

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING AND SECURITIES

COMMONWEALTH OF PENNSYLVANIA :
DEPARTMENT OF BANKING AND :
SECURITIES, BUREAU OF SECURITIES :
COMPLIANCE AND EXAMINATIONS :
 :
 : **Docket No.: 24 0005** (SEC-OSC)
v. :
 :
JMM FINANCIAL, LLC and :
JUDITH MINDOCK :
 :
 :

NOTICE TO ANSWER AND REQUEST A HEARING

You have the right to challenge the attached Order to Show Cause (“Order”) by filing an Answer, in writing, with the Docket Clerk **within 30 days** of the date of this Order as required by 1 Pa. Code § 35.37. **If you do not file an Answer within 30 days, then you will waive your right to a hearing and the Banking and Securities Commission (“Commission”) may enter a final order against you.**

Your Answer must be in writing. Your Answer must specifically admit or deny the allegations in the Order, set forth the facts you rely upon, and state concisely the law upon which you rely. General denials of the allegations set forth in the Order are not sufficient; you must support your denials with specific facts. Failure to support your denials with specific facts may cause the Commission to deem the facts in the Order as admitted and to enter a final order against you, without a hearing.

The Answer and any other documents must be filed via first-class mail and electronic mail with the Docket Clerk:

Docket Clerk
Pennsylvania Department of Banking and Securities
17 North Second Street, Suite 1300
Harrisburg, Pennsylvania 17101
Email: RA-BNDOCKETCLERK@pa.gov

Further, you must serve a copy of the Answer and any other documents on the person who signed the Order by providing a hard and electronic copy to his or her counsel indicated below:

Office of Chief Counsel
Pennsylvania Department of Banking and Securities
17 North Second Street, Suite 1300
Harrisburg, Pennsylvania 17101
Email: RA-BNChiefCounsel@pa.gov

Once you file your Answer, you will be notified of pertinent information such as the name of the presiding officer designated by the Commission to hear this matter and, if a hearing is scheduled, the date, time, and location of the hearing. You have the right to be represented by an attorney.

The hearing and all other procedural matters will be governed by the Pennsylvania Administrative Agency Law, 2 Pa.C.S. §§ 501-508, 701-704, and the General Rules of Administrative Practice and Procedure, 1 Pa. Code §§ 31.1-35.251.

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Docket No.: 24 0005 (SEC-OSC)

ORDER TO SHOW CAUSE

You, JMM Financial, LLC (“Respondent JMM”) and Judith Mindock (“Respondent Mindock”), are notified that the Department of Banking and Securities (“Department”), through the Bureau of Securities Compliance and Examinations (“Bureau”), hereby **ORDERS YOU TO SHOW CAUSE** why the Banking and Securities Commission (“Commission”) should not impose the sanctions and remedies described below. Specifically, this proceeding is instituted pursuant to 1 Pa. Code § 35.14 to determine:

- (1) whether the allegations set forth below are true; and
- (2) if these allegations are true, whether there has been a violation of the Pennsylvania Securities Act of 1972 (“1972 Act”) or of the regulations promulgated thereunder; and
- (3) if so, whether the sanctions and remedies proposed by the Bureau should be imposed by the Commission.

The Bureau alleges the following facts and violations of law for the purpose of tentatively framing the issues for consideration by the Commission. The Commission may consider this

matter directly or may designate a hearing officer to issue a recommended decision prior to the Commission issuing a final order.

**STATEMENT OF THE PARTICULARS AND MATTERS
CONCERNING WHICH THE BUREAU IS INQUIRING**

PARTIES

1. The Department is the Commonwealth of Pennsylvania's administrative agency authorized and empowered to administer and enforce the 1972 Act.

2. The Bureau is primarily responsible for administering and enforcing the 1972 Act for the Department.

3. The Bureau operates from the Department's main office located at 17 North Second Street, Suite 1300, Harrisburg, Pennsylvania 17101.

4. Respondent JMM, CRD #123121, was, at all times material herein, a Pennsylvania limited liability company with an address of Redacted

5. Respondent Mindock, CRD #4600362, was, at all times material herein, an individual with an address of Redacted

6. At all times material herein, Respondent Mindock was the owner, managing member, and chief compliance officer of Respondent JMM.

FACTUAL ALLEGATIONS

7. From November 21, 2003 to present, Respondent JMM has been registered pursuant to Section 301 of the 1972 Act, 70 P.S. § 1-301, as an investment adviser.

8. From on or about November 21, 2003 through the present, Respondent Mindock was registered pursuant to Section 301(c) of the 1972 Act, 70 P.S. § 1-301(c), as an investment adviser representative of Respondent JMM.

9. As the owner, managing member, and chief compliance officer of Respondent JMM, Respondent Mindock acted as an “affiliate” of Respondent JMM within the meaning of Section 102(b) of the 1972 Act, 70 P.S. § 1-102(b), and, as such, caused Respondent JMM to commit the herein stated acts which violated the 1972 Act.

Respondent JMM had custody of client funds/securities by using a client username and password to access a client’s custodial account

10. On January 5, 2022, staff of the Bureau (“Staff”) conducted a routine examination of Respondent JMM by way of telephone.

11. The exam revealed that Respondent JMM accessed at least one client custodial account by using the client’s username and password.

12. On September 25, 2018, the Department e-mailed a copy of its Bureau Position on the Use of Client Usernames and/or Passwords (“Bureau Position”) to all investment advisers registered in Pennsylvania.

13. The Bureau Position stated, in part, the following:

Bureau Position

The Bureau considers Registrants using client usernames and/or passwords to access client custodial accounts as a dishonest and unethical practice. The Bureau will recommend administrative action in these circumstances, unless remedial action is taken as outlined below.

Remedial Action

Unless additional circumstances exist, the Bureau will not recommend administrative action for custody violations or dishonest and unethical practices if the Registrant immediately ceases the use of client usernames and/or passwords to access client custodial accounts. In addition, the Registrant must notify affected clients to change their custodial account username and/or password and security questions. This client notification must be made within 30 days of the date of this letter, and it must be made by means of written communication.

14. On September 25, 2018, the Bureau Position was e-mailed to Respondent JMM and Respondent Mindock at jmmindock@rcn.com which was the e-mail address that Respondent JMM had reported on its Form ADV at the time.

15. By using at least one client's username and password to access a client account in 2021, Respondent JMM, in connection with advisory services provided by Respondent JMM, directly or indirectly held client funds or securities with the authority to obtain possession of them or the ability to appropriate them and thus had "custody" over client funds or securities as defined in 10 Pa. Code § 102.021(a).

Respondent JMM failed to comply with custody requirements

16. Pursuant to Regulation 304.022(a)(1), 10 Pa. Code § 304.022(a)(1), an investment adviser that has custody of client funds or securities shall file an audited balance sheet as of the end of its fiscal year.

17. At all times material herein, Respondent JMM had custody of client funds or securities and did not file an audited balance sheet with the Department.

18. Pursuant to Regulation 303.042(a)(3), 10 Pa. Code § 303.042(a)(3) as promulgated under Section 303 of the 1972 Act, an investment adviser that has its principal place of business in this Commonwealth and has custody of client funds or securities shall maintain at all times a minimum net worth of \$35,000.

19. At all times material herein, Respondent JMM had custody of client funds or securities and failed to maintain a minimum net worth of \$35,000.

20. Pursuant to Regulation 404.014(a)(1), 10 Pa. Code § 404.014(a)(1), it is unlawful and considered to be a fraudulent, deceptive or manipulative act, practice or course of business, within the meaning of section 404 of the act (70 P.S. § 1-404), for an investment adviser,

registered under section 301 (70 P.S. § 1-301), to have custody of client funds or securities unless the investment adviser notifies the Department promptly in writing on Form ADV that it has or may have custody.

21. At all times material herein, Respondent JMM had custody of client funds or securities and did not promptly notify the Department on the Form ADV that Respondent JMM had custody or possession of client funds or securities.

22. Pursuant to Regulation 404.014(a)(5)(i), 10 Pa. Code § 404.014(a)(5)(i), it is unlawful and considered to be a fraudulent, deceptive or manipulative act, practice or course of business for an investment adviser to have custody of client funds or securities unless the client funds or securities of which the investment advisor has custody are verified by actual examination at least once during each calendar year, by an independent certified public accountant, under a written agreement between the investment advisor and the independent certified public accountant, at a time that is chosen by the independent certified public accountant without previous notice or announcement to the investment advisor and that is irregular from year to year.

23. At all times material herein, Respondent JMM had custody of client funds or securities and failed to have such funds verified by a certified public accountant.

Respondent JMM failed to ensure that material information contained in its Form ADV and exhibits was current and accurate

24. Regulation 303.012(i), 10 Pa. Code § 303.012(i), requires that an investment adviser registered under the 1972 Act shall take steps necessary to ensure that material information contained in its Form ADV and exhibits remains current and accurate. If a material statement made in Form ADV and exhibits becomes incorrect or inaccurate, the investment adviser shall file with the Department an amendment on Form ADV within 30 days of the occurrence of the event which requires the filing of the amendment.

25. At all times material herein, Respondent JMM failed to ensure that Form ADV, Part 2A was true and accurate as set forth below:

- a. On Part 2A, Item 4 which requires, in part, disclosure of the type of services offered, Respondent JMM failed to describe the specific services it provides to its clients, including how it works with a broker-dealer to manage client accounts; and
- b. On Part 2A, Item 5 which requires disclosures concerning fees for advisory services, Respondent JMM failed to describe the method by which it collects advisory fees.

Respondent JMM failed to establish and maintain written procedures related to business continuity and succession planning

26. Regulation 304.071(a), 10 Pa. Code § 304.071(a), requires that an investment adviser registered with the Department must establish, implement and maintain written procedures relating to a business continuity and succession plan.

27. At all times material herein, Respondent JMM failed to establish, implement, and maintain written procedures relating to a business continuity and succession plan.

Respondent JMM failed to satisfy the requirements for investment advisor brochure disclosure

28. Regulation 404.011(e)(1), requires an investment advisor registered with to Department to deliver or offer in writing to deliver to each of its clients the current firm brochure and one or more supplements which must contain the information required under Part 2 of Form ADV without charge at least once per year.

29. At all times material herein, Respondent JMM failed to offer in writing a copy of its current brochure and brochure supplements to its clients.

COUNTS

Conduct Forming Basis to Deny, Suspend, Revoke, or Condition the Registration of or Censure Respondent JMM and Respondent Mindock Pursuant to Section 305(a)(ix) of the 1972 Act, 70 P.S. § 1-305(a)(ix), and Regulation § 305.019(a), 10 Pa. Code § 305.019(a)

1 Count

30. Paragraphs 1 through 29 are incorporated herein by reference as if set forth in their entirety.

31. By engaging in the acts and conduct set forth in paragraphs 7 through 15 above, Respondent JMM and Respondent Mindock engaged in dishonest or unethical practices in the securities business by using a client's username and password to access a client account, which acts and conduct form a basis to deny, suspend, revoke, or condition the registration of Respondent JMM and Respondent Mindock or censure Respondent JMM and Respondent Mindock pursuant to Section 305(a)(ix) of the 1972 Act, 70 P.S. § 1-305(a)(ix), and Regulation 305.019(a), 10 Pa. Code § 305.019(a).

Conduct Forming Basis to Deny, Suspend, Revoke, or Condition the Registration of or Censure Respondent JMM and Respondent Mindock Pursuant to Section 305(a)(v) of the 1972 Act, 70 P.S. § 1-305(a)(v), and Regulation § 304.022(a), 10 Pa. Code § 304.022(a)

1 Count

32. Paragraphs 1 through 30 are incorporated herein by reference as if set for in their entirety.

33. By engaging in the acts and conduct set forth in paragraphs 7 through 17 above, Respondent JMM and Respondent Mindock failed to file with the Department the required audited balance sheet and supplementary opinion, which acts and conduct form a basis to deny, suspend, revoke, or condition the registration of Respondent JMM and Respondent Mindock or censure Respondent JMM and Respondent Mindock pursuant to Section 305(a)(v) of the 1972 Act, 70 P.S. § 1-305(a)(v), and Regulation 304.022(a), 10 Pa. Code § 304.022(a).

Conduct Forming Basis to Deny, Suspend, Revoke, or Condition the Registration of or Censure Respondent JMM and Respondent Mindock Pursuant to Section 305(a)(v) of the 1972 Act, 70 P.S. § 1-305(a)(v), and Regulation § 303.042(a)(3), 10 Pa. Code § 303.042(a)(3)

1 Count

34. Paragraphs 1 through 33 are incorporated herein by reference as if set forth in their entirety.

35. By engaging in the acts and conduct set forth in paragraphs 7 through 15 and paragraphs 18 through 19 above, Respondent JMM and Respondent Mindock had custody over client funds or securities and failed to maintain a sufficient minimum net worth of \$35,000.00, which acts and conduct form a basis to deny, suspend, revoke, or condition the registration of Respondent JMM and Respondent Mindock or censure Respondent JMM and Respondent Mindock pursuant to Section 305(a)(v) of the 1972 Act, 70 P.S. § 1-305(a)(v), and Regulation 303.042(a)(3), 10 Pa. Code § 303.042(a)(3).

Violation of Section 404 of the 1972 Act, 70 P.S. § 1-404, and Regulation 404.014(a)(1) and (5), 10 Pa. Code § 404.014(a)(1) and (5)

2 Counts

36. Paragraphs 1 through 35 are incorporated herein by reference as if set forth in their entirety.

37. By engaging in the acts and conduct set forth in paragraphs 7 through 15 and paragraphs 20 through 23 above, Respondent JMM and Respondent Mindock failed to comply with the custody requirements for investment advisers in Regulation 404.014(a)(1) and (5), which acts and conduct constitute a fraudulent, deceptive or manipulative act, practice or course of business in wilful violation of Section 404 of the 1972 Act, 70 P.S. § 1-404, and Regulation 404.014(a)(1) and (5), 10 Pa. Code § 404.014(a)(1) and (5).

Conduct Forming Basis to Deny, Suspend, Revoke, or Condition the Registration of or Censure Respondent JMM and Respondent Mindock Pursuant to Section 305(a)(v) of the 1972 Act, 70 P.S. § 1-305(a)(v), and Regulation § 303.012(i), 10 Pa. Code § 303.012(i)

2 Counts

38. Paragraphs 1 through 37 are incorporated herein by reference as if set forth in their entirety.

39. By engaging in the acts and conduct set forth in paragraphs 7 through 9 and paragraphs 24 through 25 above, Respondent JMM and Respondent Mindock failed to take steps necessary to ensure that material information contained on Form ADV and exhibits remains current and accurate, and file with the Department an amendment on Form ADV within 30 days of the occurrence of the event which requires the filing of the amendment, which acts and conduct form a basis to deny, suspend, revoke, or condition the registration of Respondent JMM and Respondent Mindock or censure Respondent JMM and Respondent Mindock pursuant to Section 305(a)(v) of the 1972 Act, 70 P.S. § 1-305(a)(v), and Regulation 303.012(i), 10 Pa. Code § 303.012(i).

Conduct Forming Basis to Deny, Suspend, Revoke, or Condition the Registration of or Censure Respondent JMM and Respondent Mindock Pursuant to Section 305(a)(v) of the 1972 Act, 70 P.S. § 1-305(a)(v), and Regulation § 304.071(a), 10 Pa. Code § 304.071(a)

1 Count

40. Paragraphs 1 through 39 are incorporated herein by reference as if set for in their entirety.

41. By engaging in the acts and conduct set forth in in paragraphs 7 through 9 and paragraphs 26 through 27 above, Respondent JMM and Respondent Mindock failed to establish, implement and maintain written procedures relating to a business continuity and succession plan, which acts and conduct form a basis to deny, suspend, revoke, or condition the registration of

Respondent JMM and Respondent Mindock or censure Respondent JMM and Respondent Mindock pursuant to Section 305(a)(v) of the 1972 Act, 70 P.S. § 1-305(a)(v), and Regulation 304.071(a), 10 Pa. Code § 304.071(a).

Violation of Section 404 of the 1972 Act, 70 P.S. § 1-404, and Regulation 404.011(e), 10 Pa.

Code § 404.011(e)

1 Count

42. Paragraphs 1 through 41 are incorporated herein by reference as if set forth in their entirety.

43. By engaging in the acts and conduct set forth in paragraphs 7 through 9 and paragraphs 28 through 29 above, Respondent JMM and Respondent Mindock failed to offer in writing to deliver to each of its clients its current brochure and any supplements, which acts and conduct constitute a fraudulent, deceptive or manipulative act, practice or course of business in wilful violation of Section 404 of the 1972 Act, 70 P.S. § 1-404, and Regulation 404.011(e), 10 Pa. Code § 404.011(e).

SANCTIONS AND REMEDIES

WHEREAS, the Bureau respectfully requests the penalties and relief pursuant to its authority under the 1972 Act:

1. That an order be issued pursuant to Section 305 of the 1972 Act, 70 P.S. § 1-305, that the registration of Respondent JMM and Respondent Mindock be suspended, revoked or conditioned, or that Respondent JMM and Respondent Mindock be censured.

2. That an order be issued pursuant to Section 512 of the 1972 Act, 70 P.S. § 1-512, which bars, conditionally or unconditionally, and either permanently or for such period of time as may be determined, Respondent JMM and Respondent Mindock from:

- a. Representing an issuer offering or selling securities in this State;

- b. Acting as a promoter, officer, director or partner of an issuer (or an individual occupying a similar status or performing similar functions) offering or selling securities in this State or of a person who controls or is controlled by such issuer;
 - c. Being registered as a broker-dealer, agent, investment adviser or investment adviser representative under Section 301 of the 1972 Act; or
 - d. Being an affiliate of any person registered under Section 301 of the 1972 Act; or
 - e. Relying upon an exemption from registration contained in Sections 202, 203 or 302 of the 1972 Act.
3. That Respondent JMM and Respondent Mindock be ordered to pay the cost of the investigation pursuant to Section 602.1(b) of the 1972 Act.
4. That Respondent JMM and Respondent Mindock be ordered to pay an administrative assessment of up to \$100,000 for each act or omission constituting a wilful violation of the 1972 Act, pursuant to Section 602.1(c) of the 1972 Act.

IT IS SO ORDERED.



FOR THE COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING AND SECURITIES
BUREAU OF SECURITIES COMPLIANCE AND
EXAMINATIONS

Redacted

Eric Pistilli
Deputy Secretary for Securities

Dated: 1/25/24

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing *Order to Show Cause* upon the parties below, who constitute the only parties of record in this proceeding, in accordance with the requirements of 1 Pa. Code §§ 33.35, 33.36 and 33.37:

BY CERTIFIED AND FIRST-CLASS MAIL

JMM Financial, LLC
Redacted

Judith Mindock
Redacted

Dated: 1/30/24

Redacted

Eileen Smith, Legal Office Administrator
Office of Chief Counsel
FOR: Commonwealth of Pennsylvania
Department of Banking and Securities
Market Square Plaza
17 North Second Street, Suite 1300
Harrisburg, PA 17101
Phone: 717-787-1471