

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

FINAL CONSENT ORDER

File No: 19ADM009

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 **FERRY CAPITAL MANAGEMENT, LLC** (“FCM”) and **PAUL EDWARD FERRY** (“FERRY”) (collectively the “Respondents”), the Administrator enters this Order.

I. FINDINGS OF FACT

1. Respondent FCM (CRD No. 171725) is a Minnesota limited liability company with a business and a registered mailing address in Dare County, North Carolina.
2. Respondent FERRY (CRD No. 732477) is citizen and resident of Dare County, North Carolina.
3. Since October 2016, Respondents used FERRY’s personal residence, located at 100 Oyster Catcher Lane, Duck, North Carolina 27949 as their place of business. The location was held out to the general public as the location from which Respondents provided investment advisory services and otherwise communicated with clients.
4. Neither FCM nor FERRY has ever been registered as an investment adviser or investment adviser representative in North Carolina. Both are registered as an investment adviser in other states.

5. On July 5, 2018, FCM filed an application for registration as an investment adviser in the State of North Carolina.

6. According to the registration records filed with the Administrator and maintained by the Financial Industry Regulatory Authority (“FINRA”) Central Registration Depository/Investment Adviser Registration Depository (CRD/IARD), FERRY is listed as one of FCM’s direct owners, president, and chief compliance officer.

7. Pursuant to N.C. Gen. Stat. §§78C-2(3) and 78C-17(a), if FCM were registered with North Carolina, FERRY would be automatically registered as an investment adviser representative of FCM, by operation of law.

8. FERRY filed the application for registration with the Securities Division via FINRA’s IARD system, a comprehensive data portal which is accessible to federal and state regulators.

9. Pursuant to the Administrator’s authority under N.C. Gen. Stat. §78C-17(a), the Securities Division conducted an initial review of the Respondents’ application between July 5, 2018 and July 16, 2018. This review was to determine if the application was complete, or if it had deficiencies that necessitated resolution.

10. N.C. Gen. Stat. §§78C-16(a) and 78C-16(a1) prohibits any person to transact business as an investment adviser or investment adviser representative in this state unless registered under the Act.

11. By letter dated July 16, 2018, the Securities Division notified Respondents that it had determined that Respondents filed inconsistent and inaccurate information regarding FCM’s other business locations and advertising for investment services. The letter also included language cautioning Respondents that “North Carolina law prohibits conducting business until the Division has approved registration.”

12. From July 16, 2018 through September 5, 2018, the Securities Division received no additional filings or amendments from Respondents.

13. During telephone calls and e-mail communications with FERRY, the Securities Division learned that Respondents continued to transact business in North Carolina as an investment adviser/investment adviser representative after the July 16, 2018 letter. By letter dated September 6, 2018, the Securities Division notified Respondents that 1) the pending registration application remained incomplete and 2) both appeared to be providing investment advisory services within the state without being registered. The letter repeated the July 16, 2018 cautionary language.

14. On September 28, 2018 and November 1, 2018, Respondents filed two partial amendments to the prior registration application. On November 13, 2018, the Securities Division provided the Respondents with a version of the July 16, 2018 letter that used color-coding to identify the remaining deficiencies in Respondents' registration application.

15. FERRY informed the Securities Division he would supplement his application to address the deficiencies on a rolling basis. Between November 27, 2018 and May 19, 2019, Respondents filed three partial amendments to their application. The Securities Division reviewed the three partial amendments and informed FERRY that the application would remain "incomplete" until all the identified deficiencies were corrected.

16. On February 12, 2019, a financial investigator ("investigator"), on behalf of the Securities Division, initiated an investigation into the Respondents ongoing unregistered investment adviser/investment adviser representative activities in North Carolina.

17. The investigator reviewed the Respondents registration application materials and determined the Respondents transacted business as an investment adviser/investment adviser representative since at least October 2016.

18. FCM filed an amendment to the Form ADV on May 20, 2019, significantly changing its application. Specifically, Respondents removed all references to the Duck, North Carolina office location. The Securities Division deemed the filing to be inconsistent and/or incomplete as compared to FCM's prior filings.

19. The Securities Division served the Respondents with a Subpoena Duces Tecum (“subpoena”) on June 4, 2019, requesting all documents related to the Respondents’ advisory business from or about April 1, 2016 through present, as required by the North Carolina Investment Advisers Act. The subpoena requested Respondents provide everything by June 28, 2019, the Securities Division did not receive a full and complete response to the subpoena until January 2020.

20. During a June 14, 2019 conference call with the Securities Division, FERRY confirmed that he was presently providing advisory services to his clients from his North Carolina office. The Securities Division reminded FERRY that N.C. Gen. Stat. §§78C-16(a) and 78C-16(a1) prohibits transacting business as an investment adviser/investment adviser representative in this state without being registered. FERRY responded, “Well I have to service my clients.” The Securities Division again informed FERRY his actions violated North Carolina law.

21. During the period of October 15, 2018 through November 2019, FCM and FERRY had one investment advisory client who was resident of North Carolina, in addition to the out of state clients that were provided services from FERRY’s North Carolina office.

22. In the review of the Respondents’ business records, the investigator determined FCM experienced a ransomware attack in late November 2017. At the time of the attack, Respondents had no North Carolina clients. Respondents made adequate and timely steps to mitigate potential customer harm following the attack, including contacting their investment custodian and contracting to provide identity protection for their clients.

23. On November 12, 2019, FERRY submitted an email to the Securities Division requesting an update on the investigation before he completed the “remaining registration requirements.” In its November 12, 2019 response, the Securities Division informed the Respondents to refer to the prior letters from the Securities Division that highlighted the missing or incomplete documents.

24. FCM did not undergo an annual examination by any state regulator, from approximately November 2014 through November 2019. Specifically, FCM was not examined by the Securities Division from October 2016 through November 2019.

25. As a result of the suspected ongoing unregistered investment advisory business, Respondents were served, by order of the Administrator, with a temporary Order to Cease and Desist and Summary Postponement of Registration on November 25, 2019.

II. CONCLUSIONS OF LAW

1. The Administrator has jurisdiction over FCM and FERRY, and over the subject matter of this Order.

2. At all relevant times herein, FCM was an applicant for registration as an investment adviser, as defined under N.C. Gen. Stat. §78C-2(1). FERRY was also at all relevant times an applicant for registration as an investment adviser representative, as defined under N.C. Gen. Stat. §78C-2(3).

3. As an investment adviser, investment adviser representative, or applicant, in North Carolina, FCM and FERRY are required to comply with the Act and its administrative rules, and submit themselves to the jurisdiction and oversight of the Administrator.

4. N.C. Gen. Stat. §78C-19(a)(2)(b) grants the Administrator the authority to deny, suspend or revoke any registration, or bar or censure any registrant or any officer, director, partner or person occupying a similar status or performing similar functions for a registrant, from employment with a registered investment adviser, or restrict or limit a registrant as to any function or activity of the business in whole or in part if she finds that a registrant has willfully¹ violated or willfully failed to comply with any provisions of the Act or any rule promulgated under the Act.

5. N.C. Gen. Stat. §78C-28(b)(1) grants the Administrator, after giving notice of an opportunity for a hearing, that any person has engaged in, or is about to engage in, any act or

¹ A “willful” violation of the Act means that the person knew what he was doing, not that he was aware that the action violated the law, nor that he intentionally violated the law.

practice constituting a violation of any provision of the Act, she may order such person to cease and desist from such unlawful act or practice.

6. Under North Carolina law, it is unlawful for any person to transact business in this State as an investment adviser or investment adviser representative unless the person is registered. N.C. Gen. Stat. §§78C-16(a) and 78C-16(a1).

7. As more particularly described above, FCM and FERRY violated and/or failed to comply with the registration requirements of the Act by transacting business in North Carolina as an investment adviser and investment adviser representative for approximately two years prior to their application for registration and for sixteen months after their application for registration. FCM and FERRY therefore violated N.C. Gen. Stat. §§78C-16(a), 78C-16(a1), and 78C-19(a)(2)(b).

8. Under North Carolina law, if the information contained in any document filed with the Administrator is or becomes inaccurate or incomplete in any material respect, the registrant is required to promptly file a correcting amendment. N.C. Gen. Stat. §78C-18(d) and 18 NCAC 06A .1703.

9. As more particularly described above, FCM and FERRY filed or caused to be filed, incomplete information regarding its North Carolina business location, number of clients, and regulatory assets under management. FCM and FERRY therefore violated N.C. Gen. Stat. §§78C-18(d) and 18 NCAC 06A .1703.

10. This Order and the assessment of a civil penalty and costs is necessary or appropriate in the public interest, is for the protection of investors and clients, and is consistent with the purposes fairly intended by the policy and provisions of the Act.

11. The Administrator has the authority to enter this Order pursuant to the Act and the

Administrative rules adopted thereunder.

III. JURISDICTION, CONSENT, AND WAIVER

FCM and FERRY, as evidenced by the authorized signature of the Consent to Entry of Final Order, below, affirmatively states and agrees that:

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

2. Without admitting or denying the findings of fact or conclusions of law contained herein, other than admitting to the jurisdiction of the Administrator. FCM and FERRY voluntarily consent to the entry of this Order and understand it is a public document.

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

4. FCM and FERRY freely sign this Order. 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. FCM and FERRY permanently waive any and all rights under 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 they may be entitled related to the subject of this Order, including any court of competent jurisdiction. FCM and FERRY also permanently waive their right 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.

6. This Order contains the entire agreement between the undersigned, and FCM and FERRY understand its effect.

7. The presentation of this Order to the Administrator and any subsequent discussion of the Order prior to its entry without FCM and FERRY 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.

8. This Order is not intended to form the basis for any disqualification from registration as a broker-dealer, investment adviser, or issuer under the laws, rules, and regulations of North Carolina, and waives any disqualification from relying upon the securities registration exemptions or safe harbor provisions to which Respondents may be subject under the laws, rules and regulations of North Carolina.

9. This Order is not intended to form the basis for any disqualification under the laws of any state, the District of Columbia, Puerto Rico, or the U.S. Virgin Islands; under the rules or regulations of any securities or commodities regulator or self-regulatory organization; or under the federal securities laws, including but not limited to, Section 3(a)(39) of the Securities Exchange Act of 1934 and Regulation A and Rules 504 and 506 of Regulation D under the Securities Act of 1933. Furthermore, this Order is not intended to form the basis for disqualification under the FINRA rules prohibiting continuance in membership or disqualification under other SRO rules.

NOW, THEREFORE, the Administrator, pursuant to and under all authority granted by the North Carolina Investment Advisers Act based upon the forgoing Findings of Fact, Conclusions of Law, and Jurisdiction, Consent and Waiver, and with FCM and FERRY's express written consent to the

entry of this Order, orders the following:

IV. ORDER

1. FCM shall immediately and permanently cease and desist from violating N.C. Gen. Stat. §§ 78C-16(a), 78C-18(d), 78C-19(a)(2)(b), and 18 NCAC 06A .1703.
2. FERRY shall immediately and permanently cease and desist from violating N.C. Gen. Stat. §§ 78C-16(a1), 78C-18(d), 78C-19(a)(2)(b), and 18 NCAC 06A .1703.
3. FCM and FERRY shall immediately and permanently cease and desist from violating any other provisions of the North Carolina Investment Advisers Act and any administrative rules promulgated under the Act.
4. FCM shall timely amend its ADV Part 1 and Part 2 with respect to all reportable events and will make and keep books and records in accordance with the applicable statutes and regulations.
5. FCM shall, at its own expense, identify and hire a third-party compliance consultant to perform an annual onsite audit of FCM and FERRY on or after June 30, 2021, but on or before December 31, 2021 and submit the audit findings to the Securities Division. The third-party compliance auditor must be accredited, experienced, and approved by the Securities Division.
6. FERRY shall, at his own expense, register, attend, and participate in the Securities Division's Investment Adviser Best Practices Workshop, within twelve months of the entry of this Order.
7. FCM shall pay to the N.C. Department of the Secretary of State a civil penalty in the amount of \$10,000 within 30 days of entry of this Order.
8. FCM shall pay to the N.C. Department of the Secretary of State the reimbursement of the costs of investigation in the amount of \$50,000 within 30 days of entry of this Order.

9. The Administrator will register FCM as an investment adviser and FERRY as an investment adviser representative with FCM upon entry of this Order, payment of the civil penalties, and payment of the reimbursement of the costs of investigation.

10. FCM and FERRY 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.

11. This Order shall become final upon entry and shall be binding upon FERRY and FCM 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 16TH day of April 2020.

Time of entry: 9:21 A.M.



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



KEVIN M. HARRINGTON
DEPUTY SECURITIES ADMINISTRATOR