

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	:	Docket No. : 13 <u>0035</u> (SEC-OSC)
ENFORCEMENT	:	
	:	
	:	
	:	
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.

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.

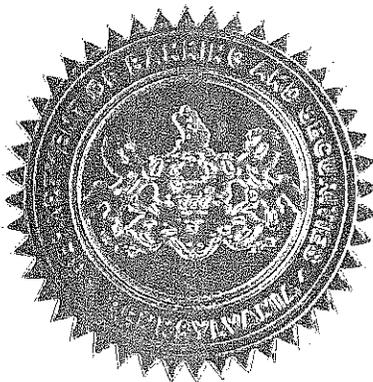
SANCTIONS AND REMEDIES

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. : 130035 (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