

State of Missouri  
Office of Secretary of State

Case No. AP-11-29

IN THE MATTER OF:

BRYAN CARROLD BINKHOLDER,  
CRD No. 3111556,

Respondent.

Serve: Bryan C. Binkholder  
14 Avondale Meadows Court  
Wentzville, Missouri 63385

**CONSENT ORDER**

SUMMARY OF ENFORCEMENT SECTION'S ALLEGATIONS

1. The Enforcement Section of the Missouri Securities Division ("Enforcement Section") has alleged that Respondent Bryan Carrold Binkholder ("Binkholder" or "Respondent") failed to disclose the commingling of investor funds in violation of Sections 409.4-412(d)(1) and (d)(2), RSMo. (Cum. Supp. 2009), and this constitutes grounds to censure, impose a bar, or impose a civil penalty on Binkholder pursuant to Section 409.412(c), RSMo. (Cum. Supp. 2009).
2. Binkholder and the Enforcement Section desire to settle the allegations and the matters raised by the Enforcement Section relating to Binkholder's alleged violations of the Missouri Securities Act of 2003.

CONSENT TO JURISDICTION

3. Respondent and the Enforcement Section stipulate and agree that the Missouri Commissioner of Securities ("Commissioner") has jurisdiction over the Respondent and these matters pursuant to the Missouri Securities Act of 2003, Chapter 409, et seq.
4. Respondent and the Enforcement Section stipulate and agree that the Commissioner has authority to enter this Order pursuant to Section 409.6-604(h), RSMo. (Cum. Supp. 2009), which provides:

"The commissioner is authorized to issue administrative consent orders in the settlement of any proceeding in the public interest under this act."

WAIVER AND EXCEPTION

5. Respondent waives his right to a hearing with respect to this matter.
6. Respondent waives any right that he may have to seek judicial review or otherwise challenge or contest the terms and conditions of this Order. Respondent specifically forever releases and holds harmless the Missouri Office of Secretary of State, Secretary of State, Commissioner, and their respective representatives and agents from any and all liability and claims arising out of, pertaining to, or relating to this matter.
7. Respondent stipulates and agrees with the Enforcement Section that, should the facts contained herein prove to be false or incomplete, the Enforcement Section reserves the right to pursue any and all legal or administrative remedies at its disposal.

CONSENT TO COMMISSIONER'S ORDER

8. Respondent and the Enforcement Section stipulate and agree to the issuance of this Consent Order without further proceedings in this matter, agreeing to be fully bound by the terms and conditions specified herein.
9. Respondent agrees not to take any action or to make or permit to be made any public statement creating the impression that this Order is without factual basis. Nothing in this paragraph affects Respondent's (a) testimonial obligations; (b) right to take legal or factual position in defense of litigation or in defense of other legal proceedings in which the Commissioner is not a party; or (c) right to make public statements that are factual.
10. Respondent agrees that Respondent is not the prevailing party in this action since the parties have reached a good faith settlement.

11. Respondent neither admits nor denies the allegations made by the Enforcement Section, but consents to the Commissioner's Findings of Fact, Conclusions of Law, and Order as set forth below solely for the purposes of resolving this proceeding and any proceeding that may be brought to enforce the terms of this Consent Order.

COMMISSIONER'S FINDINGS OF FACT  
CONCLUSIONS OF LAW, AND ORDER

I. FINDINGS OF FACT

12. Binkholder was a Missouri-registered investment adviser representative with Binkholder Solomon & Company, Inc. ("BSC") a Missouri-registered investment adviser. Binkholder was registered with BSC from September 2004 through February 2010. Binkholder was registered in Missouri through the Investment Adviser Registration Depository ("IARD") with number 3111556.
13. From January 24, 2011 until November 1, 2011, Binkholder was a Missouri-registered investment adviser doing business as The Financial Coach. The Financial Coach has IARD number of 131108. On November 1, 2011, Binkholder filed a Uniform Termination Notice for Securities Industry Registration ("Form U5"). Binkholder has a business address of 16020 Swingley Ridge, Suite 360-A, Chesterfield, Missouri 63017, and a residential address of 14 Avondale Meadows Court, Wentzville, Missouri 63385.
14. A check of the records maintained by the Missouri Department of Insurance, Financial Institutions & Professional Registration ("DIFP") indicates that Binkholder holds an active Missouri insurance producer's license, DIFP number 257545.
15. Based on findings from an audit conducted by the Missouri Securities Division, the Enforcement Section opened an investigation of Binkholder. A review of the records obtained by the Enforcement Section revealed, among other things, the following:
  - a. Respondent Binkholder utilized free-lunch seminars as a means to sell life insurance policies and annuities. These seminars were based, in part, on the concept of using money from a home equity or a 401(k) and converting it into life insurance to allow for tax-free accumulation of investor funds;
  - b. Binkholder established investment advisory relationships with individuals that Binkholder met through these free-lunch seminars;
  - c. Binkholder offered and sold promissory notes in entities under the ownership and/or control of Binkholder ("Binkholder Entities") to Binkholder's investment advisory clients;
  - d. Binkholder sold over four million five hundred thousand dollars (\$4,500,000) in promissory notes to investors;
  - e. the maturity dates on the promissory notes ranged from two to seven (2-7) years and the promissory notes were to pay monthly interest to investors between eight and twelve percent (8-12%) per annum; and
  - f. some funds invested in the promissory notes by individual investors were commingled by and between the Binkholder Entities.
16. Binkholder did not disclose to investors the commingling of investor funds between the Binkholder Entities, nor the potential conflict of interest that could affect the advisory relationship between Binkholder and the investors.
17. In applications filed to register BCS and Binkholder dba The Financial Coach with the Commissioner, BSC and Binkholder, dba the Financial Coach, did not disclose commingling of investor funds or the potential conflict of interest that could affect the advisory services to Binkholder's advisory clients.

II. CONCLUSIONS OF LAW

18. Section 409.4-412(d), RSMo. (Cum. Supp. 2009), states in part that a person may be disciplined if the person:
  - (1) Has filed an application for registration in this state under this act or the predecessor act within the previous ten 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;
  - (2) Willfully violated or willfully failed to comply with this act or predecessor act or a rule adopted or order issued under this act or the predecessor act within the previous ten years.
19. MO 15 CSR 30-51.160(3)(D), Continuing Duty of Applicants and Registrants to Disclose Material Information, states:
  1. An investment adviser, registered or required to be registered pursuant to the Missouri Securities Act, shall furnish each

advisory client and prospective advisory client with a written disclosure statement that may be either a copy of Part II of its Form ADV, or a written document containing at least the information required by Part II of Form ADV.

2. An investment adviser shall deliver the written disclosure statement to an advisory client or prospective advisory client not less than forty-eight (48) hours prior to entering into any written or oral investment advisory contract with such client or prospective client, or at the time of entering into any such contract, if the advisory client has a right to terminate the contract without penalty within five (5) business days after entering into the contract.

3. An investment adviser annually shall, without charge, deliver or offer in writing to deliver to each of its advisory clients the written disclosure statement.

20. The Commissioner finds that Respondent Binkholder filed an application for registration that was incomplete in a material respect and Respondent Binkholder violated his continuing duty to disclose material information under MO 15 CSR 30-51.160 when he commingled investor funds and failed to disclose those facts to investors in violation of Sections 409.4-412(d)(1) and (d)(2), RSMo. (Cum. Supp. 2009), and this constitutes grounds to censure, impose a bar, or impose a civil penalty on Binkholder pursuant to Section 409.412(c), RSMo. (Cum. Supp. 2009).
21. The Commissioner, after consideration of the stipulations set forth above and on the consent of Respondent Binkholder and the Enforcement Section, finds and concludes that the Commissioner has jurisdiction over Respondent and this matter and that the following Order is in the public interest, necessary for the protection of public investors and consistent with the purposes intended by Chapter 409, RSMo. (Cum. Supp. 2009).

### III. ORDER

**NOW, THEREFORE**, it is hereby Ordered that:

1. Binkholder is prohibited from transacting business as an agent or investment adviser representative in the State of Missouri.
2. Binkholder is BARRED from applying for registration as an agent or an investment adviser representative in the State of Missouri.
3. Binkholder shall pay to the Missouri Secretary of State's Investor Education and Protection Fund the sum of fifty thousand dollars (\$50,000). Payment of this amount will be suspended provided Binkholder is in compliance with the provisions of this Order and with the Missouri Securities Act of 2003.
4. Binkholder is ordered to pay five thousand dollars (\$5,000) as the costs of this investigation. This amount shall be sent within ten (10) days of the effective date of this Consent Order to the Securities Division at 600 W. Main Street, Jefferson City, Missouri 65101 and shall be payable to the Missouri Secretary of State's Investor Education and Protection Fund.
5. Binkholder shall pay his own costs and attorneys' fees with respect to this matter.

**SO ORDERED:**

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY, MISSOURI THIS 29<sup>TH</sup> DAY OF DECEMBER, 2011.

ROBIN CARNAHAN  
SECRETARY OF STATE

(Signed/Sealed)  
MATTHEW D. KITZI  
COMMISSIONER OF SECURITIES

Consented to by:

THE ENFORCEMENT SECTION OF THE  
MISSOURI SECURITIES DIVISION

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Mary S. Hosmer  
Assistant Commissioner of Securities

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Bryan Carrold Binkholder  
Respondent

Approved as to Form:

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Nathan F. Garrett  
Attorney for Respondent