

COMMONWEALTH OF KENTUCKY
PUBLIC PROTECTION CABINET
DEPARTMENT OF FINANCIAL INSTITUTIONS
AGENCY CASE NO. 2019—AH—00042



DEPARTMENT OF FINANCIAL INSTITUTIONS

COMPLAINANT

vs.

AGREED ORDER

WESLEYAN INVESTMENT FOUNDATION, INC.

RESPONDENT

FACTUAL BACKGROUND

1. The Kentucky 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”), as well as the rules and regulations enacted thereunder.

2. Respondent Wesleyan Investment Foundation, Inc. (hereafter “Wesleyan” or “Respondent”) is a church extension fund associated with The Wesleyan Church Corporation, which is a non-profit corporation existing under the laws of Indiana.

3. In July 2017, DFI received a request from Wesleyan to sell securities in Kentucky under a claim of exemption pursuant to KRS 292.400 and 292.415. Through subsequent communications with Wesleyan, DFI discovered that: (a) at that time, Wesleyan maintained eighty-six (86) active investment accounts for Kentucky residents which had been opened between 1971 and 2017; and (b) it had sold securities in Kentucky during those years without registering with DFI or filing a claim of exemption from registration, as required under the Act.

4. As a result of these communications with Wesleyan and DFI’s subsequent investigation, DFI has determined that Wesleyan has offered and sold securities in Kentucky in violation of the Act for at least forty-five (45) years.

STATUTORY AUTHORITY

5. KRS 292.340 states that it “is unlawful for any person to offer or sell any security in this state, unless the security is registered under this chapter, or the security or transaction is exempt under this chapter, or the security is a covered security.”

6. KRS 292.400 directs in relevant part that “KRS 292.340 to 292.390 shall not apply to any of the following:

...

(9) Any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes, or as a chamber of commerce or trade or professional association...”

7. However, pursuant to KRS 292.415, “[b]efore any security may be issued as an exempt security under KRS 292.400(9) . . . , a claim of exemption must first be filed with the commissioner and the commissioner by order shall not have determined that the exemption is unavailable within the next ten (10) full business days.”

CONCLUSIONS OF LAW

8. The Commissioner possesses a range of administrative authority in addressing violations of the Act, including the imposition of civil fines up to twenty thousand dollars (\$20,000) for each violation of the Act. *See* KRS 292.337; KRS 292.500(14).

9. The Commissioner finds that this Agreed Order is in the public interest.

10. In offering and selling securities in Kentucky, where such securities were neither registered with DFI nor properly exempted from registration under the Act, Respondent violated KRS 292.340.

AGREEMENT AND ORDER

11. To resolve this matter without litigation or other adversary proceedings, DFI and Respondent agree to compromise and settle all claims arising from the above-referenced factual background in accordance with the terms set forth herein.

12. In the interest of economically and efficiently resolving the violations described herein, DFI and Respondent hereby agree as follows:

- a. Respondent shall cease and desist from any further violations of the Act;
- b. Respondent agrees to pay a civil fine in the amount of **eleven thousand, two hundred and fifty dollars (\$11,250)** for the violations described herein, which shall be due and payable upon the entry of this Agreed Order;
- c. Respondent agrees to make an offer of rescission to all Kentucky investors with active advisory contracts; and
- d. All payments under this Order shall be in the form of a certified check or money order made payable to "Kentucky State Treasurer" and mailed to the Department of Financial Institutions, Securities Division, 2019-AH-00042, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601.

13. Respondent waives its right to demand a hearing at which it would be entitled to legal representation, to confront and cross-examine witnesses, and to present evidence on its own behalf, or to otherwise appeal or set aside this Agreed Order.

14. Respondent consents to and acknowledges the jurisdiction of DFI over this matter and recognizes that this Agreed Order is a matter of public record and may be disseminated as such.

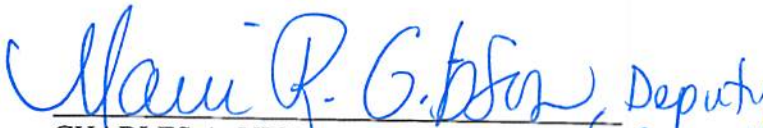
15. In consideration of execution of this Agreed Order, Respondent for itself, and for its successors and assigns, hereby releases and forever discharges the Commonwealth of

Kentucky, DFI, Office of Legal Services, and each of their members, agents, and employees in their individual capacities, from any and all manner of actions, causes of action, suits, debts, judgments, executions, claims and demands whatsoever, known and unknown, in law or equity, that Respondent ever had, now have, may have or claim to have against any or all of the persons or entities named in this paragraph arising out of or by reason of this investigation, this disciplinary action, this settlement or its administration.

16. By signing below, the parties acknowledge they have read the foregoing Agreed Order, know and fully understand its contents, and that they are authorized to enter into and execute this Agreed Order and legally bind their respective parties.

17. This Agreed Order shall constitute the Final Order in this matter.

IT IS SO ORDERED on this the 1st day of July, 2019.



CHARLES A. VICE
COMMISSIONER
Deputy
Commissioner
for Charles A. Vice

Consented to:

On behalf of the Department of Financial Institutions,

This 1st day of July, 2019.

Chad K. Harlan

Chad Harlan, Acting Director
Division of Securities
Department of Financial Institutions

AND

On behalf of Respondent,

This 19 day of June, 2019.

Craig A. Duan

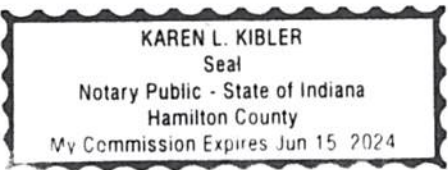
Authorized Representative, Wesleyan Investment Foundation
Respondent

ACKNOWLEDGEMENT

STATE OF Indiana)
)
COUNTY OF Hamilton)

On this the 19th day of June, 2019, before me Craig A. Duan
the Authorized Representative above personally appeared and acknowledged themselves to be a
duly authorized representative of the Wesleyan Investment Foundation, Inc. and acknowledged
that they entered into and executed the foregoing instrument for the purposes therein contained.

My Commission Expires: 06/15/2024



Karen L Kibler
Notary Public

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Agreed Order** was sent on this the 1st day of July, 2019, by certified mail, return receipt requested, to:

Regina M. Sharrow
Faegre Baker Daniels, LLP
600 East 96th Street, Suite 600
Indianapolis, Indiana 46240
Counsel for Respondent

And by Hand-Delivery to:

Stuart Michael
1025 Capital Center Drive, Suite 200
Frankfort, KY 40601
Counsel for Department of Financial Institutions



Kentucky Department of Financial Institutions