

# STATE OF NORTH CAROLINA



Department of The  
Secretary of State

In the Matter of: )

**THE NORTH CAROLINA SECURITIES DIVISION,** )

Petitioner, )

vs. )

**David L. Cole and** )  
**Senior Veterans Council, LLC** )  
5540 Centerview Drive, Suite 200 )  
Raleigh, North Carolina 27606 )

Respondents. )

**FINAL  
ORDER**

**FILE NO. 13-SEC-143**

**THIS CAUSE** coming on to be heard and being heard before the Secretary of State of the State of North Carolina (hereinafter “the Secretary of State”), as Administrator of the North Carolina Investment Advisers Act (“the Act”); and

**IT APPEARING** to the Administrator that the undersigned Respondents, **DAVID L. COLE** doing business as **Apex Planning Services, LLC, Apex Financial Services Group, and Apex Asset Management** (hereinafter “Respondent Cole”), a natural person residing in North Carolina, and **SENIOR VETERANS COUNCIL, LLC** (hereinafter “Respondent SVC”) a North Carolina limited liability company with its principal office in Raleigh, North Carolina, have consented to, and do not contest, the entry of a Final Order to resolve the matters described herein, as follows:

## **FINDINGS OF FACT**

(1) Respondent Cole, a resident of North Carolina and Respondent SVC, a North Carolina limited liability company, are not represented in this matter by counsel.

(2) The conduct of both Respondents in this matter is within the subject matter jurisdiction of the Administrator. Both Respondents are personally subject to the jurisdiction of the Administrator.

(3) Respondent SVC is a limited liability company formed in North Carolina on October 10, 2013.

(4) Respondent Cole is the managing member and registered agent of Respondent SVC. Respondent Cole was also the managing member and registered agent of Apex Planning Services, LLC. Apex Planning Services, LLC was a limited liability company formed in North Carolina on October 28, 2011, and was administratively dissolved by the Secretary of State on May 23, 2013, for failure to file its annual report. Respondent Cole and Apex Planning Services, LLC, did business in North Carolina using the names Apex Financial Services Group and Apex Asset Management.

(5) Respondent Cole was registered as an investment adviser representative in the State of North Carolina with Access Financial Advisory Services, Inc. from June 1, 2010, until November 12, 2012. Access Financial Advisory Services, Inc. was registered as an investment adviser in North Carolina until the firm terminated its registration on November 12, 2012. Since that time, Respondent Cole has not been registered in North Carolina as either an investment adviser representative or an investment adviser.

(6) Respondent SVC is not and has never been registered as an investment adviser in the State of North Carolina pursuant to the North Carolina Investment Advisers Act. Respondent

SVC is not and has never been similarly registered with the SEC and notice-filed in North Carolina as a federally covered investment adviser under the Investment Advisers Act of 1940.

(7) Respondents Cole and SVC are primarily engaged in the business of providing aging veterans living in the State of North Carolina with coordinated care and end of life planning services.

(8) Prior to and until December 27, 2013, Respondent Cole maintained a public presence on the Internet at <http://www.apexfsgroup.com>, doing business as Apex Financial Services Group and Apex Asset Management. The website was registered to Respondent Cole at the principal address it now shares with Respondent SVC. The website was accessible to anyone with Internet access.

(9) Respondent Cole held himself out on this website as a “Securities 7, 63 and 65 Registered Investment Advisor” and listed “Investment Management” as a service offered by Apex Asset Management.

(10) Respondent SVC maintains a public presence on the Internet at <http://www.seniorveteranscouncil.com/>. The website is registered to Respondent SVC at the principal address it shares with its owner and sole principal, Respondent Cole. The website is accessible to anyone with Internet access.

(11) Prior to and until February 28, 2014, Respondent Cole held himself out on Respondent SVC’s website as a Licensed “Securities Series 7, 63 and 65 Registered Investment Advisor.”

(12) On December 27, 2013, Respondent Cole provided to the Secretary of State a “standard package of information” that Respondent SVC presents to potential clients.

(13) The standard package of information includes Respondent Cole’s biography and

Respondent SVC's "Client Initial Consultation and Agent Engagement Agreement" (hereinafter "Engagement Agreement").

(14) Respondent Cole had listed "Securities Series 7, 63 and 65 Registered Investment Advisor" under the "Licenses & Accreditations Held" section of his biography.

(15) Respondent SVC's Engagement Agreement included a section entitled "Investment Advice." This section of the Engagement Agreement stated "[A]s a licensed Registered Investment Advisor, Agent will provide fiduciary advice concerning securities and insurance products. When requested by Client, Agent will provide financial plan to maximize lifestyle income, long term care needs, and legacy objectives."

(16) N.C.G.S. § 78C-2(1) defines an investment adviser in part to mean any person who for compensation engages in the business of advising others as to the advisability of investing in, purchasing or selling securities. The definition also includes persons who "hold themselves out as providing investment advisory services to others for compensation."

(17) "Holds [oneself] out" as used in N.C.G.S. § 78C-2(1) and pursuant to 18 NCAC 06A .1701(6) means "advertises, announces, represents, communicates, publishes, discloses, or makes known, by any means or manner that one will provide or is willing to provide the services referred to in N.C.G.S. § 78C-2(1) to other persons."

(18) Respondent Cole held himself out as willing to provide investment advice to others for compensation at the website address <http://www.apexfsgroup.com> while doing business as Apex Financial Services Group and Apex Asset Management. Respondent Cole was an investment adviser as that term is defined by N.C.G.S. § 78C-2(1).

(19) Respondent Cole, through Respondent SVC's website, his own biography, and Respondent SVC's Engagement Agreement, represented to clients that he was presently licensed

as a “Securities Series 7, 63 and 65 Registered Investment Advisor” and that Respondent SVC could provide investment advice when requested by a client. Respondent Cole as an agent of Respondent SVC held the entity out as willing to provide investment advice and held himself out as willing to provide investment advice on behalf of Respondent SVC. For the foregoing reasons, Respondent SVC was an investment adviser as that term is defined by N.C.G.S. § 78C-2(1).

(20) Pursuant to N.C.G.S. § 78C-16(a)(1) it is unlawful for any person to transact business in the State of North Carolina as an investment adviser unless that person is registered under the Act.

(21) On October 1, 2012, Respondent Cole entered into an Engagement Agreement to provide services including investment advice to a North Carolina client. The Engagement Agreement included a section entitled “Investment Advice” which indicated Respondent Cole’s intention to provide “fiduciary advice concerning securities” to the client. Respondent Cole invoiced the client for eight hundred and fifty dollars (\$850.00) as a onetime fixed fee for the combined services to be provided.

(22) On March 10, 2013, Respondent SVC entered into an Engagement Agreement with a North Carolina client. The Engagement Agreement included a section entitled “Investment Advice” which indicated Respondent SVC’s intention to provide “fiduciary advice concerning securities” to the client. Respondent SVC invoiced the client for eight hundred and fifty dollars (\$850.00) as a onetime fixed fee for the combined services to be provided.

(23) On October 1, 2012, Respondent Cole was still registered as an investment adviser representative in North Carolina for Access Financial Advisory Services, Inc. Respondent Cole was not registered as an investment adviser doing business as Apex Planning

Services, LLC, Apex Financial Services Group, or Apex Asset Management. By entering into a contract to provide investment advice to the client for compensation, Respondent Cole transacted business in North Carolina as an investment adviser in violation of the registration provisions of N.C.G.S. § 78C-16(a)(1).

(24) On March 10, 2013, Respondent SVC was not registered as an investment adviser in North Carolina. By entering into a contract to provide investment advice to the client for compensation, Respondent SVC transacted business in North Carolina as an investment adviser in violation of the registration provisions of N.C.G.S. § 78C-16(a)(1).

(25) N.C.G.S. § 78C-8(b) makes it unlawful for any person, in the solicitation of advisory clients “to make any untrue statement of a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.”

(26) Respondent Cole has not been registered as an investment adviser representative in North Carolina since November 12, 2012. Respondent Cole took and passed the Series 7, 63, and 65 exams in July of 2008. Passage of the Series 65 exam is considered a prerequisite to qualification for registration as an investment adviser representative in North Carolina, but passage of the exam does not alone suffice as a license to provide investment advice.

(27) Respondent SVC has never been registered as an investment adviser in North Carolina. Respondent SVC is not and was not at any time registered with the SEC and notice-filed in North Carolina as a federally covered investment adviser under the Investment Advisers Act of 1940.

(28) Respondent Cole’s identification of himself as a registered investment adviser holding Series 7, 63, and 65 licenses is an untrue statement of material fact regarding his current ability to engage in investment advisory activities in the State of North Carolina. The

statements, as used to solicit clients through Respondent Cole's website and Engagement Agreement, constitute a violation of N.C.G.S. § 78C-8(b).

(29) Respondent SVC's identification of Respondent Cole as a registered investment adviser holding Series 7, 63, and 65 licenses is an untrue statement of material fact regarding Respondent Cole's ability to engage in investment advisory activities in the State of North Carolina on behalf of Respondent SVC. The statements, as they were represented on Respondent SVC's website and within advertising material used to solicit clients, also constitute a violation of N.C.G.S. § 78C-8(b).

(30) Upon it being alleged that Respondent Cole, doing business using the names Apex Planning Services, LLC, Apex Financial Services Group, and Apex Asset Management, was improperly holding himself out as an investment adviser registered under the Act, Respondent Cole cancelled the website <http://www.apexfsgroup.com>.

(31) Upon it being alleged that Respondent SVC was an investment adviser under the Act, Respondent Cole amended Respondent SVC's website and advertising materials to indicate that Respondent Cole was not currently registered as an investment adviser in the State of North Carolina. Respondent Cole removed the subsection entitled "Investment Advice" from Respondent SVC's Engagement Agreement so that Respondent SVC would no longer be transacting business in the State of North Carolina as an investment adviser and triggering registration requirements under the Act. Respondent Cole also sent a letter to any client who had an active file with Respondent SVC after his registration as an investment adviser representative had been terminated indicating that the aforementioned provision of his Engagement Agreement was inaccurate and violated the North Carolina Investment Advisers Act.

(32) Each Respondent does not contest the Administrator's finding that Respondent

Cole and Respondent SVC were holding themselves out as investment advisers as the term “holding out” is defined by 18 NCAC 06A .1701(6).

(33) Each Respondent does not contest the Administrator’s finding that Respondent Cole and Respondent SVC were investment advisers as that term is defined by N.C.G.S. § 78C-2(1).

(34) Each Respondent does not contest the Administrator’s finding that Respondent Cole and Respondent SVC transacted business as investment advisers and these activities required registration pursuant to N.C.G.S. § 78C-16(a)(1).

(35) Each Respondent does not contest the Administrator’s finding that neither Respondent Cole nor Respondent SVC was registered as an investment adviser or investment adviser representative under the Act.

(36) Each Respondent does not contest the Administrator’s finding that in the solicitation of advisory clients, Respondent Cole and Respondent SVC made untrue statements of material fact regarding their ability to provide investment advisory services to clients in North Carolina.

(37) Both Respondents expressly waive any right to Notice of Rights and Opportunity for Hearing, a Notice of Hearing, a hearing, the making of findings of fact, and conclusions of law, and all further proceedings before the Administrator or the Office of Administrative Hearings to which each may be entitled.

(38) Both Respondents expressly waive all rights to seek judicial review or otherwise challenge the validity of this Final Order.

(39) Action by the Administrator to halt further conduct by Respondents in North Carolina in violation of Chapter 78C, N.C.G.S., is in the public interest and is necessary for the

protection of the public from further violations of the North Carolina Investment Advisers Act.

(40) This Final Order contains the entire agreement between the undersigned, there being no agreement of any kind, verbal or otherwise, which varies, alters, or adds to this Final Order. Both Respondents agree that the presentation of this Final Order to the Administrator without the undersigned Respondents or any counsel for Respondents being present shall not constitute an improper ex parte communication between the Administrator and Petitioner or counsel for Petitioner. This Final Order shall be effective only after approval, issuance and entry by the Administrator.

(41) Both Respondents, by execution of this Final Order, affirmatively state that he and it has freely agreed to the signing of this Final Order, and that no threats, promises or offers of any kind, other than as stated in this document, have been made by the Securities Administrator, Deputy Securities Administrator, any member of the staff of the Securities Division, or any agent or employee of the Department of the Secretary of State in connection with the signing of this Final Order.

**BASED UPON THE FOREGOING** Findings of Fact, the Administrator makes the following:

#### **CONCLUSIONS OF LAW**

(1) Respondents Cole and SVC held themselves out as willing and able to provide investment advisory services, falling under the definition of investment adviser as described in N.C.G.S. § 78C-2(1).

(2) Respondents Cole and SVC transacted business as investment advisers in North Carolina violating the registration requirement of N.C.G.S. § 78C-16(a)(1).

(3) Respondents Cole and SVC solicited advisory clients in violation of N.C.G.S. §

78C-8(b) by misrepresenting their ability to provide investment advisory services in the State of North Carolina.

(4) The Administrator has jurisdiction over the subject matter of this proceeding and over the person of each Respondent.

(5) Action by the Administrator to halt Respondents further violation of Chapter 78C, N.C.G.S., is in the public interest, is consistent with the purposes of the Investment Advisers Act and is necessary for the protection of the public from further violations of the Investment Advisers Act.

### **ORDER**

**NOW, THEREFORE**, the Administrator, acting through her duly appointed Deputy Securities Administrator, pursuant to and under all authority granted by the North Carolina Investment Advisers Act, and with the consent of both Respondents, does hereby enter into this **FINAL ORDER**.

**NOW, THEREFORE**, with the consent of both Respondents, it is **HEREBY ORDERED** that both Respondents shall immediately cease and desist from holding out as willing and able to provide investment advisory services and transacting business as an investment adviser in the State of North Carolina, without first complying with Chapter 78C, N.C.G.S., the North Carolina Investment Advisers Act.

**IT IS FURTHER ORDERED**, that for any person or entity not a party to this Final Order, this Final Order does not limit or create any private right or remedies against Respondents, limit or create liability of Respondents, or limit or create defenses of or for Respondents to any claims.

This **FINAL ORDER** shall become final upon entry.

WITNESS MY HAND AND THE OFFICIAL SEAL of the North Carolina

Department of Secretary of State, this is the 79<sup>th</sup> day of December, 2014.

Time of entry: 1:43 P.m.



ELAINE F. MARSHALL  
SECRETARY OF THE STATE OF NORTH  
CAROLINA and  
SECURITIES ADMINISTRATOR

By: \_\_\_\_\_  
DAVID S. MASSEY  
DEPUTY SECURITIES ADMINISTRATOR

**CONSENT TO ENTRY OF FINAL ORDER BY  
DAVID L. COLE**

I, David L. Cole, state that I have read the foregoing Order and that I know and fully understand the contents hereof; that I voluntarily consent to the entry of this Order without any force or duress, expressly waiving any right to a hearing, judicial review or other procedures in this matter; I understand that this Order is a public record document.

Dated this the 17 day of December, 2014.

**AGREED TO:**  
DAVID L. COLE

By: [Signature]  
David L. Cole

**STATE OF NORTH CAROLINA**  
**COUNTY OF Wake**

Sworn to and Subscribed before me this the  
17<sup>th</sup> day of December, 2014

[Signature]  
Notary Public

My commission expires: 11-21-2015



**AGREED TO:**  
SENIOR VETERANS COUNCIL, LLC

By: [Signature]  
David L. Cole  
Principal

**STATE OF NORTH CAROLINA**  
**COUNTY OF Wake**

Sworn to and Subscribed before me this the  
17<sup>th</sup> day of December, 2014

[Signature]  
Notary Public

My commission expires: 11-21-2015

