

**ADMINISTRATIVE PROCEEDING
BEFORE THE
SECURITIES COMMISSIONER OF MARYLAND**

IN THE MATTER OF: *

Inspired Capital Management * Securities Docket No. 2012-0450

and *

Jeffrey Windsor Waters *

* * * * *

CONSENT ORDER

WHEREAS, the Securities Division of the Office of the Maryland Attorney General (the “Division”), pursuant to the authority granted in section 11-701 of the Maryland Securities Act, Corporations and Associations Article, Title 11, Annotated Code of Maryland (2014 Repl. Vol.) (the “Act”), undertook an investigation into the securities activities of Inspired Capital Management (“ICM” or “Respondent ICM”) and Jeffrey Windsor Waters (“Waters” or “Respondent Waters”) (collectively, “Respondents”); and

WHEREAS, on the basis of that investigation the Maryland Securities Commissioner (the “Commissioner”) determined that Respondents may have engaged in acts or practices constituting violations of the registration and antifraud provisions of the Act; and

WHEREAS, the Commissioner and Respondents have reached an agreement in this action whereby Respondents, without admitting or denying any findings of fact or conclusions of law except to admit to the jurisdiction of the Commissioner in this matter and over them in this matter, consent to the terms of this Order; and

WHEREAS, Respondents waive their right to a hearing and any rights they may have to seek judicial review or otherwise challenge or contest the terms and conditions of this Consent Order; and

WHEREAS, the Commissioner has determined that it is in the public interest to issue this Consent Order;

I. JURISDICTION

1. The Commissioner has jurisdiction in this proceeding pursuant to section 11-701.1 of the Act.

II. RESPONDENTS

2. At all times relevant to this matter, Inspired Capital Management, Inc. has maintained a place of business in Cockeyville, MD or Timonium, MD. ICM was registered with the Division as an investment adviser from January 1, 2006 until December 31, 2014, at which time ICM did not renew its registration. ICM is owned by Jeffrey Waters.

3. At all times relevant to this matter, Jeffrey Waters has maintained a place of business in Cockeyville, MD or Timonium, MD. Waters was registered with the Division as an investment adviser representative from December 20, 2012 until December 31, 2014, at which time ICM did not renew Water's investment adviser representative registration. Jeffrey Waters is the owner of ICM.

III. FINDINGS OF FACT

4. In December 2005, Inspired Capital Management, Inc. filed with the Division an application for registration as an investment adviser. ICM's registration application was made effective on January 4, 2006.

5. In or about January 2006, ICM began offering and providing investment advisory services to clients.

6. ICM provided investment management services on a discretionary basis and charged a fee based upon a percentage of assets under management. According to ICM's Form ADV brochure, ICM's fee ranged from 1.75% of assets under management down to .90% of assets under management, as follows:

Market value of Account	Cumulative Annual Management Fee
On first \$500,000	1.75%
On next \$1,500,000	1.25%
On next \$3,000,000	1.00%
On next \$5,000,000	.90%

Fees were billed, quarterly in advance, based on the account value on the last business day of the preceding calendar quarter.

Estate of RW

Excessive Fee

7. In or about June 2006, Waters' mother, RW, passed away. In accordance with her will and the first codicil to her will, her assets were divided amongst her three sons, HW, BW, and Waters, in trust or outright. Waters was appointed as the executor of her estate.

8. On or about July 26, 2006, Waters established a brokerage account for the estate of RW.

9. On the application used to open the account, Waters listed himself as the executor for the estate and listed ICM as the investment adviser.

10. On July 31, 2006, the account was funded, and Respondents began managing the assets in the account on a discretionary basis. Respondents managed the account's assets until March 2007, when the account was closed and the account's assets were liquidated and distributed.

11. In exchange for managing the account's assets, Respondents were paid an advisory fee based upon the assets in the account.

12. A total of \$5,622 was deducted directly from the account's assets as follows: \$1,431 on December 12, 2006, \$3,396 on December 12, 2006, and \$795 on February 23, 2007.

13. Based upon the fee schedule set forth in the adviser's Form ADV and the assets in the account, however, the fee for that time period should have approximated \$4,201.1

14. COMAR .02.02.05.03 provides that it is a dishonest and unethical practice for an investment adviser to charge an unreasonable advisory fee.

15. Respondents charged the estate of RW an advisory fee that exceeded by \$1,400 the fee that should have been charged in accordance with Respondents' disclosure brochure.

Failure to Comply with Custody Provisions

16. As the executor for the estate of RW, Waters had full control over, and access to, the assets of the estate. By virtue of Waters' authority as executor, ICM had custody over the assets of the estate.

17. Section 11-302(f) makes it unlawful for any investment adviser to take or have custody of a client's assets if prohibited by rule.

18. COMAR 02.02.05.04 makes it unlawful for an investment adviser to take or have custody of securities or funds of a client unless the client's assets are properly segregated and, at least once each calendar year, an independent certified public accountant or public accountant verifies all client funds and securities through a surprise examination and, within 30 days of the examination, files a report with the Division.

19. Respondent ICM had custody of LW's estate assets, but failed to engage an independent CPA to perform a surprise examination of those assets for calendar years 2006 and 2007.

20. COMAR 02.02.05.17 requires an investment adviser with custody of client assets to engage an independent CPA to annually perform an audit of the investment adviser's balance sheet

¹ Respondents were unable to provide the Division with a copy of the advisory agreement between the adviser and the estate.

and file the audited balance sheet with the Division.

21. Respondent ICM had custody of LW's estate assets, but failed to engage an independent CPA to perform an audit of the investment adviser's balance sheet for calendar years 2006 and 2007.

22. Respondents failed to properly segregate their assets from those of the estate of RW, as required by COMAR 02.02.05.04. At a time that the estate of RW was an advisory client of Respondents, Waters advanced himself approximately \$14,000 from the estate's assets by wiring the funds to American Express in payment of his personal credit card. Waters later repaid the \$14,000 by making a payment of \$9,215.18 to the estate, and offsetting the remaining \$5,000 by an estate distribution owed to Waters.

23. Waters admittedly commingled funds on more than one occasion, as he stated in a letter to HW:

Because I had advanced \$25,000 from my home equity line to pay the estate taxes due rather than ask you and [BW] to come up with funds for your share. That left me depleted and once I had sold some of the remaining stocks in the estate, I used that to pay my American Express bill. On May 3, 2007 I deposited \$15,000 from my account to the estate account. This is an example of where I co-mingled my funds to pay the taxes as you and [BW] didn't have the funds available.

...

The \$12,133.75 was to reimburse me for the interest I paid on mom's Bofa home equity line for the period of 06/06 thru 12/06 in December of 06 from my personal funds. I commingled my funds to avoid asking you and [BW] for funds I didn't believe you had readily available at that time.

Borrowing Money from and Loaning Money to an Advisory Client

24. The \$14,000 advance from the estate's assets also violated COMAR 02.02.05.03B(6) which prohibits an adviser from borrowing funds from an advisory client.

25. In a letter to HW, who questioned Waters' handling of estate assets, Waters also admitted using his personal funds to pay the bills of the estate, stating "There were other times I used my personal funds to pay bills for the estate as a convenience."

26. Waters' actions violated COMAR 02.02.05.03B(7) which prohibits an adviser from loaning money to an advisory client.

Management of Brother's Assets

27. In or about November 2006, HW became an advisory client of ICM. HW, a Baltimore City teacher at the time, is a relative of Waters.

28. Respondents opened two brokerage accounts at Charles Schwab for HW. The first was an individual account in HW's name. The second was a trust account established for HW's benefit.

29. ICM was listed as the investment adviser on the accounts' new account application forms and monthly brokerage statements.

30. Prior to or at the same time of entering into an advisory relationship with clients, Respondents were required by COMAR 02.02.05.05 to provide clients with a copy of the adviser's Form ADV disclosure document. However, Respondents failed to provide HW with ICM's disclosure document.

31. Respondents also were required by COMAR 02.02.05.03 to enter into a written advisory agreement setting forth the terms of the advisory relationship, but failed to provide HW with a written agreement.

32. Respondents began managing HW's investment accounts on a discretionary basis, buying and selling securities without first consulting with HW.

33. COMAR 02.02.05.03B(4) provides that it is a dishonest and unethical practice to exercise discretionary power in a client's account without written authorization.

34. Respondents did not have written authorization to exercise discretion in HW's account.

35. In exchange for managing HW's account's, Respondents collected an advisory fee based upon the value of the assets in HW's accounts.

36. Respondents managed HW's accounts from approximately November 2006 to May 2008. During that time, Respondents collected \$29,235 in advisory fees from HW's trust account, and another \$1,024 from HW's individual account.

37. Based upon the fee schedule set forth in the adviser's Form ADV and the assets in the accounts, however, the fee for that time period should have approximated \$27,648.

38. An excess fee of approximately \$2,611 was charged by and paid to the Respondents.

39. As discussed above, Respondents managed HW's account on a discretionary basis. Waters often invested the account in the same securities in which he invested, including some relatively low-priced securities or penny stocks.

40. Rainmaker Systems New ("RSN") was a favorite of Waters. Having invested with RSN since about 2000, Waters had been invited to take part in a private placement offered by RSN and periodically attended meetings with RSN's executives.

41. Waters frequently traded RSN in his accounts, HW's accounts, and the accounts of several other clients.

42. Between March 2007 and May 2008, Waters purchased approximately \$1.2 million of RSN for HW's trust account.

43. During those months, RSN represented no less than 21% of the overall value of HW's trust account, but by April 2008 had increased to as much as 45% of the overall account value.

44. During this same time, RSN's price fluctuated from as high as approximately \$9 per share in March 2007 to as little as approximately \$3 per share in April 2008, yet Waters continued

to purchase RSN for HW's trust account.

45. Concentrating HW's account in a low-priced and steadily declining security was not in the best interests of HW. Between March 2007 and May 2008, HW's trust account incurred losses exceeding \$1,000,000, some of which were caused by the decline in RSN and other low-priced securities.

Failure to Register as an Investment Adviser Representative

46. At the time of filing its initial registration application, ICM was not considered the equivalent of a sole proprietorship; thus, ICM's principal, Jeffrey Waters, was not required to register separately as an investment adviser representative.

47. At the time of approving ICM's registration, the Division advised ICM that "if that situation changes by the addition of any person who will act as a representative of the adviser . . . the firm must amend its Form ADV, and register the proprietor and any additional persons acting as representatives, **before** that person performs any act that requires registration as an investment adviser representative."

48. On or about March 30, 2011, ICM submitted an application to register SS as an investment adviser representative for ICM. SS's application was approved on April 4, 2011.

49. With the addition of SS as an investment adviser representative for ICM, ICM was no longer considered the equivalent of a sole proprietorship.

50. Mr. Waters was required to register as an investment adviser representative with the Division, but failed to do so.

51. In January 2012, the Division informed ICM that it ceased being a sole proprietorship as early as April 2011 and, at that time, should have submitted an application to register Mr. Waters as an investment adviser representative.

52. On or about April 23, 2012, ICM submitted an application to register Mr. Waters as

an investment adviser representative.

53. From April 2011 to April 2012, Waters provided advisory services on behalf of ICM without being registered as an investment adviser representative.

Failure to Timely Amend Form ADV and Form U4

54. Section 11-411(d) of the Act and COMAR 02.02.05.11 require an investment adviser to annually update its Form ADV and file the updated Form ADV through the IARD system within 90 days of the adviser's fiscal year end.

55. Respondent ICM last filed an amendment to its Form ADV through the IARD system in April 2011.

56. Respondent ICM failed to update its Form ADV for calendar years 2012 and 2013, in violation of COMAR 02.02.05.11.

57. In early Spring of 2013, Respondents' counsel advised the Division that Respondent ICM had changed its address and was having difficulty updating the address in the IARD system. Division staff advised that address changes in the IARD system were routine and that Respondents should contact the FINRA help desk for assistance. To date, Respondents have not amended their Form ADV to disclose their current address.

58. In or about June 2013, Waters became the Director of Investor Relations for Rainmaker.

59. COMAR 02.02.05.12 requires an investment adviser representative to amend its Form U4 to disclose any material changes within 30 days of the event giving rise to the material change. Waters failed to amend his Form U4 to disclose his position with Rainmaker.

60. Respondents also failed to amend their Forms ADV Part 2A and 2B to disclose Waters' outside business activity.

Misleading Form ADV Disclosure

61. In December 2005, Respondent ICM filed its Form ADV disclosure brochure with the Division.

62. In discussing its execution policies, ICM's disclosure brochure stated that "Inspired and its employees will often own the same securities as its clients. However, the client will always receive the most favorable execution price when there is more than one execution price on the same day."²

63. Waters indeed purchased for himself the same securities that he purchased on behalf of some of his clients; often trading in the same securities on the same day.

64. Waters also traded in the same low-priced securities that he traded on behalf of some of his advisory clients. The prices of the low-priced securities tended to fluctuate significantly, including in a given day.

65. Clients often received a price per share equal to or better the price received by Waters or his family members, but there were many instances where Waters received a better price in a particular security traded in his account and those of his clients on the same day.

66. ICM's disclosure brochure further stated that "Inspired and its employees generally have a higher risk tolerance than many of its clients. For this reason, they may enter early positions in securities deemed "too risky" for client accounts at the time of the early INSPIRED purchase(s). These same securities may be added at a later date to client accounts if subsequent due diligence and/or corporate developments cause said securities to be appropriate/suitable for additional client accounts."

67. Inspired, however, failed to disclose in writing to clients that it would be trading its

² Respondent ICM's supervisory guidelines also state: "When buying or selling the same securities on the same day as clients, insiders must be allocated the highest price shares when purchasing and the lowest price shares when selling."

clients' accounts in low-priced or penny stock securities, including during a time that the securities' prices were steadily declining.

68. Section 11-302(c) of the Act makes it unlawful for any person, in the solicitation of or in dealings with advisory clients, to knowingly make any untrue statement of a material fact, or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.

69. Respondents' Form ADV disclosure that "clients will always receive the most favorable execution price when there is more than one execution price on the same day" was misleading.

70. Respondents' Form ADV disclosure failed to disclose that it would be trading clients' accounts in very risky low-priced or penny stock securities.

Failure to Supervise Investment Adviser Representative

71. In March of 2011, SS joined, and became the president of, ICM. SS also submitted an application to register as an investment adviser representative for ICM; the application was approved April 5, 2011.

72. Respondents believe that, at the time of his joining ICM, SS was provided with a copy of ICM's supervisory guidelines. However, Respondents did not have in place procedures requiring an investment adviser representative to acknowledge receipt and review of ICM's supervisory guidelines.

73. Although ICM's supervisory guidelines called for an annual review of its supervisory guidelines for their adequacy, Respondents failed to review their supervisory guidelines to determine if they continued to be reasonably designed to supervise the activities of a newly added investment adviser representative.

74. One way in which Respondents failed to update their supervisory guidelines was to address the issue of an investment adviser representative engaging in outside business activities.

75. In March 2012, SS was approached by an issuer with whom he had previously invested. The issuer asked SS if he was interested in once again investing with the issuer, but SS was financially unable to do so. SS, however, referred several of his friends to the issuer and, in return for the introductions, received commission-based compensation.

76. A month later, SS again was approached by the issuer about another investment opportunity. SS was not able to invest in the securities offering, but introduced several of his friends to the investment opportunity. In return, SS received commission-based compensation.

77. Although SS used ICM's name in his dealings with the issuer, SS did not disclose to Waters that he was receiving compensation for introducing investors to the issuer.

78. Respondent ICM's supervisory guidelines were silent on the issue of outside business activities, and neither imposed on SS an obligation to notify SCM of his outside business activity nor informed SS of his obligation to amend his Form U4 to disclose the activity.

79. Respondents failed to maintain supervisory guidelines that were reasonably designed to supervise SS's activities.

IV. CONCLUSIONS OF LAW

The Commissioner concludes that:

80. Respondent Waters transacted business as an unregistered investment adviser representative, in violation of section 11-401 of the Act.

81. Respondent ICM employed or associated with an unregistered investment adviser representative, in violation of section 11-402 of the Act.

82. Respondents violated section 11-302(c) of the Act by stating in their Form ADV that clients would always receive the most favorable execution price when more than one execution price

existed in a given day, but failing to always provide clients with the best price, and by failing to disclose the riskiness of the low-priced securities that Respondents purchased for clients' accounts.

83. Respondents entered into an advisory relationship with at least one client without first obtaining a written contract containing the disclosures required by COMAR 02.02.05.03, in violation of section 11-302(e) of the Act and COMAR 02.02.05.03.

84. Respondents had custody of the assets of the estate of RW, but failed to properly segregate its assets from those of their own, in violation of section 11-302(f) of the Act and COMAR 02.02.05.04.

85. Respondents had custody of the assets of the estate of RW during calendar years 2006 and 2007, but failed to engage an independent CPA to conduct a surprise verification of those assets, in violation of section 11-302(f) of the Act and COMAR 02.02.05.04.

86. Respondents had custody of the assets of the estate of RW during calendar years 2006 and 2007, but failed to engage an independent CPA to conduct an audit of ICM's balance sheet for those years, in violation of section 11-411(c) of the Act and COMAR 02.02.05.17.

87. Respondents failed to file annual amendments to ICM's Form ADV through the IARD system, and failed to amend ICM's Forms ADV Part 2A and 2B to disclose Waters' position with Rainmaker, in violation of section 11-411(d) of the Act and COMAR 02.02.05.11.

88. Respondent Waters failed to amend his Form U4 to disclose his position with Rainmaker Systems, in violation of section 11-411(d) of the Act and COMAR 02.02.05.12.

89. Respondents failed to maintain supervisory guidelines that were reasonably designed to supervise SS's activities, and grounds exist to revoke Respondents' investment adviser and investment adviser representative registrations under section 11-412(a)(12) of the Act.

V. SANCTIONS

NOW THEREFORE, IT IS HEREBY ORDERED, and Respondents expressly consent and agree:

90. Respondents shall permanently cease and desist from violating sections 11-302(c), (e), and (f), 11-401, 11-402, 11-411(c) and 11-411(d) of the Act.

91. Respondents ICM's and Waters' registrations as an investment adviser and investment adviser representative, respectively, are withdrawn as of December 31, 2014. Respondents agree not to reapply with the Division as an investment adviser, investment adviser representative, broker-dealer, or agent.

92. Respondents, jointly and severally, are assessed a civil monetary penalty pursuant to section 11-702 of the Act in the amount of \$50,000 for the violations set forth in this Order. In light of the sworn financial affidavit and financial records submitted by Respondents, however, collection of all but \$30,000 of the penalty shall be waived. Collection of the remaining \$30,000 penalty shall further be reduced by the amount of restitution made by Respondents to HW. Payment of the restitution shall be deferred until such time as Respondents are able to pay the amount owed, as determined by the Office of the Attorney General based upon updated sworn financial affidavits submitted by Respondents. Respondents shall submit an updated sworn financial affidavit to the Office of the Attorney General on a semiannual basis. The updated sworn financial affidavits shall be submitted by June 30th and December 31st of each year. Once it is determined by the Office of the Attorney General that Respondents are capable of paying restitution, Respondents shall make restitution in one lump sum or in quarterly installment payments, depending upon Respondents' ability to pay, as determined by the Securities Commissioner based upon Respondents' financial affidavits. Restitution shall be paid by certified check made payable to the Office of the Attorney General, and will be distributed to HW by the Office of the Attorney General in a manner within its

discretion. Collection of the civil penalty imposed herein shall be waived completely if restitution of \$30,000 is paid in full.

93. Respondent shall comply fully with the Act and the regulations promulgated thereunder.

VI. RESPONDENTS' REPRESENTATIONS OF FINANCIAL CONDITION

94. Respondents have provided a sworn financial affidavit and other financial records to the Commissioner as a condition of this Consent Order, and the Commissioner has relied upon those documents in establishing the terms of and agreeing to enter into this Consent Order. If the Commissioner receives information that the affidavit, or the underlying financial records, is false in any material respect, that misrepresentation shall be considered a violation of this Consent Order, and the Commissioner may reopen these proceedings and seek such further relief as is appropriate.

VII. JURISDICTION RETAINED

95. Jurisdiction shall be retained by the Securities Commissioner for such further orders and directions as may be necessary or appropriate for the construction or enforcement of this Consent Order.

96. If a Respondent fails to comply with any term of this Consent Order, the Commissioner may institute administrative or judicial proceedings against that Respondent to enforce this Consent Order and or to sanction that Respondent for violating an Order of the Commissioner, and may take any other action authorized under the Act or under any other applicable law, including the issuance of fines or penalties as provided by the Act. In any such proceeding, the Division may also seek other sanctions for the violations that initiated this matter. For the purpose of determining those sanctions, the Findings of Fact and violations of the Act set forth in this Consent Order shall be deemed admitted, and may be introduced into evidence against that Respondent.

97. In the event that judicial intervention in this matter is sought by the Securities Commissioner or a Respondent, subject matter jurisdiction will lie in the Circuit Court for Baltimore City pursuant to section 11-702 of the Act. The Circuit Court for Baltimore City will have personal jurisdiction over that Respondent pursuant to section 6-103(b) of the Courts and Judicial Proceedings Article, Title 6, Annotated Code of Maryland (2013 Repl. Vol. and 2014 Supp.). Venue will be properly in that Court pursuant to Section 6-201(a) and 6-202(11) of that article.

98. The terms of this Consent Order may be vacated or modified only by a subsequent order issued by the Commissioner.

SO ORDERED:

**Commissioner's Signature on
File w/Original Document**

Date: March 20, 2015

Melanie Senter Lubin
Securities Commissioner

BY CONSENT:

Inspired Capital Management, Inc.

By: Jeffrey Windsor Waters, President

Jeffrey Windsor Waters

_____, 2015
Date

_____, 2015
Date

Subscribed and sworn to before me
this ___ day of _____, 2015

Subscribed and sworn to before me
this ___ day of _____, 2015

Notary Public
My Commission expires _____

Notary Public
My Commission expires _____