

COMMONWEALTH OF KENTUCKY  
PUBLIC PROTECTION CABINET  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
ADMINISTRATIVE ACTION 2018-AH-00018



DEPARTMENT OF FINANCIAL INSTITUTIONS

COMPLAINANT

vs.

**AGREED ORDER**

ENCORE ENERGY, INC.

RESPONDENT

**BACKGROUND**

1. The Department of Financial Institutions (“DFI”) is responsible for administering the provisions of Kentucky Revised Statutes (KRS) Chapter 292, the Securities Act of Kentucky (“the Act”), all applicable rules and regulations promulgated under the Act, and all Orders entered pursuant to the Act.

2. Respondent Encore Energy, Inc. (“Encore”), is a Colorado corporation registered with the Kentucky Secretary of State as a foreign corporation. According to its most recent filing with the Kentucky Secretary of State, Encore’s principal office is located at 830 Fairview Avenue, Suite D2, Bowling Green, Kentucky 42101, and this is the same address listed for its registered agent.

**Issues Relating to Encore’s Required Disclosures**

3. On December 28, 2015, Encore submitted a request to renew the registration of Joseph Hooper (“Hooper”), an issuer agent employed by the company. DFI Form 33-e-1 (Application for Renewal of Issuer Agent Registration), which was completed and filed by Encore, states: “In accordance with KRS 292.331(5), by signing below the Issuer affirms either: (a) there

have been no material changes in the agent's information since the most recent U4 was submitted to the Division or (b) an updated U4 which discloses all material changes in the agent's information is included with this renewal application." (Form U4 Question #14E(1)(a) specifically requires disclosure of any consumer complaints and/or arbitrations.)

4. Thus, Encore's December 28, 2015's application for renewal of Hooper's issuer agent registration affirmatively attested to DFI on the Form 33-e-1 that Hooper's status information was unchanged from the previous year. However, information provided by the Financial Industry Regulatory Authority ("FINRA") revealed that, on November 16, 2015, Hooper had been subject to a FINRA regulatory action that resulted in a five (5) month suspension, a \$5,000 fine, and disgorgement of \$62,500 in compensation received during his tenure as a director of investor relations for a previous securities offering. Additionally, two (2) separate consumer complaints relating to his selling activities for this same offering were asserted against Hooper on November 23, 2015.

5. It is the position of DFI that the facts set forth above relating to Encore's December 28, 2015 renewal request, and its failure to accurately disclose required information, constitute a violation of KRS 292.440.

6. Moreover, based upon the foregoing discrepancies between the renewal application and the facts existing at the time, DFI informed Encore on March 8, 2016 that the agency was aware of Hooper's aforementioned 2015 suspension, fine, and consumer complaints. DFI further advised Encore: "You are reminded that an agent's U4 should be amended within a reasonable period of time to reflect material changes in any information contained therein." On April 15, 2016, approximately six weeks later, and over three and-a-half months after the initial disclosure of the FINRA action, Encore filed an amended Form U4 which disclosed that action, suspension

and fine. The amended Form U4, however, still failed to disclose the two consumer complaints asserted against Hooper.

7. Pursuant to KRS 292.336(3), a firm employing issuer agents shall promptly file a correcting amendment if the information contained in any document filed with DFI is or becomes inaccurate.

8. Based on the foregoing, it is DFI's position that Encore violated KRS 292.336(3) when it failed to promptly and completely update the Form U4 filing for issuer agent Hooper.

#### Issues Relating to Encore's 2016-E Offering of General Partnership Interests

9. Encore subsequently created and extended a 2016-E Offering of General Partnership Interests ("Offering"). It is DFI's position that this Offering was neither registered nor effectively exempted from registration. In particular, while the unregistered Offering purportedly relied on an exemption under Regulation D 506(b), DFI believes that Hooper's FINRA suspension, in place at the time of the Offering, legally disqualified Encore from effectively claiming that exemption. See KRS 292.340; 17 CFR Section 230.506(d)(1)(vi). Accordingly, the agency contends the Offering was neither registered nor exempt from registration as required by KRS 292.340. In response, however, Encore contends that it had confirmed with the SEC that Hooper's suspension did not constitute a disqualifying event and continues to assert the applicability of the SEC's Reasonable Care Exception.

10. In addition, Encore distributed a private placement memoranda ("PPM") in connection with the Offering. While the PPM in question did provide some forms of financial information, including a number of disclosures and a P&L Statement, it: (a) did not disclose Hooper's FINRA Order or consumer arbitrations; (b) did not include any balance sheets for

potential investors to evaluate; and (c) utilized an incorrect definition of the key term “Accredited Investor.” Encore points out that: (a) the PPM did reference its company website from which an investor could navigate to, and access, the SEC’s website where a user could search for and download an accurate definition of “Accredited Investor;” and (b) upon being advised of the foregoing omissions, Encore subsequently distributed a revised PPM that did disclose the FINRA Order and consumer arbitrations.

11. It is DFI’s position that these points constitute material facts, the omission of which may render the Offering misleading in violation of KRS 292.320.

**AGREEMENT, SETTLEMENT AND ORDER**

12. DFI possesses a range of administrative authority in addressing violations of the Act, including revocation or denial of registration and the imposition of fines of up to twenty thousand dollars (\$20,000.00) per violation. See KRS 292.470 and KRS 292.500.

13. In the interest of economically and efficiently resolving this matter without litigation, and without Encore admitting or denying the statements set forth above or any resulting liability, DFI and Encore hereby agree to the following terms:

a. Encore agrees to pay a civil penalty in the amount of Twenty Thousand dollars (\$20,000.00) as full settlement of the claims and allegations set forth herein;

b. Encore agrees to pay this sum over the course of three months with two equal installments of \$6,666.67, and one final installment of \$6,666.66. The first installment shall be due upon the Commissioner’s entry of this Agreed Order, with such payment to accompany the signed Order’s delivery to DFI. Each subsequent installment shall be due on or before the Thirtieth (30<sup>th</sup>) day of the following month;



c. Encore shall pay this assessment in the form of a certified check or money order made payable to “Kentucky State Treasurer” and mailed to the Department of Financial Institutions, Attn: Securities Division, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601;

d. All parties shall comply with the Act. Encore shall devote sufficient time and resources to ensure continuous and full compliance with all the statutory requirements of the Act as well as all applicable rules and regulations promulgated under the Act and all Orders entered pursuant to the Act.

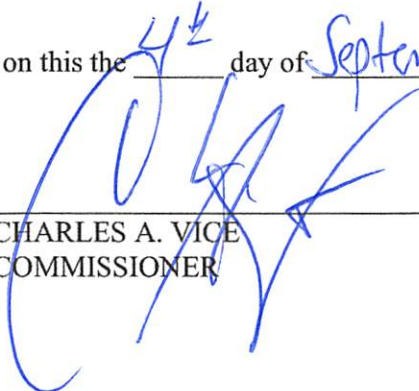
14. Encore hereby waives its right to demand an administrative hearing at which it would be entitled to legal representation and given an opportunity to confront and cross examine witnesses and present evidence on its own behalf. Encore also waives any right to appeal or set aside this Order.

15. Encore acknowledges and consents to the proper legal jurisdiction of DFI over this matter and that this Order is a matter of public record and may be disseminated as such.

16. In consideration of execution of this Agreed Order, Encore, for itself, and for its successors and assigns, hereby releases and forever discharges the Commonwealth of Kentucky, DFI, the Public Protection Cabinet’s Office of Legal Services, and each of their respective members, agents, and employees in their individual capacities, from any and all actions, causes of action, suits, debts, judgments, executions, claims and demands whatsoever, known and unknown, in law or equity, that Encore ever had, now has, or may have or claim to have against any or all of the persons or entities named in this paragraph that arise out of, or subsequently result from, this matter, the terms of the negotiated settlement agreement, this Agreed Order, or its administration.

17. By signing below, both parties acknowledge they have read the foregoing Agreed Order, know and fully understand its terms and contents, and attest that they are authorized to enter into and execute this Agreed Order and legally bind their respective parties thereto. This Agreed Order shall constitute the final resolution of this matter.

**IT IS SO ORDERED** on this the 4<sup>th</sup> day of September, 2018.

  
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CHARLES A. VICE  
COMMISSIONER

Consented to:

This 4th day of September, 2018.

Marni Rock Gibson  
Marni Rock Gibson, Director  
Division of Securities  
Department of Financial Institutions

This 1st day of September, 2018.

Steve Stengell  
Steve Stengell  
President and CEO  
Encore Energy Inc.

ACKNOWLEDGEMENT

STATE OF KY )  
                              ) )  
COUNTY OF Warren ) )

On this the 17 day of August, 2018, before me Mary Tabor, the undersigned, Steve Stengell, did personally appear and acknowledge himself/herself to be the authorized representative of Encore Energy Inc., and that he/she, being duly authorized to do so, entered into and executed the foregoing instrument for the purposes therein contained.

My Commission Expires: Jan 3, 2020

Mary Tabor  
Notary Public



Certificate of Service

I, Allison Evans, hereby certify that a copy of the foregoing **Agreed Order** was sent on this the 4 day of September 2018, by certified mail, return receipt requested, to the following:

Hon. Michael A. Valenti  
Valenti Hanley, PLLC  
401 West Main Street  
Suite 1950  
Louisville, KY 40202  
*Respondent's counsel*

Hand delivered to:

Joseph Donohue  
General Counsel  
Department of Financial Institutions  
1025 Capital Center Drive  
Suite 200  
Frankfort, Kentucky 40601

Allison Evans

NAME: Allison Evans

Title: Executive Staff Advisor