

**STATE OF NORTH CAROLINA
DEPARTMENT OF THE SECRETARY OF STATE
SECURITIES DIVISION**

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| IN THE MATTER OF: |) | |
| |) | FINAL CONSENT ORDER |
| SCD CAPITAL, INC. (CRD # 149353) |) | |
| and SCOTT C. DAILY (CRD# 1943469), |) | File No.: 17 SEC 018 |
| |) | |
| Respondents. |) | |

The Secretary of State of the State of North Carolina (the “Administrator”), as the Administrator of the North Carolina Securities Act (N.C. Gen. Stat. Chapter 78A, the “Securities Act”) and the North Carolina Investment Adviser’s Act, (N.C. Gen. Stat. Chapter 78C, the “Investment Adviser’s Act”), has considered the evidence in this matter and finds that it is in the public interest to resolve this matter on the terms set forth in this Final Consent Order (“Order”). With the consent of SCD Capital, Inc. (“SCD”) and Scott Christopher Daily (“Daily”), individually and on behalf of SCD, the Administrator enters this Order.

I. SUMMARY

1. The Administrator, through her Securities Division, conducted an investigation of SCD to evaluate whether SCD was operating its business in compliance with North Carolina’s laws and administrative rules.

2. The Securities Division found that SCD and Daily violated the Securities Act and the Investment Adviser’s Act by a) “cherry-picking” trades for personal gain, b) making false or misleading statements to clients, and c) making material misstatements in filings with the Administrator. SCD and Daily neither admit nor deny the Securities Division’s allegations.

3. Pursuant to this Order and with the consent of SCD and Daily, the Administrator suspends Daily and SCD, as provided herein, for two business days, and orders SCD and Daily

to cease and desist all such unlawful conduct, complete the designated undertakings described in this Order, pay a civil penalty, and reimburse the Securities Division for its costs of investigation.

II. FINDINGS OF FACT

1. SCD is a North Carolina corporation with its principal office at 2410 Sedley Road in Charlotte, North Carolina.

2. Daily is a resident of North Carolina and the President of SCD.

3. SCD and Daily provide investment advisory services in North Carolina to individual investors and a related-entity private fund.

Registering to Provide Investment Advisory Services

4. Any person or entity that provides investment advisory services in North Carolina must be registered with the Administrator. N.C. Gen. Stat. §§ 78C-16(a) and 78C-16(a1). Typically, the business providing the services is registered with the Administrator as an investment adviser and the person providing investment advisory services is registered with the Administrator as an investment adviser representative.

5. Registration as investment adviser requires filing a Uniform Application for Investment Adviser Registration (“ADV”) with the Administrator. 18 NCAC 06A .1702. There are two parts to the ADV. The ADV Part 1 is a publically available document that provides information about the investment adviser’s business, ownership, clients, employees, business practices, affiliations, and any disciplinary events of the adviser or its employees. The ADV Part 2 is a brochure for investors. The ADV Part 2 provides a narrative, written in plain English, that describes the advisory services offered, fee schedules, disciplinary history, conflicts of interest,

and advisory personnel. The ADV Part 2 is the primary disclosure document that investment advisers provide to clients and potential clients.

6. The ADV must be updated annually.

7. The maintenance of a truthful, accurate, and current ADV is one of the crucial required tasks that the investment adviser performs because the Administrator and the public rely on the information that the investment adviser provides on the ADV.

8. Making any untrue statements of a material fact, or omitting to state a material fact in the ADV is a violation of N.C. Gen. Stat. §§ 78C-8(b) and 78C-9 and 18 NCAC 06A .1801(a)(8).

9. In March 2009, SCD and Daily registered with the Administrator as an investment adviser and an investment adviser representative respectively.¹

10. Since then, SCD and Daily have maintained their registrations by filing the required forms, including an amended ADV, each year.

Conduct When Providing Investment Advisory Services

11. Investment advisers are fiduciaries. As fiduciaries, they must act primarily for the benefits of their clients. 18 NCAC 06A .1801(a). This also means, that they must also adhere to the practices and commitments they describe in the ADV so as not to mislead their clients or the Administrator. 18 NCAC 06A .1801(a)(8).

12. SCD's ADV describes several commitments it makes to its clients, which it must honor. Specifically, SCD assures its clients that "[i]t is the express policy of [SCD] that all persons associated in any manner with our firm must place the interests of our clients ahead of their own when implementing personal investments."

¹ Upon registering with the Administrator SCD was assigned registration number 149353 and Daily was assigned registration number 1943469.

13. Accordingly, Daily and SCD are required by law and by their own commitment to manage client accounts in a manner that is in the best interest of the clients.

14. Daily manages, and has always managed, all of SCD's client accounts.

15. In 2016, SCD had approximately 10 clients. Each client had one or more segregated accounts with SCD.

16. In addition to the separate client accounts, SCD maintained a block account. SCD used the block account to purchase a large number of shares of a security on behalf of multiple clients at one time. This practice is called "block trading." When block trading, an investment adviser representative can purchase, for example, 10,000 shares of stock in a single block trade with the understanding and documentation demonstrating that clients W, X, Y, and Z will each be allocated 2,500 shares.

17. Before an investment adviser representative purchases a block of securities, he must allocate the number of shares in the block to the separate client accounts; that means the investment adviser representative must designate which client account will receive a portion of the 10,000 shares and how many shares the client will receive, before the investment adviser representative purchases the 10,000 shares.

18. In the ADV Part 2, SCD describes its policies on block trading. The ADV Part 2 states block trading is "buying or selling the same security at the same time for several clients. This is used by the firm when [SCD] believes such action may prove advantageous to clients."

19. In the ADV Part 2, SCD assures its clients that that "the allocation of securities among client accounts will be done on a fair and equitable basis." Further, "[SCD] and its associated person(s) shall not buy or sell securities for their personal account(s) where their decision is derived, in whole or in part, by information obtained as a result of employment or

association with our firm unless the information is also available to the investing public upon reasonable inquiry.”

20. While managing SCD’s client accounts, Daily made block trades using SCD’s block account.

21. From January 2016 to October 2016, Daily made purchases in SCD’s block account, but, in some cases, Daily did not allocate the shares of stock to specific client accounts until after he observed the movement of the stock. In these cases Daily allocated stocks that increased in value to SCD’s company account in order to realize short term gains without market risk.

22. For example, on July 19, 2016, at 9:01 a.m., Daily purchased, as a block trade, 9,000 shares of Cypress Semiconductor Corp (symbol CY) at a price of \$11.1699. At the time of purchase, Daily had not allocated the shares to any specific account. Instead, Daily waited to observe the stock’s movement. On this date, the stock price rose.

23. At 2:56 p.m., Daily sold 1,300 shares of CY from SCD’s company account at the prevailing market price of \$11.5148. Daily allocated those 1,300 to SCD’s account, securing a \$448.33 risk-free profit.

24. At 3:31 p.m. Daily allocated the remaining 7,700 shares to his client accounts. Daily caused these client accounts to hold the remaining 7,700 shares of CY until they were sold on August 16, 2016 at a price of \$11.2957.

25. On at least 26 occasions, between January 2016 and October 2016, after observing that their price had risen, Daily sold shares from the SCD company account that he had not yet allocated to that account, allowing him to realize immediate risk-free profits.

26. Daily continued this practice until October 12, 2016 when his clearing broker and custodian, TD Ameritrade informed him of its intent to terminate its relationship with him and SCD, and placed an immediate prohibition on Daily's use of the block account.

27. Through this practice, Daily intercepted profits that could have been realized by his clients had Daily properly allocated those shares of stocks to their accounts.

28. This practice is commonly referred to as "cherry-picking."

29. Daily's conduct was fraudulent, was purely to capture profit for himself, was to the detriment of his clients, and was in direct contravention with the disclosures and trading policies presented to clients in the ADV Part 2.

III. CONCLUSIONS OF LAW

1. SCD is an "investment adviser" and "registrant" under North Carolina law. N.C. Gen. Stat. § 78C-2(1).

2. Daily is an "investment adviser representative" and "registrant" under North Carolina law and an agent of SCD. N.C. Gen. Stat. § 78C-2(3).

3. As an investment adviser and investment adviser representative registered in North Carolina, SCD and Daily were required to comply with North Carolina's laws, administrative rules, and regulations, and submit themselves to the jurisdiction and oversight of the Administrator.

4. Under N.C. Gen. Stat. § 78C-8(a), an investment adviser or investment adviser representative may not employ any device, scheme or artifice to defraud another, engage in any act or practice which operates as a fraud or deceit on another, or knowingly purchase any security from a client without disclosing to such client in writing before the completion of such transaction.

5. Under N.C. Gen. Stat. § 78A-8, “[i]t is unlawful for any person, in connection with the offer, sale or purchase of any security, directly or indirectly, to employ any device, scheme, or artifice to defraud, to make any untrue statement of a material fact or to omit to state a material fact or, to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.”

6. Under 18 NCAC 06A .1801(a), an investment adviser “is a fiduciary and has a duty to act primarily for the benefit of its clients. While the extent and nature of the duty varies according to the nature of the relationship between an investment adviser and its clients and the circumstances of each case, an investment adviser ... shall not engage in unethical business practices.”

7. Under N.C. Gen. Stat. §78C-8(b), it is unlawful for any person, in the solicitation of advisory clients, to make any untrue statement of a material fact, or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.

8. Under 18 NCAC 06A .1801(a)(8), it is unethical for an investment adviser or investment adviser representative to make misrepresentations to a client regarding the nature of services to be provided or omit facts material to the nature of the services to be provided which could mislead a client.

9. Under N.C. Gen. Stat. §78C-9, it is unlawful for any person to make or cause to be made, in any document filed with the Administrator, any statement which is false or misleading in any material respect.

10. SCD and Daily violated N.C. Gen. Stat. §§ 78A-8 and 78C-8(a) and 18 NCAC 06A .1801(a) when they misappropriated client profits by cherry-picking profitable trades.

11. SCD and Daily violated N.C. Gen. Stat. §78C-8(b) and 18 NCAC 06A .1801(a)(8) when they caused the ADV to be false by violating the very policies they committed to their clients that they would follow.

12. SCD and Daily violated N.C. Gen. Stat. §78C-9 when they caused the ADV to be false and misleading by violating the very policies they committed to the Administrator that they would follow.

13. When an investment adviser and/or investment adviser representative has engaged in dishonest or unethical practices or has willfully violated or failed to comply with the Investment Adviser's Act, the Administrator may by order deny, suspend or revoke the registration of the investment adviser and/or investment adviser representative, bar or censure the investment adviser and/or investment adviser representative, restrict or limit functions or activities of the investment adviser and/or investment adviser representative, impose a civil penalty, and/or require reimbursement of the costs of investigation, if such an order is in the public interest. N.C. Gen. Stat. §§ 78C-19 and 78C-28(c).

14. This Order is in the public interest and is consistent with the purposes fairly intended by the policy and provisions of the Investment Adviser's Act.

15. The Administrator has the authority to enter this Order.

IV. JURISDICTION, CONSENT AND WAIVER

SCD and Daily, as evidenced by the authorized signatures on the *Consent to Entry of Order*, below, affirmatively state and agree that:

1. The Administrator has jurisdiction over SCD and Daily and the subject matter of this Order.

2. SCD and Daily voluntarily consent to the entry of this Order and understand this is a public document.

3. SCD and Daily have read the contents of this Order and have had the opportunity to consult with an attorney prior to the signing of this Order.

4. SCD and Daily freely sign this Order, and state and agree that no threats or offers of any kind, other than as stated in this document, have been made by the Administrator, Deputy Securities Administrator, any member of the staff of the Securities Division, or any agent or employee of the North Carolina Department of the Secretary of State in connection with the signing of this Order.

5. This Order contains the entire agreement between the undersigned, and SCD and Daily understand its effect.

6. SCD and Daily have agreed to resolve this matter through this Order to avoid further administrative proceedings.

7. SCD and Daily permanently waive any and all rights under the Securities Act, the Investment Adviser's Act, the North Carolina Administrative Procedure Act (N.C. Gen. Stat. Chapter 150B), and any other law, to a *Notice of Hearing*, a hearing, the making of findings of fact and conclusions of law, and all further proceedings before the Administrator or other entity to which they may be entitled related to the subject of this Order, including any court of competent jurisdiction. SCD and Daily also permanently waive their rights to seek judicial review of this Order under N.C. Gen. Stat. Chapter 150B, to appeal this Order, or to otherwise challenge either the validity or entry of this Order in any court or administrative agency.

8. This Order is submitted on the condition that the Administrator will not bring further action against SCD or Daily for their conduct that took place between January 2016 and October 2016.

9. The execution, delivery and performance of this Order has been duly authorized and signed by a person who meets the statutory or other binding approval to sign on behalf of SCD as named in this Order.

10. The presentation of this Order to the Administrator and any subsequent discussion of the Order prior to its entry without SCD, Daily or their counsel being present shall not constitute an improper *ex parte* communication between the Administrator and the Securities Division or counsel for the Securities Division.

11. The Order shall become final upon entry.

NOW, THEREFORE, the Administrator, pursuant to and under all authority granted by the North Carolina Securities Act and North Carolina Investment Adviser's Act, based upon the forgoing Findings of Fact, Conclusions of Law, and Jurisdiction, Consent and Waiver, and with SCD and Daily's express written consent to the entry of this Order, orders the following:

V. ORDER

1. SCD and Daily shall immediately and permanently cease and desist from violating N.C. Gen. Stat. §78A-8.

2. SCD and Daily shall immediately and permanently cease and desist from violating N.C. Gen. Stat. §78C-8.

3. SCD and Daily shall immediately and permanently cease and desist from violating N.C. Gen. Stat. §78C-9.

4. SCD and Daily shall immediately and permanently cease and desist from violating 18 NCAC 06A .1801(a).

5. SCD and Daily shall immediately and permanently cease and desist from violating any other provisions of the North Carolina Securities Act and any administrative rules promulgated thereunder.

6. SCD and Daily shall immediately and permanently cease and desist from violating any other provisions of the North Carolina Investment Adviser's Act and any administrative rules promulgated thereunder.

7. SCD and Daily shall pay to the Securities Division a civil penalty in the amount of \$2,500.00 within ten (10) business days of the date of entry of this Order.

8. SCD and Daily shall pay to the Securities Division \$7,500.00 as reimbursement for investigative costs associated with this matter within ten (10) business days of the date of entry of this Order.

9. SCD shall never again maintain a block trading account, or a like account, that would allow its investment adviser representatives to make bulk trades on behalf of more than one client or account.

10. SCD and Daily shall update the ADV to reflect the elimination of the block trading strategy by eliminating any language in the ADV that SCD maintains a block account and stating that SCD does not offer a block account for the purchase of securities for groups of customers.

11. SCD's registration shall be suspended for a period of two (2) business days. For the purposes of this Order, the suspension shall mean only that SCD shall not receive compensation for providing investment advisory services for a period of two (2) business days.

12. Daily's registration shall be suspended for a period of two (2) business days. For the purposes of this Order, the suspension shall mean only that Daily shall not receive compensation for providing investment advisory services for a period of two (2) business days.

13. SCD and Daily shall not take any action, or make, or permit to be made, any public statement, denying, directly or indirectly, any finding in this Order or creating the impression that this Order is without factual basis.

14. This Order shall become final upon entry and shall be binding upon SCD and Daily and their successors and assigns as well as its affiliates and their successors and assigns with respect to all conduct subject to the provisions above and all future obligations, responsibilities, undertakings, commitments, limitations, restrictions, events, and conditions.

WITNESS MY HAND AND THE OFFICIAL SEAL of the North Carolina

Department of the Secretary of State, this the 28TH day of SEPTEMBER 2017.

Time of entry: 9:50 A.M.

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



KEVIN M. HARRINGTON
Deputy Securities Administrator



**CONSENT TO ENTRY OF ORDER
BY SCD CAPITAL, INC.**

I, Scott Christopher Daily, state that I am an officer of SCD Capital, Inc. ("SCD"); that I am duly authorized to act on its behalf; that I have read the foregoing Final Consent Order and that I know and fully understand the contents; that SCD voluntarily consents to the entry of this Final Consent Order without any force or duress, expressly waiving any right to a hearing in this matter; that SCD understands that the North Carolina Department of the Secretary of State reserves the right to take further actions to enforce this Final Consent Order or to take appropriate action upon discovery of other violations of the Investment Adviser's Act by SCD; and that SCD will fully comply with the terms and conditions stated in the Final Consent Order.

SCD understands that this Final Consent Order is a public record document.

Dated this the 15th day of September, 2017

SCD Capital, Inc.

By:

Scott Christopher Daily
Scott Christopher Daily
President of SCD Capital, Inc.

STATE OF NC
COUNTY OF Mecklenburg

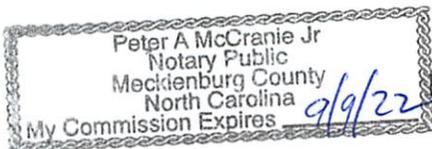
I, a Notary Public of the above County of Mecklenburg, State of NC, certify that Scott Christopher Daily personally appeared before me this day and acknowledged to me that he/she voluntarily signed the forgoing document for the purposes stated therein.

Witness my hand and official seal, this the 15th day of September, 2017.

Peter A. McCranie Jr
Official signature of notary

(Official Seal)

Peter A. McCranie Jr, Notary Public
Notary's printed or typed name



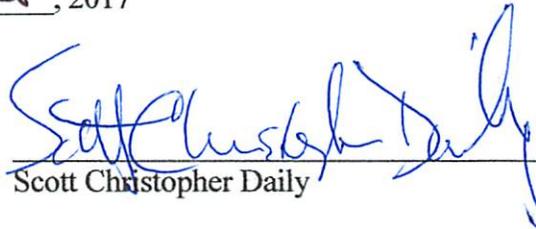
My Commission expires: 9/9/2022

**CONSENT TO ENTRY OF ORDER
BY SCOTT CHRISTOPHER DAILY**

I, Scott Christopher Daily, state that I have read the foregoing Final Consent Order and that I know and fully understand the contents; that I voluntarily consent to the entry of this Final Consent Order without any force or duress, expressly waiving any right to a hearing in this matter; that I understand that the North Carolina Department of the Secretary of State reserves the right to take further actions to enforce this Final Consent Order or to take appropriate action upon discovery of other violations of the Securities Act and/or Investment Adviser's Act by me; and that I will fully comply with the terms and conditions stated in the Final Consent Order.

I understand that this Final Consent Order is a public record document.

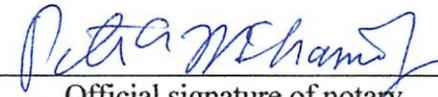
Dated this the 15th day of September, 2017

By: 
Scott Christopher Daily

STATE OF NC
COUNTY OF Mecklenburg

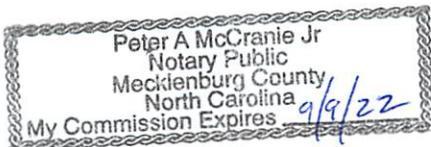
I, a Notary Public of the above County of Mecklenburg, State of NC, certify that Scott Christopher Daily personally appeared before me this day and acknowledged to me that he/she voluntarily signed the forgoing document for the purposes stated therein.

Witness my hand and official seal, this the 15th day of September, 2017.


Official signature of notary

(Official Seal)

Peter A. McCranie Jr., Notary Public
Notary's printed or typed name



My Commission expires: 9-9-2022