

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

IN THE MATTER OF:)	
)	FINAL CONSENT ORDER
RAYMOND MARX FINANCIAL)	
ADVISORY GROUP, INC.)	File No.: 17 SEC 058
(CRD # 144687),)	
)	
Respondent.)	

The North Carolina Secretary of State (the “Administrator”), as the Administrator of the North Carolina Investment Advisers Act, N.C. Gen. Stat. Chapter 78C) (the “Investment Advisers 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 Raymond Marx Financial Advisory Group, Inc., which neither admits nor denies the Conclusions of Law set forth herein, the Administrator enters this Order.

I. SUMMARY

1. The Administrator, through her Securities Division, conducted an investigation into the business activities of Raymond Marx Financial Advisory Group, Inc. (“RMFAG”).

2. The Securities Division determined that, between July 2015 and July 2017, RMFAG promoted its investment adviser business in order to attract clients to whom Raymond Marx Financial, Inc. (“RMFI”) could also sell insurance products. In doing so, RMFAG violated the Investment Advisers Act by failing to disclose the nature of advisory

services being offered. Further, RMFAG violated the investment adviser solicitation regulations by using testimonials to promote the investment adviser business.

3. With the consent of RMFAG, the Administrator orders RMFAG to:
 - i. cease and desist from violating the Investment Advisers Act and Administrative Rule 18 NCAC 06A. 1801;
 - ii. pay a civil penalty;
 - iii. reimburse the Securities Division for its costs of investigation; and
 - iv. agree to certain undertakings.

II. FINDINGS OF FACT

1. RMFAG is registered as an investment adviser in North Carolina. Between July 2015 and July 2017 (“the relevant time period”), RMFAG transacted business out of its branch office at 28 Schenck Parkway, Suite 200, Asheville, North Carolina.

2. RMFI is an insurance agency whose primary business is the sale of residential, life, health, and fixed annuity insurance products. During the relevant time period, RMFI also transacted business out of the office at 28 Schenck Parkway, Suite 200, Asheville, North Carolina.

3. In addition to sharing offices in North Carolina, RMFAG and RMFI are affiliated through the common ownership and control of Raimund Marx, the president of both RMFAG and RMFI, who is registered as an investment adviser representative of RMFAG and is a licensed insurance agent of RMFI.

4. During the relevant time period, RMFAG and RMFI engaged in marketing in and around Asheville, North Carolina consisting of weekly radio shows, radio spot commercials, and in-person seminars.

5. Through that marketing, RMFAG promoted its services in order to attract clients to the shared office so RMFI could also sell them insurance products.

6. During the relevant time period, prospective clients who went to RMFAG desiring investment advisory services were referred to a third-party registered investment adviser (“RIA”). For each referral, RMFAG received a referral fee.

A. Marketing of Advisory Services

7. When soliciting clients, RMFAG used two marketing methods that had the potential to mislead prospective clients.

8. First, RMFAG used the doing-business-as name of “Raymond Marx Financial.” This was misleading, without additional disclosure, because RMFI also used this name. This likely had the effect of preventing the listener of a radio commercial or show from deciphering when the speaker was referring to RMFAG, the investment adviser firm or RMFI, the insurance company. This, without additional disclosure, enabled, RMFAG to endorse the beneficial features of each of the businesses as if both companies shared those features.

9. Second, RMFAG touted the investment adviser fiduciary standard and, when doing so, implied that RMFI was held to the fiduciary standard and that other

financial professionals could not be trusted because those professionals were not held to the same standard.¹ For example:

- a. In seminar presentation materials, RMFAG showed prospective clients a picture of a pyramid. The pyramid was divided into three levels that represented different duties of care to prospective clients. At the top of the pyramid was the word “Fiduciaries.” At the bottom of the pyramid were the words “Life Ins. Agents and Annuity Sales People.” The presenter did not associate RMFI or its representatives with the insurance agents at the bottom of the pyramid.



- b. The slide that followed the pyramid slide described above-read: “4 out of 5 investors believe their financial professional is a fiduciary. The truth: RIAs make up only about 25% of the industry.” The slide failed to explain that RMFI was an insurance agency (not an investment adviser), and therefore not required to act as fiduciary under North Carolina law.



- c. In radio advertisements, RMFAG was described as “a fiduciary here to help you” and “a trusted financial professional”; the radio advertisement further stated, “we are fiduciaries” without disclosing

An insurance company is required to have reasonable grounds to believe that its recommendation is suitable for the client on the basis of the facts disclosed by the client as to the client’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.

or distinguishing RMFAG and RMFI or their services, or explaining that RMFI was an insurance agency.

10. As a result of this marketing, prospective clients went to the RMFAG office, the same office that housed the insurance company, RMFI, likely believing that they would meet with an investment adviser and fiduciary.

11. However, in practice, during the relevant time period, the prospective clients met with RMFAG as a solicitor for a third-party RIA and RMFI as an insurance agency, and clients were offered one or more of the insurance products that RMFI was incentivized to sell.

B. Testimonials.

12. RMFAG used testimonials to promote its business.

13. Within certain radio spots, RMFAG scripted a voice actor portraying a fictional client to describe RMFAG's services.

14. Also, a broadcast personality was scripted to introduce RMFAG as, "Asheville's trusted retirement adviser."

15. These statements were testimonials.

C. Cooperation.

16. RMFAG has fully cooperated with the Securities Division's investigation.

17. Upon receiving constructive comments from the Securities Division, RMFAG promptly took corrective action including the submission to the Securities Division of marketing material for review.

III. CONCLUSIONS OF LAW

1. Pursuant to N.C. Gen. Stat. § 78C-(1), 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 of investing in ... securities.”

2. An investment adviser is a fiduciary and has a “duty to act primarily for the benefit” of its clients. 18 NCAC 06A .1801.

3. When soliciting advisory clients, an investment adviser must ensure that statements fully and clearly disclose “the nature of advisory services being offered or fees to be charged for such service,” and must not “omit to state a material fact necessary to make the statements made ... not misleading.” 18 NCAC 06A .1801(a)(8).

4. Rule 206(4)-1 under the Investment Advisers Act of 1940 prohibits an adviser from publishing, circulating, or distributing any advertisement “[w]hich refers, directly or indirectly, to any testimonial of any kind concerning the investment adviser or concerning any advice, analysis, report or other service rendered by such investment adviser.” This federal rule is incorporated by reference into the North Carolina rules that govern investment advisers under 18 NCAC .1801(a)(13), which states that an investment adviser may not publish, circulate or distribute any advertisement which does not comply with Rule 206(4)-1 under the Investment Advisers Act of 1940.

5. RMFAG is an “investment adviser” under the Investment Advisers Act. N.C. Gen. Stat. § 78C-2(1).

6. RMFAG violated 18 NCAC 06A.1801(a) when it used joint marketing materials that touted RFMAG’s fiduciary standard to attract clients to its offices,

understanding that, once there, the clients would be offered insurance products from RMFI, which is not a registered investment adviser.

7. RMFAG violated 18 NCAC 06A .1801(a)(13) when RMFAG included testimonials when promoting RMFAG.

8. When an investment adviser has violated the Investment Advisers Act or regulations thereunder, the Administrator may, by order (a) restrict or limit functions or activities of the investment adviser and/or investment adviser representative; (b) impose a civil penalty; and/or (c) 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.

9. This Order is in the public interest and is consistent with the purposes fairly intended by the policy and provisions of the Investment Advisers Act.

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

IV. JURISDICTION, CONSENT, AND WAIVER

RMFAG, 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 RMFAG and the subject matter of this Order.

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

3. RMFAG 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. RMFAG 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 RMFAG understands its effect.

6. RMFAG has agreed to resolve this matter through this Order to avoid further administrative proceedings.

7. RMFAG permanently waives any and all rights under the Investment Advisers 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 it may be entitled related to the subject of this Order, including any court of competent jurisdiction. RMFAG 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.

8. This Order is submitted on the condition that the Administrator will not bring further action against RMFAG or any affiliated entities or individuals, past or present, for the conduct described in this Order that occurred 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 RMFAG as named in this Order.

10. The presentation of this Order to the Administrator and any subsequent discussion of this Order prior to its entry without RMFAG 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.

11. This Order shall become final upon entry.

V. AGREEMENT

1. RMFAG agrees to submit to the Administrator, prior to its use, copies of all of its marketing materials for the three (3) months following the signing of this Order.

2. RMFAG agrees to provide additional training to its representatives regarding the conduct and rules described above.

VI. ORDER

NOW, THEREFORE, the Administrator, pursuant to and under all authority granted by the Investment Advisers Act, based upon the forgoing Findings of Fact; Conclusions of Law; Jurisdiction, Consent and Waiver; and Agreement, with RMFAG's express written consent to the entry of this Order, orders the following:

1. RMFAG shall cease and desist from violating 18 NCAC 06A .1801(a).

2. RMFAG shall comply with the Investment Advisers Act and the regulations promulgated thereunder.

3. RMFAG shall pay a civil penalty in the amount of \$5,000.00 to the Securities Division within ten days of the date of entry of this Final Consent Order.

4. RMFAG shall, within the time agreed upon by the Securities Division, pay the Securities Division \$30,000 as reimbursement for investigative costs.

5. RMFAG 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. Nothing in this Order affects RMFAG's testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which the Administrator or Securities Division is not a party.

6. This Order shall become final upon entry and shall be binding upon RMFAG 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.

7. This Order concludes the investigation by the Securities Division and any other action that the Administrator could commence against RMFAG or any of its affiliated entities or individuals, past or present ("Affiliates"), under applicable law as it relates to the Findings of Fact and Conclusions of Law set forth in this Order.

8. This Order is not intended to subject RMFAG, or any of its affiliates, to any disqualifications contained in the federal securities laws or the rules and regulations thereunder; the rules and regulations of self-regulatory organizations; or various states' or U.S. territories' securities or insurance laws, including, without limitation, any

disqualification from relying upon the registration exemptions or safe harbor provisions. In addition, this Order is not intended to form the basis for any such disqualifications. To the extent this Order shall be deemed a disqualification under the North Carolina Securities Act (Chapter 78A) or the Investment Adviser Act (Chapter 78C) or the rules promulgated under either Act, any such disqualification is hereby waived.

9. This Order is entered into solely for the purpose of resolving this investigation and is not intended to be used for any other purpose. For any person or entity not a party to this Order, this Order does not: (a) limit or create any private rights or remedies against RMFAG or its Affiliates; (b) limit or create any liability of RMFAG or its Affiliates; or (c) limit or create defenses of RMFAG or its Affiliates to any claims.

WITNESS MY HAND AND THE OFFICIAL SEAL of the North Carolina Department of the Secretary of State, this the 2nd day of OCTOBER, 2018.

Time of entry: 10:24 A.M.



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

KEVIN M. HARRINGTON
Deputy Securities Administrator