

**THE NORTH CAROLINA SECURITIES
DIVISION,**)
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 Petitioner,)
)
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 vs.)
)
)
 FERRY CAPITAL MANAGEMENT,)
 LLC and PAUL EDWARD FERRY,)
)
 Respondents.)

**TEMPORARY ORDER TO
CEASE AND DESIST
AND
SUMMARY POSTPONEMENT
OF REGISTRATION**

File No: 19ADM009

Pursuant to the authority granted by the Investment Advisers Act, N.C. Gen. Stat. Chapter 78C, (the “Investment Advisers Act”) and the rules promulgated thereunder, the North Carolina Secretary of State’s Securities Division (the “Securities Division”) has investigated the activities of **FERRY CAPITAL MANAGEMENT, LLC (“FCM”)** and **PAUL EDWARD FERRY (“FERRY”)** (collectively the “Respondents”), to determine if they have engaged in, or are about to engage in, any act or practice constituting a violation of the Investment Advisers Act or any rule or order thereunder.

THE SECURITIES DIVISION has filed an Administrative Petition against the above-named Respondents seeking, among other remedies, a Temporary Order to Cease and Desist pursuant to the provisions of N.C. Gen. Stat. § 78C-28(b)(2) and a summary postponement, pursuant to the provisions of N.C. Gen. Stat. § 78C-19(c), of the registration of FCM and FERRY to transact business as an investment adviser and/or investment adviser representative in North Carolina.

THE NORTH CAROLINA SECRETARY OF STATE (the “Administrator”), acting by and through her duly authorized Deputy Securities Administrator, from the investigation and the information derived therefrom, and for the protection and preservation of the public welfare and in the public interest, makes the following:

FINDINGS OF FACT

1. FCM is a North Carolina foreign business entity and has its principal place of business located at 100 Oyster Catcher Lane, Duck, North Carolina 27949.
2. FERRY is an individual who maintains his personal residence and offices at 100 Oyster Catcher Lane, Duck, North Carolina 27949.
3. FCM initially filed an application for registration as an investment adviser, in the state of North Carolina on July 5, 2018.
4. According to the registration records filed with the Administrator and maintained by the Central Registration Depository/Investment Adviser Registration Depository (CRD/IARD), FERRY is listed as a direct owner, president, and chief compliance officer of FCM.
5. Pursuant to N.C. Gen. Stat. §§78C-2(3) and 78C-17(a), if FCM registered with North Carolina, FERRY would be automatically registered as an investment adviser representative of FCM, by operation of law.
6. Pursuant to the Administrator's authority under N.C. Gen. Stat. §78C-17(a), a representative of the Administrator conducted an examination of the Respondents' application for deficiencies and completeness on July 16, 2018.
7. The application information received by the Administrator's representative indicated the Respondents solicited and provided investment advisory services, as well as received fees or other remuneration for investment advisory services in North Carolina since on or about October 2016, in possible violation of the registration provision of the Investment Advisers Act.
8. Neither FCM nor FERRY has been registered as an investment adviser or investment adviser representative in North Carolina.

9. On July 16, 2018, a representative of the Administrator notified the Respondents that the application for registration was incomplete. The Respondents were provided a list of deficiencies and inconsistencies with the registration documents and were informed representatives of the Administrator would not continue to review the application until it was completed. The Respondents were also informed, “North Carolina law prohibits conducting business until the [Securities] Division has approved registration.”
10. Representatives of the Administrator have not received a full response from the Respondents regarding the list of deficiencies and inconsistencies.
11. On November 13, 2018, a representative of the Administrator resubmitted the July 16, 2018 letter to the Respondents identifying the items that contain outstanding deficiencies and continue to require clarifying verbiage. The Respondents were again informed the applications were incomplete and that state law prohibits conducting advisory services without registration.
12. Pursuant to the Administrator’s authority under N.C. Gen. Stat. §78C-27(a)(1), a representative of the Administrator initiated an investigation of the Respondents investment advisory activity on February 6, 2019.
13. Representatives of the Administrator provided FCM with five deficiency letters between June 2018 and June 2019 identifying missing, incomplete, and misleading documents related to its registration.
14. From on or about June 2019 through on or about November 2019, the Securities Division notified the Respondents no less than six times, in writing and verbally, that responding to the requests of the investigation does not serve as a substitute for responding to the deficiency letters related to FCM’s registration.
15. FCM has not provided all of the necessary documents to resolve the deficiencies identified to complete the application.

16. The Respondents have not provided all of the necessary documents related to FCM and FERRY's unregistered investment advisory activity.

17. After representatives of the Administrator questioned FCM about its unregistered activity, FCM caused the filing of an amended Form ADV on May 20, 2019 with the following inconsistent and inaccurate information:

- a. FCM reported zero clients on the Form ADV. Representatives of the Administrator determined FCM and FERRY have maintained approximately 37-42 clients each year since 2016.
- b. FCM reported \$0 Regulatory Assets Under Management ("RAUM") on the Form ADV Part 1. FCM and FERRY reported approximately \$20,000,000 in RAUM on the Form ADV Part 2.
- c. FCM's Form ADV noted FERRY as its Chief Compliance Officer ("CCO"). FCM also reported the address of its CCO, location of books and records, business main address, and its mailing address as 2900 Dakota Avenue, St. Louis Park, Minnesota 55416. This address matches the reported personal residence of Chris Ferry, Co-owner of FCM, and son of FERRY.

18. FERRY reported to the Securities Division that FCM's primary place of business was Minnesota until November 2017.

19. Respondents use the address 100 Oyster Catcher Lane, Duck, North Carolina 27949 as a location that is held out to the general public at which the Respondents provide investment advisory services, solicits, meets with, or otherwise communicates with clients.

20. FERRY maintained a residence and physical presence at 100 Oyster Catcher Lane, Duck, Dare County, North Carolina 27949 since on or before October 2016.

21. Respondents have used the 100 Oyster Catcher Lane, Duck, North Carolina 27949 address as FCM and FERRY's principal place of business since on or about October 2016.

22. FCM filed its Form ADV - January 24, 2017 amendment listing its other business address at 100 Oyster Catcher Lane, Duck, North Carolina 27949.
23. FCM filed FERRY's U-4 January 24, 2017 amendment listing his office location at 100 Oyster Catcher Lane, Duck, North Carolina 27949.
24. After inquiries from the Securities Division regarding unregistered activity, FCM has since filed conflicting business and office addresses.
 - a. FCM filed its Form ADV - November 27, 2018 amendment listing its principal office at 100 Oyster Catcher Lane, Duck, North Carolina 27949.
 - b. FCM was registered as a foreign business entity in North Carolina on December 13, 2018 with a principal office at 100 Oyster Catcher Lane, Duck, North Carolina 27949.
 - c. FCM filed its Form ADV - May 20, 2019 amendment listing 2900 Dakota Avenue, St. Louis Park, Minnesota 55416 as its principal office and removed all references to the 100 Oyster Catcher Lane, Duck, North Carolina 27949 office address.
25. FCM and FERRY willfully failed to provide accurate information regarding the primary place of business for FCM and FERRY, in violation of N.C. Gen. Stat. §78C-19(a)(2)(b).
26. Upon information and belief, FCM has filed an application for registration indicating it had no clients, \$0 Regulatory Assets Under Management and it did not maintain offices in North Carolina. As of its filing date, or as of the amendment dates, the application was incomplete in material respect or contained statements of material fact, that in light of the circumstances it was made, were false or misleading, in violation of N.C. Gen. Stat. §78C-19(a)(2)(a).
27. Through the investigation, information received by the Administrator's representative indicated the Respondents were continuing to receive fees or other remuneration from clients and others, in possible violations of the registration provisions of the Investment Advisers Act.

28. Respondents have transacted business in the state of North Carolina as an investment adviser and investment adviser representative, respectively, since on or about October 2016 without being registered, in violation of N.C. Gen. Stat. §78C-16(a)(1) and 78C-16(a1).

29. Upon information and belief, FCM and FERRY continue to transact business in North Carolina as an investment adviser and/or investment adviser representative by engaging in the business of advising others in investment activities for compensation.

30. On its LinkedIn webpage, FCM represents itself as a “boutique investment advisor offering tailored investment strategies to clients who need expert financial advice.”¹

31. FCM is not registered in North Carolina under the provisions of the Investment Advisers Act.

32. FCM states on its LinkedIn webpage that Chris Ferry is a “Registered Investment Advisor at Ferry Capital Management.”

33. FERRY reported to representatives of the Administrator that Chris Ferry terminated his employment with FCM in November 2017.

34. Chris Ferry is not registered with the state of North Carolina under the provisions of the Investment Advisers Act and is not registered in any other state.

35. FERRY’s LinkedIn webpage describes his services as “manages total return municipal bond accounts thru ladders (5-10 years) trading and close end funds for high net worth individuals. Paul@ferrycapitalmgt.com.” FERRY’s LinkedIn webpage goes on to describe his experience as a Chief Executive Officer with FCM as “[FCM] provides municipal investment advisory and wealth management services to individual investors, banks, investment funds and other financial service institutions.”

¹ FCM’s use and spelling of Investment “Advisor” is common in the securities industry and is used interchangeably with Investment “Adviser” as defined in N.C. Gen. Stat. § 78C-2(1).

36. FERRY is not registered as an investment adviser or investment adviser representative in North Carolina or in any state.

37. Between June 2018 and June 2019, FCM and FERRY were warned six times in writing and during conference calls of the prohibition against providing investment advisory services in North Carolina without being registered.

38. Pursuant to her investigative powers, the Administrator issued a Subpoena Duces Tecum to FERRY, in his capacity as President and Chief Compliance Officer of FCM, requesting production of information about clients, total asset under management, trades, fees and remuneration that was being received by FCM, FERRY, and others since August 2016 (Subpoena attached as Exhibit 1) on June 3, 2019.

39. FCM and FERRY provided investment advisory services to approximately 36-42 clients each year from approximately October 2016 – March 2019.

40. In June 2019, representatives of the Administrator again warned FERRY he was in direct violation of North Carolina law by acting as an investment adviser when he was not registered. In response, FERRY declared, “Well I have to handle my clients.”

41. FCM and FERRY willfully failed to comply with the Securities Division’s subpoena and numerous requests to provide complete and necessary information related to their unregistered advisory activity.

42. Respondents have received management investment advisory fees for investment advisory activities in North Carolina.

43. Upon information and belief, the Respondents willfully generated and received approximately \$553,298 in management investment fees from on or about April 2016 through on or about March 2019, in violation of N.C. Gen Stat. §78C-19(a)(2)(b).

44. FCM and FERRY filed numerous documents with the Administrator, which at the time and in the light of the circumstances under which they were made, were false and misleading.

45. Allowing FCM and FERRY to continue their current course of conduct will allow both to continue to harm current and prospective North Carolina investors.

46. FERRY has sole control over some, if not all, of the assets of his investment advisory firm, FCM.

47. Through the investigation, information received by the Administrator's representative indicates FCM experienced a data breach on or before October 2017, impacting North Carolina investors. The data breach resulted in the release of account numbers, names, physical address, email addresses, and other personal identifiable information to unknown parties.

48. Upon information and belief, the Respondents experienced a data breach on or before October 2017, impacting the personal identifiable information of North Carolina investors and have not provided representatives of the Administrator with any information regarding the circumstances and mitigation of the data breach.

49. FCM and FERRY willfully failed to provide the Securities Division any proof of notification to the North Carolina investors affected by FCM's data breach.

50. FCM and FERRY willfully violated the Investment Advisers Act by continuing to transact business in North Carolina as an investment adviser and investment adviser representative after numerous instructions by the Securities Division to discontinue the unregistered investment advisory activity.

51. Upon information and belief, the Respondents have not provided all of the information requested in the Subpoena Duces Tecum, as referenced in paragraph 37 above, to produce information about clients, total asset under management, trades, fees and remuneration that was being received by FCM, FERRY, and others since August 2016, in violation N.C. Gen Stat. §78C-19(a)(2)(b).

52. FCM and FERRY made untrue statements of a material fact, in violation of N.C. Gen. Stat. §78C-8(b), by representing themselves in solicitation of advisory clients as an investment adviser and investment adviser representative, respectively, when neither are registered as such in this state.

53. Upon information and belief, the Respondents, in solicitation of advisory clients are making untrue statements of a material fact, or omitting 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, in violation of N.C. Gen. Stat. §78C-8(b).

54. FCM made untrue statements of a material fact, in violation of N.C. Gen. Stat. §78C-8(b), in that FCM stated that its employee is a registered investment adviser, when, in fact, he is not.

55. It is in the public interest and for the protection of investors and clients that FCM be prohibited from violating the provisions of the Investment Advisers Act in connection with its business of providing investment advisory services for compensation.

56. It is in the public interest and for the protection of investors and clients that FERRY be prohibited from violating the provisions of the Investment Advisers Act in connection with the representation as an investment adviser representative and providing investment advisory services for compensation.

57. FCM and FERRY presently continue to have the ability to transact business as an investment adviser and investment adviser representative, respectively, in North Carolina in violation of the provisions of N.C. Gen. Stat. §§78C-8(b), 78C-16(a), 78C-16(a1), and 78C-19(a)(2)(a)-(b).

58. The registration of FCM as an investment adviser and FERRY as an investment adviser representative in North Carolina threatens injury to the citizens of the State of North Carolina resulting from providing investment advisory services in violation of North Carolina laws.

59. A Temporary Order to Cease and Desist is necessary and appropriate to address the Respondents' violations of the Investment Advisers Act. Any delay in issuing an order under §78C-28(b)(1) will result in irreparable harm to the public interest by allowing unregistered persons to continue to transact business in North Carolina in violation of its laws and to its citizens in the form of economic loss resulting from investment advisory services in violation of its laws.

60. A Summary Order Postponing the Registration of FERRY CAPITAL MANAGEMENT, LLC as an investment adviser pursuant to N.C. Gen. Stat. §78C-19(c) is necessary or appropriate in the public interest or for the protection of investors and clients and consistent with the purposes fairly intended by the policy and provisions of Chapter 78C, pending a final determination of any proceeding under N.C. Gen. Stat. §78C-19.

61. A Summary Order Postponing the Registration of PAUL FERRY as an investment adviser representative pursuant to N.C. Gen. Stat. §78C-19(c) is necessary or appropriate in the public interest or for the protection of investors and clients and consistent with the purposes fairly intended by the policy and provisions of Chapter 78C, pending a final determination of any proceeding under N.C. Gen. Stat. §78C-19.

CONCLUSIONS OF LAW

1. The Administrator has statutory authority pursuant to N.C. Gen. Stat. §78C-28(b)(2) to enter and issue a Temporary Order to Cease and Desist against the Respondents.
2. There is reasonable cause to believe FCM has engaged in willful violations of the Investment Advisers Act, specifically N.C. Gen. Stat. §§ 78C-8(b), 78C-16(a), and 78C-19(a)(2)(a)-(b).
3. There is reasonable cause to believe FERRY has engaged in willful violations of the Investment Advisers Act, specifically N.C. Gen. Stat. §§ 78C-8(b), 78C-16(a), 78C-16(a1) and 78C-19(a)(2)(a)-(b).
4. There is reasonable cause to believe the Respondents have willfully failed to submit all documents requested in the Administrator's subpoena issued under the Investment Advisers

Act.

5. Pursuant to N.C. Gen. Stat. § 78C-19(c), the Administrator has statutory authority to issue summary orders postponing the registration of investment advisers or investment adviser representatives in North Carolina pending final determination of an administrative proceeding initiated under N.C. Gen. Stat. § 78C-19(a).
6. There is reasonable cause to believe the Respondents will continue to commit acts and omissions in violation of the Investment Advisers Act.
7. It is necessary or appropriate in the public interest or for the protection of investors and clients and consistent with the purposes fairly intended by the policy and provisions of Chapter 78C that the Respondents be temporarily ordered to cease and desist from transacting business in this State as an investment adviser and investment adviser representative in violation of the Investment Advisers Act and its rules and orders issued thereunder and in connection with the solicitation of advisory clients, making any untrue statements of a material fact in violation of the Investment Advisers Act.
8. It is necessary or appropriate in the public interest or for the protection of investors and clients and consistent with the purposes fairly intended by the policy and provisions of Chapter 78C that the registration of FCM, as an investment adviser, and FERRY, as an investment adviser representative, be summarily postponed pending a final determination of any proceeding initiated under N.C. Gen. Stat. § 78C-19.
9. The public interest would be irreparably harmed by the delay inherent in issuing an order under the provisions of N.C. Gen. Stat. § 78C-28(b)(1).

NOW, THEREFORE, IT IS ORDERED, pursuant to the authority contained in N.C. Gen. Stat. § 78C-28(b)(2), that Respondents, **FERRY CAPITAL MANAGEMENT, LLC AND PAUL FERRY** shall immediately cease and desist from:

- a. transacting business in this state as an investment adviser unless registered in North Carolina;
- b. transacting business in this state as an investment adviser representative unless registered in North Carolina;
- c. soliciting any prospective advisory clients;
- d. transacting business by providing investment advice to current advisory clients;
- e. representing as an investment adviser and/or investment adviser representative on the internet or any social media platform;
- f. making any untrue statements of a material fact or omitting 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 to advisory clients;
- g. making or causing to be made any misleading filing, in any document or statement that is either at the time and in the light of the circumstances it was made false or misleading in any material respect;
- h. willfully violating or willfully failing to comply with any provision of Chapter 78C of the Investment Advisers Act or any rule thereunder;
- i. violating any other provisions of the Investment Advisers Act.

AND IT IS FURTHER ORDERED, pursuant to the authority contained in N.C. Gen. Stat. § 78C-19(c), that Respondents **FERRY CAPITAL MANAGEMENT, LLC AND PAUL FERRY**'s registration as an investment adviser and/or investment adviser representative, respectively, is hereby **POSTPONED** pending final determination of the proceeding initiated pursuant to N.C. Gen. Stat. § 78C-19(a)(2)(a)-(b).

NOTICE IS HEREBY GIVEN that the Respondents may request a hearing upon this matter by transmitting such request, in writing and within thirty (30) business days of receipt of this document, to Kevin Harrington, Deputy Securities Administrator, Securities Division,

Department of the Secretary of State, Post Office Box 29622, Raleigh, North Carolina 27626-0622. A copy of any such request shall be served by first-class mail upon Sherrell L. Forbes, Enforcement Attorney, Securities Division, Department of the Secretary of State, Post Office Box 29622, Raleigh, North Carolina 27626-0622. If such a request is made, this matter shall be scheduled for a hearing in accordance with Chapter 150B of the North Carolina General Statutes within twenty (20) days after receipt by the Deputy Securities Administrator of the written request. If no request for a hearing, other responsive hearing, or submission is received by the Deputy Securities Administrator within thirty (30) business days of the receipt of service hereof, this Temporary Order to Cease and Desist shall become final and remain in effect unless it is modified or vacated by the Secretary of State in her capacity as Administrator of the Investment Advisers Act.

WITNESS MY HAND AND THE OFFICIAL SEAL of the North Carolina Department of the Secretary of State, this the 25TH day of NOVEMBER 2019.

Time of entry: 10:10 A.M.



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

REDACTED

KEVIN M. HARRINGTON
DEPUTY SECURITIES ADMINISTRATOR