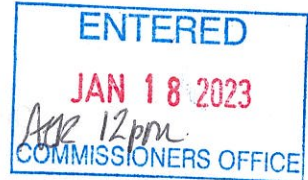


COMMONWEALTH OF KENTUCKY  
PUBLIC PROTECTION CABINET  
DIVISION OF SECURITIES  
ADMINISTRATIVE ACTION NO. 2023-AH-0001



DEPARTMENT OF FINANCIAL INSTITUTIONS

COMPLAINANT

vs.

MICHAEL L. SCHEEL and  
PROFOLIO INVESTMENTS, INC.

RESPONDENTS

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**AGREED ORDER**

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**PARTIES**

1. The Department is responsible for administering the provisions of KRS Chapter 292, the Securities Act of Kentucky (“the Act”), as well as any applicable rules, regulations and orders entered pursuant to the Act.

2. Respondent Michael L. Scheel is a registered investment adviser representative in Kentucky, Central Registration Depository (“CRD”) #5003698. He resides at 10863 War Admiral Drive, Union, Kentucky 41091. Scheel is the President and Chief Compliance Officer of Respondent Profolio Investments, Inc.

3. Respondent Profolio Investments, Inc. (“Profolio”) is a registered investment adviser in Kentucky, CRD #173241. Its principal office and place of business is 10863 War Admiral Drive, Union, Kentucky 41091.

**STATEMENT OF FACTS**

4. On May 19, 2022, the Department received from Profolio an SEC Form ADV, Uniform Application for Investment Adviser Registration, signed by Scheel, Profolio’s President and sole owner, seeking Profolio’s registration in Kentucky as an investment adviser.

5. On November 18, 2022, the Department received a FINRA Form U4 from Profolio seeking Scheel's registration in Kentucky as an investment adviser representative affiliated with Profolio.

6. On June 13, 2022, Scheel provided to the Department a signed and notarized Affidavit of Investment Adviser Activity Within or From Kentucky, indicating that he, acting through Profolio, had previously provided investment advisory services for eight clients within or from Kentucky without registration in Kentucky.

7. In response to follow-up inquiry by the Department, on August 8, 2022, Scheel indicated that Profolio established itself as a Kentucky corporation on January 11, 2021, that he moved to Kentucky on April 21, 2022, and that between April 21, 2022 and June 13, 2022, those eight clients had received advisory services from him while he was located in Kentucky.

#### STATUTORY AUTHORITY

8. Under KRS 292.310(11), as used in the Act,

"[i]nvestment adviser" means any person who, for compensation, directly or indirectly, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities.

9. Under KRS 292.310(12), as used in the Act,

"[i]nvestment adviser representative" means an individual employed by or associated with an investment adviser or covered adviser and who makes any recommendations or otherwise gives investment advice regarding securities, manages accounts or portfolios of clients, determines which recommendations or advice regarding securities should be given, provides investment advice or holds himself or herself out as providing investment advice, receives compensation to solicit, offer, or negotiate for the sale of or for selling investment advice, or supervises employees who perform any of the foregoing.

10. Under KRS 292.330(8), “[i]t is unlawful for any person to transact business in [Kentucky] as an investment adviser unless the person is registered under [the Act] as an investment adviser or is exempt from registration under subsection (9) of this section.”

11. Under KRS 292.330(10), “[i]t is unlawful for an investment adviser to employ or associate with an investment adviser representative unless the representative is registered under [the Act] or exempt from registration.”

12. Under KRS 292.330(11), “[i]t is unlawful for an individual to transact business in [Kentucky] as an investment adviser representative unless the individual is registered under [the Act] as an investment adviser representative or is exempt from registration under subsection (12) of this section.”

13. Under KRS 292.337(1), “[t]he commissioner may deny, refuse to renew, suspend, or revoke the registration of any broker-dealer, agent, investment adviser, or investment adviser representative . . . for any reason set forth in subsection (2) of this section.”

14. Under KRS 292.337(2),

the commissioner shall find that it is in the public interest and further find that the applicant or registrant . . .

(b) Has violated or failed to comply with this chapter or any administrative regulation promulgated or order issued under this chapter or a predecessor law.

15. Under KRS 292.470,

Whenever it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule or order under this chapter, the commissioner may in his or her discretion bring any or all of the following remedies: . . .

(3) Issue a final order, after notice and an opportunity for a hearing, containing findings of fact and conclusions of law, directing any person or persons found to have engaged in, or

about to be engaged in, activity that constitutes a violation of this chapter or any rule or order under this chapter: . . .

(c) To pay fines assessed under KRS 292.500(14) and costs assessed under KRS 292.500(15).

16. Under KRS 292.500(14),

The commissioner may impose civil fines against any person who violates any provision of this chapter or any rule or order or voluntary agreement entered into under this chapter. The fine shall not exceed twenty thousand dollars (\$20,000) per violation[.] . . . Each act or transaction which violates this chapter or administrative regulation, or orders or agreements entered into under this chapter, shall constitute a separate violation.

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

17. The Commissioner finds that Profolio violated KRS 292.330(8) and (10), and Scheel violated KRS 292.330(11), by Scheel's providing investment advisory services for eight clients, through Profolio, while Scheel and Profolio were located in Kentucky and before they were registered with the Department.

18. The Commissioner finds that suspension of Profolio and Scheel's registrations is in the public interest.

#### AGREEMENT AND ORDER

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

20. In the interest of economically and efficiently resolving the violations described herein, the Department, Profolio, and Scheel hereby agree as follows:

- a. Profolio's registration as an investment adviser shall be immediately suspended for a period of one month from the date of entry of this Agreed Order;

- b. Scheel's registration as an investment adviser representative shall be immediately suspended for a period of one month from the date of entry of this Agreed Order;
- c. Profolio and Scheel agree to pay a civil fine in the amount of **one-thousand, five-hundred dollars (\$1,500.00)** for the violations described herein, imposed jointly and severally, which fine shall be due and payable within thirty days of the date of entry of this Agreed Order;
- d. All payments under this Agreed Order shall be in the form of an ACH payment made via secure website, pursuant to instructions provided to Scheel and Profolio, or by a certified check or money order made payable to "Kentucky State Treasurer" and mailed to the Department of Financial Institutions, Securities Division, 2023-AH-0001, 500 Mero Street, 2 SW 19, Frankfort, Kentucky 40601; and
- e. Profolio and Scheel shall cease and desist from any further violations of the Act.

21. Profolio and Scheel waive their right to demand a hearing at which they would be entitled to legal representation, to confront and cross-examine witnesses, and to present evidence on their own behalf, or to otherwise appeal or set aside this Agreed Order.

22. Profolio and Scheel consent to and acknowledge the jurisdiction of the Department over this matter and recognize that this Agreed Order is a matter of public record and may be disseminated as such.

23. In consideration of the execution of this Agreed Order, Profolio and Scheel for themselves, and for their successors and assigns, hereby release and forever discharge the

Commonwealth of Kentucky, the Department, the 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 Profolio or Scheel 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.

24. 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.

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

**IT IS SO ORDERED** on this the 18th day of January, 2023.

*Marni Rock Gibson*

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JUSTIN BURSE  
ACTING COMMISSIONER

Acting Deputy Commissioner  
Signing on behalf of Commissioner

**Consented to:**

*On behalf of the Department of Financial Institutions,*

This 17 day of January, 2023.

*Chad Harlan*

CHAD HARLAN  
Director, Division of Securities  
Department of Financial Institutions

**AND**

*On his own behalf and on behalf of Profolio Investments, Inc.*

This 17 day of January, 2023.

*Michael L. Scheel*

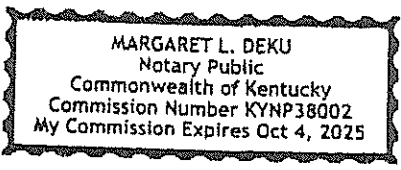
Michael L. Scheel  
Respondent and Agent for Profolio Investments, Inc.

**ACKNOWLEDGEMENT**

STATE OF KENTUCKY )  
 )  
COUNTY OF BOONE )

On this the 17 day of JANUARY, 2023, before me MARGARET L. DEKU,  
Michael L. Scheel personally appeared and acknowledged himself to be the Respondent named  
in the foregoing instrument and to be a duly authorized representative of **Profolio Investments,**  
**Inc.** and acknowledged that he entered into and executed the foregoing instrument for the  
purposes therein contained.

My commission expires: 10/4/25



*Margaret L. DeKu*  
Notary Public

**CERTIFICATE OF SERVICE**

I, Allison Reed, hereby certify that a copy of the foregoing Agreed Order was sent on this the 18<sup>th</sup> day of January, 2023, by certified mail, return receipt requested, to the following:

Profolio Investments, Inc.  
10863 War Admiral Dr.  
Union, KY 41091

Michael L. Scheel  
10863 War Admiral Dr.  
Union, KY 41091

And by electronic delivery to:

Michael Barnett  
Staff Attorney  
Department of Financial Institutions  
500 Mero St.  
2 SW 19  
Frankfort, KY 40601  
michael.barnett@ky.gov

Allison Reed  
Department of Financial Institutions

Name: Allison Reed

Title: Executive Staff Advisor