

**ADMINISTRATIVE PROCEEDING
BEFORE THE
MARYLAND SECURITIES COMMISSIONER**

IN THE MATTER OF: *

Index Portfolio Tools Advisors, CRD # 159434 * IA File No. 2011-2964
Docket No. 2022-0102

and *

Thomas Campi, CRD # 4272965 *

Respondents *

* * * * *

CONSENT ORDER

WHEREAS, the Securities Division of the Office of the Maryland Attorney General (the “Division”), pursuant to the authority granted in section 11-411 of the Maryland Securities Act, Corporations and Associations Article, Title 11, Annotated Code of Maryland (2014 Repl. Vol. and Supp. 2021) (the “Act”), conducted a remote examination of the advisory practice of Index Portfolio Tools Advisors (“IPTA” or “Respondent IPTA”) and its principal, Thomas Campi (“Campi” or “Respondent Campi”) (collectively, the “Respondents”); and

WHEREAS, on the basis of that examination the Maryland Securities Commissioner (the “Commissioner”) has concluded that grounds exist to allege that the Respondents violated sections 11-302(a)(2), (a)(3), (c), and (f), 11-303, and 11-411(c) and (d) of the Act; and

WHEREAS, the Commissioner and the Respondents have reached an agreement in this action whereby the Respondents consent to the terms of this Consent Order;

WHEREAS, the Respondents waive their rights 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;

THEREFORE, before the holding of a hearing in this matter, without trial or final adjudication of any issue of fact or law, and prior to the issuance of a final order in this proceeding, the Commissioner finds:

I. JURISDICTION

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

II. RESPONDENTS

2. IPTA is a limited liability company with a principal place of business in Easton, Maryland. IPTA has been registered with the Division as an investment adviser since November 14, 2011. IPTA is owned by Thomas Campi (“Campi” or “Respondent Campi”).

3. Campi is a resident of Easton, MD. Campi is the sole owner and chief compliance officer of IPTA. Campi has been registered with the Division as an investment adviser representative for IPTA since December 20, 2011. Prior to that, Campi was registered as a registered representative with the Financial Industry Regulatory Authority (“FINRA”) and as a broker-dealer agent with the Division with various brokerage firms from March 2001 to December 2008.

III. FINDINGS OF FACT

4. On or about October 24, 2011, Respondents filed with the Division applications to register IPTA as an investment adviser and Campi as an investment adviser representative.

5. The application filed on behalf of IPTA included, among other things, IPTA's Form ADV (Uniform Application for Investment Advisers) and its client contracts.

6. In its Form ADV, IPTA represented to the Division that it would have custody of clients' funds because of its ability to have its advisory fees deducted from clients' accounts.

7. The practice of an adviser requesting or directing a client's custodian to debit a client's account for the fees for which the adviser is entitled to receive is a generally accepted practice if the adviser follows certain safeguards set forth in Item 2I(1) of Form ADV Part 1B. IPTA represented that it would comply with the Form ADV Part 1B safeguards, which include sending copies of fee invoices to clients' custodian(s) at the same time the adviser sends copies to clients, and the clients' custodian(s) sending quarterly statements to clients showing all disbursements from the account(s), "including the amount of the advisory fees."

8. Based upon the representations made in their registration applications, on November 14, 2011 and December 20, 2011, IPTA's and Campi's investment adviser and investment adviser representative registration applications, respectively, were made effective in Maryland.

9. In April 2022, the Division conducted a remote examination of Respondents' advisory practice.

10. During the remote examination, the Division learned that rather than requesting or directing clients' custodian(s) to deduct and remit advisory fees to IPTA, Campi had obtained the

usernames and passwords of clients' custodial accounts and was using the usernames and passwords to log into and access clients' accounts as though he was the client. Campi then initiated transfers from clients' accounts to IPTA in payment of its advisory fees.

11. The custodian at which the vast majority of clients' accounts were held was unaware of Respondents' practice of using clients' usernames and passwords and immediately cut off Respondents' access once made aware of the practice.

12. The Division also was unaware of this practice. IPTA and Campi failed to amend and disclose in IPTA's Form ADV that they would have access to clients' usernames and passwords and use those credentials to transfer funds from clients' accounts.

13. Despite representing to the Division that they would comply with the safeguards set forth in Item 2I(1) of Form ADV Part 1B, IPTA and Campi failed to do so. IPTA and Campi did not send invoices to clients' custodians, thus eliminating a layer of protection designed to safeguard against misuse of client assets. Instead, they simply stood in the shoes of their clients and directly transferred the funds to themselves.

14. Additionally, the quarterly statements sent to clients did not identify the payment to IPTA as an "advisory fee", which is contrary to industry practice and could have alerted clients' custodian(s) to the fact that compensation was being paid to an investment adviser.

Failure to Comply with Financial Requirements

15. An adviser who has custody of client assets is required, under COMAR 02.02.05.04 and 02.02.05.17, to take precautions to safeguard the client's assets including engaging an independent CPA to perform an annual verification of the assets over which the

adviser has custody, and engaging an independent CPA to perform an annual audit of the adviser's balance sheet.

16. As discussed above, IPTA had custody of clients' assets by virtue of having access to the usernames and passwords to their accounts and using those usernames and passwords to access and transfer funds from the accounts.

17. Beginning in calendar year 2011 and continuing to the present, Respondents failed to engage an independent CPA to perform a surprise verification of the assets over which Respondents had custody, as required by COMAR 02.02.05.04.

18. Beginning in calendar year 2011 and continuing to the present, Respondents failed to engage an independent CPA to perform an audit of IPTA's balance sheet, as required by COMAR 02.02.05.17.

Failure to Comply with or Enforce Supervisory Guidelines

19. COMAR 02.02.05.13 requires an investment adviser to establish, maintain, and enforce written supervisory guidelines that are reasonably designed to supervise the activities of its investment adviser representatives and associated persons to achieve compliance with the Act and reasonably designed to ensure that the investment adviser is in compliance with the Act.

20. IPTA and Campi failed to comply with or enforce several of the provisions in IPTA's supervisory guidelines related to custody and financial requirements.

21. Section 12.3.1 of IPTA's supervisory guidelines sets forth prohibited forms of custody that IPTA will not engage in, including "possess[ing] the username and password to a client's account if such login credentials allow the disbursement of funds." As discussed above, IPTA and Campi failed to comply with or enforce this policy in its supervisory guidelines.

22. Section 12.3.1 of IPTA's supervisory guidelines states that "the Designated Principal will perform a periodic assessment of the firm's business to ascertain whether the firm or its Advisory Representatives have taken custody of client funds or securities in an impermissible manner. The CCO is responsible for overseeing the firm's custody practices and the safeguarding of client funds and securities." IPTA and Campi failed to perform periodic assessments to determine whether IPTA had taken custody of clients' funds.

23. Section 12.3.2 of IPTA's supervisory guidelines states that "the firm currently permits no form of custody. If the firm changes its policy in the future, this section will be used to provide a description of permissible forms of custody." Section 12.3.3 states that "the firm will not permit any exceptions to the prohibition of accepting custody of client funds or securities." IPTA and Campi failed to comply with or enforce this policy in its supervisory guidelines.

24. Section 12.4 of IPTA's supervisory guidelines states:

With limited exceptions, investment advisers with custody must subject themselves to annual surprise examinations conducted by an independent accountant registered with, and subject to regular inspection by, the Public Company Accounting Oversight Board (PCAOB). The purpose of these surprise examination is to verify the funds and securities of which the Firm has custody. The CCO is responsible for engaging an accountant and ensuring that the annual surprise examination is timely completed for any calendar year in which the Firm has custody of client funds or securities.

As neither the Firm nor Advisory Representative will have or be permitted to have custody of client's securities or funds, surprise examinations will not be conducted upon the Firm.

As discussed above, IPTA and Campi had custody of clients' assets and were required to comply with the audit and surprise examination requirements set forth under COMAR 02.02.05.04 and

02.02.05.17 but failed to do so. Thus, IPTA and Campi failed to comply with or enforce this policy in its supervisory guidelines.

IV. CONCLUSIONS OF LAW

THE COMMISSIONER, THEREFORE, CONCLUDES AS A MATTER OF LAW:

25. Respondents violated sections 11-302(a)(2), (a)(3) and (c) of the Act by, among other things, engaging in a practice of using clients' usernames and passwords to access clients' accounts and transfer funds from those accounts without disclosing said practice to the Division or to clients' custodians, misrepresenting to the Division that the Respondents were sending invoices to clients' custodians, and failing to disclose to clients that use of their usernames and passwords to access their accounts was in contravention to IPTA's policies and procedures and industry practice.

26. Respondents violated section 11-302(f) of the Act by failing to comply with the custody requirements.

27. Respondents violated section 11-303 of the Act by filing with the Division Form ADV applications that contained inaccurate responses to questions related to custody and failing to make material disclosures related to custody.

28. Respondents violated section 11-411(c) of the Act and COMAR 02.02.05.04 by failing to engage an independent CPA to annually perform a surprise verification of the assets over which Respondents had custody for calendar years 2011 through 2022.

29. Respondents violated section 11-411(c) of the Act and COMAR 02.02.05.17 by failing to engage an independent CPA to annually perform an audit of IPTA's balance sheet for calendar years 2011 through 2022.

30. Respondents violated section 11-411(d) of the Act by failing to amend IPTA's Form ADV to disclose Respondents' practice of using clients' usernames and passwords to access clients' accounts.

31. Respondents violated COMAR 02.02.05.13 by failing to comply with or enforce supervisory policies and procedures related to custody.

V. CONSENT TO CEASE AND DESIST AND OTHER RELIEF

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

32. Respondents shall permanently cease and desist from engaging in activities in violation of sections 11-302(a)(2), (a)(3), (c), and (f), 11-303, and 11-411(c) and (d) of the Act.

33. Respondents shall cease the practice of obtaining clients' usernames and passwords and/or using those credentials to access clients' accounts.

34. Respondents, jointly and severally, are assessed a civil monetary penalty in the amount of \$10,000 for the violations set forth in this Consent Order. Payment of the penalty shall be made contemporaneously with the issuance of this Consent Order. Payment of the penalty shall be by check made payable to the "Office of the Attorney General."

35. Within thirty (30) days of the date of this Consent Order, Respondents shall engage an independent CPA to conduct an examination of the advisory fees charged by Respondents to determine whether the fees were charged in accordance with and in compliance with the fee schedule(s) set forth in IPTA's Form ADV and in client contracts. The examination shall cover the period from which Respondents first became registered to the present, the period during which Respondents had access to clients' usernames and passwords ("covered

period”). Respondents have represented to the Division that they have taken reasonable steps to obtain statements for all clients for the covered period but were unable to obtain statements for all clients for the covered period. Respondents shall fully cooperate with the independent CPA and take all reasonable steps to provide the independent CPA with client statements or other documents or information necessary for the CPA to complete the examination including, but not limited to, providing the CPA with documents or information necessary to compensate for the missing statements, when possible. If the examination by the independent CPA determines that a client or clients were materially overcharged advisory fees, Respondents acknowledge and agree that the Division may subpoena or otherwise request any missing statements or other relevant client documents and require that those documents be examined for fee discrepancies, at the expense of Respondents. The independent CPA shall promptly report to the Division any fee discrepancies found during the examination and, within thirty (30) days of completing the examination, provide the Division with a report of its findings. If the examination determines that Respondents received fees to which they were not entitled, Respondents shall refund those fees. Respondents understand that any material fee discrepancies may result in this matter being re-reviewed and additional sanctions being imposed.

36. Respondents shall retain an Independent Consultant approved by the Commissioner (the “Independent Consultant”) to review and, if necessary, revise Respondent IPTA’s supervisory guidelines to ensure compliance with the Securities Act. The Independent Consultant shall be retained no later than thirty (30) days from the date of this Order.

37. The Independent Consultant shall audit Respondents’ advisory practice, no later than ninety (90) days after the Independent Consultant establishes or amends Respondent IPTA’s

supervisory guidelines, to verify that Respondents are operating in compliance with the Act. Subsequently, the Independent Consultant shall annually audit Respondents' advisory practice for two (2) consecutive calendar years.

38. The Independent Consultant shall promptly report to the Division any discrepancies or deficiencies found during the audits, and report to the Division plans for correction necessary to address the discrepancies and deficiencies.

39. Respondents shall implement any plans for correction recommended by the Independent Consultant to address any discrepancies or deficiencies.

40. Respondents shall in all future activities in Maryland comply fully with the Act and the rules and regulations promulgated thereunder.

VI. JURISDICTION RETAINED

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

42. 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.

43. 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 Supp. 2020). Venue will be properly in that Court pursuant to Section 6-201(a) and 6-202(11) of that article.

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

DATE OF THIS ORDER:

April 18, 2023

SO ORDERED:

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

Melanie Senter Lubin
Securities Commissioner

CONSENTED TO:

Index Portfolio Tools Advisors

By: Thomas Campi, President

_____, 2023
Date

Subscribed and sworn to before me
this ___ day of _____, 2023

Notary Public
My Commission expires _____

Thomas Campi

_____, 2023
Date

Subscribed and sworn to before me
this ___ day of _____, 2023

Notary Public
My Commission expires _____