



Government of the District of Columbia  
Vincent C. Gray, Mayor  
Department of Insurance, Securities and Banking



William P. White  
Commissioner

_____	)	
IN THE MATTER OF:	)	
	)	
Berg Faircloth Investment Advisors Corp.	)	<u>NO: SB-CO-02-13</u>
	)	
and	)	
	)	
Ricky Landon Faircloth,	)	
	)	
_____ Respondents	)	

**ADMINISTRATIVE CONSENT AGREEMENT  
AND ORDER**

WHEREAS, Berg Faircloth Investment Advisors Corp. (“Berg Faircloth Investment”) is a financial investment advisory firm headquartered in Leesburg, Virginia that manages approximately 285 accounts totaling an estimated \$34.1 million of assets under management;

WHEREAS, Ricky Landon Faircloth (R.L. Faircloth) is the principal of Berg Faircloth Investment;

WHEREAS, on November 28, 2012, the Department of Insurance, Securities and Banking (the “Department”) received an application from Berg Faircloth Investment for a license to act as an investment adviser in the District of Columbia;

WHEREAS, on November 28, 2012, the Department also received an application from R.L. Faircloth for a license to act as an investment adviser representative in the District of Columbia;

WHEREAS, in its applications to the Department, Berg Faircloth and R.L. Faircloth (collectively referred to as the "Respondents") indicated that they had effected transactions on behalf of DC residents or within the District of Columbia while not effectively licensed;

WHEREAS, on the basis of the foregoing information, the Department began an internal investigation to determine the extent of the violations;

WHEREAS, the Commissioner of the Department (the "Commissioner") having the authority to administer and provide for enforcement of the Securities Act of 2000, (D.C. Official Code § 31-5601.01 *et. seq.* (effective September 29, 2000 (D.C. Law 13-203 (2001)) ("Act")), and upon due consideration of the subject matter hereof, has determined that grounds exist to allege that the Respondents engaged in acts or practices constituting violations of § 202 (a) of the Securities Act, D.C. Official Code § 31-5602.02(a);

WHEREAS, without holding a hearing, without trial or formal finding of any issue of fact or law, and prior to the initiation of any formal proceeding, the Department and the Respondents have reached a mutual agreement;

WHEREAS, LICENSEE voluntarily elects to permanently waive any right to a hearing and appeal under the District of Columbia Administrative Procedure Act, D.C. Official Code §§ 2-509(a) and 2-510(a) (2001); the Rules of Practice and Procedures for Hearings in the District of Columbia, 26 DCMR § B300 *et seq.*; and sections 602(b) and 803(a) of the Act, D.C. Official Code §§ 31-5606.02(b) and 31-5608.03(a) with respect to this Administrative Consent Agreement and Order ("Order"); and

NOW, THEREFORE, the Commissioner, as administrator of Act hereby enters into this Administrative Consent Order ("Order") with the Respondents:

## I. STIPULATION OF FACTS

### A. Jurisdiction

1. The Department has jurisdiction over this matter pursuant to District of Columbia Official Code § 31-5606.02(b).
2. This action concerns the period from September 2012 and October 2012 (the "Relevant Period").

### B. Background

1. Berg Faircloth Investment Advisors Corp. ("Berg Faircloth Investment") is a financial investment advisory firm headquartered in Leesburg, Virginia that manages approximately 285 accounts totaling an estimated \$34.1 million of assets under management.
2. Ricky Landon Faircloth (R.L. Faircloth) is the principal of Berg Faircloth Investment.
3. On November 28, 2012, the Department (the "Department") received an application from Berg Faircloth Investment for a license to act as an investment advisers in the District of Columbia.
4. On November 28, 2012, the Department also received an application from R.L. Faircloth for a license to act as an investment adviser representative in the District of Columbia.
5. In its applications to the Department, the Respondents indicated that they had effected transactions on behalf of DC residents or within the District of Columbia while not effectively licensed.

6. Based on the foregoing information, the Department began an investigation to determine the full extent of the unlicensed activities by Respondents. That investigation yielded the information contained in this section.
7. Respondents acknowledged, in writing, its error for not registering in District of Columbia.
8. Respondents have no disciplinary history.
9. Respondents do not have any consumer complaints on record.
10. To date, Respondents have been fully cooperative and responsive to the Department's requests for information regarding the licensing matter.

## II. CONCLUSIONS OF LAW

1. The Department of Insurance, Securities and Banking has jurisdiction over this matter pursuant to District of Columbia Code § 31-5602.02(a).
2. The conduct of the Respondents of transacting business in the District of Columbia, without being properly licensed in the District, could form the basis of charges under D.C. Official Code § 31-5602.07(a)(2).

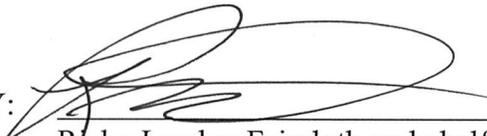
## III. AGREEMENT

1. On the basis of the Stipulation of Facts and Conclusions of Law, the Respondents consent to enter into this Order for the sole purpose of settling this matter, prior to a hearing.

2. This Order concludes the concerns of the Department and any other action that the Commissioner could commence on behalf of the District of Columbia as it relates to the Respondents; provided, however, that the Commissioner may enforce any claims against Respondents arising from or relating to any violation of this Order.
3. This Order shall become final upon its entry by the Department.
4. The Respondents will continue to provide to the Department all information reasonably necessary to demonstrate the company's compliance with the terms of this Order.
5. The Respondents shall pay an amount of \$1,000 as a civil monetary penalty, pursuant to District of Columbia Official Code § 31-5606.02(b)(4), made payable to the 'D.C. Treasurer' to be deposited into the District of Columbia's General Fund, pursuant to District of Columbia Official Code § 1-204.50. This amount shall be paid to the District of Columbia Department of Insurance, Securities and Banking within ten (10) days of the entry of this Order.
6. If payment is not made by the Respondents as agreed, the Commissioner may vacate this Order, at its sole discretion, upon 10 days notice to the Respondents and without opportunity for administrative hearing and the Respondents agree that any statute of limitations applicable to the subject of the investigation and any claims arising from or relating thereto are tolled from and after the date of this Order until such date that the Commissioner vacates this Order.

7. This Order and any dispute related thereto shall be construed and enforced in accordance, and governed by, the laws of the District of Columbia, without regard to any choice of law principles.
8. The Respondents represent, warrant, and agree that they have received independent legal advice from its attorney(s) with respect to the advisability of executing this Order.
9. The Respondents through its execution of this Order, voluntarily waives its right on this matter and to judicial review of this Order under D.C. Official Code §§ 31-5606.02 (b) and 31-5608.03.

**AGREED AND CONSENTED TO:**

BY:   
\_\_\_\_\_  
Ricky Landon Faircloth on behalf of  
Respondents

DATE: 9/12/13

Dated this 20<sup>th</sup> Day of September, 2013

SEAL



**APPROVED and so SETTLED: In Witness Whereof,  
I have hereunto set my hand and affixed the official  
seal.**

A handwritten signature in cursive script that reads "William P. White".

William P. White,  
Commissioner