# STATE OF WASHINGTON DEPARTMENT OF FINANCIAL INSTITUTIONS SECURITIES DIVISION

IN THE MATTER OF DETERMINING whether there has been a violation of the Securities Act of Washington by: Order Number S-19-2708-19-TO01

SUMMARY ORDER

Franklin Capital Advisors, LLC, CRD 158750 and Michael Brustkern, CRD 5273153

Respondents.

THE STATE OF WASHINGTON TO:

Franklin Capital Advisors, LLC CRD 158750 Michael Brustkern, CRD 5273153

#### STATEMENT OF CHARGES

Please take notice that the Securities Administrator of the state of Washington has reason to believe that Respondents have violated the Securities Act of Washington. The Securities Administrator believes those violations justify the entry of an order summarily suspending Franklin Capital Advisors, LLC's investment adviser registration and Michael Brustkern's investment adviser representative registration and giving notice of the intent to revoke Respondents' registrations, to impose a fine, and to charge costs pursuant to RCW 21.20.110. The Securities Administrator finds that a delay in suspending Respondents' registrations would be hazardous to the investors and to the public interest and that this Summary Order should be entered immediately. The Securities Administrator finds as follows:

# **TENTATIVE FINDINGS OF FACT**

#### Respondents

1. Franklin Capital Advisors, LLC, (Franklin Capital) has been registered as an investment adviser with the Washington State Securities Division since 2012. The investment adviser's Central Registration Depository ("CRD") number is 158750.

1

SUMMARY ORDER

- 2. Michael Brustkern is an investment adviser representative and the owner of Exvere, Inc., which owns Franklin Capital. Brustkern's CRD number is 5273153.
  - Nature of the Conduct

3. Each investment adviser registered with the Securities Division must make annual filings with the director after the investment adviser's fiscal year-end.

4. An investment adviser must, under WAC 460-24A-060, file with the Securities Division a
fiscal year-end balance sheet within 120 days following the end of the fiscal year-end. The Securities
Division reviews these balance sheets to determine whether the investment adviser meets the minimum
financial requirements as set forth in WAC 460-24A-170.

10 5. Franklin Capital has a fiscal year-end of December 31 and its 2018 year-end balance sheet
11 was due by April 30, 2019.

6. In addition, an investment adviser must, under WAC 460-24A-205, file an annual updating
amendment to its Form ADV within 90 days of its fiscal year-end. This annual amendment must include any
changes to Form ADV Parts 1 and 2. The Securities Division reviews the annual updates to Form ADV to
determine whether the investment adviser is making necessary disclosure to investors and track where the
adviser's books and records are stored. Franklin Capital's updating amendment was due by March 30, 2019.

The Securities Division sent Respondents reminders by electronic mail, by regular mail,
 and by telephone to remind Respondents to file a balance sheet and the annual updating amendment.
 Nonetheless, Respondents did not responded to the reminders or otherwise submitted a year-end balance
 sheet or an annual updating amendment.

8. On May 8, 2019, the Securities Division spoke with Franklin Capital by telephone.
 Franklin Capital represented to the Securities Division that the firm would be filing a Form ADV-W
 withdrawing its registration as an investment adviser. However, as of the date of this order, it has not
 withdrawn its registration.

Based upon the above Findings of Fact, the following Conclusions of Law are made: SUMMARY ORDER 2 DEPARTMENT OF FINANCIAL INSTITUTIONS Securities Division

PO Box 9033

360-902-8760

Olympia, WA 98507-9033

25

26

27

28

1

2

3

4

5

2 3

4

5

1

# **CONCLUSIONS OF LAW**

1. Respondent Franklin Capital Advisors willfully violated WAC 460-24A-060 by failing to timely file a 2018 fiscal year-end balance sheet. Such conduct is grounds for an order to suspend and revoke an investment adviser registration under RCW 21.20.110(1)(b).

2. Respondent Franklin Capital Advisors willfully violated WAC 460-24A-205 by failing to file an updating amendment to its Form ADV. Such conduct is grounds for an order to suspend and 6 7 revoke an investment adviser registration under RCW 21.20.110(1)(b).

3. The willful violations of WAC 460-24A-060 and WAC 460-24A-205 each constitute a 8 ground for the entry of an order imposing fines under RCW 21.20.110(1) and for charging costs under 9 RCW 21.20.110(7). 10

4. Respondent Michael Brustkern as the person who indirectly owns Franklin Capital 11 Advisors is responsible for Franklin Capital Advisors' violations of WAC 460-24A-060 and WAC 460-12 24A-205. Such conduct is grounds for an order to suspend or revoke an investment adviser representative 13 registration under RCW 21.20.110(6) imposing fines under RCW 21.20.110(1) and for charging costs 14 under RCW 21.20.110(7). 15

### **EMERGENCY**

The Securities Division has been unable to determine whether Franklin Capital Advisors meets the 17 minimum financial requirements for investment advisers or is providing investors with proper disclosure. 18 Therefore, the Securities Administrator finds that an emergency exists, that the continued violations of 19 20 WAC 460-24A-060 and WAC 460-24A-205 constitute a threat to the investing public, and a summary order suspending Franklin Capital Advisors' investment adviser registration and Michael Brustkern's 21 investment adviser representative registration is in the public interest and necessary of the protection of the 22 investing public. 23

24

25

26

28

29

16

# NOTICE OF INTENT TO REVOKE REGISTRATION

Pursuant to RCW 21.20.110(1)(b) and based upon the Tentative Findings of Fact and Conclusions of

3

SUMMARY ORDER

1	Law, the Securities Administrator intends to enter an order revoking the investment adviser registration for
2	Franklin Capital Advisors and the investment adviser representative registration of Michael Brustkern.
3	NOTICE OF INTENT TO IMPOSE FINES
4	Pursuant to RCW 21.20.110(1) and based upon the Tentative Findings of Fact and Conclusions of
5	Law, the Securities Administrator intends to order that that Respondents each shall be liable for and shall
6	pay a fine of at least \$1,000.
7	NOTICE OF INTENT TO CHARGE COSTS
8	Pursuant to RCW 21.20.110(7) and based upon the Tentative Findings of Fact and Conclusions of
9	Law, the Securities Administrator intend to order that Respondents shall each be liable for and shall pay the
10	costs, fees, and other expenses incurred by the Securities Division in an amount not less than \$200.
11	SUMMARY ORDER
12	Based upon the foregoing,
13	NOW, THEREFORE, IT IS HEREBY SUMMARILY ORDERED under the authority of RCW
14	21.20.110(1) and (3) that the investment adviser registration of Franklin Capital Advisors and the investment
15	adviser representative registration of Michael Brustkern is suspended pending a final determination in this
16	proceeding.
17	AUTHORITY AND PROCEDURE
18	This Order is entered pursuant to the provisions of chapter 21.20 RCW and is subject to the
19	provisions of RCW 21.20.120 and Chapter 34.05 RCW. The Respondents may make a written request for a
20	hearing as set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR
21	HEARING accompanying this Order. If a Respondent does not request a hearing in the allowed time, the
22	Securities Administrator intends to adopt the above Tentative Findings of Fact and Conclusions of Law as
23	final and enter an order revoking the Respondents' registrations and imposing the fine and charging the costs
24	sought.
25	WILLFUL VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.
26	SUMMARY ORDER 4 DEPARTMENT OF FINANCIAL INSTITUTIONS Securities Division
27	PO Box 9033 Olympia, WA 98507-9033 360-902-8760
28	
29	

n Seatz

William M. Beatty Securities Administrator

Approved by:

In Elm

Suzanne E. Sarason Chief of Enforcement

SUMMARY ORDER

Presented by:

Kriskn-Standifor

Kristen Standifer Compliance Legal Examiner

5 DEPARTMENT OF FINANCIAL INSTITUTIONS Securities Division PO Box 9033 Olympia, WA 98507-9033 360-902-8760