

FILED

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING AND SECURITIES

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PENNSYLVANIA
BANKING AND SECURITIES

COMMONWEALTH OF PENNSYLVANIA :
DEPARTMENT OF BANKING AND :
SECURITIES, BUREAU OF SECURITIES :
LICENSING, COMPLIANCE AND :
ENFORCEMENT :

Docket No. : 130035 (SEC-~~CAO~~)^{OSC}

v.

*TIMOTHY DAVID BURNS :
ESG CAPITAL PARTNERS I, LP :
ESG CAPITAL PARTNERS II, LP :

CONSENT AGREEMENT AND ORDER

The Commonwealth of Pennsylvania, acting through the Department of Banking and Securities ("Department"), Bureau of Securities Licensing, Compliance and Enforcement ("Bureau") has conducted an investigation of the securities activities of Timothy David Burns ("Burns") through ESG Capital Partners I, LP ("ESG Capital Partners I"), ESG Capital Partners II, LP ("ESG Capital Partners II") (collectively, "ESG Capital Partners I and II"), and ESG Wealth Management, LLC ("ESG") pursuant to the Pennsylvania Securities Act of 1972, 70 P.S. §1-101, et. seq. ("1972 Act"). Burns, neither admitting nor denying the allegations herein, and intending to be legally bound, hereby agrees to the terms of this Consent Agreement and Order ("Order").*

BACKGROUND

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

* This Consent Agreement and Order applies only to Timothy David Burns.

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

3. Burns, CRD #4127393, was, at all times material herein, an individual with a residential address at 26 Meredith Road, Phoenixville, Pennsylvania 19420 and a business address at 125 East Elm Street, Conshohocken, Pennsylvania 19428.

4. From in or about August 2005 to March 2013, Burns had been registered pursuant to Section 301 of the 1972 Act, 70 P.S. § 1-301 as an investment adviser representative for ESG, CRD #136830.

5. From in or about August 2005 to March 2013, pursuant to ESG's Form ADV, Burns had been the Chief Compliance Officer, sole owner, and sole managing member of ESG.

6. From in or about April 2013 through the present, Burns' registration has been suspended by the Department through a Consent Order and Agreement dated April 26, 2013 and pursuant to its authority in Section 305(d) of the 1972 Act, 70 P.S. § 1-305(d) (see Exhibit 1).

7. In or about August 2013, pursuant to ESG's Form ADV-W, ESG withdrew its registration as an investment adviser.

8. From in or about March 2012 to August 2012, Burns was registered as an agent of CV Brokerage, Inc. (CRD #462), a broker-dealer registered pursuant to Section 301 of the 1972 Act, 70 P.S. § 1-301.

9. From in or about August 2005 to March 2012, Burns was registered as an agent of Purshe Kaplan Sterling Investments (CRD #35747), a broker-dealer registered pursuant to Section 301 of the 1972 Act, 70 P.S. § 1-301.

10. At all times material herein, Burns, through various entities, acted as the general partner of two investment funds, ESG Capital Partners I and II.

11. At all times material herein, Burns, as the general partner of ESG Capital Partners I and II, was the sole "affiliate" of ESG Capital Partners I and II, respectively, as that term is defined by Section 102(b) of the 1972 Act, 70 P.S. § 1-102(b).

12. At all times material herein, ESG Capital Partners I and II were entities established and operating for the stated purpose of purchasing shares of Facebook stock on a pre-IPO basis.

13. At all times material herein, ESG Capital Partners I and II were offering for sale limited partnership interests, which are "securities," as that term is defined by Section 102(t) of the 1972 Act, 70 P.S. § 1-102(t).

14. At all times material herein, ESG Capital Partners I and II were "issuers" of securities as that term is defined by Section 102(l), 70 P.S. § 1-102(l).

15. At all times material herein, as the sole "affiliate" of ESG Capital Partners I and II, Burns attempted to effectuate transactions in securities for pre-IPO shares of Facebook stock.

16. On or about January 15, 2013, the U.S. Attorney for the Eastern District of Pennsylvania filed a criminal complaint against Burns in the United States District Court for the Eastern District of Pennsylvania at Docket No. 2:13-cr-002530-LDD ("Criminal Matter") (see Exhibit 2).

17. On or about June 19, 2013, the U.S. Attorney for the Eastern District of Pennsylvania filed a Superseding Information in the Criminal Matter (see Exhibit 3) which states, in part, that Burns "devised and intended to devise a scheme to defraud clients, investors and a bank to obtain money and property valued in total just under \$20 million, by means of false and fraudulent pretenses, representations and promises." These charges arise from Burns' involvement on behalf of ESG Capital Partners I and II in a scheme to defraud clients, investors and a bank in connection with certain investments and loans.

18. On or about April 22, 2013, the Bureau issued an Order to Show Cause ("OSC") (see Exhibit 4) to Burns, ESG Capital Partners I and II alleging violations of Sections 305, 401 and 403 of the 1972 Act, 70 P.S. §§ 1-305, 401, 403.

19. On or about April 26, 2013, the Bureau entered into a Consent Agreement and Order with Burns, in part, to suspend Burns' securities registration during the adjudication of the Criminal Matter (see Exhibit 1).

20. On or about June 25, 2013, a Guilty Plea Memorandum (see Exhibit 5) was entered in the Criminal Matter.

21. On or about September 27, 2013, Burns is scheduled to be sentenced in the Criminal Matter.

VIOLATIONS

22. By engaging in the acts and conduct set forth in paragraphs 3 through 21 above, Burns has engaged in dishonest or unethical practices in the securities business or has taken unfair advantage of a customer which form a basis to deny, suspend, revoke or condition a registration pursuant to Section 305(a)(ix) of the 1972 Act, 70 P.S. § 1-305(a)(ix) and Regulation 305.019, 10 Pa. Code § 305.019.

23. By engaging in the acts and conduct set forth in paragraphs 3 through 21 above, Burns has, in connection with the offer, sale or purchase of a security in the State, directly or indirectly employed a device, scheme or artifice to defraud, in willful violation of Section 401(a) of the 1972 Act, 70 P.S. § 1-401(a).

24. By engaging in the acts and conduct set forth in paragraph 3 through 21 above, Burns has, in connection with the offer, sale, or purchase of a security in the State, directly or indirectly, made untrue statements of material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, in willful violation of Section 401(b) of the 1972 Act, 70 P.S. § 1-401(b).

25. By engaging in the acts and conduct set forth in paragraphs 3 through 21 above, Burns has, in connection with the offer and sale of a security in the State, engaged in acts, practices, or courses of business which operated or would have operated as a fraud or deceit upon any person, in willful violation of Section 401(c) of the 1972 Act, 70 P.S. § 1-401(c).

26. By engaging in the acts and conduct set forth in paragraphs 3 through 21 above, Burns has effected transactions in a security in the State, by means of a manipulative, deceptive,

or other fraudulent scheme, device, or contrivance, in willful violation of Section 403 of the 1972 Act, 70 P.S. §1-403 and Regulation 403.010, 10 Pa. Code § 403.010.

AUTHORITY

27. The Department has authority in Section 305(a) of the 1972 Act to revoke the registration of Burns, *see* 70 P.S. § 1-305(a).

28. The Department has authority in Section 512 of the 1972 Act to permanently bar registration of Burns, *see* 70 P.S. § 1-512.

RELIEF

29. Pursuant to the authority in Section 305(a) of the 1972 Act, 70 P.S. 1-305(a), the Department hereby REVOKES the registration of Timothy David Burns.

30. Pursuant to the authority in Sections 512(a)(1), (2), (3), (4) and (5) of the 1972 Act, 70 P.S. §1-512(a)(1), (2), (3), (4), and (5), the Department hereby PERMANENTLY BARS Timothy David Burns from the date of this Order:

- a. Representing an issuer offering or selling securities in this State;
- b. Acting as 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;
- d. Being an affiliate of any person registered under section 301; or
- e. Relying upon an exemption from registration contained in section 202, 203 or 302.

31. Timothy David Burns is ORDERED to comply with the 1972 Act, and Regulations adopted by the Department.

32. Should Timothy David Burns fail to comply with any or all provisions of this Order, the Department may impose additional sanctions and costs and seek other appropriate relief subject to his right to a hearing pursuant to the 1972 Act.

FURTHER PROVISIONS

33. Consent. Burns hereby knowingly, willingly, voluntarily and irrevocably consents to the entry of this Order pursuant to the Department's authority under the 1972 Act and agrees that he understands all of the terms and conditions contained herein. Burns, by voluntarily entering into this Order, waives any right to a hearing or appeal concerning the terms, conditions and/or penalties set forth in this Order.

34. Entire Agreement. This Order contains the entire agreement between the Department and Burns. There are no other terms, obligations, covenants, representations, statements, conditions, or otherwise, of any kind whatsoever concerning this Order. This Order may be amended in writing by mutual agreement by the parties.

35. Binding Nature. The Department and Burns and all heirs and assigns of him intend to be and are legally bound by the terms of this Order.

36. Counsel. This Order is entered into by the parties upon full opportunity for legal advice from legal counsel.

37. Effectiveness. Burns hereby stipulates and agrees that the Order shall become effective on the date that the Bureau executes the Order ("Effective Date").

38. Other Enforcement Action.

a. The Department reserves all of its rights, duties, and authority to enforce all statutes, rules and regulations under its jurisdiction against Burns in the future regarding all matters not resolved by this Order; and

b. Burns acknowledges and agrees that this Order is only binding upon the Department and not any other local, state, or federal agency, department or office regarding matters within this Order.

39. Authorization. The parties below are authorized to execute this Order and legally bind their respective parties.

40. Counterparts. This Order may be executed in separate counterparts, by facsimile and by PDF.

41. Titles. The titles used to identify the paragraphs of this document are for the convenience of reference only and do not control the interpretation of this document.

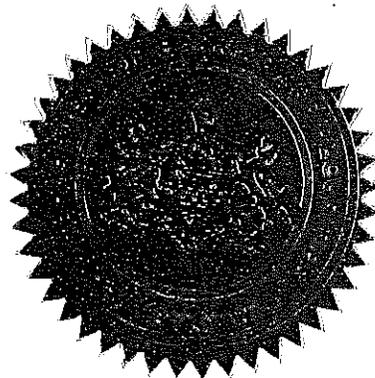
42. Finding. The Department finds that it is necessary and appropriate, in the public interest and for the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the 1972 Act to issue this Order.

WHEREFORE, in consideration of the foregoing, including the recital paragraphs, the Commonwealth of Pennsylvania, Department of Banking and Securities, Bureau of Securities, Licensing, Compliance and Enforcement and Timothy David Burns, intending to be legally bound, do hereby execute this Consent Agreement and Order.

**FOR THE COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING AND SECURITIES,
BUREAU OF SECURITIES
LICENSING, COMPLIANCE AND ENFORCEMENT**

Victoria Reider
Executive Deputy Secretary

Date: 11/25/13



TIMOTHY DAVID BURNS

(Signature)

Timothy D. Burns
(Print Name)

Date: 10/31/13

EXHIBIT 1

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING AND SECURITIES

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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING AND
SECURITIES, BUREAU OF SECURITIES
LICENSING, COMPLIANCE AND
ENFORCEMENT

PA DEPARTMENT OF
BANKING AND SECURITIES

Docket No. : 13 0035 (SEC-OSC)

v.

TIMOTHY DAVID BURNS
ESG CAPITAL PARTNERS I, LP
ESG CAPITAL PARTNERS II, LP

CONSENT AGREEMENT AND ORDER

The Commonwealth of Pennsylvania, acting through the Department of Banking and Securities ("Department"), Bureau of Securities Licensing, Compliance and Enforcement ("Bureau") is conducting an investigation of the securities activities of Timothy David Burns ("Burns"), ESG Capital Partners I, LP ("ESG Capital Partners I") and ESG Capital Partners II, LP ("ESG Capital Partners II") pursuant to the Pennsylvania Securities Act of 1972, 70 P.S. §1-101, et. seq. ("1972 Act"). Burns, neither admitting nor denying the allegations herein, and intending to be legally bound, hereby agrees to the terms of this Consent Agreement and Order ("Order").*

BACKGROUND

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.

* This Consent Agreement and Order applies only to Timothy David Burns, and shall not be construed as a final resolution of the investigation or of the allegations contained in the Order to Show Cause issued on April 22, 2013.

3. Burns, CRD #4127393, was, at all times material herein, an individual with a residential address at 26 Meredith Road, Phoenixville, Pennsylvania 19420 and a business address at 125 East Elm Street, Conshohocken, Pennsylvania 19428.
4. From in or about August 2005 to March 2013, Burns has been registered pursuant to Section 301 of the 1972 Act, 70 P.S. § 1-301 as an investment adviser representative for ESG Wealth Management, LLC ("ESG"), CRD #136830.
5. From in or about August 2005 to March 2013, pursuant to ESG's Form ADV, Burns has been the Chief Compliance Officer, sole owner, and sole Managing Member of ESG.
6. From in or about March 2012 to August 2012, Burns was registered as an agent of CV Brokerage, Inc. (CRD #462), a broker-dealer registered pursuant to Section 301 of the 1972 Act, 70 P.S. § 1-301.
7. From in or about August 2005 to March 2012, Burns was registered as an agent of Purshe Kaplan Sterling Investments (CRD #35747), a broker-dealer registered pursuant to Section 301 of the 1972 Act, 70 P.S. § 1-301.
8. At all times material herein, Burns, through various entities, acted as the general partner of two investment funds, ESG Capital Partners I, LP and ESG Capital Partners II, LP.
9. At all times material herein, Burns, as the general partner of ESG Capital Partners I, LP and ESG Capital Partners II, LP, was the sole "affiliate" of ESG Capital Partners I, LP and ESG Capital Partners II, LP, as that term is defined by Section 102(b) of the 1972 Act, 70 P.S. § 1-102(b).
10. At all times material herein, ESG Capital Partners I, LP and ESG Capital Partners II, LP were entities established and operating for the stated purpose of purchasing shares of Facebook on a pre-IPO basis.
11. At all times material herein, ESG Capital Partners I, LP and ESG Capital Partners II, LP were offering for sale limited partnership interests, which are "securities," as that term is defined by Section 102(t) of the 1972 Act, 70 P.S. § 1-102(t).

12. At all times material herein, ESG Capital Partners I, LP and ESG Capital Partners II, LP were "issuers" of securities as that term is defined by Section 102(l), 70 P.S. § 1-102(l).

13. At all times material herein, as the sole "affiliate" of ESG Capital Partners I, LP and ESG Capital Partners II, LP, Burns purported to effectuate transactions in securities for pre-IPO shares of Facebook stock.

14. On or about January 15, 2013, the U.S. Attorney for the Eastern District of Pennsylvania filed a criminal complaint against Burns (see Exhibit 1) which alleges that Burns committed interstate wire fraud with respect to the purchase of pre-IPO Facebook shares on behalf of ESG Capital Partners I, LP and ESG Capital Partners II, LP ("Criminal Complaint").

15. The Criminal Complaint is pending in the United States District Court for the Eastern District of Pennsylvania at Docket No. 2:13-mj-00053-1.

16. On or about January 22, 2013, Burns entered into an Agreement to Conditions of Pretrial Release with the United States of America (see Exhibit 2) which, in part, prohibits him from "involvement or contact with ESG businesses or their employees or clients, absent prior notification to the government; except as may be necessary and appropriate for his defense."

17. On or about April 22, 2013, the Bureau issued an Order to Show Cause ("OSC") to Burns, ESG Capital Partners I, LP and ESG Capital Partners II, LP alleging violations of Sections 401 and 403 of the 1972 Act, 70 P.A. §§ 1-401, 403, and alleging facts which, if proven, would form the basis to suspend or revoke Burns' registration pursuant to Section 305 of the 1972 Act, 70 P.S. 1-305.

AUTHORITY

18. The Department has the authority in Section 305(d) of the 1972 Act to summarily deny, postpone, or suspend an application or registration pending final determination of any proceeding under Section 305, *see* 70 P.S. § 1-305(d).

RELIEF

19. The Department hereby SUSPENDS the investment adviser representative registration of Timothy David Burns pending final determination of the OSC.

20. Timothy David Burns is ordered to comply with the 1972 Act, and Regulations adopted by the Department.

21. Should Timothy David Burns fail to comply with any or all provisions of this Order, the Department may impose additional sanctions and costs and seek other appropriate relief subject to his right to a hearing pursuant to the 1972 Act.

FURTHER PROVISIONS

22. Consent. Burns hereby knowingly, willingly, voluntarily and irrevocably consents to the entry of this Order pursuant to the Department's authority under the 1972 Act and agrees that he understands all of the terms and conditions contained herein. Burns, by voluntarily entering into this Order, waives any right to a hearing or appeal concerning the terms, conditions and/or penalties set forth in this Order.

23. Entire Agreement. This Order contains the entire agreement between the Department and Burns. There are no other terms, obligations, covenants, representations, statements, conditions, or otherwise, of any kind whatsoever concerning this Order. This Order may be amended in writing by mutual agreement by the parties.

24. Binding Nature. The Department and Burns and all heirs and assigns of him intend to be and are legally bound by the terms of this Order.

25. Counsel. This Order is entered into by the parties upon full opportunity for legal advice from legal counsel.

26. Effectiveness. Burns hereby stipulates and agrees that the Order shall become effective on the date that the Bureau executes the Order ("Effective Date").

27. Other Enforcement Action.

a. The Department reserves all of its rights, duties, and authority to enforce all statutes, rules and regulations under its jurisdiction against Burns in the future regarding all matters not resolved by this Order; and

b. Burns acknowledges and agrees that this Order is only binding upon the Department and not any other local, state or federal agency, department or office regarding matters within this Order.

28. Authorization. The parties below are authorized to execute this Order and legally bind their respective parties.

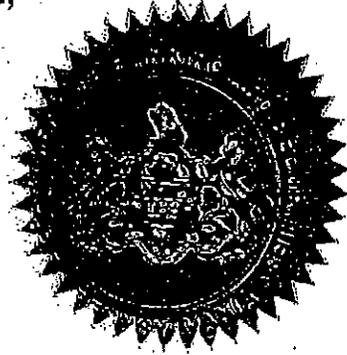
29. Counterparts. This Order may be executed in separate counterparts, by facsimile and by PDF.

30. Titles. The titles used to identify the paragraphs of this document are for the convenience of reference only and do not control the interpretation of this document.

31. Finding. The Department finds that it is necessary and appropriate in the public interest and for the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the 1972 Act to issue this Order.

WHEREFORE, in consideration of the foregoing, including the recital paragraphs, the Commonwealth of Pennsylvania, Department of Banking and Securities, Bureau of Securities, Licensing, Compliance and Enforcement and Timothy David Burns, intending to be legally bound, do hereby execute this Consent Agreement and Order.

FOR THE COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING AND SECURITIES,
BUREAU OF SECURITIES LICENSING,
COMPLIANCE AND ENFORCEMENT



Arthur A. Toth
Deputy Secretary of Securities

Date: 4/25/13

TIMOTHY DAVID BURNS

(Signature) J

Timothy David Burns
(Print Name)

Date: 4/17/13

EXHIBIT 2

CRIMINAL COMPLAINT

Rev. 11/82 (FBI Form Authorization)

United States District Court		DISTRICT Eastern District of Pennsylvania	
UNITED STATES OF AMERICA v. TIMOTHY BURNS		DOCKET NO.	
		MAGISTRATE'S CASE NO.	
COMPLAINT for Violation of Title 18 United States Code § 1343 By: <i>[Signature]</i>			
NAME OF JUDGE OR MAGISTRATE Honorable L. FELIPE RESTREPO		OFFICIAL TITLE U.S. Magistrate Judge	LOCATION Philadelphia, PA
DATE OF OFFENSE 2008 through present	PLACE OF OFFENSE Philadelphia, PA	ADDRESS OF ACCUSED (if known) 244 Bella Lane King of Prussia, PA	
COMPLAINANT'S STATEMENT OF FACTS CONSTITUTING THE OFFENSE OR VIOLATION: Defendant Timothy Burns, having devised a scheme to defraud and obtain money by means of false and fraudulent pretenses, representations and promises, for the purpose of executing the scheme, caused to be transmitted by means of wire communications in interstate commerce, writings, signs and signals, in violation of Title 18, United States Code, Section 1343.			
BASIS OF COMPLAINANT'S CHARGE AGAINST THE ACCUSED: SEE AFFIDAVIT ATTACHED HERETO.			
MATERIAL WITNESSES IN RELATION AGAINST THE ACCUSED.			
Being duly sworn, I declare that the foregoing is true and correct to the best of my knowledge.		SIGNATURE OF COMPLAINANT (official title) <i>[Signature]</i> Michael K. Bantner	
<i>[Signature]</i> Sworn to before me and subscribed in my presence		OFFICIAL TITLE Special Agent, Federal Bureau of Investigation	
SIGNATURE OF MAGISTRATE (1) Honorable L. FELIPE RESTREPO, United States Magistrate Judge		DATE 1/15/13	

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(1) See Federal Rules of Criminal Procedure rules 3 and 54.

AFFIDAVIT

I, Michael K. Bantner, depose and swear that:

1. I am a Special Agent of the FBI and have been so for 17 years. I have extensive experience in white collar fraud. I am a Certified Public Accountant and hold a Masters in Business Administration.
2. I am working with the United States Postal Inspection Service on an investigation of the fraudulent theft of funds by defendant Timothy Burns and financial management companies he created and continues to maintain.
3. I know the following from statements defendant Timothy Burns made to the FBI in 2012 and information provided by victims of defendant Burns' fraud scheme. As this affidavit is submitted only for a probable cause finding, I have not included all information that I have learned in this investigation.
4. The government has learned that through his scheme defendant Burns fraudulently misappropriated client funds in an amount substantially in excess of \$1 million.
5. Defendant Burns owns financial management companies that among other things take care of the day-to-day financial affairs of wealthy clients. Clients give the defendant access to their bank accounts and powers of attorney to initiate payments and transfers of funds to satisfy the clients' various on-going financial affairs. The defendant was authorized to pay himself for his legitimate and lawful services. At no time, however, was defendant Burns authorized to convert client funds to his own personal or business use. To the best of the government's knowledge, defendant Burns has between approximately 20 and 40 clients.
6. According to clients who have volunteered information to the FBI, from approximately 2010 to the present, defendant Burns has been misappropriating client funds and

attempting to do so.

7. In one case, defendant Burns, knowing that his clients were abroad, attempted to wire transfer \$300,000 from a client account to one of his own, alleging it was for the purpose of buying Facebook shares before their offering to the public. Defendant Burns also made smaller wire misappropriations from that client totaling approximately \$105,000 in 2010 and 2011.

8. In another case, the defendant admitted to clients that he had defrauded them by misappropriation, by wire transfer and by intra-bank transfers of funds, of between \$650,000 and \$1.1 million, some of which at least appears to have been falsely booked as an on-going investment in Facebook shares.

9. Wire transfers in these two cases were from PNC Bank and from then Wilmington Trust to Penn Liberty Bank. These transfers go through the interstate Federal Reserve system.

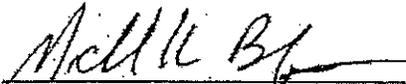
10. At roughly the same time as he was engaged in these misappropriations of funds, defendant Burns acquired real and personal property, including without limitation a beach house at 23 Pelican Drive, Avalon, New Jersey and an office building at 125 E. Elm Street, Conshohocken, Pennsylvania.

11. Some of the misappropriated money was wired, at his instruction from his offices in Conshohocken, Pennsylvania to a person in California who claimed to be able to acquire Facebook shares. Burns' effort to acquire these shares through his California connection was ultimately unsuccessful.

12. The government does not know at this juncture the full extent of the losses from defendant Burns' fraud and attempted fraud but reasonably believes based on the reports from

two of Burns' clients that substantially in excess of approximately \$1 million was taken.

13. For all these reasons, there is probable cause to believe that defendant Timothy Burns has committed interstate wire fraud in an amount in excess of \$1 million by misappropriation of funds entrusted to him by clients and others and has used these funds to enable him to purchase real and personal property, in violation of 18 U.S.C. § 1343.


MICHAEL K. BANTNER
FBI Special Agent

Sworn and subscribed to
before me this 15th day
of January, 2013.


HONORABLE L. FELIPE RESTREPO
United States Magistrate Judge

EXHIBIT 3

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA : DATE: 6-19-13
v. : CRIMINAL NO.: 13-253
TIMOTHY D. BURNS : VIOLATIONS:
: 18 U.S.C. § 1341 (mail fraud – 1 count)
: 18 U.S.C. § 1343 (wire fraud – 1 count)
: 18 U.S.C. § 1014 (loan fraud–2 counts)
: Notice of Forfeiture

SUPERSEDING INFORMATION

COUNT ONE

THE UNITED STATES ATTORNEY CHARGES THAT:

At all times material to this information:

1. Defendant TIMOTHY D. BURNS of Phoenixville was a businessman whose office was in Conshohocken, all in the Eastern District of Pennsylvania.
2. Defendant TIMOTHY D. BURNS owned and operated businesses including one that provided bill paying and concierge services to wealthy clients, and another that provided financial management services to a different set of clients. BURNS was the sole owner of these businesses and others.
3. In 2011, it appeared that Facebook, Inc., the owner of the social network known as "Facebook," would become a publicly traded company.
4. Some of defendant TIMOTHY D. BURNS' friends and clients learned that a large financial services company planned to purchase and sell of shares of Facebook prior to any public offering of the stock.

5. At some time in the winter of 2011, that financial services company withdrew from brokering Facebook stock. Some of defendant TIMOTHY D. BURNS' clients and their associates, however, remained interested in buying Facebook shares before it was available as a publicly traded stock. Defendant BURNS stepped in and offered to make the purchases for them. It was defendant BURNS' intention to earn money from the transactions several different ways: he would take a fee at the time of the purchase, he would take a small percent of the growth in the value of the shares for a period of two years after the shares were publicly traded, and he planned to make purchases for his own account.

6. To the end of purchasing Facebook shares before they were offered publicly, defendant TIMOTHY D. BURNS formed a limited partnership hereafter called "Fund I." Defendant BURNS issued a prospectus for Fund I. It was a limited partnership and investors were limited partners, in which their interests were a function of the amount of money they invested.

7. By in or about March 2011, defendant TIMOTHY D. BURNS raised from about 50 investors approximately \$13,000,000 to purchase Facebook shares.

8. Initially, through an intermediary internet site, defendant TIMOTHY D. BURNS negotiated to purchase about 500,000 shares at \$27 each through a Facebook employee known here as D.W. On or about March 21, 2011, defendant TIMOTHY D. BURNS called the capital from Fund I investors to close the deal. However, just before closing, D.W. changed his mind and walked away from the deal. It was defendant BURNS' understanding that D.W. wanted a higher price for the shares. The deal fell through.

9. Shortly thereafter, the intermediary told defendant TIMOTHY D. BURNS

that he had found 2,000,000 shares of Facebook that BURNS could buy for \$27 per share. The person who defendant BURNS was told controlled the shares was known as "Ken Dennis."

This name was a pseudonym for a man named T.S.

10. Through the intermediary internet site, defendant TIMOTHY D. BURNS was introduced to T.S. T.S. represented that for an advance of approximately \$11.2 million, he would provide defendant TIMOTHY D. BURNS with 20 million Facebook shares.

11. Defendant TIMOTHY D. BURNS created a second limited partnership entity for the purpose of selling shares of Facebook and issued a prospectus for it, as he had for the first. This second partnership was called Fund II.

THE SCHEME

12. From on or about May 15, 2007, to on and about September 12, 2012, defendant

TIMOTHY D. BURNS

devised and intended to devise a scheme to defraud clients, investors and a bank to obtain money and property valued in total just under \$20 million, by means of false and fraudulent pretenses, representations and promises.

MANNER AND MEANS

It was part of the scheme that:

13. Defendant TIMOTHY D. BURNS used money he converted from his Family Services clients in an attempt to acquire Facebook and other similar social media shares to sell to willing investors.

14. Defendant TIMOTHY D. BURNS used Fund I money from investors to

pay to acquire Fund II and other Facebook shares, without any disclosure to Fund I investors.

15. In advance of any closing of the purchase of any Facebook shares, defendant TIMOTHY D. BURNS spent over approximately \$4 million of Fund II funds to buy a shore home in Avalon, New Jersey.

16. In advance of any closing of the purchase of any Facebook shares defendant TIMOTHY D. BURNS used Fund II funds to make a down payment on a commercial property in Conshohocken, Pennsylvania for his personal investment inventory.

17. After defendant TIMOTHY D. BURNS learned that he had been defrauded of and had lost the \$11.2 million he paid from Fund I to acquire Facebook shares from T.S., he called for the capital from Fund II investors.

18. On or about April 12, 2012, in the Eastern District of Pennsylvania and elsewhere, defendant

TIMOTHY D. BURNS

for the purpose of executing such scheme and attempting to do so, caused to be placed in an authorized depository for mail matter and to be delivered by mail to T.H. B. according to the directions thereon mail matter, that is, a purported "K1" statement for the year 2011, fraudulently purporting to reflect a purchase by T.H.B. of Facebook shares.

In violation of Title 18, United States Code, Section 1341.

COUNT TWO

THE UNITED STATES ATTORNEY FURTHER CHARGES THAT:

1. Count One, paragraphs 1 through 11 and 13 through 17 are incorporated as if set forth here.
2. On or about October 3, 2011, in the Eastern District of Pennsylvania and elsewhere, defendant

TIMOTHY D. BURNS

for the purpose of executing the scheme described above, and attempting to do so, caused to be transmitted by means of wire communication in interstate commerce sounds and signals, that is, the wire transfer of \$4,198,654.02 from PNC Bank in Pennsylvania to the Sturdy Stone Harbor Bank in New Jersey, funds which he told victims would be used to purchase stock but which he instead used to purchase a family shore house on Pelican Drive, Avalon, New Jersey.

In violation of Title 18, United States Code, Section 1343.

COUNT THREE

THE UNITED STATES ATTORNEY FURTHER CHARGES THAT:

1. Count One, paragraphs 1 through 11 and 13 through 17 are incorporated as if set forth here.
2. The Bancorp Bank is a federally insured financial institution.
3. On or about January 12, 2012, in Philadelphia, in the Eastern District defendant

TIMOTHY D. BURNS

knowingly made and caused to be made to The Bancorp Bank a false statement for the purpose of influencing the actions of the bank upon a loan, that is, a loan in the amount of \$6,000,000 to purchase a commercial building at 125 East Elm Street, Conshohocken, Pennsylvania, in that defendant BURNS falsely represented to Bancorp executives that his companies had earned approximately \$20 million from the sale of Facebook stock, \$8.6 million of which was his profit on the transaction, when, in fact, he had made no such purchases and profit, but had been defrauded, as he well knew, of \$11.2 million that he had paid to T.S.

All in violation of Title 18, United States Code, Section 1014.

COUNT FOUR

THE UNITED STATES ATTORNEY FURTHER CHARGES THAT:

1. Count One, paragraphs 1 through 11 and 13 through 17 are incorporated as if set forth here.
2. The Bancorp Bank is a federally insured financial institution.
3. On or about September 12, 2012, in Philadelphia, in the Eastern District defendant

TIMOTHY D. BURNS

knowingly made and caused to be made to The Bancorp Bank a false statement for the purpose of influencing the actions of the bank upon a loan, that is, a loan in the amount of \$1,500,000 to purchase a commercial building at 125 East Elm Street, Conshohocken, Pennsylvania, in that defendant BURNS falsely represented to Bancorp executives that his companies had earned approximately \$20 million from the sale of Facebook stock, \$8.6 million of which was his profit on the transaction, when, in fact, he had made no such purchases and profit, but had been defrauded, as he well knew, of \$11.2 million that he had paid to T.S.

All in violation of Title 18, United States Code, Section 1014.

NOTICE OF FORFEITURE

THE UNITED STATES ATTORNEY FURTHER CHARGES THAT:

1. As a result of the violations of Title 18, United States Code, Sections 1341, 1343, and 1014, set forth in this indictment, defendant

TIMOTHY D. BURNS

shall forfeit to the United States of America all property, real or personal, constituting proceeds of the offenses and any property traceable thereto, including, but not limited to:

A. The following real property:

- i. 23 Pelican Drive,
Avalon, New Jersey,
or any proceeds of its sale;
- ii. 125 East Elm Street,
Conshohocken, Pennsylvania,
or any proceeds of its sale;
- iii. 26 Meredith Road,
Phoenixville, Pennsylvania,
or any proceeds of its sale;

B. All of the following personal property in which defendant TIMOTHY D. BURNS has any right, title or interest or any proceeds thereof:

- i. Penn Liberty Bank
 1. Account No. ending 3280, in the name of Timothy Burns and Claire Burns,
 2. Account No. ending 4973, in the name of Timothy Burns and Claire Burns,
 3. Account No. ending 1478, in the name of Timothy Burns and Claire Burns,
 4. Account ending 0173, in the name of ESG Capital Partners GP, LTD,
 5. Account ending 1205, in the name of ESG Capital Partners GP, LLC,

6. Account ending 1213, in the name of ESG Capital Partners, LP,
7. Account ending 1437, in the name of 23 Pelican, LLC,
8. Account ending 1494, in the name of 125 E. Elm Partners,
9. Account ending 2286, in the name of ESG Capital Partners IV, LP,
10. Account ending 6569, in the name of ESG Coldstream, LP,
11. Account ending 9621, in the name of ESG,
12. Account ending 2906, in the name of ESG,
13. Account ending 3012, in the name of ESG,
14. Account ending 3301, in the name of ESG,
15. Account ending 3665, in the name of ESG,
16. Account ending 4507, in the name of ESG Reality Partners,
17. Account ending 2039, in the name of ESG;

ii. PNC Bank

1. Account No. ending 6456, in the name of Timothy Burns and Claire Burns.
2. Account No. ending 8208, in the name of the Burns Trust,
3. Account ending 8195, in the name of ESG Capital Partners GP, LTD.,
4. Account ending 8179, in the name of ESG Capital Partners II, LP;

iii. Fidelity Investments

1. Account No. ending 1741, in the name of Timothy Burns and Claire Burns,
2. Account No. ending 3660, in the name of Timothy Burns and Claire Burns,
3. Account No. ending 9511, in the name of Timothy Burns and Claire Burns,
4. Account No. ending 2656, in the name of ESG Capital Partners, LP,
6. Account No. ending 5334, in the name of ESG Wealth Management;

iv. Hartford Investments Account in the name of Timothy David Burns

- v. Facebook, Inc. stock, in which Timothy Burns or the Burns Trust has any right, title, or interest.

- vi. Twitter stock, in which Timothy Burns or the Burns Trust has any right, title, or interest.
- vii. Any proceeds of claims filed in the Eastern District of California relating to purported stock sales by T.S.

or the sum of 19,638,923.60 in U.S. currency.

2. If any of the property subject to forfeiture, as a result of any act or omission of the defendants:

- (a) cannot be located upon the exercise of due diligence;
- (b) has been transferred or sold to, or deposited with, a third party;
- (c) has been placed beyond the jurisdiction of the Court;
- (d) has been substantially diminished in value; or
- (e) has been commingled with other property which cannot be divided without difficulty;

it is the intent of the United States, pursuant to Title 18, United States Code, Section 982 and Title 28, United States Code, Section 2461, both incorporating Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of the defendant up to the value of the property subject to forfeiture including without limitation the following personal property:

1. 244 Bella Lane,
King of Prussia, Pennsylvania,
2. 26 Meredith Road,
Phoenixville, Pennsylvania, to the extent that the
property is not otherwise forfeitable as proceeds.

All pursuant to Title 18, United States Code, Sections 981(a)(1)(C) and 982(a)(2) and Title 28, United States Code, Section 2461.

ZANE DAVID MEMEGER
UNITED STATES ATTORNEY

EXHIBIT 4

FILED

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING AND SECURITIES

2013 APR 22 PM 2: 52

PA DEPARTMENT OF
BANKING AND SECURITIES

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING AND
SECURITIES, BUREAU OF SECURITIES
LICENSING, COMPLIANCE AND
ENFORCEMENT

Docket No. : 130035 (SEC-OSC)

v.

TIMOTHY DAVID BURNS
ESG CAPITAL PARTNERS I, LP
ESG CAPITAL PARTNERS II, LP

NOTICE TO ANSWER AND REQUEST A HEARING

You, Timothy David Burns, ESG Capital Partners I, LP and ESG Capital Partners II, LP, have the right to challenge the attached Order to Show Cause ("Order") by filing an Answer, in writing, with the Banking and Securities Commission ("Commission") 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 Commission may enter a final order against you.

Your Answer must be in writing, specifically admit or deny the allegations in the Order, set forth the facts you rely upon and state concisely the law you rely upon. 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 with:

Linnea Freeberg, Docket Clerk
Department of Banking and Securities
17 N. Second Street, Suite 1300
Harrisburg, PA 17101

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

Carolyn Mendelson
Assistant Counsel, Office of Chief Counsel
Attorney ID #74601
FOR: Commonwealth of Pennsylvania

Department of Banking and Securities
301 Fifth Avenue, Room 290
Pittsburgh, PA 15222

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.

All 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.

FILED

COMMONWEALTH OF PENNSYLVANIA 2013 APR 22 PM 2:52
DEPARTMENT OF BANKING AND SECURITIES

PA DEPARTMENT OF
BANKING AND SECURITIES

COMMONWEALTH OF PENNSYLVANIA	:	
DEPARTMENT OF BANKING AND	:	
SECURITIES, BUREAU OF SECURITIES	:	
LICENSING, COMPLIANCE AND	:	Docket No. : 13 <u>0035</u> (SEC-OSC)
ENFORCEMENT	:	
	:	
	:	
v.	:	
	:	
TIMOTHY DAVID BURNS	:	
ESG CAPITAL PARTNERS I, LP	:	
ESG CAPITAL PARTNERS II, LP	:	

ORDER TO SHOW CAUSE

You Timothy David Burns, ESG Capital Partners I, LP and ESG Capital Partners II, LP are notified that the Department of Banking and Securities ("Department") through the Bureau of Securities Licensing, Compliance and Enforcement ("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, PA 17101.
4. Timothy David Burns ("Burns") CRD #4127393, was, at all times material herein, an individual with a residential address at 26 Meredith Road, Phoenixville, Pennsylvania 19420 and a business address at 125 East Elm Street, Conshohocken, Pennsylvania 19428.
5. ESG Capital Partners I, LP ("ESG Capital Partners I") and ESG Capital Partners II, LP ("ESG Capital Partners II"), were, at all times material herein, entities with business addresses at 125 East Elm Street, Conshohocken, Pennsylvania 19428.

6. From in or about August 2005 to March 2013, Burns has been registered pursuant to Section 301 of the 1972 Act, 70 P.S. §1-301 as an investment adviser representative for ESG Wealth Management, LLC ("ESG"), CRD #136830.

FACTUAL ALLEGATIONS

7. From in or about August 2005 to March 2013, ESG has been registered as a Pennsylvania registered investment adviser pursuant to Section 301 of the 1972 Act, 70 P.S. § 1-301, CRD #136830.
8. From in or about August 2005 to March 2013, pursuant to ESG's Form ADV, Burns has been the Chief Compliance Officer, sole owner, and sole Managing Member of ESG.
9. From in or about March 2012 to August 2012, Burns was registered as an agent of a licensed broker-dealer, CV Brokerage, Inc. (CRD #462), pursuant to Section 301 of the 1972 Act, 70 P.S. § 1-301.
10. From in or about August 2005 to March 2012, Burns was registered as an agent of Purshe Kaplan Sterling Investments (CRD #35747), a licensed broker-dealer, pursuant to Section 301 of the 1972 Act, 70 P.S. §1-301.
11. From in or about August 2012 to March 2013, Burns has not been registered with any broker-dealer as its agent pursuant to Section 301 of the 1972 Act, 70 P.S. §1-301.

ESG Capital Partners I

12. At all times material herein, ESG Capital Partners I was an investment fund established with the stated purpose of purchasing between \$10,000,000 to \$30,000,000 worth of Facebook stock on behalf of the fund's private investors.
13. At all times material herein, ESG Capital Partners I was offering for sale limited partnership interests, which are "securities" as that term is defined by Section 102(t) of the 1972 Act, 70 P.S. §1-102(t).
14. At all times material herein, ESG Capital Partners GP, LLC (ESG LLC) was the general partner of ESG Capital Partners I, a Delaware limited liability company with a business address of 125 East Elm Street, Conshohocken, Pennsylvania 19428, and an entity for which Burns was the sole member and managing partner.
15. At all times material herein, Burns solely "controlled" ESG LLC as that term is defined by Section 102(g) of the 1972 Act, 70 P.S. §1-102(g).
16. At all times material herein, Burns, through ESG LLC as the general partner, "controlled" ESG Capital Partners I, as that term is defined by Section 102(g) of the 1972 Act, 70 P.S. §1-102(g).
17. At all times material herein, Burns, through ESG LLC, was the sole "affiliate" of ESG Capital Partners I, as that term is defined by Section 102(b) of the 1972 Act, 70 P.S. §1-102(b).

ESG Capital Partners II

18. At all times material herein, ESG Capital Partners II was another investment fund established for the stated purpose of purchasing up to \$1.1 billion of shares of Facebook stock on behalf of its investors.
19. At all times material herein, ESG Capital Partners II was offering for sale limited partnership interests, which are "securities", as that term is defined by Section 102(t) of the 1972 Act, 70 P.S. §1-102(t).
20. At all times material herein, ESG Capital Partners, Inc. (ESG INC) was the general partner of ESG Capital Partners II with a business address of 125 East Elm Street, Conshohocken, Pennsylvania 19428.
21. At all times material herein, Burns was the sole officer and director of ESG INC and "controlled" ESG INC as that term is defined by Section 102(g) of the 1972 Act, 70 P.S. §1-102(g).
22. At all times material herein, Burns, through the general partner, "controlled" ESG Capital Partners II, as that term is defined by Section 102(g) of the 1972 Act, 70 P.S. §1-102(g) and was the sole "affiliate" of ESG Capital Partners II, as that term is defined by Section 102(b) of the 1972 Act, 70 P.S. §1-102(b).
23. At all times material herein, Burns effectuated transactions in securities for pre-IPO shares of Facebook stock.
24. On or about January 15, 2013, the U.S. Attorney for the Eastern District of Pennsylvania filed a criminal complaint against Burns (see Exhibit 1) which alleges that Burns

- committed interstate wire fraud with respect to the purchase of pre-IPO Facebook shares on behalf of ESG Capital Partners I and ESG Capital Partners II (“Criminal Complaint”).
25. The Criminal Complaint is pending in the United States District Court for the Eastern District of Pennsylvania at Docket No. 2:13-mj-00053-1.
26. On or about January 22, 2013, Burns entered into an Agreement to Conditions of Pretrial Release with the United States of America (see Exhibit 2) which, in part, prohibits him from “involvement or contact with ESG businesses or their employees or clients, absent prior notification to the government; except as may be necessary and appropriate for his defense.”
27. At all times material herein, ESG Capital Partners I and ESG Capital Partners II were “issuers” of “securities” as those terms are defined by Sections 102(l) and 102(t) of the 1972 Act, 70 P.S. § 1-102(l) and 1-102(t), respectively.
28. At all times material herein, Burns also is an “agent” of ESG Capital Partners I and ESG Capital Partners II as that term is defined by Section 102(c) of the 1972 Act, 70 P.S. § 1-102(c).

COUNTS

Section 305(a)(ix) and Regulations 305.019(a), (b) and (c)

29. Paragraphs 1 through 28 are incorporated herein by reference as if set forth in their entirety.

30. By engaging in the acts and conduct set forth in paragraphs 4 through 28 of the Factual Allegations, Burns, has engaged in dishonest or unethical practices in the securities business or has taken unfair advantage of a customer in violation of Section 305(a)(ix) of the 1972 Act, 70 P.S. §1-305(a)(ix) and Regulations § 305.019 (a), (b) and (c).

Violation of Section 401(a) of the 1972 Act, 70 P.S. §1-401(a)

31. Paragraphs 1 through 28 are incorporated herein by reference as if set forth in their entirety.
32. By engaging in the acts and conduct set forth in paragraphs 4 through 28 of the Factual Allegations, Burns, through ESG Capital Partners I, ESG Capital Partners II, and their general partners, has, in connection with the offer, sale or purchase of a security in the State, directly or indirectly employed a device, scheme or artifice to defraud, in wilful violation of Section 401(a) of the 1972 Act, 70 P.S. §1-401(a).
33. By engaging in the acts and conduct set forth in paragraphs 4 through 28 of the Factual Allegations, ESG Capital Partners I and ESG Capital Partners II, through Burns, in connection with the offer, sale or purchase of a security in the State, have directly or indirectly employed a device, scheme or artifice to defraud, in wilful violation of Section 401(a) of the 1972 Act, 70 P.S. §1-401(a).

Violation of Section 401(b) of the 1972 Act, 70 P.S. §1-401(b)

34. Paragraphs 1 through 28 are incorporated herein by reference as if set forth in their entirety.

35 . By engaging in the acts and conduct set forth in paragraphs 4 through 28 of the Factual Allegations, Burns, through ESG Capital Partners I, Respondent ESG Capital Partners II, and their general partners, has, in connection with the offer, sale or purchase of a security in the State, directly or indirectly, made untrue statements of material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, in wilful violation of Section 401(b) of the 1972 Act, 70 P.S. §1-401(b).

36. By engaging in the acts and conduct set forth in paragraphs 4 through 28 of the Factual Allegations, ESG Capital Partners I, Respondent ESG Capital Partners II, through Burns, have, in connection with the offer, sale or purchase of a security in the State, directly or indirectly, made untrue statements of material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, in wilful violation of Section 401(b) of the 1972 Act, 70 P.S. §1-401(b).

Violation of Section 401(c) of the 1972 Act, 70 P.S. §1-401(c)

37. Paragraphs 1 through 28 are incorporated herein by reference as if set forth in their entirety.

38. By engaging in the acts and conduct set forth in paragraphs 4 through 28 of the Factual Allegations, Burns, through ESG Capital Partners I, ESG Capital Partners II, and their general partners, has, in connection with the offer and sale of a security, engaged in acts,

- practices, or courses of business which operated or would operate as a fraud or deceit upon any person, in wilful violation of Section 401(c) of the 1972 Act, 70 P.S. §1-401(c).
39. By engaging in the acts and conduct set forth in paragraphs 4 through 28 of the Factual Allegations, ESG Capital Partners I, ESG Capital Partners II, through Burns have, in connection with the offer and sale of a security, engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon any person, in wilful violation of Section 401(c) of the 1972 Act, 70 P.S. §1-401(c).

Violation of Section 403 of the 1972 Act, 70 P.S. §1-403

40. Paragraphs 1 through 28 are incorporated herein by reference as if set forth in their entirety.
41. By engaging in the acts and conduct set forth in paragraphs 4 through 28 of the Factual Allegations, Burns, through ESG Capital Partners I, ESG Capital Partners II, and general partners, has effected transactions in a security by means of a manipulative, deceptive, or other fraudulent scheme, device, or contrivance, in Pennsylvania in wilful violation of Section 403 of the 1972 Act, 70 P.S. §1-403.
42. By engaging in the acts and conduct set forth in paragraphs 4 through 28 of the Factual Allegations, ESG Capital Partners I and ESG Capital Partners II, through Burns, have effected transactions in a security by means of a manipulative, deceptive, or other fraudulent scheme, device, or contrivance, in Pennsylvania in wilful violation of Section 403 of the 1972 Act, 70 P.S. §1-403.

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 512 of the 1972 Act, 70 P.S. § 1-512, permanently barring Respondent Burns 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;
 - 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 Section 202, 203 or 302 of the 1972 Act;
2. That an order be issued revoking the investment adviser representative registration of Respondent Burns;
3. That Respondents be ordered to effect a rescission offer to investors of ESG Capital Partners I, LP and ESG Capital Partners II, LP, pursuant to Section 513 of the 1972 Act; 70 P.S. § 1-513;
4. That Respondents be ordered to pay the costs of the investigation pursuant to Section 602.1 (b) of the 1972 Act, 70 P.S. § 1-602.1 (b); and

5. That Respondents 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, 70 P.S. § 1-602.1 (c).

IT IS SO ORDERED.



FOR THE COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING AND SECURITIES
BUREAU OF SECURITIES LICENSING,
COMPLIANCE AND ENFORCEMENT

Aimée A. Toth
Deputy Secretary of Securities

Dated: _____

4/22/2013

FILED

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING AND SECURITIES 2013 APR 22 PM 2:52

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING AND
SECURITIES, BUREAU OF SECURITIES
LICENSING, COMPLIANCE AND
ENFORCEMENT

PA DEPARTMENT OF
BANKING AND SECURITIES

Docket No. : 136035 (SEC-OSC)

v.

TIMOTHY DAVID BURNS
ESG CAPITAL PARTNERS I, LP
ESG CAPITAL PARTNERS II, LP

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing Order 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

Timothy David Burns
c/o Lisa A. Mathewson
The Law Offices of Lisa A. Mathewson, LLC
123 South Broad Street, Suite 810
Philadelphia, PA. 19109

ESG Capital Partners I, LP
125 East Elm Street
Conshohocken, PA 19428

ESG Capital Partners II, LP
125 East Elm Street
Conshohocken, PA 19428

Dated this 22nd day of April, 2013

Fran Beers, Administrative Officer
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
717-787-1471

EXHIBIT 5

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA :
v. : CRIMINAL NO. 13-253
TIMOTHY D. BURNS :

GUILTY PLEA MEMORANDUM

I. INTRODUCTION

The defendant, Timothy D. Burns, is charged in a four-count superseding information with one count each of mail and wire fraud, and two counts of making a false statement to a bank, in violation of Title 18, United States Code, Sections 1341, 1343, and 1014. These charges arise from the defendant's involvement in a scheme to defraud clients, investors, and a bank in connection with certain investments and loans.

II. PLEA AGREEMENT

Pursuant to the written guilty plea agreement, the defendant will plead guilty to all four counts of the superseding information. A copy of the plea agreement will be forwarded to the Court in advance of the guilty plea hearing.

III. ELEMENTS OF THE OFFENSES

Count One - 18 U.S.C. § 1341 (*mail fraud*)

1. The defendant devised a scheme to defraud or to obtain money or property by materially false or fraudulent pretenses, representations or promises, or omissions, concerning a material fact, or willfully participated in such a scheme with knowledge of its fraudulent nature;

2. The defendant did so with the intent to defraud; and
3. That in advancing, furthering, or carrying out the scheme, the defendant used the mails or caused the mails to be used.

Count Two - 18 U.S.C. § 1343 (*wire fraud*)

1. The defendant devised a scheme to defraud or to obtain money or property by materially false or fraudulent pretenses, representations or promises, or omissions, concerning a material fact, or willfully participated in such a scheme with knowledge of its fraudulent nature;
2. The defendant did so with the intent to defraud; and
3. That in advancing, furthering, or carrying out the scheme, the defendant transmitted any writing, signal, or sound by means of a wire, radio, or television communication in interstate commerce or caused the transmission of any writing, signal, or sound of some kind by means of a wire, radio, or television communication in interstate commerce.

Counts Three and Four - 18 U.S.C. § 1014 (*false statement to a bank*)

1. The defendant knowingly made or caused to be made a false statement or report to a bank;
2. The false statement or report was made for the purpose of influencing the bank's action on a loan application or decision concerning whether to continue extending credit; and
3. The bank was then insured by the Federal Deposit Insurance Corporation.

IV. MAXIMUM SENTENCE (STATUTORY)

The Court may impose the following statutory maximum sentences: for Count One (mail fraud), 20 years of imprisonment, three years of supervised release, a \$250,000 fine, and a \$100 special assessment; Count Two (wire fraud), 20 years of imprisonment, three years of supervised release, a \$250,000 fine, and a \$100 special assessment; and on each of Counts Three and Four (false statement to a bank), 30 years of imprisonment, five years of supervised release, a \$1,000,000 fine, and a \$100 special assessment. In addition, probation is not an available sentence for Counts Three and Four, each of which is a Class A felony.

TOTAL MAXIMUM SENTENCE: 100 years of imprisonment, a mandatory term of some imprisonment, five years of supervised release, a \$2.5 million fine, and a \$400 special assessment. Full restitution of as much as \$19,638,923.60 also shall be ordered. Forfeiture of all proceeds from the offenses also may be ordered.

The defendant further understands that supervised release may be revoked if its terms and conditions are violated. When supervised release is revoked, the original term of imprisonment may be increased by up to three years, per count of conviction. Thus, a violation of supervised release increases the possible period of incarceration and makes it possible that the defendant will have to serve the original sentence, plus a substantial additional period, without credit for time already spent on supervised release.

V. EVIDENCE IN SUPPORT OF THE ALLEGATIONS

If this case were to proceed to trial, the government would introduce competent evidence which would prove that from May 15, 2007, to September 12, 2012, the defendant participated in a scheme to defraud clients, investors, and a bank in connection with certain investments and loans. At all relevant times Timothy Burns was a businessman whose office

was in Conshohocken, Pennsylvania. Burns owned and operated several businesses, including one, Family Office, that provided bill paying and concierge services to wealthy clients, and another that provided financial management services to a different set of clients. The defendant was the sole owner of these businesses.

In 2010, it appeared that Facebook, Inc., the owner of the online social network known as "Facebook," would become a publicly traded company. Some of the defendant's friends and clients learned that a large financial services company planned to purchase and sell shares of Facebook prior to any public offering of the stock. However, at some time in late 2010, that financial services company withdrew from brokering Facebook stock. Some of Burns' clients and their associates remained interested in buying Facebook shares before it was available as a publicly traded stock. The defendant stepped in and offered to make the purchases for them. It was Burns' intention to earn money from the transactions in several different ways: he would take a fee at the time of the purchase, he would take a small percent of the growth in the value of the shares for a period of two years after the shares were publicly traded, and he planned to make purchases for his own account.

In order to purchase Facebook shares before they were publicly offered, Burns formed a limited partnership known as "Fund I." Defendant Burns issued a prospectus for Fund I. It was a limited partnership, and investors were limited partners. Their interests were a function of the amount of money they invested. By approximately March 2011, the defendant raised from about 50 investors approximately \$13 million to purchase Facebook shares.

Initially, through an intermediary internet site, Burns negotiated to purchase about 500,000 shares at \$27 each through a Facebook employee whose initials are D.W. On March 21, 2011, the defendant called the capital from Fund I investors to close the deal. However, just

before closing, D.W. changed his mind and walked away from the deal. It was Burns' understanding that D.W. wanted a higher price for the shares. The deal fell through.

Shortly thereafter, the intermediary told the defendant that he had found two million shares of Facebook that the defendant could buy for \$27 per share through an individual known as "Ken Dennis." Unbeknownst to Burns at the time, this was a pseudonym for an individual whose true name is Troy Stratos, who is charged elsewhere.

Through the intermediary internet site, Burns was introduced to Stratos. Stratos represented that for an advance of approximately \$11.2 million, he would provide Burns with 20 million Facebook shares. The defendant created a second limited partnership entity for the purpose of buying shares of Facebook and issued a prospectus for it, as he had for the first. This second partnership was called Fund II.

In order to pay the \$11.2 million to Stratos, the defendant used Fund I money from investors, which he did not disclose to the Fund I investors. The defendant had represented to those investors that their money would be used for direct purchases of Facebook shares, and had not told them it would be used to pay the intermediary he knew as "Dennis."

In advance of any closing for the purchase of Facebook shares, the defendant spent approximately \$4 million of Fund II investor money to buy a personal family shore home on Pelican Drive in Avalon, New Jersey. On October 3, 2011, in order to close on his purchase of the Pelican Drive property, the defendant caused a wire transfer of \$4,198,654.03 from PNC Bank in Pennsylvania to the Sturdy Savings Bank in Stone Harbor, New Jersey, which was derived from funds which he told victims would be used to purchase stock. [Count Two]

Also in advance of any closing for the purchase of Facebook shares, Burns used Fund II money to make a down payment on a commercial property on East Elm Street in

Conshohocken, Pennsylvania, for his personal investment portfolio. No later than December 2011, the defendant learned that Stratos had misappropriated the \$11.2 million, failed to acquire any Facebook shares, and defrauded Burns. After the defendant learned that, he nonetheless called for additional capital from Fund II investors.

On January 12, 2012, in order to secure a \$6 million loan to purchase the Elm Street property, the defendant falsely represented to The Bancorp Bank ("Bankcorp") that his companies had earned approximately \$20 million from the sale of Facebook stock, \$8.6 million of which was his profit on the transaction, when, in fact, he had made no such purchases and profit, but had been defrauded, as he well knew, of \$11.2 million that he had paid to Stratos.

[Count Three]

Beginning in approximately 2008 and continuing through January 2012, the defendant misappropriated approximately \$1.5 million from his Family Office clients. He used the stolen money to pay his businesses' operating expenses, his personal expenses, and to purchase the Elm Street property for himself.

Even after he learned that the \$11.2 million of Fund I investor money had been stolen by Stratos, the defendant failed to disclose the theft to the investors and continued to lull them into believing that he had purchased Facebook shares on their behalf. On or about April 12, 2012, in furtherance of his scheme, the defendant caused to be mailed to a Fund I investor whose initials are T.H.B. a purported "K1" statement for the year 2011, fraudulently purporting to reflect a capital balance when in fact there was none due to the theft. [Count One]

On September 12, 2012, in order to secure a \$1.5 million "line of credit" or loan modification to the original \$6 million Bankcorp loan, which was also secured by the Elm Street property, once again the defendant falsely represented to Bancorp that his companies had earned

approximately \$20 million from the sale of Facebook stock, \$8.6 million of which was his profit on the transaction, when, in fact, he had made no such purchases and profit, but had been defrauded, as he well knew, of \$11.2 million that he had paid to Stratos. Bankcorp was, at all times, insured by the Federal Deposit Insurance Corporation. [Count Four]

In total, the defendant misappropriated from his clients and investors, and obtained through fraud from Bankcorp, just under \$20 million.

Respectfully submitted,

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United States Attorney

s/ Nancy E. Potts
NANCY E. POTTS
Assistant United States Attorney

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was filed electronically, is available for viewing and downloading from the Electronic Case Filing system, and was served by electronic filing and first class U.S. mail upon:

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DATE: June 25, 2013

s/ Nancy E. Potts
Nancy E. Potts
Assistant United States Attorney