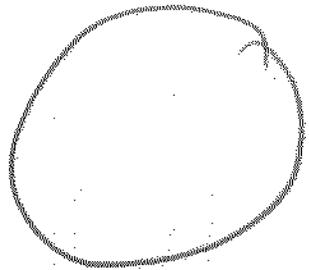


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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

OTTO SAM FOLIN, BENCHMARK ASSET
MANAGERS, LLC and HARVEST
MANAGERS LLC,

Defendants.

C.A. No. 11-4447 ()

FILED

JUL 21 2011

MICHAEL E. KUNZ, Clerk
Dep. Clerk

FINAL JUDGMENT

The Securities and Exchange Commission having filed a Complaint and Defendants Otto Sam Folin ("Folin"), Benchmark Asset Managers LLC ("Benchmark") and Harvest Managers LLC ("Harvest") (collectively, the "Defendants") each having entered a general appearance; consented to the Court's jurisdiction over them and the subject matter of this action; consented to entry of this Final Judgment without admitting or denying the allegations of the Complaint (except as to jurisdiction); waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment:

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IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Folin, Benchmark and Harvest, and their agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section

10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Folin, Benchmark and Harvest, and their agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77q(a)] in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements

made, in light of the circumstances under which they were made, not misleading;
or

- (c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Folin and Benchmark and their agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined, while investment advisers, from violating, directly or indirectly, 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 [17 C.F.R. §275.206(4)-8] by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, to:

- (a) employ any device, scheme, or artifice to defraud any client or prospective client;
or
- (b) engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client; or
- (c) engage in any act, practice, or course of business which is fraudulent, deceptive, or manipulative, including, but not limited to, while an investment adviser to a pooled investment vehicle, making any untrue statement of a material fact or omitting to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading, to any investor or prospective investor in a pooled investment vehicle, or otherwise

engaging in any act, practice or course of business that is fraudulent, deceptive or manipulative with respect to any investor or prospective investor in the pooled investment vehicle.

IV.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that defendants Folin, Benchmark and Harvest are jointly and severally liable for disgorgement of \$8,706,620, representing ill-gotten gains as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$1,454,177, for a total of \$10,160,797. In addition, Benchmark shall pay a civil penalty of \$725,000 pursuant to Section 20(d)(1) of the Securities Act [15 U.S.C. §77t(d)(1)], Section 21(d)(3) of the Exchange Act [15 U.S.C. §78u(d)(3)], and Section 209(e)(1) of the Advisers Act [15 U.S.C. §80b-9(e)(1)], Harvest shall pay a civil penalty in the amount of \$725,000 pursuant to Section 20(d)(1) of the Securities Act [15 U.S.C. §77t(d)(1)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. §78u(d)(3)], and Folin shall pay a civil penalty in the amount of \$150,000, pursuant to Section 20(d)(1) of the Securities Act [15 U.S.C. §77t(d)(1)], Section 21(d)(3) of the Exchange Act [15 U.S.C. §78u(d)(3)], and Section 209(e)(1) of the Advisers Act [15 U.S.C. §80b-9(e)(1)]. Defendants shall satisfy these obligations by paying all amounts due hereunder within 14 days after entry of this Final Judgment to the Clerk of this Court, together with a cover letter identifying the paying Defendant as a defendant in this action, setting forth the title and civil action number of this action and the name of this Court; and specifying that payment is made pursuant to this Final Judgment. Defendants shall simultaneously transmit photocopies of each payment and letter to Elaine C. Greenberg, Associate Regional Director, United States Securities and Exchange Commission, Philadelphia Regional Office, 701 Market Street, Suite 2000, Philadelphia, PA

19106. By making these payments, the Defendants each relinquish all legal and equitable right, title, and interest in such funds, and no part of the funds shall be returned to Defendants.

Defendants shall pay post-judgment interest on any delinquent amounts pursuant to 28 U.S.C. §1961.

The Commission may enforce the Court's judgment for disgorgement and prejudgment interest by moving for civil contempt (and/or through other collection procedures authorized by law) at any time after 14 days following entry of this Final Judgment. In response to any such civil contempt motion by the Commission, the defendants may assert any legally permissible defense.

The Clerk shall deposit the funds into an interest bearing account with the Court Registry Investment System ("CRIS") or any other type of interest bearing account that is utilized by the Court. These funds, together with any interest and income earned thereon (collectively, the "Fund"), shall be held in the interest bearing account until further order of the Court. In accordance with 28 U.S.C. § 1914 and the guidelines set by the Director of the Administrative Office of the United States Courts, the Clerk is directed, without further order of this Court, to deduct from the income earned on the money in the Fund a fee equal to ten percent of the income earned on the Fund. Such fee shall not exceed that authorized by the Judicial Conference of the United States. The Commission may by motion propose a plan to distribute the Fund subject to the Court's approval. Such a plan may provide that the Fund shall be distributed pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002. Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil penalties pursuant to this Judgment shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Defendants shall

not, after offset or reduction of any award of compensatory damages in any Related Investor Action based on Defendants' respective payment(s) of disgorgement in this action, argue that they, individually or collectively, are entitled to, nor shall they, individually or collectively, further benefit by, offset or reduction of such compensatory damages award by the amount of any part of Defendants' respective payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Defendants shall, within 30 days after entry of a final order granting the Penalty Offset, notify Elaine C. Greenberg, Associate Regional Director, United States Securities and Exchange Commission, Philadelphia Regional Office, 701 Market Street, Suite 2000, Philadelphia, PA 19106 and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this Judgment. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Defendants by or on behalf of one or more investors based on substantially the same facts as alleged in the Complaint in this action.

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consents are incorporated herein with the same force and effect as if fully set forth herein, and that Defendants shall comply with all of the undertakings and agreements set forth therein.

VII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

Dated: 7/20/11

/s/LEGROME B. DAVIS

UNITED STATES DISTRICT JUDGE

ENTERED
JUL 27 2011
CLERK OF COURT