

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

IN THE MATTER OF:	)	
	)	
<b>RJM FINANCIAL, RJM FINANCIAL, LLC (CRD #150942) and RUSSELL J. MUTTER (CRD #2365190),</b>	)	<b>TEMPORARY CEASE AND DESIST ORDER</b>
	)	File No.: 18 ADM 004
	)	
Respondents.	)	

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The Secretary of State of the State of North Carolina (the “Administrator”), pursuant to her authority and responsibility to administer and enforce the North Carolina Investment Advisers Act, (N.C. Gen. Stat. Chapter 78C, the “Investment Advisers Act”) has considered the evidence, finds that the public interest will be irreparably harmed by delay, and therefore, enters this Order.

**I. SUMMARY**

1. The Administrator, through her Securities Division, conducted an investigation of RJM Financial, RJM Financial, LLC and Russell Joseph Mutter (“Mutter”) to evaluate whether Mutter was conducting the investment adviser business in compliance with the Investment Advisers Act.

2. The Securities Division found that RJM Financial, RJM Financial, LLC and Mutter are violating the Investment Advisers Act by misappropriating client funds.

3. Through this Order, the Administrator orders RJM Financial, RJM Financial, LLC and Mutter to cease and desist from soliciting new clients, administering the assets of current clients, and misappropriating client funds.

**II. FINDINGS OF FACT**

1. RJM Financial and RJM Financial, LLC (collectively “RJM”) are the entity names under which Russell Joseph Mutter (“Mutter”) transacts his investment advisory business in North

Carolina. Mutter registered as an investment adviser with the Administrator in 2010 with a primary business name of “Russell Mutter DBA RJM Financial.”

2. Mutter is an adult individual residing in Forsyth County in North Carolina. Mutter is the founder of RJM and is the only active participant in the business of RJM.

3. Since 2010, Mutter has engaged in the business of providing investment advisory services on behalf of RJM to residents of North Carolina, including to a client which will be referred to as “Client A.”

4. Upon founding RJM in 2010, Mutter solicited Client A to act as Client A’s investment adviser.

5. Client A agreed and he transferred approximately \$500,000 to RJM so that Mutter could manage his investments.

6. Mutter developed an investment plan for Client A, in which he recommended that Client A invest in “blue chip” bonds and U.S. Treasury Inflation Protected Securities (“TIPS”) bonds. Client A approved the plan.

7. Mutter told Client A that he had invested \$100,000 in a Caterpillar bond and that he had purchased four TIPS bonds for \$100,000 each. The Caterpillar bond and the four TIPS bonds were scheduled to mature at various dates beginning in 2014.

8. Mutter represented to clients that, at least annually, he would provide written reports to them detailing investment allocations. He also represented to clients that the clients’ custodian would provide monthly statements to them that itemized their holdings.

9. However, between 2010 and 2014, Mutter only provided Client A with one account statement. This statement was for the Caterpillar bond, and it had the First Security Bank logo imprinted at the top of the page. Mutter never provided any account statements for the four TIPS

bonds that he claimed to have purchased with \$400,000, and he would not divulge where the TIPS were held despite being asked to do so by Client A.

10. In 2014, Mutter returned \$105,000 to Client A, which he represented as the maturity proceeds from the Caterpillar bond.

11. In 2016, Mutter returned another \$105,000 to Client A, which he represented as the maturity proceeds from one of the TIPS bonds.

12. Mutter failed to return the maturity proceeds for the remaining three TIPS bonds, an amount of \$300,000 plus applicable interest.

13. When Client A inquired as to the remaining funds, Mutter was unable to return any money to Client A, nor was he able to account for the whereabouts of Client A's assets.

14. In 2017, Client A filed a civil law suit against Mutter.

15. When responding to the civil law suit, Mutter admitted that he had never invested Client A's \$300,000 in the three TIPS bonds. He claimed that, instead of investing in the TIPS bonds, he "invested in a series of options (Primarily S&P 500 Put Options)." He claimed that those options had declined in value and that he was no longer able to return the funds.

16. When the Securities Division inquired as to the authenticity of the First Security Bank account statement that Mutter sent to Client A to account for the Caterpillar bond, an official of First Security Bank stated that the account statement provided by Mutter was not a First Security Bank account statement. In fact, First Security Bank represented:

We are unable to verify the authenticity of this statement as we have no account in the name of RJM Financial LLC or [Client A's] IRA Rollover. In addition, there are no records previous or current held in our department. Finally, our statement format has never looked like the document you attached and I have returned to you.

17. Mutter has admitted that he has been "attempting to raise money, through investments, to repay the plaintiff in full." He further stated that he has "constantly tried, to no

avail, to raise the necessary funds to repay the plaintiff to date” and that “it is [my] plan...to fully replace the lost funds.” These statements strongly suggest that Mutter continues to attempt to recruit new investors in order to use their funds to pay back Client A.<sup>1</sup>

### **III. PROTECTION OF THE PUBLIC AND IRREPARABLE HARM**

18. Allowing Mutter to continue his current course of conduct will allow him to continue to harm his current and prospective clients.

19. Mutter has sole control over some, if not all, of the assets of his investment advisory firm RJM.

20. Mutter represented that, as of December 31, 2016, RJM managed \$17,000,000 of client assets.

21. Mutter is unable to account for \$300,000 of Client A’s assets.

22. The Securities Division is aware of additional clients who have suffered similar losses through their investments with Mutter.

23. Mutter has demonstrated that he will move client assets without client consent, he will create false documents to avoid discovery by his clients, and he will not confirm to his clients where their funds are held.

24. Because Mutter has sole control over his clients’ assets, Mutter has the present ability to misappropriate client assets. Further, Mutter has the present ability to solicit additional clients from which he can misappropriate more assets.

25. Prohibiting RJM, Mutter, and any person acting on either or both of their behalf from continuing to solicit new investors and misappropriating the assets of current investors is in

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<sup>1</sup> According to the SEC, “A Ponzi scheme is an investment fraud that involves the payment of purported returns to existing investors from funds contributed by new investors.”

the interest of the public of North Carolina. Such a prohibition is necessary for the protection of the investing public, and consistent with the purposes fairly intended by the policy and provisions of the Investment Advisers Act.

26. An immediate Temporary Cease and Desist Order is necessary and appropriate to address the violations of the Investment Advisers Act. Delay in issuing an order under N.C. Gen. Stat. § 78C-28(b)(1) will result in irreparable harm to the public.

#### **IV. CONCLUSIONS OF LAW**

1. The Administrator has jurisdiction over Mutter and RJM and the subject matter of this Order.

2. RJM is an investment adviser as defined by N.C. Gen. Stat. § 78C-2(1)

3. Mutter is an investment adviser as defined by N.C. Gen. Stat. § 78C-2(1).

4. Mutter and RJM violated N.C. Gen. Stat. § 78C-8 when Mutter, on behalf of RJM, engaged in a practice which operated as a fraud on his clients.

5. Mutter's and RJM's violations of the Investment Advisers Act are willful, subjecting them to the sanctions and penalties described in N.C. Gen. Stat. § 78C-19.

6. Mutter's and RJM's conduct, acts, and practices threaten immediate and irreparable public harm.

7. It is necessary and appropriate for the protection and preservation of the public interest and for the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Investment Advisers Act, that Mutter and RJM be temporarily and summarily ordered to cease and desist from soliciting new clients, administering the assets of current clients, and misappropriating client funds.

8. The foregoing violations constitute bases for the issuance of a Temporary Cease and Desist Order pursuant to N.C. Gen. Stat. § 78C-28(b)(2).

#### **V. ORDER**

It is therefore ORDERED that Mutter and RJM and any person, employee, officer, director, entity, or independent contractor under Mutter's and/or RJM's direction or control immediately CEASE AND DESIST from:

1. soliciting new clients;
2. administering the assets of current clients;
3. misappropriating client funds;
4. employing any device, scheme, or artifice to defraud any person;
5. engaging in any practice or course of business which operates as a fraud or deceit upon a person; and
6. violating any other provisions of the Investment Advisers Act and any administrative rules promulgated thereunder.

#### **VI. NOTICE**

Each Respondent may request a hearing upon this matter by transmitting such request, in writing, to Kevin M. Harrington, Deputy Securities Administrator, 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 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 hearing, other responsive pleading or submission is received by the Deputy Securities Administrator within thirty (30) business days of the receipt of service, this Temporary Cease and Desist Order shall become final

and remain in effect as to each Respondent that fails to request a hearing 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 27<sup>th</sup> day of February 2018.

Time of entry: 11:24 A.M.



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



KEVIN M. HARRINGTON  
Deputy Securities Administrator