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COMMONWEALTH OF PENNSYLVANIA 2021 SEP 30 PM 2: 15  
DEPARTMENT OF BANKING AND SECURITIES

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

PA DEPARTMENT OF  
BANKING AND SECURITIES

Docket No. : 210032(SEC-OSC)

v.

LEGACY ADVISORY GROUP, INC.  
LWM INCOME FUND, LLC  
LWM EQUITY FUND, L.P.

**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 Legacy Advisory Group, Inc. ("LAG"), LWM Income Fund, LLC ("LWMI"), and LWM Equity Fund, L.P. ("LWME"). Based on the results of its investigation, the Bureau has concluded that LAG, LWMI, and LWME operated in violation of the Pennsylvania Securities Act of 1972, 70 P.S. § 1-101 *et seq.* ("1972 Act"). LAG, LWMI, and LWME 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. LAG, CRD # 131895, was, at all times material herein, a Pennsylvania corporation with an address at 3087 Innovation Way, Hermitage, Pennsylvania 16148-7905.

4. From in or about August 2005 until the present, Respondent LAG was registered pursuant to Section 301(c) of the 1972 Act, 70 P.S. §1-301(c), as an investment adviser.

5. LWMI was at all times material herein a Delaware limited liability company with an address at 3087 Innovation Way Hermitage, Pennsylvania 16148-7905.

6. LWME was at all times material herein a Delaware limited partnership with an address at 3087 Innovation Way Hermitage, Pennsylvania 16148-7905.

7. LWMI and LWME acted as "affiliates" of LAG within the meaning of Section 102(b) of the 1972 Act, 70 P.S. §1-102(b), and, as such, caused LAG to commit the herein stated acts which violated the 1972 Act.

8. LAG, in connection with its advisory services, directly or indirectly held client funds or securities with the authority to obtain possession of them or the ability to appropriate them and thus had "custody" over client funds or securities as defined in Regulation 102.021, 10 Pa. Code § 102.021.

9. Regulation 303.042(a)(3) provides that "[a]n investment adviser that has its principal place of business in this Commonwealth and has custody of client funds or securities shall maintain at all times a minimum net worth of \$35,000 unless the investment adviser has custody solely as the result of ...

(ii) Serves as a general partner, manager of a limited liability company or a person occupying a similar status or performing a similar function which gives the investment adviser or its supervised person legal ownership or access to client funds or securities and the following conditions are met:

(A) The pooled investment vehicle is subject to audit at least annually and distributes its audited financial statements which have been prepared by an independent certified public accountant in accordance with generally accepted accounting principles to all limited partners, members or beneficial owners within 120 days of the end of its fiscal year.

(B) The investment adviser:

(I) Hires an independent party to review all fees, expenses and capital withdrawals from the accounts included in the pooled investment vehicle before forwarding them to the qualified custodian with the independent party's approval for payment.

(II) Sends written invoices or receipts to the independent party describing:

(-a-) The amount of the fees, including any formulae used to calculate the fees, the time period covered by the fees and the amount of assets under management on which the fees were based.

(-b-) The expenses or capital withdrawals for the independent party to verify that payment of the fees, expenses or capital withdrawals is in accordance with the documents governing the operation of the pooled investment vehicle and any statutory requirements applicable thereto.

(III) Notifies the Department in writing on Form ADV that the investment adviser intends to employ the use of the audit safeguards in subclauses (I) and (II)." 10 Pa. Code § 303.042(a)(3)(ii)(A)-(B).

10. LAG failed to maintain a net worth of \$35,000.

11. 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

12. LAG's fiscal year ends on December 31.

13. LAG did not file an audited balance sheet with the Department as of the end of its fiscal year.

### VIOLATIONS

14. By engaging in the acts and conduct set forth in paragraphs 3 through 10 above, LAG, LWMI, and LWME failed to comply with the investment adviser capital requirements, in violation of Section 305(a)(v) of the 1972 Act, 70 P.S. § 1-305(a)(v), and Regulation § 303.042(a)(3)(ii)(A)-(B) 10 Pa. Code § 303.042(a)(3)(ii)(A)-(B).

15. By engaging in the acts and conduct set forth in paragraphs 3 through 8 and paragraphs 11 through 13 above, LAG, LWMI, and LWME 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**

16. LAG, LWMI, and LWME shall pay the Department an administrative assessment in the amount of \$150,000.00. 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.

17. The administrative assessment shall be paid as follows:

- a. \$15,000 on or before November 1, 2021;
- b. \$15,000 on or before February 1, 2022;
- c. \$15,000 on or before May 1, 2022;
- d. \$15,000 on or before August 1, 2022;
- e. \$15,000 on or before November 1, 2022;
- f. \$15,000 on or before February 1, 2023;
- g. \$15,000 on or before May 1, 2023;
- h. \$15,000 on or before August 1, 2023;
- i. \$15,000 on or before November 1, 2023; and
- j. \$15,000 on or before February 1, 2024.

18. LAG, LWMI, and LWME 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 303.042(a)(3)(ii) and 304.022(a)(1), 10 Pa. Code §§ 303.042(a)(3)(ii), 304.022(a)(1).

19. Should LAG, LWMI, and LWME fail to pay the assessment as set forth in paragraphs 16 and 17 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 LAG, LWMI, and LWME the option of either paying the assessment or being indefinitely subject to the sanctions.

20. Should LAG, LWMI, and LWME 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 LAG's, LWMI's, and LWME's rights to a hearing pursuant to the 1972 Act.

#### **FURTHER PROVISIONS**

21. Consent. LAG, LWMI, and LWME 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. LAG, LWMI, and LWME 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.

22. Entire Agreement. This Order contains the entire agreement between the Department, LAG, LWMI, and LWME. 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, LAG, LWMI, and LWME.

23. Binding Nature. The Department, LAG, LWMI, and LWME, and all officers, owners, directors, employees, heirs and assigns of LAG, LWMI, and LWME, intend to be and are legally bound by the terms of this Order.

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

25. Effectiveness. LAG, LWMI, and LWME hereby stipulate and agree that the Order shall become effective on the date the Bureau executes the Order ("Effective Date").

26. Other Enforcement Action.

- a. This Order resolves all issues raised in the Order to Show Cause, dated May 18, 2021.
- b. The Department reserves all of its rights, duties, and authority to enforce all statutes, rules, and regulations under its jurisdiction against LAG, LWMI, and LWME in the future regarding all matters not resolved by this Order.
- c. LAG, LWMI, and LWME 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.

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

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

29. 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.

30. 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, Legacy Advisory Group, Inc., LWM Income Fund, LLC, and

LWM Equity Fund, L.P., 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: 09/30/2021

**FOR LEGACY ADVISORY GROUP, INC**

**Redacted**

(Signature)

David A. Gollner, President  
(Print Officer Name)

Date: 9-29-21

**FOR LWM INCOME FUND, LLC**

**Redacted**

(Signature)

Date: 9-29-21

**FOR LWM EQUITY FUND, L.P.**

**Redacted**

(Signature)

Date: 9-29-21