

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

IN THE MATTER OF:)	
)	FINAL CONSENT ORDER
RICHARD PARKES,)	
)	File No.: 17 SEC 108
Respondent.)	

The North Carolina Secretary of State (the “Administrator”), as the Administrator of 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 Richard Parkes, the Administrator enters this Order.

I. FINDINGS OF FACT

1. Richard Parkes (“Parkes”) is an adult individual and a resident of North Carolina. Parkes is a member of Diversified Estate Services, LLC (“DE Services”).
2. DE Services is a North Carolina limited liability company with a principal place of business at 4101 Lake Boone Trail, Suite 112, Raleigh, North Carolina. DE Services is a licensed insurance company and insurer.
3. Parkes offers retirement financial planning services to clients through DE Services.
4. Parkes is an insurance agent. Parkes is not registered as an investment adviser. As such, Parkes may not, for compensation, engage in the business of advising others as to the value of securities or as to the advisability of purchasing or selling securities. N.C. Gen. Stat. § 78C-(1). Further, he may not hold himself out as providing investment advisory services to others for compensation. *Id.* As an insurance agent, Parkes is not required by statute or rule in North

Carolina to act as fiduciary when recommending insurance products.¹ Finally, Parkes is prohibited from describing an insurance product in a way that could mislead a customer to believe that he/she will receive something other than an insurance policy. 11 NCAC 12 .0426.

5. When Parkes advertises, he holds himself out as an investment adviser by a) stating he is required to act as a fiduciary, b) describing services that suggest he will manage and advise on an entire portfolio, and c) describing his insurance policies using terms that imply that his clients receive investment products.

6. On his radio show he states, “We have fiduciary requirements, we have to put our client’s interest ahead of ours and that makes a big difference ... I must put their interest ahead of ours.”

7. Parkes describes his services by stating, “What we want to look at also is ... be realistic and balance our accounts. We want to make sure that the balance is there that we have enough safety that matches our age and risk tolerance that matches our age also.”

8. When he describes insurance products, he states “Being independent fiduciaries we have accounts that are indexing some really good indexes better than the S&P 500 that are earning seven, eight, nine percent and still having pure safety where you can’t lose. ... And no fees, no risk.”

II. CONCLUSIONS OF LAW

1. In North Carolina, an investment adviser is “any person who, for compensation, engages in the business of advising others ... as to the value of securities or as to the advisability

¹ An insurance agent, like Parkes, is required to have reasonable grounds to believe that his/her recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer as to the consumer’s investments and financial situation. N.C. Gen. Stat. § 58-60-170(a). As such, an insurance agent is held to a suitability standard. Alternatively, an investment adviser is required to act in the best interest of their clients and is held to fiduciary standard. 18 NCAC 06A .1801. It is, however, permissible for an insurance agent to act as a fiduciary, but it is not currently required under the North Carolina statutes and rules and to state otherwise is false and misleading.

of investing in ... securities.” N.C. Gen. Stat. § 78C-(1). An investment adviser also includes financial planners and other persons who hold themselves out as providing investment advisory services to others for compensation. *Id.*

2. Investment advisers transacting business in North Carolina must be registered with the Administrator unless a specific exemption applies. N.C. Gen. Stat. §78C-16(a).

3. Parkes violated N.C. Gen. Stat. §78C-16(a) when he held himself out as investment adviser when he was not registered with the Administrator as investment adviser.

4. When the Administrator determines that any person has engaged or is about to engage in any act or practice constituting a violation of the Investment Adviser’s Act, the Administrator may by order restrict or limit the investment advisory functions or activities, 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-28(c).

5. 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.

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

III. JURISDICTION, CONSENT AND WAIVER

Parkes, as evidenced by the authorized signature on the *Consent to Entry of Order*, below, affirmatively states and agrees that:

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

2. Parkes voluntarily consents to the entry of this Order and understands this is a public document.

3. Parkes has read the contents of this Order and has had the opportunity to consult with an attorney prior to the signing of this Order.

4. Parkes freely signs this Order, and states and agrees 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 Parkes.

6. Parkes understands the effects of this Order.

7. Parkes has agreed to resolve this matter through this Order to avoid further administrative proceedings.

8. Parkes permanently waives any and all rights under 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, and all further proceedings before the Administrator or other entity to which he may be entitled related to the subject of this Order, including any court of competent jurisdiction. Parkes also permanently waives his 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.

9. This Order is submitted on the condition that the Administrator will not bring further action against Parkes for his conduct described in this Order that occurred prior to the signing of this Order.

10. The presentation of this Order to the Administrator and any subsequent discussion of the Order prior to its entry without Parkes or his 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, pursuant to and under all authority granted by the North Carolina Investment Adviser's Act, based upon the forgoing Findings of Fact, Conclusions of Law, and Jurisdiction, Consent and Waiver, and Parkes' express written consent to the entry of this Order, the Administrator orders the following:

IV. ORDER

1. Parkes shall immediately and permanently cease and desist from violating §78C-16.

2. Parkes shall immediately and permanently cease and desist from violating any other provisions of the Investment Adviser's Act and any administrative rules promulgated under the Investment Adviser's Act.

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

4. DE Solutions and Parkes shall pay the Securities Division the sum of \$1,000.00 as reimbursement for investigative costs within ten (10) days of the date of entry of this Order.

5. Parkes shall submit to the Administrator, prior to its use, all of his copy for marketing efforts for the three (3) months following the signing of this Order.

6. Parkes 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.

7. This Order shall become final upon entry and shall be binding upon Parkes and his 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 10TH day of August 2018.

Time of entry: 2:43 P.M.



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

KEVIN M. HARRINGTON
Deputy Securities Administrator