

ADMINISTRATIVE PROCEEDING
BEFORE THE
SECURITIES COMMISSIONER OF MARYLAND

IN THE MATTER OF: *

JOSEPH GIORDANO *

and * Securities Division No. 2012-0297

GIORDANO ASSET MANAGEMENT, LLC *

and *

HARBOR INVESTMENT SOLUTIONS, LLC *

RESPONDENTS. *

* * * * *

CONSENT ORDER

WHEREAS, the Securities Division of the Office of the Maryland Attorney General (the “Securities Division”), pursuant to the authority granted in section 11-701 of the Maryland Securities Act, Title 11, Corporations and Associations Article, Annotated Code of Maryland (2007 Repl. Vol. and Supp. 2012) (the “Securities Act”), undertook an investigation into the securities-related activities of Joseph Giordano (“Giordano” or “Respondent Giordano”), Giordano Asset Management, LLC (“GAM” or “Respondent GAM”), and Harbor Investment Solutions, LLC (“Harbor” or “Respondent Harbor”) (collectively, “Respondents”); and

WHEREAS, on the basis of that investigation, the Maryland Securities Commissioner (the “Commissioner”) has determined that the Respondents may have engaged and may continue to engage in acts or practices constituting violations of the registration and anti-fraud provisions of the Securities Act; and

WHEREAS, the Commissioner and Respondents have reached an agreement in this action whereby Respondents, without admitting or denying any findings of fact or conclusions of law except to admit to the jurisdiction of the Commissioner in this matter and over them in this matter, consent to the terms of this Consent Order; and

WHEREAS, Respondents waive their right to a hearing and any rights they may have to seek judicial review or otherwise challenge or contest the terms and conditions of this Consent Order; and

WHEREAS, the Commissioner has determined that it is in the public interest to issue this Consent Order;

NOW, THEREFORE, THE COMMISSIONER FINDS, CONCLUDES, AND ORDERS:

I. JURISDICTION

1. The Commissioner has jurisdiction in this proceeding pursuant to section 11-701.1 of the Securities Act.

II. RESPONDENTS

2. Joseph Giordano maintains a place of residence in Graysonville, MD and, at all relevant times, maintained a place of business in Annapolis, MD. From October 1992 to June 2012, Giordano was registered with the Securities Division as a broker-dealer agent, and with the Financial Industry Regulatory Authority ("FINRA") as a general securities agent, through an affiliation with Capital Investment Group, Inc. ("CIG"). According to the CRD system,

Giordano was terminated from CIG for allegedly “selling away and making false and misleading statements to the firm.” Prior to his employment with CIG, Giordano was registered with the Securities Division as a broker-dealer agent, and with FINRA as a general securities agent, for Merrill Lynch, Pierce, Fenner & Smith Incorporated from April 1991 to April 1992, and for Charles Schwab & Co., Inc. from May 1986 to February 1991. Giordano is the sole owner and president of Giordano Asset Management, LLC.

3. Giordano Asset Management, LLC (“GAM”) is a Maryland limited liability company that, at all relevant times, maintained a place of business in Annapolis, MD. From July 2005 until January 2012, GAM was registered as an investment adviser with the Securities and Exchange Commission (“SEC”). According to its Form ADV, GAM provided investment advice to only one client, the Giordano Investment Trust.

4. Harbor Investment Solutions, LLC is a Maryland limited liability company that, at all relevant times, maintained a place of business in Annapolis, MD. Harbor is owned by Giordano.

III. STATEMENT OF FACTS

A. Background

5. Giordano first met Wilfred Azar III (“Azar”) in the early 1990s.
6. At the time, Giordano was a registered representative for CIG.
7. Giordano was operating his brokerage business out of his home, but searching for office space.
8. Giordano expressed to a friend an interest in leasing office space in a building that

Giordano drove by every day. The building was owned by Annapolis National Bank (now Bank Annapolis).

9. The friend knew Azar and introduced Giordano to Azar. At the time, Azar was on the board of directors for Annapolis National Bank.

10. Shortly after meeting Azar and other officers of Annapolis National Bank, Giordano began leasing office space in the Annapolis National Bank building.

11. Giordano soon developed a personal and business relationship with Azar.

12. In the mid 1990s, North Arundel Hospital Foundation became a brokerage client of CIG and Giordano. Azar was a board member of the foundation.

13. A few years later, Azar became a client of CIG and Giordano. Azar transferred his SEP IRA to CIG and established other brokerage accounts with CIG.

14. In or about 1999, Azar purchased from his grandfather, Wilfred Azar I, a majority interest in Empire Corporation, a real estate management and development company. Since the mid 1980's, Azar had worked for Empire Corporation in various positions including as a laborer, administrative assistant, assistant superintendent, and member of the board of directors. With the purchase of his grandfather's interest, Azar owned more than 60% of Empire Corporation.

15. That same year, according to Giordano, Azar approached him about custodying bonds issued by Empire Corporation, known as Empire Corporation Senior Subordinated Debenture - Interest Compounded Monthly @ 10% ("Empire debentures" or "debentures"). Azar's sister-in-law and brother-in-law wanted to purchase bonds issued by Empire Corporation to hold in their IRA accounts, and Azar was looking for a custodian to hold the bonds.

16. According to Giordano, at that time he approached CIG and Sterne, Agee & Leach, Inc. ("SAL"), CIG's clearing broker-dealer, to determine if and how the Empire debentures could be custodied with SAL, and SAL provided Giordano with the procedures for establishing IRA accounts to hold the Empire debentures.

17. CIG, however, has no record of approving Giordano's participation in the purchase or sale of the Empire debentures during this time.

18. Giordano assisted Azar's sister-in-law and brother-in-law in purchasing and establishing accounts at SAL to hold the Empire debentures. Subsequently, Giordano assisted other clients to establish accounts at SAL and to purchase the Empire debentures.

19. Giordano initially offered the Empire debentures only to those who had a pre-existing relationship with Azar, such as friends and family of Azar. That soon changed however.

B. Capital Investment Group clients

20. During the Winter of 2006, CIG conducted an on-site audit of Giordano's office which, at the time, was an Office of Supervisory Jurisdiction branch office of CIG.

21. Following the on-site visit, Bill Portwood, CIG's then Chief Compliance Officer, sent Giordano a deficiency letter noting issues of concern found during CIG's on-site visit. One of those issues concerned the Empire Corporation debentures that, as a result of the audit, Portwood learned Giordano was offering.

22. In his letter, Portwood noted that Giordano's office was in the process of conducting sales of a private placement that Portwood had not previously approved, when he wrote: "Prior approval was not received for this private placement unless it was received prior to my arrival."

23. In a February 16, 2006 e-mail to Portwood, responding to Portwood's issue regarding the Empire debentures, Giordano, in part, wrote:

For your records, we have made these bonds available to our clients since October 2002. Lisa Brittain (formerly of Capital Investment Group) and Frank Powell (Sterne Agee & Leach) have each given us their permission and have helped us develop procedures to process these transactions and maintain these securities . . . Furthermore, **we do not receive compensation of any kind for handling these transactions.** I am the only investment representative in our office permitted to provide the availability these bonds to our clients and **I do not solicit them.**

Emphasis added.

24. A few days later, on February 21, 2006, Portwood wrote in an e-mail to Giordano: "I have no further questions. I understand. You can continue to sell such bonds on an **unsolicited basis.**" *Emphasis added.*

25. Giordano has no evidence that, in 2002, Ms. Brittain or anyone else at CIG authorized him in writing to participate in the offer and sale of the debentures, as required by NASD Rule 3040. Further, in sworn testimony taken by the SEC, Giordano stated that, in or about 2002, Portwood (not Brittain) authorized him to offer the debentures, despite Portwood not starting at CIG until September 2004.

26. Despite his representations that he did not solicit clients to purchase the debentures, and CIG's stipulation that the securities continue to be offered on an unsolicited basis only, Giordano soon began actively soliciting clients to purchase the debentures.

27. Beginning in or about the Spring of 2006, Giordano began offering the debentures to investors not previously associated with Azar, including Giordano's friends and his CIG brokerage clients.

28. Between 2006 and 2009, Giordano raised more than \$2,000,000 from more than 30 investors. Some of the investors had pre-existing relationships with Azar, but many had no pre-existing relationship with Azar and were solicited by Giordano to purchase the debentures.

29. Giordano both directly solicited investors and asked others to solicit on his behalf.

30. In August 2008, Giordano asked D.C., an Annapolis-based CPA, to meet him for lunch. D.C. prepared taxes for a client of Giordano's, and occasionally contacted Giordano to obtain 1099 tax forms. The two met for lunch at a Panera Bread in Annapolis. During lunch, Giordano began discussing the Empire debenture investment. Giordano explained that he was seeking minimum investments of \$20,000 to \$30,000. Giordano then solicited D.C. to purchase the Empire debentures. Giordano also asked D.C. if he had any clients that would be interested in purchasing the Empire debentures. D.C. declined to invest and declined to refer his clients to Giordano.

31. Giordano sometimes approached Azar to see if Azar needed additional funding.

32. In an e-mail to Azar dated February 23, 2009, Giordano wrote, in part: "Might have some investors for Empire bonds, they will definitely need the money at maturity though. 5 years, interest accreted in bonds. **Do you have projects for up to \$200K with these terms?**" *Emphasis added.*

33. In another e-mail to Azar dated October 6, 2009, Giordano wrote: "What are your current needs right now for funding?"

34. Azar also approached Giordano when in need of funding.

35. In an e-mail to Azar dated February 2, 2009, Giordano wrote: "Any luck today? I think I found some new investors for the traditional program but not for the 60 day program.

These funds are not going to be able to close until next week but should be for around \$100K, if that helps or buys some time.” In an e-mail sent the following day, Giordano wrote:

“Unfortunately, [John Doe] changed his mind and will not be sending the money. I have two meetings today but I will keep an eye out for \$100K for you.”

36. In another e-mail dated August 17, 2009, Giordano reached out to an investor at the behest of Azar: “Fred Azar, CEO of Empire Corp called me looking for \$350,000 to secure financing on the construction of a new medical building in Odenton. He will agree to almost any term and interest payment arrangement at 10%. Please let me know if you are interested.”

37. In early November 2009, Azar again approached Giordano for assistance in raising funds to satisfy a demand by SunTrust bank to substantially pay down the mortgage on the Quarterfield 100 building. Azar personally held a 1/6th ownership interest in the Quarterfield building; it was not a property owned by Empire Corporation.¹

38. Giordano reached out to some or all of his clients to raise the funds needed by Azar. In one e-mail exchange with Azar, on November 4, 2009, Giordano wrote: “Unfortunately, [Jane Doe] has decided not to invest any additional funds in Empire Bonds for now. **I will keep working on others for you.**” *Emphasis added.* The next day, Azar responded, in part: “Any luck late yesterday or today?” Giordano then responded: “No luck yet, I am meeting with [James Doe] this afternoon, definite potential, he did get the house so I will see what his needs today. I will let you know. . . Should be getting \$150K from an existing

¹ Azar personally held a 48% ownership interest in Empire Ventures, which held a 1/3rd ownership interest in the Quarterfield 100 building. The other owners of the Quarterfield building were not affiliated with Empire Corporation.

client next week, he knows the Empire story and has not participated, .. yet.”

39. On November 11, 2009, Giordano wrote to Azar: “I think I have called or e-mailed all of our clients with over \$30,000 in the money market. Were you able to raise the funds you need or are you still looking? We have a few bonds maturing 11/15.” Azar responded, in part: “I have had a little bit of success, but still looking for the last \$125,000.00.”

40. In November 2009, Giordano was able to raise \$60,000 from two brothers, W.S.P. and W.P., who each invested \$30,000.

41. According to the brothers, they were told by Giordano that they were investing in a short term 90-day loan, and that their funds were being used by Empire Corporation to cover additional construction costs on a building that had experienced cost overruns. They also were told that the building would be completed in a matter of days, at which time the construction loan would be converted to a regular loan, and they would be reimbursed.

42. The brothers’ funds were not paid at maturity. When their investments weren’t paid, the brothers were given several different explanations by Giordano. One of the brothers was told that his funds were not applied towards the building initially intended, but instead used for repairs on the elevator system in the Empire Towers building. Later, he was told that the funds were used to repair the heating and air conditioning unit in the Empire Towers building.

43. Neither brother was told that his funds were being solicited initially to pay down the mortgage on a property personally owned by Azar, not by Empire Corporation. Azar was unable to satisfy the principal curtailment and eventually lost his 1/3rd interest in the Quarterfield 100 property.

44. In the Spring of 2009, Empire Corporation began experiencing difficulty making

payments to investors.

45. One investor's debenture had matured and another investor needed to withdraw \$70,000 from his investment. In an e-mail to Azar dated April 17, 2009, Giordano wrote: "Please get the proceeds of the 60 day bonds to me by noon on Monday. I hate to put pressure on you like this but I am in an uncomfortable situation unable to issue the check to Mr. [X] for his taxes. Also, [Mr. Y] has told me he may need \$70,000 next week and I told him the funds would be available."

46. Azar issued checks to Mr. X and Mr. Y, but the checks bounced. On April 29, 2009, Giordano wrote Azar saying: "Our customer statements close tomorrow. I have not told [Mr. Y] and Mr. [X] that their checks from Empire bounced. Can we get these cleaned up before close of business tomorrow so this doesn't become a bigger problem?"

47. Three weeks later, the investors' funds still had not been paid. In an e-mail to Azar dated May 18, 2009, Giordano wrote: "I hate to be a pain about this but the heat is really being placed on me and I cannot go hide. Please give me an ETA on when we can expect the funds for [James Doe]. . . . **It was recommended to me this morning that we get a statement from your CPA, lawyer, or banker verifying such things as the contents of your balance sheet, occupancy rate, and any significant change within Empire Corp. I explained that I did not think it was necessary at this time.**" *Emphasis added.*

48. The next day, a month after the funds were initially requested, the funds finally were paid to the investors. Giordano wrote to Azar: "Great news, thanks, what a relief. I know you must feel terrible about this whole thing. I always knew it was only an aberration, not the norm. On the bright side, your bondholders, our shareholders, board of directors, lawyers,

administrators got to see how we handle a stressful situation and no one gets hurt.”

49. Shortly thereafter, as discussed in detail below, the attorney and board members for the Fund managed by Giordano began expressing concerns regarding the financial stability of Empire Corporation.

50. Despite the bounced investor checks, and the concerns expressed regarding Empire Corporation’s financial stability, Giordano represented to investors that the Empire debentures were not a risky investment.

51. In an e-mail dated June 22, 2009 to a potential investor, Giordano told the investor, in part, that the “**Empire Corp bonds are solid**. I met with the CEO of the company last week, even though things are not as strong as they were, business is bright.” *Emphasis added.*

52. Shortly after purchasing the debentures, W.S.P., one of the brothers discussed above, asked his partner to contact Giordano regarding, among other things, his recent debenture purchase. On November 12, 2009, W.S.P.’s partner, herself a client of Giordano and an investor in the Fund, in an e-mail to Giordano wrote: “Also, I sent the letter you gave on Friday to [Z]. He said that this was a bond not a 90 day CD. We have not received anything in the mail ref that either.” In an e-mail responding to her inquiry, Giordano reiterated his assurances regarding the risks associated with the debentures by stating: “I hope [W.S.P.] did not misunderstand it is not a CD. It is a 90 day Senior Subordinated Debenture paying 10%. **It is not backed by the FDIC but it is safe, the issuer will have no problem paying back the principal plus interest.** These bonds ar[e] normally issued for 5 years but they are offering shorter maturities to help them raise

cash to get better terms as they refinance their commercial mortgages of mainly medical buildings." *Emphasis added.*

53. Despite what appeared to be financial difficulties and concerns regarding Empire Corporation's financial stability as early as the Spring of 2009, Giordano continued throughout the remainder of 2009 to portray the Empire Corporation as a solid company and continued to solicit investors to purchase the debentures.

54. Giordano had no basis for representing that the investment was safe or that Empire Corporation would have no problem paying back the principal and interest.

55. Up until late 2009, Giordano had obtained from Empire Corporation no more disclosure than unaudited balance sheets for 2006 and 2007. The 2007 balance sheet was not only unaudited but, on its face, noticeably inaccurate as the Total Assets did not equal the Total Liabilities and Equity but instead exceeded them by more than \$3.3 million.²

56. Further, over the years, Giordano had never obtained statements of cash flow or income statements from Empire Corporation. Had Giordano reviewed Empire Corporation's income statements, they would have shown significant losses exceeding \$600,000 in 2006, \$1.8 million in 2007, and \$1.4 million in 2008.

57. More importantly, Giordano never obtained audited financial statements. Instead, he settled for representations made by Azar whom, in Giordano's own words, he trusted.

58. No written disclosure documents disclosing the nature of, or the risks associated

² The unaudited balance sheet for 2007 did not reflect the close to \$1 million loan to Azar reflected on a subsequently prepared 2007 balance sheet.

with, the Empire debentures were given to investors.

59. The Empire debentures were not registered with the SEC or the Securities Division, and there was no exemption or notice filed on behalf of the debentures.

60. Giordano did not disclose to investors that the debentures were not registered with the SEC or with the Securities Division and, in the case of at least one potential investor, Giordano went so far as to say that the “bonds are registered in Maryland” even though he had no basis for this statement.³

61. Giordano did not disclose to investors that he was offering the debentures in contravention of CIG’s directive to offer the securities only on an unsolicited basis.

62. Despite Giordano’s representations to Portwood that he did not “receive compensation of any kind for handling these transactions,” Giordano began receiving compensation in connection with the Empire debentures, and didn’t seek CIG’s approval for the changed circumstances.

63. In 2007, Giordano asked Azar for payments in connection with the Empire debentures but, according to Giordano, none was forthcoming at the time.

64. Beginning in February 2009, Giordano began receiving a series of checks issued by Empire Corporation. The checks, totaling \$69,300, were issued as follows: \$5,000 check

³ In an e-mail dated July 15, 2009 to a potential investor, his own father-in-law, Giordano represented that the bonds were registered in Maryland. However, in sworn testimony taken by the SEC, Giordano stated that, over the years, he had heard different things regarding the registration of the bonds -- that they were registered, that they weren’t registered, and that they were exempt from registration. Giordano also stated that his early 2009 investigation regarding the debenture’s registration “ended up going nowhere.”

issued February 6, 2009, \$3,000 check issued July 17, 2009, \$8,000 check issued July 29, 2009, \$22,800 check issued September 10, 2009,⁴ \$17,500 check issued November 2, 2009, and \$13,000 check issued November 25, 2009. The memo sections of four of the six checks indicated that the checks were for “fee(s).”

65. These payments were solicited by Giordano.

66. In connection with the September 2009 payment, in an e-mail to Azar dated September 10, 2009, Giordano wrote: “I normally would not ask but can you pay me ASAP for [H] and [N]. I am in a bit of a bind and it would really help if I can settle some obligations quickly. I can pick the check up if that would be easier.” H and N had recently invested a total of approximately \$228,000 in the Empire debentures.

67. That same day Giordano received a check in the amount of \$22,800, and Giordano sent Azar another e-mail thanking him: “Thank you for the check! The amount of the check was extremely generous and is greatly appreciated. I am fortunate to be able to offer your bonds to our clients and have such a wonderful relationship with you and Empire Corp. Thank you for taking the time to express gratitude in person, our relationship is very important to me and I expect much success for both of us in the future.”

68. In another e-mail to Azar dated November 17, 2009, Giordano wrote: “I am hoping to pay my Dad back the money I owe him before Thanksgiving. Any of the fees you could send my way would be helpful.”

69. Giordano did not disclose the payments to investors purchasing the Empire

⁴ The check for \$22,800 was returned for non-sufficient funds, but subsequently made good through a wire transfer.

debentures.

70. Giordano did not disclose to his broker-dealer, CIG, the substantial payments he received from Empire Corporation and Azar.

71. Giordano did not amend his Form U4 to disclose his outside business activity with Empire Corporation, and filed with the Division several Forms U4 that did not include the outside business activity.

72. In December 2009, Giordano's branch office was again audited by CIG's home office. The audit was conducted by CIG's Chief Compliance Officer, Ronald King ("King").

73. During the audit, King discovered that Giordano was offering the Empire debentures to clients.

74. King asked Giordano why he was offering the debentures. Giordano told King that Portwood approved the offering on an unsolicited basis. Giordano further told King that he was not getting any compensation in connection with the debenture offering.

75. However, as discussed above, Giordano offered the debentures on a solicited basis and received compensation in connection with the debenture offering.

76. King expressed concerns regarding the Empire debenture offering including, but not limited to, the lack of financial statements provided and the lack of registration, and instructed Giordano to immediately cease marketing the Empire debentures.

77. Despite the numerous concerns expressed by CIG and others, Giordano's loyalty to Azar and the Empire debentures continued. In an e-mail to King dated December 31, 2009, Giordano suggested procedures that CIG could implement to continue offering the Empire debentures. Among other things, his e-mail suggested "providing Empire Corp financials with every purchase," "do[ing] a yearly mailing to all Empire bondholders asking them to return a

letter saying they understand the risks,” and “get[ting] paid for our efforts and risk, this may increase our liability. I get enough from the other business these clients generate so I do not need to be included. Also, there is a potential conflict because the Giordano Fund holds an Empire Corp Bond (has a put feature built-in).”

78. Although acknowledging in this e-mail a potential conflict of interest associated with receiving compensation in connection with the Empire debenture offering, Giordano accepted payments of more than \$69,000 from Empire Corporation. Giordano also continued his pattern of withholding from his broker-dealer the fact that he had already received \$69,000 in compensation.

C. Unsuitable Investment

79. The debentures were not suitable for some investors.

80. In sworn testimony before the SEC, Giordano was asked if he considered making an individual investment in the bonds. Giordano responded, “I’m not an accredited investor. I was not eligible.” Yet, Giordano solicited and offered the debentures to several non-accredited investors.

81. Neither W.P nor W.S.P. were accredited investors. At the time of their Empire debenture investments, their net worth, excluding their primary residence, did not exceed \$1 million, and their annual incomes were significantly less than the \$200,000 required for an accredited investor.

82. When W.P. first became a client of Giordano’s in 2007, a CIG brokerage new account form was completed for him. At the time, the new account form listed W.P.’s net worth and liquid net worth as \$400,000 and \$250,000, respectively. His net income was listed as \$58,000 annually.

83. By 2009, when he was solicited by Giordano to invest in the Empire debentures, W.P.'s net worth had increased, but still was significantly less than \$1 million.

84. Despite the passage of two years, Giordano failed to obtain updated financial information for W.P. prior to soliciting his investment in the Empire debentures.

85. Not only was W.P. not an accredited investor, but he was not a sophisticated investor. He worked as a produce manager for a grocery store chain, and his prior investment experience was limited to investing in mutual funds.

86. Despite W.P.'s lack of investment sophistication and experience, Giordano recommended that W.P. invest \$30,000 in the Empire debentures, an amount representing approximately 10% of his liquid net worth.

87. A.D. was a client of Giordano's. According to her CIG brokerage new account form, dated February 20, 2008, she was a self-employed artist with an annual income of \$6,000. Her husband's income was listed at \$70,000. Her net worth and liquid net worth were listed as \$200,000 and \$10,000, respectively. She was not an accredited investor.

88. In or about March 2008, A.D. was solicited by Giordano to invest in the Empire debentures. In late March 2008, she purchased \$5,000 worth of Empire debentures.

89. Given A.D.'s financial background and investment experience, the Empire debenture investment was not suitable for her.

90. H.W. became a client of Giordano's in July 2003. Having little to no investment experience, she was encouraged by her mother to start investing. She was referred to Giordano by her mother, who already was a client of Giordano.

91. According to her 2003 CIG brokerage new account form, H.W. had an annual income of approximately \$60,000 and a net worth of approximately \$20,000.

92. In early 2008, Giordano approached H.W. about the Empire debentures and recommended that she invest in them. She had no prior knowledge of the Empire investment. In April 2008, relying upon Giordano's advice, she invested \$10,000 in the Empire debentures.

93. By the time of her 2008 investment, H.W.'s annual income was more than \$100,000, but it was substantially less than \$200,000. Her net worth was significantly less than \$1 million. Giordano did not obtain updated financial information prior to soliciting her investment in the Empire debentures.

94. Other investors solicited by Giordano did not meet the accredited investor standard that, according to Giordano, made him ineligible to personally invest in the Empire debentures.

D. Giordano Asset Management, LLC

95. In June 2005, Giordano organized the Giordano Investment Trust, an open-ended investment company, and the Giordano Fund ("Fund"), a series of the Giordano Investment Trust ("GIT"). Giordano was the chairman and president, as well as a trustee, of GIT.

96. That same year, Giordano also formed Giordano Asset Management, LLC ("GAM") to serve as the investment adviser for the Fund.

97. On October 8, 2005, Giordano and GAM called a meeting of the GIT Fair Value Committee for the purpose of considering the Fund's investment in the Empire debentures.

98. Present at the meeting were two trustees, the general counsel for Nottingham Company, the Fund's administrator, and legal counsel for the GIT.

99. At the meeting, Giordano provided the members of the Fair Value Committee with an overview of the Empire debentures. Giordano told the committee members that he had followed Empire Corporation for several years and was very familiar with the company, and that

Empire Corporation had been offering similar debentures for the past 30 years.

100. Giordano informed the committee members that the Empire debentures were not registered with the SEC. He also told the members that since the unregistered debentures might have a limited market, Empire Corporation had agreed to buy back the debentures on a sliding discounted scale at any time.

101. Giordano, however, had not reviewed any financial statements from Empire Corporation, let alone audited financial statements, and was unaware of Empire Corporations' ability to buy back the debentures.

102. GIT's legal counsel then reviewed with the committee members the policies and procedures set forth in GIT's guidelines, and GIT's investment limitations related to illiquid securities. It was noted during the meeting that the Empire debentures would be considered illiquid securities.

103. The committee members then asked Giordano and GIT's legal counsel a series of questions relating to GAM's reasons for investing in the Empire debentures and the possible risks associated with investing in non-registered securities.

104. There is no indication in the minutes that Giordano addressed whether the debentures should have been registered, or whether an exemption filing should have been made, with the SEC. Giordano did not disclose to the board that the debentures were not registered, or exempted from registration, with the Securities Division.⁵

⁵ Giordano asserts that Wilfred Azar I told him that the debentures were registered with the State of Maryland. However, there is no evidence that Giordano himself looked into whether the debentures were registered until the Spring of 2008 when he asked Wilfred Azar III about the

105. After considering the information provided by Giordano and GIT's legal counsel, the committee members approved the Fund's investment in the Empire debentures.

106. On or about December 8, 2005, Giordano and GAM purchased \$100,000 of Empire debentures for the Fund.

107. Despite recommending that the board invest more than 5% of the Fund's total portfolio in the Empire debentures, Giordano had not received or reviewed financial statements from Empire Corporation.

108. At an April 12, 2006 board meeting called by GAM, Giordano recommended that the Fund purchase another \$75,000 to \$100,000 of Empire debentures. The board accepted Giordano's recommendation and, shortly thereafter, GAM purchased another \$75,000 of Empire debentures.

109. The Empire debentures, at that point, represented more than 10% of the Fund's total portfolio assets, yet Giordano still had not reviewed Empire Corporation's financial statements.

110. A year later, on or about April 27, 2007, GAM again called a board meeting to discuss the purchase of additional Empire debentures.

111. Prior to the meeting, board members were provided a copy of the 2006 unaudited balance sheet for the Empire Corporation. At the meeting, Giordano discussed the balance sheet,

debentures' registration status. In an e-mail responding to Giordano's inquiry, Azar wrote: "I have discussed with our counsel, Bob Briskin the issues that you raised. He will research and get back to me, but his initial response was that we are not held to the same standards as a public company and as long as we are disclosing this to the Bond purchasers then there are no issues. Of course the spirit of this type of investing is that it is commonly done with "insiders" or indirect insiders."

his meeting with Empire Corporation's management, his tour of Empire's properties, and his review of Empire Corporation's financial condition.

112. Giordano then recommended the purchase by the Fund of an additional \$100,000 of Empire debentures. According to the meeting's minutes, Giordano based his recommendation upon a number of factors including Empire's debt ratio, the CD held by Empire Corporation at Commerce First Bank,⁶ the history of timely payments to Giordano's clients, the well-maintained and updated condition of Empire's facilities, the number and type of Empire's tenants, Empire's relationship with lenders, and the 35-year history of ownership by the current owner.

113. Giordano informed the board that, if the board approved the additional purchase, he was considering rolling the existing debentures over to a newly issued \$275,000 debenture with a put feature requiring Empire to buy back the debentures at face value plus accrued interest. The board approved the purchase of an additional \$100,000, bringing the debentures' percentage of the Fund's total portfolio to more than 11%.

114. Despite being the largest holding in the Fund, Giordano still had not collected from Empire Corporation anything more than an unaudited balance sheet for the 2006 calendar year. Income statements and cash flow statements were never produced by Azar or reviewed by Giordano. Giordano asserts that he asked for audited financial statements and tax returns, but they were never produced.

⁶ According to Giordano, Azar and Empire Corporation held a \$550,000 CD at Commerce First Bank that he believed served as collateral for the Fund's investment in the debentures. Although Giordano asked Azar for proof that the CD existed, Azar never provided proof other than listing the CD as an asset on unaudited financial statements. While listed on the unaudited balance sheet, the CD was not listed as funds restricted as collateral for the Fund's investment. Further, the CD was worth far less than the millions of dollars owed to all of the holders of Empire debentures.

115. Although the Empire debentures were by far the largest single investment in the Fund, Giordano recommended and continued to recommend the Fund's investment in the debentures despite the fact that Empire Corporation refused to produce audited financial statements.

116. By September 2008, the percentage of the Fund's total assets represented by the Empire debentures exceeded 15%. The percentage rose to 17.87% in December 2008 and to 18.63% in June 2009, and remained above 15% through June 2010 when it represented 16.29% of the Fund's assets. It wasn't until approximately September 2010, when Giordano and GAM wrote down the value of the Empire debentures, that the value of the debentures dropped below 15%.

117. Under the Investment Company Act of 1940, a mutual fund company must stand ready to redeem shares daily and be in a position to pay redeeming shareholders within seven days of request. Because of this requirement for liquidity, the SEC restricts the percentage of illiquid assets that an open-end mutual investment company can hold. In its Revisions of Guidelines to N-1A, Investment Company Act Release 18612, 57 FR 9828 (Mar. 20, 1992), the SEC increased from 10% to 15% the amount of illiquid assets that could be held by a mutual fund.

118. Despite exceeding the 15% liquidity threshold for nearly two years, GAM and Giordano never amended the Fund's prospectus to disclose that the liquidity threshold, established by the SEC for the protection of their assets, had been exceeded.

119. In 2009, the lawyer and/or board members for the Fund began to express concerns regarding the financial stability of Empire Corporation.

120. In an e-mail to Azar dated August 25, 2009, Giordano wrote: "I just got off the

phone with our lawyer and he is very worried about Empire Corp, Empire Bonds, and the way I handle this part of my business. With an internal and SEC audit probably happening within the next few months I want to make sure everything is perfect. He has suggested that we sell the bonds back to you if we cannot get this up to his satisfaction, I don't want to sell the bonds and I plan on easing his nerves ASAP. Please provide any financial information you can, along with the spreadsheet, the certificates, and anything you think would help."

121. A few months later, on or about October 8, 2009, Giordano followed up with another e-mail expressing the continued concerns of the board and the Fund's attorney: "I am really being pressed by our lawyer and the board of the Giordano Investment Trust for Empire Corp financials, can you get me something by October 15th? It does not have to be audited but it needs to be professionally prepared, if you want, **Empire Corp can deduct the preparation costs from what I am owed on the bond purchases.** I really need to make this issue go away." *Emphasis added.*

122. In November 2009, Giordano submitted to CIG's compliance department the 2009 Annual Report for the Fund for the period ending September 30, 2009. Accompanying the report was a letter from Giordano, in his capacity as the President of the Fund, to the "shareholders, clients, friends, and prospects." In his letter, he discussed the status of the Empire Corporation debentures, when he wrote: "The largest holding in our portfolio is the Empire Corp Senior Subordinated Debenture. . . Through this difficult economy Empire has been able to maintain its occupancy rates at over 90%. . . **I maintain weekly contact with Empire's management and continue to believe that Empire maintains a strong credit position.** As a result, I feel holding this position has, generally speaking, been beneficial to the Fund."

Emphasis added.

123. Despite the bounced checks discussed above, the concerns expressed by the Fund's attorney and board members, and the lack of audited financial statements, Giordano continued to tout the financial stability of Empire Corporation as late as November 2009.

124. Beginning in February 2009, as discussed above, Giordano began receiving payments from Empire Corporation and Azar. Although Giordano believed that the receipt of compensation was a conflict of interest, as indicated in his e-mail to King on December 31, 2009 above, Giordano failed to amend the Fund's prospectus to disclose to Fund investors the payments or the conflict of interest associated with receiving compensation from an issuer in which the Fund is invested.

125. Giordano also did not disclose the payments, or the conflict of interest associated with the payments, to the board of directors for the Fund.

126. On August 11, 2010, the Fund exercised its option to put the Empire debentures back to Empire Corporation. Upon presenting the certificates, Empire Corporation informed the Fund that it was unable to pay the principal and interest owed to the Fund for the debentures. The Fund's management decided to write off the debentures as of September 30, 2010.

127. In October 2010, Empire Corporation's parent company, Empire Holdings Corporation, filed for bankruptcy.

128. The Fund, and its underlying investors, sustained a loss of approximately 20% of the Fund's value as a result of the Fund's investment in Empire debentures.

129. Likewise, the CIG clients that invested in the Empire debentures have not been repaid and, thus, have incurred aggregate losses in the millions.

D. Unregistered investment advisory and securities activities

130. In or about January 2009, Harbor was formed by Giordano to “provide investment services, management, and administration.”

131. According to its website, Harbor is a full service investment firm providing, among other services, investment services, wealth management, and administrative services. The investment services included, among other things, “trading of stocks,” “investment advisory services,” “portfolio review,” and “asset allocation,” while the administrative services included services such as “bill paying” and “gift and family financial planning services.”

132. Harbor is not now, nor has it ever been, registered as an investment adviser in Maryland.

133. In or about June 2012, Giordano was terminated by CIG. The following month, Giordano joined a new broker-dealer, Meyers Associates (“Meyers”). Giordano’s agent registration with the Securities Division has been pending since June 2012.

134. In or about September 2012, Giordano asked a long-time associate, D.B., to join him at Meyers. D.B. had previously worked with Giordano at CIG.

135. D.B. joined Meyers as a registered representative and became registered as an agent with the Securities Division in late September 2012.

136. D.B. also was the owner of an investment advisory firm that has been registered with the Securities Division since February 2012.

137. Shortly after joining Meyers, D.B. moved into Giordano’s office suite in Annapolis, MD.

138. On December 6, 2012, members of the Securities Division visited D.B. to conduct

an audit of his investment advisory and securities business.

139. When Securities Division staff arrived at D.B.'s office on December 6th, staff members knocked on the door to the office suite, but received no answer.

140. Securities Division staff then entered into the lobby of the office suite. Once inside the lobby, Securities Division staff observed two offices. One office was empty; the other office was occupied but Securities Division staff could not see the individual inside the office.

141. The individual was on the telephone. Securities Division staff overheard the individual advising the person on the other end of the telephone line about effecting transactions in Apple stock and options on Apple stock.

142. Securities Division staff knocked again on the inside of the office suite's door, and the individual eventually placed the person on hold and greeted Securities Division staff.

143. The individual identified himself as Joseph Giordano and advised Securities Division staff that D.B. was not in the office. Giordano put Securities Division staff in touch with D.B. by telephone. After talking with D.B. by telephone, Securities Division staff left the office.

144. On December 19, 2012, Securities Division staff revisited D.B.'s office and conducted an audit of his investment advisory and securities business.

145. During the audit, Securities Division staff requested D.B. to provide Securities Division staff with access to his brokerage files, including client files. D.B. advised that he was unable to do so because the files were located in Giordano's office and Giordano's office was locked.

146. Securities Division staff requested D.B. to provide Securities Division staff with electronic access to his brokerage records, including access to his trade blotter and other

transaction records. D.B. advised Securities Division staff that he could not because he did not have the user id and password needed to access Meyers Associates' electronic system.

147. When asked who had access to the user id and password, D.B. advised that Giordano had access to the user id and password.

148. Securities Division staff requested that D.B. contact his broker-dealer to gain access to his user id and password.

149. D.B. contacted Meyers, and Meyers forwarded to D.B. an e-mail that would allow him to reset his password. However, D.B. informed Securities Division staff that he had never used his Meyers' e-mail account and, thus, did not know how to access the e-mail forwarded to him.

150. Upon Division staff returning from lunch, D.B. advised Securities Division staff that he had been in touch with Giordano by telephone and now was in possession of the user id and password necessary to access his electronic brokerage records. Giordano's office door also was open, but he was not there.

151. Securities Division staff then reviewed the electronically maintained transaction records reflecting securities trades placed on behalf of D.B.'s brokerage clients.

152. The records reflected that, between October 2012 and December 2012, more than 60 securities transactions were effected on behalf of approximately 10 different clients, all of whom were former CIG brokerage clients of Giordano.

153. Those clients were just a few of the more than 30 former CIG clients of Giordano who transferred their accounts from CIG to Meyers Associates between October and December 2012. The clients were brought over by Giordano who, through Harbor, assisted clients in

transferring their accounts from CIG to Meyers Associates.⁷

154. D.B. was listed as the broker of record on the clients' accounts; however, prior to the transfer of their accounts to Meyers Associates, D.B. had no relationship with most, if not all, of the clients.

155. D.B. executed less than 5 of the 60 plus transactions.

156. The majority of the transactions were executed by Giordano.

157. Many of the transactions were executed by Giordano while D.B. was out of the office. In the case of a few transactions, Giordano first discussed the transactions with clients, and then called D.B. to discuss the transactions with D.B. D.B. then authorized the transactions and Giordano executed the transactions.

158. In the case of other transactions, D.B. neither discussed the transactions with Giordano nor executed the transactions on behalf of the clients.

159. As discussed above, on December 6, 2012, Securities Division staff observed Giordano advising an individual with respect to a transaction in Apple stock and options on Apple stock. According to transaction records reviewed by the Securities Division, approximately one week after the telephone conversation, two transactions relating to Apple stock, including an options transaction, were executed in a client's account. D.B. did not execute the trades or discuss the trades with Giordano or the client; the trades were placed by Giordano.

IV. CONCLUSIONS OF LAW

⁷ In an e-mail from one client in the process of transferring his account, the client indicated that he would be sending a new account form to Harbor in January and cc'ed Giordano using Giordano's harbor-invest.com e-mail account.

The Commissioner concludes that:

160. Respondents Giordano and GAM violated section 11-301 of the Securities Act by, among other things, misrepresenting or omitting to disclose material facts to investors, and making unsuitable recommendations.

161. Respondents GAM and Giordano violated section 11-302 of the Securities Act by misrepresenting or omitting to disclose material facts to investors.

162. Respondent Giordano violated section 11-501 of the Securities Act by offering and selling unregistered securities.

163. Respondents Giordano and Harbor violated section 11-401 of the Securities Act by acting as an unregistered broker-dealer, agent, investment adviser, or investment adviser representative.

164. Respondent Harbor violated section 11-402 of the Securities Act by employing an unregistered agent and investment adviser representative.

165. Respondent Giordano violated section 11-411 of the Securities Act by failing to amend his Form U4 to disclose his outside business activity with Empire Corporation.

166. Respondent Giordano violated sections 11-301, 11-302, 11-501, 11-401, and 11-411 of the Securities Act, and engaged in unethical and dishonest business practices, and grounds exist under sections 11-412(a)(2) and 11-412(a)(7) to revoke Respondent Giordano's agent registration.

V. SANCTIONS

NOW THEREFORE, IT IS HEREBY ORDERED, and Respondents expressly consent and agree:

167. Each Respondent shall permanently cease and desist from violating sections 11-301, 11-302, 11-401, 11-402, 11-501, and 11-411 of the Securities Act.

168. Each Respondent is barred from engaging in the securities or investment advisory business in Maryland for or on behalf of others, including in a consulting capacity, or from acting as a principal in any entity so engaged.

169. Respondents, jointly and severally, are assessed a civil monetary penalty of \$100,000 for the violations set forth in this Order. However, in light of a sworn financial affidavit submitted by Respondent Giordano, collection of all but \$25,000 of the civil monetary penalty is waived. Payment of the monetary penalty shall be made in installments, as follows: \$5,000 contemporaneous with the issuance of this Consent Order; and payments of \$2,500 each payable by the 1st of the month beginning each successive quarter (the “quarterly due dates”), until the monetary penalty is paid in full. The quarterly due dates are as follows: January 1st, April 1st, July 1st, and October 1st. Each check shall be payable to the “Office of the Attorney General.”

170. Each Respondent shall comply fully with the Securities Act and the regulations promulgated thereunder.

VI. JURISDICTION RETAINED

171. Jurisdiction shall be retained by the Commissioner for such further orders and directions as may be necessary or appropriate for the construction or enforcement of this Consent Order.

172. If a Respondent fails to comply with any term of this Consent Order, the Commissioner may institute administrative or judicial proceedings against that Respondent to

enforce this Consent Order and/or to sanction that Respondent for violating an Order of the Commissioner, and may take any other action authorized under the Securities Act or under any other applicable law, including the issuance of fines or penalties as provided by the Securities Act. In any such proceeding, the Division may also seek other sanctions for the violations that initiated this matter. For the purpose of determining those sanctions, the Statement of Facts and violations of the Securities Act set forth in this Consent Order shall be deemed admitted, and may be introduced into evidence against that Respondent.

173. In the event that judicial intervention in this matter is sought by the Commissioner or Respondent, subject matter jurisdiction will lie in the Circuit Court for Baltimore City pursuant to section 11-702 of the Securities Act. The Circuit Court for Baltimore City will have personal jurisdiction over Respondent pursuant to section 6-103(b) of the Courts and Judicial Proceedings Article, Title 6, Annotated Code of Maryland (2006 Repl. Vol. and 2012 Supp.). Venue will be properly in that Court pursuant to Section 6-201(a) and 6-202(11) of that article.

174. The terms of this Consent Order may be vacated or modified only by a subsequent order issued by the Commissioner.

SO ORDERED:

**Commissioner's Signature is
on File with Original Document**

Melanie Senter Lubin
Securities Commissioner

Date: May 17, 2013

BY CONSENT:

/S/
Joseph Giordano

/S/
Giordano Asset Management, LLC

by: Joseph Giordano, President

_____, 2013
Date

_____, 2013
Date

Subscribed and sworn to before me
this ____ day of _____, 2013.

Subscribed and sworn to before me
this ____ day of _____, 2013.

Notary Public
My Commission expires _____

Notary Public
My Commission expires _____

_____/S/_____
Harbor Investment Solutions, LLC

by: Joseph Giordano, President

_____, 2013
Date

Subscribed and sworn to before me
this ____ day of _____, 2013.

Notary Public
My Commission expires _____