfolio's PPM permitted the payment of certain, quantified "offering and organizational costs." In those instances, even if the "development costs" were, in fact, "offering" or "organizational" costs, the development costs actually charged exceeded the amount disclosed in the various PPMs. For instance, Green Real Estate's PPM disclosed that the portfolio would pay $300,000 in "offering and organizational costs." At the time the PPM was drafted and distributed to the Green Real Estate Portfolio investors, however, Benchmark and Folin had already caused the Green Real Estate Portfolio to pay Benchmark and Harvest $440,000 in development costs.

63. As another example, the PPM for the High Impact portfolio disclosed that the portfolio would pay $120,000 in "offering and organizational" costs when, in fact, that portfolio paid $295,000 in development costs to Benchmark and Harvest.

64. Moreover, these purported "costs" did not relate to any actual expense incurred by Harvest or Benchmark in connection with the formation or offering of the Safe Haven Portfolios. Rather, these payments coincided with Harvest's and Benchmark's respective need for funds to pay prior investors, expenses, and Folin's salary. These "costs" were a subterfuge by which Benchmark and Harvest could use Safe Haven Portfolio investor funds to pay off the South African debt, the

accruing interest on certain Harvest and Benchmark Notes, and otherwise support Harvest and Benchmark.

65. Folin and Benchmark also improperly reflected these "development costs" on the financial statements of the Safe Haven Portfolios. Specifically, Folin and Benchmark caused the Safe Haven Portfolios to amortize these costs, instead of expensing them as incurred. This accounting treatment was not in accordance with Generally Accepted Accounting Principles ("GAAP") and, thus, the financial statements were not, as represented in various funds' PPMs, presented in accordance with GAAP. This accounting treatment resulted in the understatement of expenses and, accordingly, the overstatement of each fund's net asset value ("NAV").

66. So, for example, with respect to the Green Real Estate portfolio, in 2008, Folin and Benchmark represented to investors that the NAV of the portfolio, after receiving initial investments, was $930,000. In fact, however, the NAV should have been reduced by the $340,000 in "development costs" paid by the fund.

Misrepresentations and Omissions in Connection with "Loans" By the Safe Haven Portfolio to Harvest and Benchmark

67. From 2007 through 2010, Folin and Benchmark caused certain of the Safe Haven Portfolios to make loans to Benchmark and Harvest. These "loans" were simply another method by which Folin obtained funds to pay off old debt and to sustain Benchmark's and Harvest's operations.

68. Folin and Benchmark defrauded investors in the Safe Haven Portfolios by misrepresenting and omitting material information concerning, among other things, the nature of these loans, the use of investor funds, the value of loans receivable of the Safe Haven Portfolios, and certain conflicts of interest.

69. From March 2007 through December 2008, Folin caused the Private Fixed Income portfolio to loan Harvest over $2 million. Some of these loans were due in May 2011 and are now delinquent; others have due dates in December 2011. Harvest has continued to accrue, but not pay, the interest due on those loans and currently has no ability to repay the loans or the accrued interest. As of March 2011, the balance due on those loans was approximately $2.29 million. The "loans" issued by the Private Fixed Income portfolio to Harvest do not satisfy the investment criteria set forth in the Private Fixed Income PPM, namely that the fund would invest in the debt securities of "High Impact Compan[ies]" with "strong balance sheets and operating income and/or in those companies able to pledge collateral of at least 1.25 to 1 coverage."

70. Harvest did not meet these criteria. Harvest did not have strong financials – it had significant debt, no employees, no operations, and no source of revenue that it could use to repay any debt. Further, and contrary to Harvest's representations in the loan agreement between it and the Private Fixed Income fund, Harvest was not "solvent"—it was unable to pay its debt as it matured.

71. In addition, Harvest's ultimate use of the loan proceeds undermines any claim that the loan was an "investment" in a "High Impact Company." The Private Fixed Income PPM defines "High Impact Company" as one of the "50 to 100 of the 1000 leading public companies that are proactive in seeking sustainable (long term) solutions for cultural, social and/or environmental problems...." For example, Harvest used the monies to:

a. Repay loans purportedly made by Folin to Harvest and Benchmark;

b. Pay back money previously misappropriated by Folin;

c. Pay the South African Debt;

d. Pay operational costs of Harvest and Benchmark;

e. Buy a home for a Benchmark employee for which Benchmark holds the mortgage;

f. Repay investors in Harvest Notes; and

g. Make a payment to "Fly Tahiti" as a wedding gift to a friend.

72. The PPM for the Private Fixed Income portfolio also requires that: (a) loans made by the portfolio will be supported by adequate collateral to ensure repayment; (b) "the net exposure to any one issuer typically will not exceed 5% of the [Private Fixed Income] assets"; and (c) the portfolio will not invest with money obtained through leverage. In fact, however, the loans made by the Private Fixed Income portfolio to Harvest were not supported by adequate collateral to ensure repayment; they accounted for over half of the portfolio's assets at the time they were made; and, on multiple occasions, the Private Fixed Income portfolio borrowed funds from other Safe Haven portfolios to make loans to Harvest and to meet investor redemption requests.

73. Moreover, not only did the use of investor funds as loans to Harvest violate the Private Fixed Income PPM, but it also contradicted Folin's express representations to investors.

74. For instance, in June 2008, Folin advised a Benchmark advisory client to liquidate the client's entire retirement account, which was invested primarily in conservative bonds, and to invest in the Private Fixed Income Portfolio. In providing this advice, Folin told the client that the Private Fixed Income Portfolio was a conservative investment that would provide the client with funds to live on. Following Folin's advice, the client invested $350,000 in the Private Fixed Income Portfolio.

75. Shortly after the client invested $350,000, Folin and Benchmark caused the Private Fixed Income portfolio to loan Harvest $409,000, which Harvest then paid to Folin as

purported repayment of loans. In August 2008, Folin used this money to purchase a Philadelphia condominium.

76. As stated above, Harvest did not have strong financials – it had no significant sources of income, and was using the loans to pay off its debt. Contrary to Folin's representation to the client, the use of investments in the Private Fixed Income portfolio to loan money to Harvest was a high risk investment of those funds, with no likely return.

77. Moreover, in 2009 and 2010, Benchmark caused the Enhanced Cash Portfolio to loan Benchmark approximately $1.91 million. These loans are payable in September and October 2011. Benchmark has accrued, but has not paid any interest on those loans and currently has no ability to repay the loans. As of March 30, 2011, the balance due on those loans was approximately $1.96 million.

78. The Enhanced Cash portfolio loan to Benchmark and the acceptance of a note in return from a company with no ability to pay, does not correspond with the quarterly representations by Folin and Benchmark that the Enhanced Cash Portfolio was a "money market" alternative with an "income" objective. It further does not correspond to the Enhanced PPM disclosure that the portfolio invested primarily in debt securities that meet certain investment and social criteria, such as short-term debt securities offered by governments and social enterprises that are funding community development.

79. Similar to Harvest, Benchmark used the loan proceeds to repay loans purportedly made by Folin and to pay operational costs.

80. Finally, and contrary to their stated compliance with GAAP, the financial statements provided by Folin and Benchmark to Safe Haven Portfolio investors pursuant to the PPM, did not comply with GAAP. Those financial statements improperly valued the Private

Fixed Income Portfolio to Harvest and the Enhanced Cash Portfolio loans to Benchmark. Specifically, Folin and Benchmark valued the Private Fixed Income and Enhanced Cash loans to Harvest and Benchmark at face value, not "fair value." In contrast, GAAP requires that these loans and accrued interest be reported at "net realizable value" and be treated as related party transactions.

81. Moreover, the Safe Haven Portfolios, as an audited pooled investment vehicle, is required to utilize investment company accounting pursuant to Paragraph 1.01 of the AICPA Audit and Accounting Guide, Investment Companies, as then in effect. Under this accounting guidance, a pooled investment vehicle must use fair value accounting, which includes an evaluation of impairment. The Private Fixed Income portfolio loans to Benchmark and Harvest were never evaluated for impairment and, indeed, Harvest has no means to repay the loans.

82. By reflecting the loans on the books of the Private Fixed Income portfolio and Enhanced Cash portfolio at face value, without any adjustment for impairment, this accounting treatment inflated the value of the funds' loans receivable.

83. With respect to all of the loans, and notwithstanding the fiduciary duties owed by Folin and Benchmark to Benchmark advisory clients, Folin and Benchmark failed to disclose their conflict of interest in advising clients to invest in the Safe Haven Portfolios. At the time Folin and Benchmark solicited investments in the Safe Haven Portfolios, they knew of Benchmark's and Harvest's continually precarious financial positions and that, in order to survive, Benchmark and Harvest would need funds, including loans, from the Safe Haven Portfolios. By recommending investments in the Safe Haven Portfolios over other, unrelated investments, Folin and Benchmark assured themselves and Harvest of ready cash to access when needed.

Folin and Benchmark Failed to Disclose to Advisory Clients Harvest and Benchmark's Dire Financial Situation

84. Moreover, and notwithstanding the fiduciary duties owed by Folin and Benchmark to Benchmark advisory clients, Folin and Benchmark failed to inform their advisory clients of Benchmark's and Harvest's continually precarious financial positions and that, in order to survive, Benchmark and Harvest needed the loans from the Safe Haven Portfolios and the purported development costs paid by the Safe Haven Portfolios.

Folin and Harvest Made Material Misrepresentations and Omissions to a Trust Beneficiary

85. In the late 1980s, Folin was appointed as co-trustee for trusts established for three individuals who had been wrongfully institutionalized. Folin established and controlled brokerage accounts in the trusts' names (the "Trust Accounts"). The Trust Accounts were established to, among other things, pay the personal expenses of the mentally challenged beneficiaries.

86. At all relevant times, Folin had sole control over the funds in the Trust Accounts.

87. Folin caused the Trust Accounts to invest approximately $839,000 in the South African Investments in return for securities in Harvest. By 2002, those investments were worthless. Folin also caused the Trust Accounts to periodically make payments of at least $249,000 to Folin, Benchmark and Harvest at times when they needed funds to pay expenses. Folin later justified these payments as trustee fees.

88. As a result of Folin's use of trust funds, in 2007, when the beneficiary of one of the Trust Accounts died, and a secondary beneficiary (the "New Beneficiary") requested liquidation of the trust account, the Trust Accounts did not have sufficient assets to accommodate the request.

89. In an accounting that Folin created at the request of the New Beneficiary, Folin misrepresented to the New Beneficiary that the trust account at issue held illiquid investments worth approximately $370,000 in Harvest Notes, and reflected expenditures for "investment fees" and "advisory fees" in amounts substantially less than those withdrawn by Folin and Harvest from the trust. Subsequently, Folin created and provided four Harvest Notes to the New Beneficiary. Those notes, dated July 1, 2003, had various interest rates, and staggered maturity dates ranging from 2009 through 2012, none of which were reflected on Harvest's balance sheets.

90. Upon request by the New Beneficiary to redeem all of the Harvest Notes, Folin, using money collected from the Safe Haven Portfolios as "development costs," made a partial payment of one of these notes to the New Beneficiary. He further offered to the New Beneficiary redemption of the remaining notes at a 14% discount -- a $235,557 payment—on the pretense that he would try to sell the Harvest Notes to a private investor at a discount.

91. Folin did not sell the notes to a private investor. Notwithstanding, he paid the notes off at the stated discount by charging the Hedged Equity portfolio development costs, and arranging a loan to Harvest from the Private Fixed Income portfolio.

FIRST CLAIM FOR RELIEF

Violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder by all Defendants

92. The Commission realleges and incorporates by reference each and every allegation in paragraphs 1 through 91, inclusive, as if the same were fully set forth herein.

93. From at least 2002 through October 2010, as a result of the conduct alleged herein, defendants Folin, Benchmark, and Harvest, knowingly or recklessly, in connection with the offer, purchase, or sale of securities, directly or indirectly, by the use of the means or

instruments of transportation or communication in interstate commerce, or the means or instrumentalities of interstate commerce, or the mails, or the facilities of a national securities exchange:

a. employed devices, schemes or artifices to defraud;

b. obtained money or property by means of, or made, untrue statements of material fact, or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

c. engaged in acts, transactions, practices, or courses of business that operated as a fraud or deceit upon offerees, purchasers, and prospective purchasers of securities.

94. By engaging in the foregoing conduct, defendants Folin, Benchmark, and Harvest have violated, and unless restrained and enjoined will continue to violate, Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Rule 10b-5 [17 C.F.R.§ 240.10b-5], thereunder.

SECOND CLAIM FOR RELIEF
Violations of Sections 206(1) and 206(2) of the Advisers Act by Folin and Benchmark

95. The Commission realleges and incorporates by reference each and every allegation in paragraphs 1 through 94, inclusive, as if the same were fully set forth herein.

96. From at least mid-2005 through the present, as a result of the conduct alleged herein, defendants Folin and Benchmark, while acting as investment advisers, by the use of the means and instrumentalities of interstate commerce and of the mails, directly and indirectly, knowingly or recklessly have employed and are employing devices, schemes and artifices to

defraud their clients and prospective clients; and have engaged and are engaging in transactions, practices and courses of business which operate as a fraud or deceit upon their clients and prospective clients.

97. By engaging in the foregoing conduct, defendants Folin and Benchmark have violated, and unless restrained and enjoined will continue to violate, Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. § 80b-6(1) and 80b-6(2)].

THIRD CLAIM FOR RELIEF

Violations of Section 206(4) of the Advisers Act and Rule 206(4)-8 by Folin and Benchmark

98. The Commission realleges and incorporates by reference each and every allegation in paragraphs 1 through 97, inclusive, as if the same were fully set forth herein.

99. From at least 2002 through October 2010, as a result of the conduct alleged herein, defendants Folin and Benchmark, while acting as investment advisers in connection with a pooled investment vehicle, have made untrue statements of material fact or omitted to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading, to an investor or prospective investor in the pooled investment vehicle or otherwise engaged in acts, practices, or courses of business that are fraudulent, deceptive or manipulative with respect to an investor or prospective investor in the pooled investment vehicle.

100. By reason of the foregoing, defendants Folin and Benchmark have violated Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6(4)] and Rule 206(4)-8 thereunder [17 C.F.R. § 275.206(4)-8].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court enter a final judgment:

I.

Permanently restraining and enjoining defendants Folin, Benchmark, and Harvest from violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Rule 10b-5 [17 C.F.R.§ 240.10b5], thereunder.

II.

Permanently restraining and enjoining defendants Folin and Benchmark from violating Sections 206(1), 206(2) and 206(4) of the Advisers Act [15 U.S.C. §§ 80b-6(1), 80b-6(2) and 80b-6(4)] and Rule 206(4)-8 thereunder [17 C.F.R. § 275.206(4)-8].

III.

Ordering the Defendants to disgorge any and all ill-gotten gains, together with prejudgment interest, derived from the activities set forth in this Complaint.

IV.

Ordering the Defendants to pay civil penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C.§ 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C.§ 78u(d)(3)], and, with respect to defendants Folin and Benchmark, also pursuant to Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(e)].

V.

Granting such other and further relief as the Court may deem just and appropriate.

Dated: July 12, 2011

Respectfully submitted,

s/Catherine E. Pappas
Daniel M. Hawke
Elaine C. Greenberg
G. Jeffrey Boujoukos (PA #67215)
Catherine E. Pappas (PA #56544)
Mary P. Hansen
Attorneys for Plaintiff:

SECURITIES AND EXCHANGE COMMISSION
Philadelphia Regional Office
701 Market Street, Suite 2000
Philadelphia, PA 19106
Telephone: (215) 597-3100
Facsimile: (215) 597-2740
pappasc@sec.gov