

**STATE OF WISCONSIN**  
**Before the**  
**DEPARTMENT OF FINANCIAL INSTITUTIONS**  
**DIVISION OF SECURITIES**

In the Matter of

THE INVESTMENT COUNSEL LLC and  
BRANDON M. ADKINS,

Respondents.

SUMMARY ORDER RESTRICTING AND  
SUSPENDING INVESTMENT ADVISER  
AND INVESTMENT ADVISER  
REPRESENTATIVE REGISTRATIONS,  
IMPOSING CEASE AND DESIST, AND  
REVOKING REGISTRATION  
EXEMPTIONS and

NOTICE OF PROPOSED ORDER TO  
REVOKE INVESTMENT ADVISER AND  
INVESTMENT ADVISER  
REPRESENTATIVE REGISTRATIONS,  
AND IMPOSE CIVIL PENALTIES,  
RESTITUTION, INTEREST, AND COSTS

File No. S-233356 (LX)

**I.**

The Administrator of the State of Wisconsin, Department of Financial Institutions, Division of Securities (“Division”), having legal authority and jurisdiction to administer and enforce Wis. Stat. ch. 551, the Wisconsin Uniform Securities Law, and Wis. Admin. Code ch. DFI-Sec, deems it necessary and appropriate in the public interest and for the protection of investors, to issue the following:

**II.**

After an investigation, the Division has presented evidence sufficient for the Administrator to make the following findings of fact and conclusions of law:

**A. Findings of fact.**

**Respondents**

1. The Investment Counsel LLC (CRD No. 175006) (“Investment Counsel”) is a Wisconsin limited liability company organized on or about January 29, 2015. Investment Counsel has been registered with the Division as an investment adviser since March 2, 2015. Investment Counsel’s last known address is 5620 Deerfield Road, Eau Claire, Wisconsin, 54701.

2. Brandon M. Adkins (CRD No. 5858667) (“Adkins”) has been registered with the Division as an investment adviser representative with Investment Counsel since March 4, 2015. Adkins’s last known address is 5620 Deerfield Road, Eau Claire, Wisconsin, 54701. Adkins was previously registered with the Division for Merrill Lynch Pierce, Fenner & Smith Inc (“Merrill Lynch”) as a broker-dealer agent from February 4, 2011 through February 7, 2011 and again from July 26, 2011 through January 8, 2015; and as an investment adviser representative from September 16, 2011 through January 8, 2015.

### **Conduct**

3. On or about April 17, 2006, a Wisconsin limited liability company named Badgerland Alarm LLC (“Badgerland”) was organized. From about July 10, 2008 through November 9, 2011, Adkins was a founder and the registered agent for Badgerland. On or about November 9, 2011, Badgerland was administratively dissolved.

4. According to the official records of the Hennepin County District Court, located in Minneapolis, Minnesota, a judgment including a monetary award of \$23,755.64 was entered against Adkins and Badgerland on November 5, 2008 in favor of plaintiffs Lincoln Property Company and PACW Eden Prairie LLC (“Badgerland Judgment”). As of the date of the service of this order, the Badgerland Judgment has been unsatisfied. Neither Investment Counsel nor Adkins disclosed the unsatisfied Badgerland Judgment on any investment adviser, or investment adviser representative, or broker-dealer agent applications to the Division.

5. On or about July 18, 2011, Adkins started working for Merrill Lynch, as a broker-dealer agent and investment adviser representative at a branch office in Eau Claire, Wisconsin. Adkins was previously employed by a Merrill Lynch branch office in Bloomington, Minnesota from October 2010 until his termination on January 28, 2011 for failing to meet registration requirements.

6. Around July 2011, Adkins met Investor A, an elderly male person at the time living in Eau Claire, Wisconsin, at a local church. Investor A subsequently became Adkins’s client at Merrill Lynch. Due to Investor A’s various health issues, he was unable to drive himself, and became reliant on Adkins for assistance including transportation to medical appointments.

7. In July 2014, another Merrill Lynch client of Adkins submitted a written complaint alleging that Adkins had made unsuitable investment recommendations and misrepresentations. Merrill Lynch settled with said client for \$22,966.32 in September 2014.

8. On December 17, 2014, Merrill Lynch terminated Adkins’s employment for recommending the purchase of securities which had not been researched or approved by Merrill Lynch for sale to clients. Adkins had recommended such purchases to at least fourteen clients with self-directed brokerage accounts. Adkins marked the “solicited” orders of the recommendations as “unsolicited”, which was a violation of Merrill Lynch’s compliance manual.

9. After his employment termination on December 17, 2014 but before his investment adviser representative and Investment Counsel's registrations were filed with the Division on March 2, 2015, Adkins failed to disclose to Investor A that he was no longer a registered investment adviser, yet continued to act as an investment adviser to Investor A.

10. On January 20, 2015, securities valued at approximately \$30,023.91 were liquidated from Investor A's Merrill Lynch brokerage account and placed into Investor A's personal bank account. On January 26, 2015, a check from Investor A's personal bank account was made payable to Adkins in the amount of \$30,000, and was deposited into Adkin's personal joint checking bank account (the "\$30,000"). Adkins had represented to Investor A that the \$30,000 would be invested for Investor A's benefit and failed to disclose to Investor A that Adkins would use the monies for his own personal expenses, including purchasing a lawn mower, a car, and clothing; dining at restaurants; other entertainment; and paying for Adkins's and his wife's student loan debts and towards their personal residence.

11. On March 2, 2015, Investment Counsel became registered as an investment adviser and Adkins became registered as an investment adviser representative with the Division. Shortly thereafter, Investor A's securities accounts were transferred from Merrill Lynch to Investment Counsel's custodian, Charles Schwab & Co. ("Charles Schwab"), and with Investment Counsel being authorized to direct transactions in the account.

12. On August 11, 2015, the Division conducted an initial and routine examination of Investment Counsel to verify compliance with securities laws. During the examination, Adkins stated that the \$30,000 he received from Investor A on January 26, 2015 was "seed money" for his new investment adviser firm, and that the loan was Investor A's suggestion.

13. Also during the examination, Adkins failed to disclose an active investigation by the Financial Industry Regulatory Authority Inc ("FINRA") into his trading activity at Merrill Lynch. Adkins also failed to provide Investment Counsel's financial records required by § DFI-Sec 5.03(b), Wis. Admin. Code. Adkins later provided a "profit and loss statement" for Investment Counsel on September 2, 2015, but the statement failed to reflect the \$30,000 he characterized as a loan, as part of the liabilities. Adkins provided no other required financial records.

14. On September 4, 2015, in a deficiency letter to Adkins, the Division made a written request for him to address repayment of the \$30,000 to Investor A. On September 16, 2015, Adkins responded that he would refund all of the advisory fees collected by Investment Counsel from Investor A and cease charging any advisory fees until the \$30,000 was fully repaid to Investor A. However, no advisory fees were refunded until April 2016 when Division staff had scheduled an in-person interview with Adkins to discuss Investment Counsel's compliance issues.

15. On September 29, 2015, Adkins provided a copy of a promissory note for the \$30,000, executed with Investor A just four days earlier on September 25, 2015, as documentation of how the \$30,000 would be repaid (the "promissory note"). The promissory note stated a term of 72 months, with first payment due on April 1, 2016, during which the principal would accrue an annual interest of 4 percent. At the time of the promissory note's execution, Investor A was approximately 88 years old with health issues.

16. Around October 2015, Division staff contacted Investor A via telephone to discuss the promissory note. Investor A stated to the examiner that Adkins had not told him about taking the \$30,000 until late September 2015 when he was asked to sign the promissory note. Investor A stated that he did not know how much money he had or how to access it because Adkins controlled all of his financial affairs. Investor A stated that he had memory issues; that Adkins provided all transportation to and from medical appointments; that Adkins remained present during those medical appointments; and that Adkins regularly discussed Investor A's mental and physical health issues, appointment scheduling, and medications with Investor A's healthcare providers. Shortly after the contact, Investor A relocated to an assisted living facility in West Allis, Wisconsin, to be closer to his son, and who he has since designated as his financial and healthcare power of attorney.

17. In April 2016, the Division again met with Adkins to discuss Investment Counsel's compliance issues, specifically the outstanding \$30,000 to Investor A. Following the meeting, the Division mailed Adkins a letter directing that he repay Investor A in full by June 1, 2016, or provide a written statement detailing how to repay Investor A in full by July 1, 2016.

18. On May 31, 2016, Adkins sent to the Division by electronic mail a statement which stated that he had arranged a loan from a relative to repay Investor A in full by July 1, 2016, and included a tracking number for a certified mailing on July 1, 2016 containing a check to Investor A.

19. On July 14, 2016, the Division was advised by Investor A's son that the check from Adkins had been returned due to insufficient funds, and that Adkins has failed to return Investor A's son's phone calls inquiring about the check.

20. As of the date of the service of this order, Adkins has failed to disclose to the Division that his check to Investor A was returned for insufficient funds, nor disclose that he has failed to repay the Client as directed in the April 2016 letter.

## **B. Conclusions of law.**

### **Legal authority and jurisdiction**

21. The Administrator has legal authority and jurisdiction over the conduct described above, pursuant to Wis. Stat. ch. 551, and Wis. Admin. Code ch. DFI-Sec.

## Violations

22. As a result of the conduct described above, Respondents violated Wis. Stat. § 551.412(4)(a), which prohibits filing an application for registration in this state under this chapter 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.

23. As a result of the conduct described above, Respondents violated Wis. Stat. § 551.412(4)(b), which prohibits willfully violating or willfully failing to comply with Wis. Stat. ch. 551, or the predecessor act or a rule adopted or order issued under Wis. Stat. ch. 551, or the predecessor act within the previous 10 years; and Wis. Admin. Code § DFI-Sec 5.03(1)(b), which requires each registered investment adviser whose principal office is in this state to prepare and keep current at that office, or at a designated office located in this state, as specified in writing to, and permitted by, the division, or at an office under the direct supervision and control of the principal or designated office, a general ledger (or other records in the case of a sole proprietor) reflecting all asset, liability, income, expense, and capital accounts.

24. As a result of the conduct described above, Respondents violated Wis. Stat. § 551.412(4)(m), which prohibits engaging in dishonest or unethical practices in the securities, commodities, investment, franchise, banking, finance, or insurance business within the previous 10 years; and Wis. Admin. Code § DFI-Sec 5.06(4), which prohibits recommending to a client the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known by the investment adviser.

25. As a result of the conduct described above, Respondents violated Wis. Stat. § 551.412(4)(m), which prohibits engaging in dishonest or unethical practices in the securities, commodities, investment, franchise, banking, finance, or insurance business within the previous 10 years; and Wis. Admin. Code § DFI-Sec 5.06(6), which prohibits borrowing money or securities from, or lending money or securities to, a client, unless that client is a financial institution or institutional investor designated in Wis. Stat. §§ 551.401(2)(b) or (c),

26. As a result of the conduct described above, Respondents violated Wis. Stat. § 551.412(4)(m), which prohibits engaging in dishonest or unethical practices in the securities, commodities, investment, franchise, banking, finance, or insurance business within the previous 10 years; and Wis. Admin. Code § DFI-Sec 5.06(7), which prohibits misrepresenting to any client, or prospective client, the qualifications of the investment adviser, investment adviser representative, federal covered investment adviser, or any employee, or person affiliated with the investment adviser, investment adviser representative or federal covered investment adviser, or misrepresenting the nature of the advisory services being offered or fees to be charged for such service, or to omit to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading.

27. As a result of the conduct described above, Respondents violated Wis. Stat. § 551.412(4)(q), which prohibits making any material misrepresentation to or withheld or concealed any material fact from the administrator, or refusing to furnish information reasonably requested by the Administrator.

28. As a result of the conduct described above, Respondents violated Wis. Stat. § 551.604(1), which prohibits a person from being engaged in, engaging in, or about to engage; or materially aiding or about to materially aid, in an act, practice, or course of business constituting a violation of Wis. Stat. ch. 551, or a rule adopted or order issued under Wis. Stat. ch. 551; and Wis. Stat. § 551.403(1), which prohibits a person from transacting business in this state as an investment adviser unless the person is registered under Wis. Stat. ch. 551, as an investment adviser or is exempt from registration as an investment adviser under Wis. Stat. § 551.403(2).

### III.

In view of the above findings of fact and conclusions of law, the Administrator deems it necessary and appropriate in the public interest and for the protection of investors, and pursuant to its legal authority and jurisdiction under Wis. Stat. ch. 551, to-wit Wis. Stat. §§ 551.412 and 551.604; and Wis. Admin. Code ch. DFI-Sec, to-wit Wis. Stat. § DFI-Sec 5.09, to issue the following orders and notices:

#### A. Summary orders.

(a.) IT IS ORDERED summarily that the investment adviser registration for Respondent Investment Counsel and the investment adviser representative registration for Respondent Adkins, pursuant to Wis. Stat. §§ 551.412(2) and (6), are:

- (1.) Restricted from accepting new clients;
- (2.) Limited to assisting current clients in making necessary arrangements for the transfer of the management of existing investments to a different investment advisor; and
- (3.) Suspended indefinitely starting 7 calendar days from the date of issuance and until further notice from the Administrator.

(b.) IT IS FURTHER ORDERED summarily that Respondents shall cease and desist from engaging in the act of making or causing to be made to any person in the state of Wisconsin, any offer or sale of securities until such securities are qualified as covered or registered securities under the law, pursuant to Wis. Stat. §§ 551.604(1)(a) and (2).

(c.) IT IS FURTHER ORDERED summarily that all exemptions from registration set for in Wis. Stat. ch. 551, that may otherwise apply to any sale or offer to sale of securities by Respondents, are hereby revoked, pursuant to Wis. Stat. §§ 551.604(1)(b) and (2).

(d.) IT IS FURTHER ORDERED that the above summary orders are effective on the issuance and effective date below, pursuant to Wis. Stat. §§ 551.412(6) and 551.604(2).

**B. Notice of proposed orders.**

(e.) IT IS PROPOSED that an order be issued revoking the investment adviser registration for Respondent Investment Counsel and the investment adviser representative registration for Respondent Adkins, pursuant to Wis. Stat. §§ 551.412(2) and (7).

(f.) IT IS FURTHER PROPOSED that an order be issued to impose a civil penalty against Respondents jointly and severally in the form of an administrative assessment totaling \$30,000 for the many violations committed against Investor A, a person who is at least 65 years of age when the violations occurred, pursuant to Wis. Stat. §§ 551.412(3) and 551.604(4).

(g.) IT IS FURTHER PROPOSED that an order be issued against Respondents jointly and severally to pay restitution in the amount of \$30,000 and interest on such amount at the legal rate under Wis. Stat. § 138.04, \$5 upon the \$100 for one year, starting from January 26, 2015 and through the date of satisfaction, to Investor A, a person suffering loss as a result of a violation, pursuant to Wis. Stat. § 551.604(4m).

(h.) IT IS FURTHER PROPOSED that an order be issued against Respondents jointly and severally for the actual cost of the investigation and proceeding for the violations of Wis. Stat. ch. 551, or a rule adopted or order issued under Wis. Stat. ch. 551, pursuant to Wis. Stat. § 551.604(5).

(i.) IT IS FURTHER PROPOSED that the above proposed orders be imposed as final in a final order issued by the Administrator, pursuant to Wis. Stat. §§ 551.412(2) and (7), and 551.604(3), (4), (4m), and (5).

**C. Service of order.**

(j.) IT IS FURTHER ORDERED that this order shall be sent promptly by certified mail to each party named in the order at his or her last known address or to the party's attorney of record, or shall be personally served upon the party or the party's attorney of record, pursuant to Wis. Admin. Code § DFI-Sec 8.06. The date of the service of this order is the date it is placed in the mail (which is also the issue and effective date below).

**D. Notice of hearing rights.**

(k.) IT IS NOTICED that you have the right to request a hearing. Every request for a hearing shall be in the form of a petition filed with the Division, pursuant to Wis. Admin. Code § DFI-Sec 8.01. A petition for a hearing to review an order shall:

(1.) Plainly admit or deny each specific allegation, finding or conclusion in the order and incorporated papers. However, if the petitioner lacks sufficient knowledge or information to permit an admission or denial, the petition shall so state, and that statement shall have the effect of a denial; and

(2.) State all affirmative defenses. Affirmative defenses not raised in the request for hearing may be deemed waived.

(l.) IT IS FURTHER NOTICED that, within 15 days after receipt of a request in a record from you, the matter will be scheduled for a hearing or other public administrative proceedings, pursuant to Wis. Stat. §§ 551.412(6) and 551.604(2) and (3).

(m.) IT IS FURTHER NOTICED that if you do not request a hearing and none is ordered by the Administrator within 30 days after the date of service of this order, the findings of fact, conclusions of law, and summary and proposed orders, including the imposition of a civil penalty or requirement for payment of restitution, disgorgement, interest, or the costs of investigation sought in a statement in the order, becomes final as by operation of law, pursuant to Wis. Stat. §§ 551.412(6) and 551.604(2).

By the Administrator.

Issued at Madison, Wisconsin, and effective this 2<sup>nd</sup> day of September, 2016

(SEAL)



*Leslie M. Van Buskirk*

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Administrator

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