

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

IN THE MATTER OF:	)	
	)	<b>FINAL CONSENT ORDER</b>
<b>JGM WEALTH MANAGEMENT,</b>	)	File No.: 16 SEC 076
<b>L.L.C. (CRD# 168220) and JOHN G.</b>	)	
<b>MERGNER, JR. (CRD# 722770)</b>	)	
	)	
Respondents.	)	

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The Secretary of State of the State of North Carolina (the “Administrator”), as Administrator of the North Carolina Investment Advisers Act, (N.C. Gen. Stat. Chapter 78C, the “Act”) has considered the evidence and finds that it is in the public interest to resolve this matter on the terms set forth in this Final Consent Order (the “Order”). With the consent of JGM Wealth Management, L.L.C. (“JGM”) and John G. Mergner, Jr. (“Mergner”), individually and as the representative of JGM, the Administrator enters this Final Consent Order.

**I. FINDINGS OF FACT**

1. JGM is a North Carolina limited liability company, with its principal office at 2012 Hearthwood Court in Greensboro, North Carolina. JGM is registered with the Administrator as an investment adviser.

2. Mergner is a resident of North Carolina and the President, CEO and only managing member of JGM and is registered with the Administrator as an investment adviser representative for JGM.

**a. Registration with the Administrator as an Investment Adviser**

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

4. In order to maintain a registration, the investment adviser must renew the registration annually and file the Uniform Application for Investment Adviser Registration (“Form ADV”) annually. N.C. Gen. Stat. §78C-16(c) and 18 NCAC 06A. 1702.

5. If the information contained in a filing becomes inaccurate or incomplete in any material respect, the investment adviser must “promptly” file a correcting amendment.<sup>1</sup> N.C. Gen. Stat. §78C-18(d).

6. It is imperative that the investment adviser file complete and accurate documents because the Administrator and public rely on the information they contain.

7. JGM and Mergner have repeatedly failed to properly maintain JGM’s investment adviser registration filings.

**i. JGM and Mergner Failed to Timely File Annual Registration.**

8. An investment adviser must file an annual registration renewal by December 31 each year. N.C. Gen. Stat. §78C- 16(c). 18 NCAC 06A. 1702(f).

9. On October 10, 2013, JGM registered as an investment adviser.

10. On December 31, 2014, JGM’s registration lapsed for failing to renew the registration.

11. On January 28, 2015, JGM reregistered after receiving a reminder from the Administrator.

12. Subsequent annual registrations have been timely filed.

**ii. JGM and Mergner Failed to Timely File Annual Updated Form ADVs.**

13. An investment adviser must annually file the Form ADV within 90 days of the investment adviser’s fiscal year. 18 NCAC 06A. 1702(c).

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<sup>1</sup> “Promptly” means within 30 days. 18 NCAC 06A. 1702(c)(2).

14. JGM's fiscal year ends on December 31 each year. Therefore, it must file its Form ADV between January 1 and March 31 each year.

15. After registering on October 10, 2013, JGM and Mergner timely filed the Form ADV on March 31, 2014.

16. In 2015, JGM's registration lapsed so he filed the Form ADV with the registration.

17. JGM and Mergner failed to file a Form ADV in 2016.

18. On February 2017, the Securities Division performed an examination of JGM. At the onsite examination and in the deficiency letter dated March 2, 2017 that followed, the Securities Division reminded JGM and Mergner that the annual Form ADV for fiscal year 2016 was due on or before March 31, 2017.

19. JGM and Mergner failed to file the Form ADV until April 1, 2017.

20. As described above, JGM and Mergner failed to file one of its Form ADVs and filed one of its Form ADVs late.

**iii. JGM and Mergner Failed to Timely Amend the ADV.**

21. Investment advisers must file an amendment with the Administrator within 30 days of the event requiring amendment. 18 NCAC 06A .1702(c)(2). The Form ADV must be amended when it contains statements that are materially inaccurate. 18 NCAC 06A .1707.

22. In August 2016, JGM relocated its place of business. However, JGM and Mergner failed to file the amendment noting the change of address until April 1, 2017.

**iv. JGM and Mergner Made Inaccurate Statements on the ADV.**

23. Investment advisers are responsible for ensuring that the documents they file with the Administrator do not contain any statement which is false or misleading in any material

respect. N.C. Gen. Stat. §78C-9. Failing to promptly file amendments causes the filings to be misleading in violation of N.C. Gen. Stat. §78C-9.

24. The Form ADV contains a series of questions, including, “Are there any unsatisfied judgments or liens against you [the investment adviser], any advisory affiliate, or any management person?”

25. On May 1, 2007, the Internal Revenue Service filed a tax lien against Mergner, an advisory affiliate. JGM and Mergner never disclosed this tax lien on the Form ADV.

26. On December 18, 2013, the North Carolina Department of Revenue filed a tax lien against Mergner that was released on May 17, 2016. Again, JGM and Mergner never disclosed this tax lien on the Form ADV.

27. Further, JGM and Mergner have repeatedly failed to timely file amendments causing the filings to be false and misleading while they remained uncorrected.

28. Each of the above examples, represent information that was false and misleading in JGM’s filings.

**b. Registration with Administrator as an Investment Adviser Representative**

29. Investment adviser representatives must be registered with the Administrator in order to transact business in North Carolina unless a specific exemption applies. N.C. Gen. Stat. §78C-16(a1).

30. In order to maintain a registration, the investment adviser representative must renew the registration annually. N.C. Gen. Stat. §78C-16(c) and 18 NCAC 06A. 1703.

31. If the information contained in a filing becomes inaccurate or incomplete in any material respect, the investment adviser must “promptly” file a correcting amendment.<sup>2</sup> N.C. Gen. Stat. §78C-18(d).

32. It is imperative that the investment adviser representative file complete and accurate documents because the Administrator and public rely on the information they contain.

33. JGM and Mergner have repeatedly failed to properly maintain Mergner’s investment adviser representative filings.

**i. JGM and Mergner Failed to Timely Amend the U4.**

34. The Uniform Application for Industry Registration (“Form U4”) is the filing document for investment adviser representatives. If information disclosed on the Form U4 changes, the investment adviser representative and investment adviser must file an amendment with the Administrator within 30 days. 18 NCAC 06A .1703(c)(3).

35. The Form U4 asks, “Do you have any unsatisfied judgments or liens against you?”

36. On December 18, 2013, the North Carolina Department of Revenue filed a tax lien against Mergner. JGM and Mergner failed to disclose the lien until January 28, 2015.

37. On May 17, 2016, the state tax lien was released. Again, JGM and Mergner failed to promptly file the amendment. JGM and Mergner did not amend the Form ADV to reflect the release of lien until June 26, 2017.

38. On May 1, 2007, the Internal Revenue Service filed a tax lien against Mergner, an advisory affiliate. JGM and Mergner failed to disclose this tax lien until January 28, 2015.

39. As described above, JGM and Mergner have repeatedly failed to timely file amendments.

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<sup>2</sup> “Promptly” means within 30 days. 18 NCAC 06A. 1702(c)(2).

**ii. JGM and Mergner Made Inaccurate Statements on the U4.**

40. Investment adviser representatives and investment advisers are responsible for ensuring that the documents they file with the Administrator do not contain any statement which is false or misleading in any material respect. N.C. Gen. Stat. §78C-9. Failing to promptly file amendments causes the filings to be misleading in violation of N.C. Gen. Stat. §78C-9.

41. When Mergner and JGM updated the tax lien information on June 26, 2017, Mergner and JGM wrote, "BOTH (i) THE LIEN FILED BY NCDOR, AND (ii) AMOUNT ALLEGED OWED BY NCDOR (SEE 1. ABOVE) WERE ERRONEOUS. .... ON 05/20/2016, THE NCDOR ISSUED A LETTER TO THE 'CLERK OF SUPERIOR COURT, GUILFORD COUNTY' INSTRUCTING THE CLERK TO "PLEASE CANCEL THE CERTIFICATE OF TAX LIABILITY [PREVIOUSLY] RECORDED [BY NCDOR IN ERROR] AGAINST TAXPAYER." SEE COMMENT IN SECTION 8. BELOW. .... THIS DISPUTED AND ULTIMATELY PROVEN TO BE ERRONEOUS JUDGMENT/LIEN FILING BY THE NCDOR SHOULD HAVE NEVER BEEN REPORTED BY RESPONDENT ON FORM U4 TO BEGIN WITH BASED ON THE FACTS."

42. The North Carolina Department of Revenue issued a letter to the Superior Court of Guilford County stating, "Please cancel the Certificate of Tax Liability recorded against the above taxpayer." The North Carolina Department of Revenue did not state that the lien was erroneous or recorded in error.

**c. Solicitation of Clients**

43. When soliciting advisory clients, an investment adviser may not make any untrue statements of a material fact. N.C. Gen. Stat. §78C-8(b). The rules further clarify that investment advisers may not "misrepresent the nature of advisory services being offered or fees

to be charged for such service, or omit to state a material fact necessary to make the statements made ... not misleading.” 18 NCAC .1801(a)(8).

44. When an investment adviser publicizes services or fee structures that are no longer available, the investment adviser is making untrue statements of material facts and is violating N.C. Gen. Stat. §78C-8(b) and 18 NCAC .1801(a)(8).

45. During the February 2017 examination by the Securities Division, Mergner claimed that JGM no longer provided asset management services. Mergner claimed that JGM provides only fee-based financial planning.

46. The representations and description of services on the JGM website contradicted Mergner’s assertions. Under the “Services” tab on <http://www.jgmwealth.com>, the following is listed:

**Investment Products**

- Mutual Funds (Domestic and International)
- Federally Insured CDs
- Checking, Savings and Money Market Funds
- Exchange Traded Funds (ETFs)
- Bonds: U.S. Treasury, Agency, Corporate & Municipal
- Stocks
- International Investing
- Options
- Real Estate Investment Trusts (REITs)
- Master Limited Partnerships (MLPs)
- Annuities: Tax-Deferred Fixed and Indexed
- Insurance: Whole, Universal & Variable Life

**Services**

- Fee-Only Financial Planning
- Asset Allocation Analysis
- Retirement Planning
- Education Planning
- Estate Planning Review
- Charitable Gift Planning
- Risk Management Planning/Life Insurance
- Business Succession Planning

**Basic Investment Account Types**

- Individual

- Estate
- Joint
- Guardianship/Conservatorship
- Education Savings Account (ESA)
- Trust Account (Testamentary)
- Custodial/UGMA
- Trust Account (Non-Testamentary)
- Corporate
- Investment Club
- Sole Proprietorship
- Partnership/Limited Partnership
- Limited Liability Company (LLC)
- Association/Other

47. This list of services is misleading if, as Mergner claimed, JGM is not providing asset management services.

## II. CONCLUSIONS OF LAW

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

2. Mergner is an “investment adviser representative” and “registrant” under North Carolina law and an agent of JGM. N.C. Gen. Stat. § 78C-2(3).

3. As an investment adviser and investment adviser representative registered in North Carolina, JGM and Mergner 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. JGM and Mergner violated N.C. Gen. Stat. §78C-16(c) and 18 NCAC 06A. 1702(c) when they failed to file and/or timely file the annual registration and Form ADV.

5. JGM and Mergner violated N.C. Gen. Stat. 18 NCAC 06A. 1703(c) when they failed to timely amend the Form U4.

6. JGM and Mergner violated N.C. Gen. Stat. §78C-18(d) and §78C-9 when they failed to amend and/or timely amend the Forms ADV and U4.

7. JGM and Mergner violated N.C. Gen. Stat. §78C-9 when they caused the ADV and U4 to be false and misleading by misrepresenting the status of the liens.

8. JGM and Mergner violated N.C. Gen. Stat. §78C-8(b) and 18 NCAC 06A .1801(a)(8) when they promoted services and fee structures that they no longer offered.

9. 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).

10. 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.

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

### **III. JURISDICTION, CONSENT AND WAIVER**

JGM and Mergner, 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 JGM and Mergner and the subject matter of this Order.

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

3. JGM and Mergner 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. JGM and Mergner 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 JGM and Mergner understand its effect.

6. JGM and Mergner have agreed to resolve this matter through this Order to avoid further administrative proceedings.

7. JGM and Mergner permanently waive 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 they may be entitled related to the subject of this Order, including any court of competent jurisdiction. JGM and Mergner 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 JGM or Mergner for their conduct described in this Order that transpired prior to the signing of this Order.

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 JGM 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 JGM, Mergner 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 Investment Adviser's Act, based upon the forgoing Findings of Fact, Conclusions of Law, and Jurisdiction, Consent and Waiver, and with JGM and Mergner's express written consent to the entry of this Order, orders the following:

#### **IV. ORDER**

1. JGM and Mergner shall immediately and permanently cease and desist from violating §78C-16(c) and 18 NCAC 06A. 1702(c).

2. JGM and Mergner shall immediately and permanently cease and desist from violating N.C. Gen. Stat. §78C-18(d).

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

4. JGM and Mergner shall immediately and permanently cease and desist from violating N.C. Gen. Stat. §78C-8(b) and 18 NCAC 06A .1801(a)(8).

5. JGM and Mergner 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 either Act.

6. JGM and Mergner shall update his Form U4 within ten days of the execution of this Order so that it no longer contains false or misleading information.

7. JGM and Mergner shall file a Form ADV-W to withdraw his registration within ten days of this Order.

8. JGM and Mergner shall not reapply for registration as an investment adviser or investment adviser representative until JGM and Mergner have cured the deficiencies described in this Order.

9. JGM and Mergner shall not take any action, or make, or permit to be made, any public statement, denying, directly or indirectly, any finding in this Final Consent Order or creating the impression that this Final Consent Order is without factual basis.

10. This Final Consent Order shall become final upon entry and shall be binding upon JGM and Mergner 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 2<sup>nd</sup> day of NOVEMBER 2017.

Time of entry: 1:22 P.M.



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



KEVIN M. HARRINGTON  
Deputy Securities Administrator