

COMMONWEALTH OF PENNSYLVANIA 2021 AUG 30 AM 7:51
DEPARTMENT OF BANKING AND SECURITIES

COMMONWEALTH OF PENNSYLVANIA	:	PA DEPARTMENT OF
DEPARTMENT OF BANKING AND	:	BANKING AND SECURITIES
SECURITIES, BUREAU OF SECURITIES	:	
COMPLIANCE AND EXAMINATIONS	:	Docket No. : 210020(SEC-OSC)
	:	
v.	:	
	:	
PTK FINANCIAL, LLC	:	
CAPRICORN INCOME FUND I, LLC	:	
PAUL TERENCE KOHLER	:	
ALBERT VAGNOZZI	:	

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 business practices of PTK Financial, LLC (“PTK”), Capricorn Income Fund I, LLC, (“Capricorn”), Paul Terrence Kohler (“Kohler”), and Albert Vagnozzi (“Vagnozzi”). Based on the results of its investigation, the Bureau has concluded that PTK, Capricorn, Kohler, and Vagnozzi operated in violation of the Pennsylvania Securities Act of 1972, 70 P.S. § 1-101 *et seq.* (“1972 Act”). PTK, Capricorn, Kohler, and Vagnozzi, in lieu of litigation, and without admitting or denying the allegations herein, and intending to be legally bound, hereby agree 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.

3. PTK, CRD # 115012, was, at all material times herein, a Pennsylvania limited liability company with an address at 21 West Front Street, Suite 300, Media, Pennsylvania 19063.

4. From in or about August 1995 until the present, PTK has been registered pursuant to Section 301(c) of the 1972 Act, 70 P.S. §1-301(c), as an investment adviser.

5. From in or about March 2018 until the present, Capricorn was a Delaware limited liability company with an address at 21 West Front Street, Suite 300, Media, Pennsylvania 19063

6. From in or about February 2007 until the present, Kohler has been registered pursuant to Section 301(c) of the 1972 Act, 70 P.S. §1-301(c), as an investment adviser representative of PTK.

7. From in or about February 2007 until the present, Kohler was the direct owner of PTK and a direct owner and promoter of Capricorn.

8. As a direct owner of PTK, Kohler acted as an "affiliate" of PTK within the meaning of Section 102(b) of the 1972 Act, 70 P.S. §1-102(b), and, as such, caused PTK to commit the herein stated acts which violated the 1972 Act.

9. As a direct owner and promoter of Capricorn, Kohler acted as an "affiliate" of Capricorn within the meaning of Section 102(b) of the 1972 Act, 70 P.S. §1-102(b), and, as such, caused Capricorn to commit the herein stated acts which violated the 1972 Act

10. From in or about November 2013 until the present, Vagnozzi has been registered pursuant to Section 301(c) of the 1972 Act, 70 P.S. §1-301(c), as an investment adviser representative of PTK.

11. From in or about 2017 until the present, Vagnozzi was a direct minority owner of PTK and a direct owner and promoter of Capricorn.

12. As a direct owner of PTK, Vagnozzi acted as an “affiliate” of PTK within the meaning of Section 102(b) of the 1972 Act, 70 P.S. §1-102(b), and, as such, caused PTK to commit the herein stated acts which violated the 1972 Act.

13. As a direct owner and promoter of Capricorn, Vagnozzi acted as an “affiliate” of Capricorn within the meaning of Section 102(b) of the 1972 Act, 70 P.S. §1-102(b), and, as such, caused Capricorn to commit the herein stated acts which violated the 1972 Act.

14. As Kohler and Vagnozzi are both direct owners of PTK and direct owners and promoters of Capricorn, Capricorn acted as an “affiliate” of PTK within the meaning of Section 102(b) of the 1972 Act, 70 P.S. §1-102(b), and, as such, caused PTK to commit the herein stated acts which violated the 1972 Act.

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

16. On Form ADV Part 1A Item 9 (A-F) and Part 2A Item 15, TK indicated that PTK does not maintain custody of client funds. However, PTK does maintain custody of client funds as defined in Regulation 102.021, 10 Pa. Code § 102.021.

17. Regulation 304.022(a)(1), 10 Pa. Code § 304.022(a)(1), requires that an investment adviser that has custody of client funds shall file with the Department an audited balance sheet as of the end of its fiscal year

18. PTK’s fiscal year ends on December 31.

19. PTK did file consolidated balance sheets with the Department, however PTK did not file an audited balance sheet with the Department as of the end of its fiscal year.

VIOLATIONS

20. By engaging in the acts and conduct set forth in Paragraphs 3 through 16 above, PTK, Capricorn, Kohler and Vagnozzi have not taken steps necessary to ensure that material information contained in Form ADV remains current and accurate and have not filed with the Department an amendment on Form ADV within 30 days of the occurrence of the event which requires the filing of the amendment, in violation of Section 305(a)(v) of the 1972 Act, 70 P.S. § 1-305(a)(v), and Regulation 303.012(i), 10 Pa. Code § 303.012(i).

21. By engaging in the acts and conduct set forth in Paragraphs 3 through 14 and Paragraphs 17 through 19 above, PTK, Capricorn, Kohler, and Vagnozzi failed to file with the Department an audited balance sheet as of the end of its fiscal year as required for an investment adviser that has custody of client funds or securities, in violation of Section 305(a)(v) of the 1972 Act, 70 P.S. § 1-305(a)(v), and Regulation 304.022(a)(1), 10 Pa. Code § 304.022(a)(1).

RELIEF

22. PTK, Capricorn, Kohler, and Vagnozzi shall pay the Department an administrative assessment in the amount of \$125,000.00. Payment shall be made by certified check or money order 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, Pennsylvania 17101.

23. The administrative assessment shall be paid as follows:

- a. \$15,000 on or before September 30, 2021;
- b. \$9,166 on or before January 15, 2022;

- c. \$9,166 on or before April 15, 2022;
- d. \$9,166 on or before July 15, 2022;
- e. \$9,166 on or before October 15, 2022;
- f. \$9,166 on or before January 15, 2023;
- g. \$9,166 on or before April 15, 2023
- h. \$9,166 on or before July 15, 2023
- i. \$9,166 on or before October 15, 2023
- j. \$9,166 on or before January 15, 2024
- k. \$9,166 on or before April 15, 2024
- l. \$9,166 on or before July 15, 2024; and
- m. \$9,166 on or before October 15, 2024.

24. PTK, Capricorn, Kohler, and Vagnozzi are ORDERED to comply with the 1972 Act and Regulations adopted by the Department, and in particular Section 305(a)(v) of the 1972 Act, 70 P.S. § 1-305(a)(v), and Regulations 303.012(i) and 304.022(a)(1), 10 Pa. Code §§ 303.012(i), 304.022(a)(1).

25. Should PTK, Capricorn, Kohler, and Vagnozzi fail to pay the assessment as set forth in Paragraphs 22 and 23 above, the sanctions set forth elsewhere in this Order shall continue in full force and effect until full payment is made. However, this provision shall not be construed as affording PTK, Capricorn, Kohler, and Vagnozzi the option of either paying the assessment or being indefinitely subject to the sanctions.

26. Should PTK, Capricorn, Kohler, and Vagnozzi fail to comply with any and/or all provisions of this Order, the Department may impose additional sanctions and costs and seek other

appropriate relief subject to PTK's, Capricorn's, Kohler's and Vagnozzi's rights to a hearing pursuant to the 1972 Act.

27. This Order is not intended to constitute and shall not be interpreted to constitute a basis for disqualification of PTK, Capricorn, Kohler, or Vagnozzi or any affiliates under Federal or State securities laws, rules, or regulations or any regulatory organization rules or regulations.

FURTHER PROVISIONS

28. Consent. PTK, Capricorn, Kohler, and Vagnozzi 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. PTK, Capricorn, Kohler, and Vagnozzi, 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.

29. Entire Agreement. This Order contains the entire agreement between the Department, PTK, Capricorn, Kohler, and Vagnozzi. 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 Department, PTK, Capricorn, Kohler, and Vagnozzi.

30. Binding Nature. The Department, PTK, Capricorn, Kohler, and Vagnozzi, and all officers, owners, directors, employees, heirs and assigns of PTK, Capricorn, Kohler, and Vagnozzi, intend to be and are legally bound by the terms of this Order.

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

32. Effectiveness. PTK, Capricorn, Kohler, and Vagnozzi hereby stipulate and agree that the Order shall become effective on the date the Bureau executes the Order ("Effective Date").

33. 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 PTK, Capricorn, Kohler, and Vagnozzi in the future regarding all matters not resolved by this Order.
- b. This Order resolves all matters raised in the Order to Show Cause docketed on April 26, 2021.
- c. PTK, Capricorn, Kohler, and Vagnozzi 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.

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

35. Counterparts. This Order may be executed in separate counterparts, by facsimile, and/or by PDF.

36. 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.

37. 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, PTK Financial, LLC, Capricorn Income Fund I, LLC, Paul

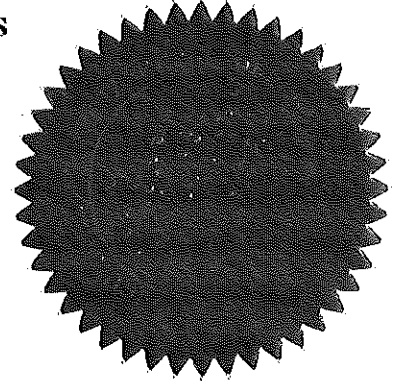
Terrence Kohler, and Albert Vagnozzi, intending to be legally bound, do hereby execute this Consent Agreement and Order.

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

Redacted

Eric Pistilli, Acting Deputy Secretary for Securities

Date: 08/24/2021



FOR PTK FINANCIAL, LLC

Redacted

(Signature)

Paul Terence Kohler
(Print Officer Name)

Date: 8/23/2021

FOR CAPRICORN INCOME FUND I, LLC

Redacted

(Signature)

Albert Vagnozzi
(Print Officer Name)

Date: 8/23/2021

