



STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LANSING

RICK SNYDER  
GOVERNOR

SHELLY EDGERTON  
DIRECTOR

Complaint No. 327440

In the matter of:

HARBINGER ASSET MANAGEMENT, L.L.C.  
IARD# 146811

Respondent.

---

**FINAL ORDER**

1. This matter came before the Department of Licensing and Regulatory Affairs under the Michigan Uniform Securities Act (2002), 2008 PA 551, as amended, MCL 451.2101 *et seq.* (the "Act"), and associated administrative rules.
2. On April 29, 2016, the Director of the Corporations, Securities & Commercial Licensing Bureau, who is the Administrator of the Act (the "Administrator"), issued a Notice of Intent to Revoke Investment Adviser Registration (the "Notice of Intent to Revoke") to Harbinger Asset Management, LLC ("Respondent"), providing it with notice and an opportunity to show compliance under the Administrative Procedures Act, 1969 PA 306, as amended, MCL 24.201 *et seq.*, and notice and an opportunity to request a hearing under MCL 451.2412.
3. On July 6, 2016, Respondent, through its attorney, indicated that it did not contest the findings of fact and conclusions of law set forth in the Notice of Intent to Revoke, waiving its right to a hearing on the matter.
4. The findings of fact and conclusions of law set forth in the Notice of Intent to Revoke are incorporated by reference.
5. Respondent is in violation of the Act and/or its associated administrative rules as specified in paragraph 16 of the Notice of Intent to Revoke.

**THEREFORE, IT IS ORDERED**, that Respondent's Investment Adviser Registration is revoked, as authorized by section 412(2) of the Act, MCL 451.2412(2); and

**IT IS FURTHER ORDERED**, that the following penalties authorized by section 412(3) of the Act, MCL 451.2412(3), are imposed:

- A. Respondent must pay a FINE in the amount of Fifty Thousand Dollars and 00/100 Cents (\$50,000.00) based on the multiple violations identified in paragraph 16 of

the Notice of Intent to Revoke. The fine is payable to the State of Michigan within sixty (60) days from the mailing date of this Final Order. Complaint No. 327440 must be clearly indicated on the cashier's check or money order, and the payment sent to the Department of Licensing and Regulatory Affairs, Corporations, Securities & Commercial Licensing Bureau, Final Order Monitoring – Securities & Audit Division, P.O. Box 30018, Lansing, Michigan 48909.

B. No application for a permit, registration, licensure, relicensure, reinstatement, or renewal submitted by Respondent under the Act will be considered or granted by the Department, until all final orders of the Department are fully complied with.

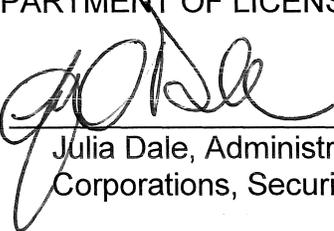
C. Failure to comply with this Order may subject Respondent to additional administrative or criminal sanctions, fines, and/or penalties. Under MCL 451.2508, a person that willfully violates the Act, or an order issued under the Act, is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than \$500,000.00 for each violation, or both. An individual convicted of violating a rule or order under the Act may be fined, but shall not be imprisoned, if the individual did not have knowledge of the rule or order.

**This Final Order is effective immediately upon its mailing.**

Given under my hand at Okemos, Michigan, this 18 day of July, 2016.

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

By:



Julia Dale, Administrator and  
Corporations, Securities & Commercial Licensing Bureau Director

Date mailed: July 19, 2016

This is the last and final page of the Final Order in the matter of Harbinger Asset Management, L.L.C., Complaint No. 327440.

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
CORPORATIONS, SECURITIES & COMMERCIAL LICENSING BUREAU

In the matter of:

Agency No. 327440

HARBINGER ASSET MANAGEMENT, LLC  
IARD# 146811

Respondent.  
\_\_\_\_\_ /

Issued and entered  
This 21<sup>st</sup> Day of April, 2016

**NOTICE OF INTENT TO REVOKE**  
**INVESTMENT ADVISER REGISTRATION**

**I. RELEVANT FACTS AND APPLICABLE LAW.**

Relevant information and statutory provisions, under the Michigan Uniform Securities Act (2002), 2008 PA 551, as amended, MCL 451.2101 *et seq* (the "Securities Act"):

1. Harbinger Asset Management, LLC (IARD#146811) ("Respondent") was registered as an investment adviser in Michigan from on or around September 21, 2012 until on or around March 24, 2016, when the firm voluntarily withdrew its registration. Prior to its registration in Michigan, Respondent had been registered with the Securities & Exchange Commission, beginning in or around July 2008. Respondent is a Michigan limited liability company which identifies on the Investment Adviser Registration Depository ("IARD") that its principal office and place of business is 5220 Lovers Lane, Suite 130, Portage, Michigan 49002.
2. The Corporations, Securities & Commercial Licensing Bureau ("the Bureau") within the State of Michigan Department of Licensing and Regulatory Affairs began a routine examination of Respondent on or around August 5, 2015 pursuant to authority granted by section 411(4) of the Securities Act, MCL 451.2411(4).
3. In the course of the examination, Bureau staff interviewed Christopher T. Tolmács (CRD#6468724), Respondent's sole owner and the chief compliance officer of the firm. Staff determined that Christopher T. Tolmács, under the guise of providing investment advice through Respondent, engaged in the unlawful borrowing of money from Respondent's clients, and attempted to hide the borrowing from Bureau staff. (See Exhibit 1). The Bureau considers it an unethical business practice for an investment adviser or its associated representatives to borrow money or securities from clients.

4. In an interview that occurred on or around August 5, 2015 in connection with the examination, Respondent, through Christopher T. Tolmacs, lied to Bureau staff regarding the existence of loans from Respondent's investment advisory clients. The Bureau considers the misrepresentation to be a dishonest and unethical practice in the securities industry.
5. In an interview that occurred on or around February 11, 2016 in connection with the examination, Respondent, through Christopher T. Tolmacs, lied to Bureau staff regarding the flow of funds generated by loans with clients. Mr. Tolmacs represented that loan proceeds were deposited into accounts associated with Respondent, when in fact the funds were deposited into Mr. Tolmacs's personal accounts. The Bureau considers the misrepresentation to be a dishonest and unethical practice in the securities industry.
6. In the course of the examination, Bureau staff requested that Respondent and Christopher Tolmacs provide a personal balance sheet for Mr. Tolmacs to demonstrate solvency, as required by section 412(4)(g) of the Securities Act, MCL 451.2412(4)(g); however, neither Respondent nor Mr. Tolmacs provided a balance sheet to Bureau staff. (See Exhibit 1). The Bureau considers this to be an impediment to the Bureau's examination of Respondent.
7. In the course of the examination, Respondent and Christopher T. Tolmacs provided bank statements to Bureau staff which were altered or redacted to conceal from Bureau staff relevant information regarding withdrawals from Mr. Tolmacs's accounts. (See Exhibit 1). The Bureau considers this a dishonest and unethical business practice.
8. Respondent indicated on its form ADV registration application that neither Respondent nor any related persons (i.e., Christopher T. Tolmacs) had custody of client funds or securities; however, Respondent's related person, Mr. Tolmacs, did take custody of client funds by accepting loans from Respondent's clients. The representation on the form ADV was false.
9. The Director ("Administrator") of the Bureau has reviewed materials relating to Respondent's actions as a registrant under the Securities Act. The Administrator has determined that the REVOCATION OF RESPONDENT'S REGISTRATION AS AN INVESTMENT ADVISER is authorized, appropriate, and in the public interest based upon Respondent's conduct discussed above and hereafter.
10. Section 409 of the Securities Act, MCL 451.2409, states in part, "The administrator may institute a revocation or suspension proceeding under section 412 within 1 year after the withdrawal became effective automatically and issue a revocation or suspension order as of the last date on which registration was effective if a proceeding is not pending."

11. Section 412(2) of the Securities Act, MCL 451.2412(2), states:

If the administrator finds that the order is in the public interest and subsection (4) authorizes the action, an order under this act may revoke... the registration of a registrant and if the registrant is a broker-dealer or investment adviser, of a partner, officer, or director, or a person having a similar status or performing similar functions, or a person directly or indirectly in control of the broker-dealer or investment adviser...

12. Section 412(3) of the Securities Act, MCL 451.2412(3) states:

If the administrator finds that the order is in the public interest and subsection (4)(a) to (f), (i) to (j), or (l) to (n) authorizes the action, an order under this act may censure, impose a bar, or impose a civil fine in an amount not to exceed a maximum of \$10,000.00 for a single violation or \$500,000.00 for more than 1 violation on a registrant and, if the registrant is a broker-dealer or investment adviser, on a partner, officer, or director, a person having a similar status or performing similar functions, or a person directly or indirectly in control of the broker-dealer or investment adviser.

13. Section 412(4) of the Securities Act, MCL 451.2412(4) states in relevant part:

(a) The person filed an application for registration in this state under this act or the predecessor act within the previous 10 years, which, as of the effective date of registration or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained a statement that, in light of the circumstances under which it was made, was false or misleading with respect to a material fact.

(b) The person willfully violated or willfully failed to comply with this act or the predecessor act or a rule adopted or order issued under this act or the predecessor act within the previous 10 years.

\*\*\*

(h) The person refuses to allow or otherwise impedes the administrator from conducting an audit or inspection under section 411(4) or refuses access to a registrant's office to conduct an audit or inspection under section 411(4).

\*\*\*

(m) The person has engaged in dishonest or unethical practices in the securities, commodities, investment, franchise, banking, finance, or insurance business within the previous 10 years...

14. Section 412(7) of the Securities Act, MCL 451.2412(7) states:

(7) Except under subsection (6), an order shall not be issued under this section unless all of the following have occurred:

- (a) Appropriate notice has been given to the applicant or registrant.
- (b) Opportunity for hearing has been given to the applicant or registrant.
- (c) Findings of fact and conclusions of law have been made on the record pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

15. Section 505 of the Securities Act states:

A person shall not make or cause to be made, in a record that is used in an action or proceeding or filed under this act, a statement that, at the time and in the light of the circumstances under which it is made, is false or misleading in a material respect, or, in connection with the statement, omit to state a material fact necessary to make the statement made, in the light of the circumstances under which it was made, not false or misleading.

16. The Administrator may revoke Respondent's investment adviser registration pursuant to section 412(2) of the Securities Act, MCL 451.2412(2), because it is in the public interest, and because:

- a. Respondent failed to update its form ADV to reflect that it or its affiliated person, Christopher Tolmacs, had custody of client funds, contrary to section 412(4)(a) of the Securities Act, MCL 451.2412(4)(a);
- b. Respondent, through Christopher T. Tolmacs, willfully violated or failed to comply with the Securities Act by providing false information to Bureau staff in the course of the Bureau's examinations, contrary to section 412(4)(b), MCL 451.2412(4)(b) and section 505, MCL 451.2505;
- c. Respondent further willfully violated Securities Act by engaging in unethical business practices, through Christopher T. Tolmacs, contrary to section 412(4)(m), MCL 451.2412(4)(m), when Mr. Tolmacs accepted loans from clients under the guise of providing investment advice through Respondent, and subsequently lied to the Bureau about those loans, contrary to section 412(4)(b), MCL 451.2412(4)(b);
- d. Respondent, through Christopher T. Tolmacs, impeded the Bureau's examination, contrary to section 411(4), MCL 451.2411(4), by failing to provide a balance sheet for Mr. Tolmacs to Bureau staff, contrary to section 412(4)(h), MCL 451.2412(4)(h); the balance sheet is necessary for Mr. Tolmacs to

demonstrate compliance with the solvency requirement of section 412(4)(g) of the Securities Act, MCL 451.2412(4)(g);

- e. Respondent further impeded the Bureau's examination, through Christopher T. Tolmacs, contrary to section 411(4), MCL 451.2411(4), by redacting or otherwise altering bank statements submitted in the course of the examination, contrary to section 412(4)(h), MCL 451.2412(4)(h); and
- f. Respondent, through Christopher T. Tolmacs, engaged in dishonest and unethical behaviors in the securities industry by accepting loans from clients, contrary to section 412(4)(m), MCL 451.2412(4)(m). Respondent, through Mr. Tolmacs, exacerbated the impact of those behaviors by attempting to conceal from, and subsequently lying to Bureau staff regarding the loans, which was also contrary to section 412(4)(m), MCL 451.2412(4)(m).

## II. ORDER.

The Administrator finds that this ORDER is authorized, appropriate, and in the public interest based on the above-cited facts and law.

IT IS ORDERED as follows:

1. The Administrator intends TO REVOKE THE INVESTMENT ADVISER REGISTRATION OF HARBINGER ASSET MANAGEMENT, LLC under section 412(2) of the Securities Act, MCL 451.2412(2), because it submitted a false form ADV; it willfully violated the Securities Act; it impeded the Bureau's examination; and it has engaged in dishonest and unethical business practices in the securities industry within the previous 10 years, all of which support the revocation of its investment adviser registration under the above-cited provisions of the Michigan Uniform Securities Act (2002), 2008 PA 551, MCL 451.2101 *et seq.*

2. In accordance with section 412(3) of the Securities Act, MCL 451.2412(3), the Administrator intends to impose a civil fine in the amount of \$50,000.00 against Respondent in her Final Order revoking Respondent's investment registration.

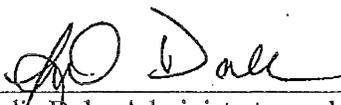
3. In accordance with sections 412(2) and 412(7) of the Securities Act, MCL 451.2412(2) and MCL 451.2412(7): This is NOTICE that the Administrator intends to commence administrative proceedings to REVOKE Respondent's investment adviser registration, and that Respondent has thirty (30) days after the date that this Order is served on Respondent to respond in writing to the enclosed Notice of Opportunity to Show Compliance. If the Administrator timely receives a written request, depending upon the election, the Administrator shall either promptly schedule a compliance conference, or schedule a hearing within fifteen (15) days after receipt of the written request. If you fail to respond to this Notice and Order within the time frame specified, the Administrator shall schedule a hearing. If a

hearing is requested or ordered, the Administrator, after notice of and an opportunity for hearing to Respondent, may modify or vacate this Order or extend the Order until final determination.

If Respondent requests a hearing, the request must be in writing and filed with the Department of Licensing and Regulatory Affairs, Corporations, Securities & Commercial Licensing Bureau, Regulatory Compliance Division, P.O. Box 30018, Lansing, MI 48909.

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

By: \_\_\_\_\_

  
Julia Dale, Administrator and Director  
Corporations, Securities & Commercial Licensing Bureau