

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING AND SECURITIES

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COMMONWEALTH OF PENNSYLVANIA	:	PA DEPARTMENT OF
DEPARTMENT OF BANKING AND	:	BANKING AND SECURITIES
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	:	

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.

