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

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| **IN THE MATTER OF:**<br><br>**ROY NEIL CARLSON**<br>**(CRD No. 2750602)**<br><br>**Respondent.** | **FINAL ORDER**<br><br>**File No: 21ADM001** |

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 in this matter and finds that it is in the public interest to resolve it on the terms set forth in this Final Order ("Order") by consent. With the consent of **ROY NEIL CARLSON** ("CARLSON" or "Respondent") the Administrator enters this Order.

## I. FINDINGS OF FACT

### A. UNREGISTERED INVESTMENT ADVISER REPRESENTATIVE ACTIVITY

1. Respondent CARLSON (CRD No. 2750602) is resident of Wake County, North Carolina.

2. CARLSON entered the financial industry in May 1996. CARLSON first became registered as an investment adviser representative in North Carolina in June 2004. CARLSON was previously registered with the Institute for Wealth Advisors, Inc. ("IWA") (CRD No. 149347). IWA withdrew its registration with the U.S. Securities and Exchange Commission ("SEC") on April 30, 2019. Consequently, IWA also terminated the registration of its investment adviser representatives, including CARLSON on April 30, 2019.

3. On May 10, 2019, IWA's affiliate, the Institute for Wealth Management, LLC ("The Institute") (CRD No. 127207) filed a new North Carolina investment adviser representative registration application ("application") on behalf of CARLSON. The Institute is an SEC registered investment adviser and maintains notice filing in North Carolina.

4. The Institute filed CARLSON's application with the Administrator via Financial Industry Regulatory Authority's ("FINRA") CRD system, a comprehensive data portal which is accessible to federal and state regulators.

5. Pursuant to the Administrator's authority under N.C. Gen. Stat. §78C-17(a), the North Carolina Department of the Secretary of State, Securities Division ("Securities Division") conducted an initial review of CARLSON's application. This review determines if the application is complete or if it contains deficiencies that necessitates resolution.

6. By letter dated June 6, 2019, the Securities Division noted CARLSON's application was deficient and thus incomplete. CARLSON was required to provide a response and copies of documents related to his business history. The letter also included language cautioning CARLSON that "North Carolina law prohibits conducting business until such time as the [Securities Division] has approved registration."

7. CARLSON's application contained additional deficiencies including: an inaccurate business address, outdated outside business activities, unreported liens, and an unreported felony. The Institute and CARLSON were informed his application would remain incomplete and unapproved until the deficiencies were resolved. CARLSON was again warned of the prohibition against transacting business in the State as an unregistered investment adviser representative.

8. From on or about May 1, 2019 through on or about August 2020, CARLSON was an investment adviser representative as defined under section 203A of the Investment Advisers Act of 1940 and associated with The Institute, an investment adviser covered under federal law. At all times during the relevant period, CARLSON provided advisory services to more than five natural persons and more than 10% of his clients were natural persons. CARLSON maintained a place of business at 13341 Falls of Neuse Road, Suite 201, Raleigh, North Carolina. CARLSON regularly solicited, communicated and met with clients of The Institute at his North Carolina place of business.

9. CARLSON failed to comply with the registration provisions of the Act by transacting business as an unregistered investment adviser representative in the State from on or about May 1, 2019 through on or about July 31, 2020.

10. While unregistered, CARLSON engaged in the business of advising others in North Carolina and received advisory management fees.

## B. DISCLOSURE FAILURES – FELONY AND LIENS

11. Investment adviser representatives are required to provide their investment advisers with accurate information necessary to timely create, update and maintain filing documents. Investment advisers register their investment adviser representatives and file updates by submitting the Form U4 to FINRA's CRD system. Investment adviser representatives themselves cannot submit Form U4s, but are required to ensure the filing, accuracy, and the timeliness of the Form U4s filed on their behalf by the associated investment adviser firm. Although CARLSON made several attempts to submit the corrected information to the Institute and requested that the Institute amend his Form U4, CARLSON did not ensure that the Institute filed the amended Form U4.

12. CARLSON has a continuing duty to timely amend or correct filing documents as necessary, if any information on the form subsequently becomes inaccurate or incomplete.

13. In October 2019, the Securities Division instructed CARLSON to amend his Form U4 to properly reflect his previously undisclosed felony and liens.

14. On December 17, 1985, CARLSON was arrested in Sunrise, Florida and charged with the felony possession of a controlled substance. For 16 years, CARLSON failed to disclose or update his Form U4 to properly reflect his felony charge and subsequent felony nolo contendere, in filings submitted to the Administrator.

15. Since on or about March 2009, CARLSON failed to disclose or update his Form U4 to properly report two tax liens that were subsequently discharged.

16. After notification of his disclosure deficiencies, CARLSON failed to update his required disclosures for an additional seven months. On June 23, 2020, CARLSON's Form U4 was amended.

17. As a result of the suspected ongoing unregistered investment advisory business, the Administrator issued a temporary Order to Cease and Desist against Respondent on March 26, 2021.

18. 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.

## II. CONCLUSIONS OF LAW

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

2. At all relevant times herein, CARLSON was an applicant for registration or an investment adviser representative employed by or associated by an investment adviser covered under federal law as defined under N.C. Gen. Stat. §78C-2(3).

3. As an investment adviser representative or applicant in North Carolina, CARLSON is required to comply with the Act and its administrative rules, and submit himself 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 the applicant or registrant willfully[1] 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 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 representative unless the person is registered. N.C. Gen. Stat. §78C-16(a1).

[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.

7. As more particularly described above, CARLSON willfully violated and/or failed to comply with the registration requirements of the Act by transacting business in North Carolina as an investment adviser representative from May 2019 through August 2020 in violation of N.C. Gen. Stat. §§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, an amendment must be filed promptly, or within 30 days of the event. N.C. Gen. Stat. §§78C-18(d) and 18 NCAC 06A .1703.

9. CARLSON failed to timely disclose, update or amend his filings to reflect his felony charge, felony nolo contendere plea, and liens in violation of 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

CARLSON affirmatively states and agrees that:

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

2. CARLSON has read the contents of this Order and had the opportunity to consult with an attorney prior to the signing of this Order.

3. CARLSON freely consents to the entry of 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.

4. CARLSON 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. CARLSON also permanently waive his 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.

5. This Order contains the entire agreement between the undersigned, and CARLSON understands its effect.

6. The presentation of this Order to the Administrator and any subsequent discussion of the Order prior to its entry without CARLSON or his counsel being present shall not constitute an improper *ex parte* communication between the Administrator and the Securities Division or counsel for the Securities Division.

7. 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 Respondent may be subject under the laws, rules and regulations of North Carolina.

8. 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 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 CARLSON's express written consent to the entry of this Order, orders the following:

## IV. ORDER

1. CARLSON 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.

2. CARLSON 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.

3. CARLSON shall, at his own expense, register, attend and participate in the Securities Division's Investment Adviser Best Practices Workshop ("Workshop"), within twelve months of the Workshop being offered in-person by the Securities Division.

4. CARLSON shall pay to the N.C. Department of the Secretary of State a civil penalty in the amount of $15,000.

5. CARLSON shall pay to the N.C. Department of the Secretary of State reimbursement of the costs of investigation in the amount of $50,000.

6. CARLSON 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.

7. If payment is not made in full by CARLSON, the Secretary of State may vacate this Order, at her sole discretion, upon 10 days' notice to CARLSON and without the opportunity for an administrative hearing.

8. This Order shall become final upon entry and shall be binding upon CARLSON and his successors and assigns as well as 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 21ST day of May 2021.

Time of entry: 11:48 A.M.

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

[redacted]

**KEVIN M. HARRINGTON**
**DEPUTY SECURITIES ADMINISTRATOR**