

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

IN THE MATTER OF:)	
)	FINAL CONSENT ORDER
RISING TIDE, INC.)	17 SEC 092
(CRD No. 118516))	
)	
Respondent.)	

The Secretary of State of the State of North Carolina (“Administrator”), as the Administrator of the North Carolina Investment Advisers Act, (N.C. Gen. Stat. Chapter 78C, the “Act”), has considered the evidence in this matter and finds that it is in the public interest to resolve it on the terms set forth in this Final Consent Order (“Order”). With the consent of Rising Tide, Inc. (“Rising Tide”), the Administrator enters this Order.

FINDINGS OF FACT

1. Rising Tide is a corporation organized and existing under and by virtue of the laws of North Carolina with its registered office and principal place of business in Chapel Hill, Orange County, North Carolina.
2. Rising Tide provides investment advisory services in North Carolina to individual investors.
3. Rising Tide is registered with the Administrator pursuant to N.C. Gen. Stat. §78C-16(a) as an investment adviser and has been assigned registration number 118516.

4. On February 15, 2007, an Investment Adviser Auditor (“auditor”) from the North Carolina Department of the Secretary of State, Securities Division (“Securities Division”) conducted a routine books and records examination of Rising Tide.¹

5. 18 NCAC 06A .1801(a)(16) prohibits an investment adviser from entering into an investment advisory contract unless the contract is in writing and discloses certain information, including, among other things, the fee; the services the investment adviser is to provide; and whether the investment adviser has discretionary authority of the client’s investments.

6. The auditor determined that Rising Tide had an investment advisory contract but none of the contracts had been “entered into,” that is, signed by both parties. By letter dated March 23, 2007, the auditor notified Rising Tide of this deficiency and requested that it provide signed copies of the contract to the Securities Division.

7. Rising Tide signed contracts with its clients and produced them for the Securities Division; the auditor notified Rising Tide on February 1, 2008, that it had satisfactorily addressed all deficiencies.

8. On August 29, 2014, a Senior Securities Examiner (“examiner”) conducted, on behalf of the Securities Division, another routine books and records examination of Rising Tide.

9. The examiner determined that Rising Tide had written, signed investment advisory contracts. However, these contracts did not totally comport with North Carolina law. For instance, the contract was unclear and internally inconsistent as to whether or not Rising Tide had discretion over client accounts. If Rising Tide had discretion, it would be able to trade securities without securing client approval for each trade and would be subject to certain additional requirements.

¹ This examination, and the two subsequent books and record examinations described in this Order, were conducted pursuant to N.C. Gen. Stat. §78C-18(e). The Securities Division conducts these examinations to monitor investment advisers’ compliance under the Act and to help ensure future compliance.

10. The investment advisory contracts also had internally inconsistent statements regarding the client's right of rescission, and the financial planning fee was inconsistent with Rising Tide's Form ADV.² The examiner therefore required Rising Tide to draft new contracts that complied with North Carolina law and to correct all noted contract deficiencies. Rising Tide would then need to have its advisory clients sign these new contracts. Rising Tide revised its contract and forwarded it to the examiner on or about January 12, 2015, for review.

11. By subsequent letter, dated February 5, 2015, the examiner informed Rising Tide that its investment advisory agreements now complied with North Carolina law. The examiner instructed Rising Tide to have these new investment advisory agreements signed no later than 90 days from the date of the letter.

12. On May 6, 2015, the examiner informed Rising Tide that its responses had addressed all other deficiencies noted in the August 29, 2014, exam. The examiner requested that Rising Tide notify her when it received the revised advisory agreements executed by its clients. This exam was closed on or about May 6, 2015.

13. On June 29, 2017, the Securities Division conducted a third examination of Rising Tide. The same examiner who conducted the August 29, 2014, exam conducted this examination.

14. During the June 29, 2017, exam, the examiner determined that Rising Tide had not yet obtained signed investment advisory contracts that complied with North Carolina law for approximately 25 clients.

15. Further, Rising Tide did not have a contract to use with clients who retained it for financial planning. Instead of entering into a financial adviser contract, Rising Tide would send

² Form ADV is the standardized form that investment advisers use to register either with U.S. Securities and Exchange Commission, or with the various State Securities Administrators.

an “email engagement” to these clients. This method of engagement did not comply with North Carolina law.

16. The examiner instructed Rising Tide to obtain investment advisory contracts for the clients described in paragraph 14 above. Despite these instructions, it took Rising Tide until October 6, 2017, to obtain all such contracts.

17. As of the entry of this Order, Rising Tide has obtained signed investment contracts in compliance with North Carolina law. Rising Tide also submitted to the Securities Division an investment advisory contract for use with financial planning clients, and the Securities Division has approved that contract. Further, Rising Tide has taken other steps to ensure compliance with the Act and the related administrative rules.

18. The Securities Division acknowledges that Rising Tide cooperated fully and promptly with its personnel throughout the course of its investigation by responding timely to requests for information, actively communicating with the Securities Division, providing documentary evidence and other materials relating hereto, and addressing questions raised by the Securities Division.

19. The Securities Division acknowledges that no client of Rising Tide has ever made a complaint to the Securities Division regarding any services provided by Rising Tide, and that the Securities Division is not aware of any evidence that Rising Tide’s failure to conform its contracts to North Carolina Law caused any harm or loss.

CONCLUSIONS OF LAW

1. The Administrator has jurisdiction over Rising Tide, and over the subject matter of this Order.

2. Rising Tide is an “investment adviser” as defined under North Carolina law. N.C. Gen. Stat. § 78C-2(1). Rising Tide is a registrant under North Carolina law.

3. As an investment adviser in North Carolina, Rising Tide was required to comply with North Carolina’s laws, administrative rules, and regulations, and to submit itself to the jurisdiction and oversight of the Administrator. N.C. Gen. Stat. §78C-19(a)(2)(b) grants the Administrator the authority to deny, suspend, or revoke any registration in whole or in part if she finds that a registrant has willfully violated or willfully failed to comply with any provision of the Investment Advisers Act or any rule promulgated under the Investment Advisers Act. §§ 78C-19 and 78C-28 give the Administrator the authority to issue an Order under the Investment Advisers Act.

4. An investment adviser must, pursuant to 18 NCAC 06A .1801(a)(16), have a written investment advisory contract that discloses certain information, such as the fee and the services to be provided. This investment advisory contract must be signed by the parties.

5. As more particularly described above, Rising Tide failed, at all of its exams, to have written investment advisory contracts for all of its clients that complied with North Carolina law and that were signed by both the client and by Rising Tide. Rising Tide thereby violated 18 NCAC 06A. 1801(a)(16).

6. This Order is in the public interest, is for the protection of investors, and is consistent with the purposes fairly intended by the policy and provisions of the Investment Adviser’s Act. It is also in the public interest, for the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Investment Adviser’s Act that the Administrator impose a civil penalty and costs in this matter.

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

JURISDICTION, CONSENT AND WAIVER

Rising Tide, 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 it and the subject matter of this Order.
2. Rising Tide voluntarily consents to the entry of this Order and understands it is a public document.
3. Rising Tide 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. Rising Tide freely signs this Order and states and agrees that no threats, promises, 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; Rising Tide understands its effect.
6. Rising Tide permanently waives any and all rights under the North Carolina Securities Act, the North Carolina 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 any other proceedings before the Administrator or other entity to which it may be entitled related to the subject of this Order, including any court of competent jurisdiction. Rising Tide also permanently waives its 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. This Order resolves this matter without further administrative proceedings.

7. 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 Rising Tide as named in this Order.

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

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 Rising Tide's express written consent to the entry of this Order, orders the following:

ORDER

1. Rising Tide shall immediately and permanently cease and desist from violating 18 NCAC 06A. 1801(a)(16).

2. Rising Tide 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 under the Act.

3. Rising Tide shall pay to the Securities Division a civil penalty in the amount of \$1,000.00 within ten (10) business days of the date of entry of this Order.

4. Rising Tide shall pay to the Securities Division the sum of \$500.00 as reimbursement for investigative costs within ten (10) business days of the date of entry of this Order.

5. Rising Tide 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.

6. This Order shall become final upon entry and shall be binding upon Rising Tide and its 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 14TH day of OCTOBER 2019.

Time of entry: 10:35 A.M.



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

REDACTED

KEVIN M. HARRINGTON
Deputy Securities Administrator