

FILED

2018 JUL 11 AM 11:21

PA DEPARTMENT OF
BANKING AND SECURITIES

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING AND SECURITIES

COMMONWEALTH OF PENNSYLVANIA :
DEPARTMENT OF BANKING AND :
SECURITIES, BUREAU OF SECURITIES :
COMPLIANCE AND EXAMINATIONS :

v. :

Docket No. : 18 0051 (SEC-CAO)

PMN, INC. :
d/b/a PORTFOLIO MANAGEMENT :
NETWORK, INC. :
S. JOHN WHITEHILL :

CONSENT AGREEMENT AND ORDER

The Commonwealth of Pennsylvania, acting through the Department of Banking and Securities ("Department"), Bureau of Securities Compliance and Examinations ("Bureau"), has conducted an investigation of the investment advisory activities of PMN, Inc. d/b/a Portfolio Management Network, Inc. ("PMN") and S. John Whitehill ("Whitehill"). Based on the results of its investigation, the Bureau has concluded that PMN and Whitehill have engaged in certain investment advisory activities in violation of certain provisions of the Pennsylvania Securities Act of 1972, 70 P.S. § 1-101, et. seq. ("1972 Act"). PMN and Whitehill, in lieu of litigation, and without admitting or denying the allegations contained herein, and intending to be legally bound, hereby agree to the entry of this Consent Agreement and Order ("CAO")

BACKGROUND

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

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

3. PMN, CRD#122372, was at all times material herein, an entity with a business address at 535 Smithfield Street, 620 Oliver Building, Pittsburgh, Pennsylvania 15222.

4. Whitehill, CRD #1425916, was, at all times material herein, an individual with a business address 535 Smithfield Street, 620 Oliver Building, Pittsburgh, Pennsylvania 15222. At all times material herein, Whitehill was president and chief compliance officer of PMN.

5. From in or about August 1997 through the present, PMN has been registered pursuant to Section 301(c) of the 1972 Act, 70 P.S. §1-301(c) as an investment adviser.

6. From in or about August 1997 through the present, Whitehill has been registered pursuant to Section 301(c) of the 1972 Act, 70 P.S. §1-301(c) as an investment adviser representative of PMN.

7. As the president and chief compliance officer of PMN, Whitehill acted an "affiliate of PMN within the meaning of Section 102(b) of the 1972 Act, 70 P.S. § 1-102(b), and, as such, caused PMN to commit the herein stated acts which violate the 1972 Act and its regulations.

FACTUAL ALLEGATIONS

8. Pursuant to Regulation 304.022(a)(1), 10 Pa. Code §304.022(a)(1), an investment adviser that has custody of client funds or securities shall file with the Department an audited balance sheet as of the end of its fiscal year. From in or about August 2016, through the present, PMN had custody of client funds or securities and failed to file with the Department an audited balance sheet for the years ending December 31, 2016 and December 31, 2017 as required by such regulation.

VIOLATION

9. By engaging in the acts and conduct set forth in paragraph 8 above, PMN and Whitehill engaged in acts and conduct which formed a basis to deny, suspend, revoke, or condition the registration of PMN and Whitehill or censure PMN or Whitehill pursuant to Section 305(a)(v) of the 1972 Act, 70 P.S. §1-305(a)(v).

RELIEF

10. PMN and Whitehill shall pay the Department an administrative assessment in the amount of \$10,000. Payment shall be made by certified check or money order that is made payable to the Department of Banking and Securities and shall be mailed or delivered, in person, to the Bureau of Securities Compliance and Examinations located at 17 N. Second Street, Suite 1300, Harrisburg, PA 17101. The assessment shall be paid as follows:

- a. \$2,500 to be paid within 30 days of entry of this Order;
- b. \$2,500 to be paid on or before August 31, 2018;
- c. \$2,500 to be paid on or before October 31, 2018; and
- d. \$2,500 to be paid on or before December 31, 2018.

11. This Order is not intended to indicate that PMN, Whitehill or any of their affiliates or current or former employees should be subject to any disqualification contained in the federal securities laws, the rules and regulations thereunder, the rules and regulations of self-regulatory organizations or various states' securities law, including the provisions of the 1972 Act and regulations promulgated thereunder; and any disqualification from relying upon the registration exemptions or safe harbor provisions, and this Order is not intended to form the basis of any such disqualification.

12. PMN and Whitehill are ORDERED to comply with the 1972 Act and Regulations adopted by the Department, and in particular Sections 304(b) of the 1972 Act, 70 P.S. § 1-304(b).

13. Should PMN and Whitehill fail to pay the assessment as set forth in paragraph 10 above, the sanctions set forth elsewhere in the Order shall continue in full force and effect until payment is made. However, this provision shall not be construed as affording PMN and Whitehill the option of either paying the assessment or being indefinitely subject to the sanctions.

14. Should PMN and Whitehill 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 the right to a hearing pursuant to the 1972 Act.

FURTHER PROVISIONS

15. Consent. PMN and Whitehill hereby knowingly, willingly, voluntarily and irrevocably consent to the entry of this Order pursuant to the Bureau's authority under the 1972 Act and agree that they understand all of the terms and conditions contained herein. PMN and Whitehill, by voluntarily entering into this Order, waive any right to a hearing or appeal concerning the terms, conditions and/or penalties set forth in this Order.

16. Entire Agreement. This Order contains the entire agreement between the Department, PMN and Whitehill. 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 between the Department, PMN and Whitehill.

17. Binding Nature. The Department, PMN and Whitehill, and all officers, owners, directors, employees, heirs and assigns of PMN and Whitehill intend to be and are legally bound by the terms of this Order.

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

from legal counsel.

19. Effectiveness. PMN and Whitehill hereby stipulate and agree that the Order shall become effective on the date that the Bureau executes the Order ("Effective Date").

20. 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 PMN and Whitehill in the future regarding all matters not resolved by this Order, except that the Department will not institute a proceeding against PMN or Whitehill under Section 305(f) of the 1972 Act, 70 P.S. §1-305(f), on the basis of any information obtained by the Department from the investigation by the Bureau of PMN and Whitehill which formed the basis of this Order.
- b. PMN and Whitehill acknowledge and agree 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.
- c. PMN and Whitehill acknowledge and agree that this Order does not preclude any other agency from instituting administrative, civil or criminal proceedings that may be related to matters addressed by this Order.

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

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

23. 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.

24. 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.

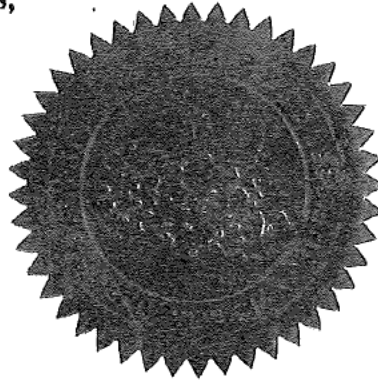
WHEREFORE, in consideration of the foregoing, including the recital paragraphs, the Commonwealth of Pennsylvania, Department of Banking and Securities, Bureau of Securities Compliance and Examinations and PMN, Inc. d/b/a Portfolio Management Network, Inc. and S John Whitehill, intending to be legally bound, do hereby execute this Consent Agreement and Order.

FOR THE COMMONWEALTH OF PENNSYLVANIA

**DEPARTMENT OF BANKING AND SECURITIES,
BUREAU OF SECURITIES
COMPLIANCE AND EXAMINATIONS**

Redacted

Joseph J. Minisi,
Deputy Secretary of Securities
Date: 7/10/18



**PMN, INC. d/b/a PORTFOLIO
MANAGEMENT NETWORK, Inc.**

Redacted

(Signature)

Redacted

(Print Name)

President

(Title)

Date: 7/10/18

S. JOHN WHITEHILL

Redacted

(Signature)

S John Whitthill
(Print Name)

Date: 7/10/18