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BEFORE THE ARKANSAS SECURITIES COMMISSIONER

CASE NO. S-12-0015

ORDER NO. S-12-0015-14-OR07

IN THE MATTER OF:

**VFG, LLC f/k/a
VOYAGER FINANCIAL GROUP, LLC,**

and ANDREW GAMBER

RESPONDENTS

CONSENT ORDER

This Consent Order ("Order") is entered pursuant to the Arkansas Securities Act, codified at Ark. Code Ann. §§ [23-42-101](#) through [23-42-509](#) ("Act"), the Rules of the Arkansas Securities Commissioner promulgated pursuant to the Act ("Rules"), and the Arkansas Administrative Procedures Act, codified at Ark. Code Ann. §§ [25-15-201](#) through [25-15-219](#), in accordance with an agreement between the Staff of the Arkansas Securities Department ("Staff") and the Respondents in full and final settlement of all claims that could be brought against Respondents by Staff in connection with this matter.

This Order is a compromise of disputed claims and is entered into for the sole purpose of resolving the issues between the parties and avoiding the costs and expenses of litigation.

Respondents admit the jurisdiction of the Act and the Arkansas Securities Commissioner ("Commissioner"), waive their right to a formal hearing and appeal, consent to the entry of this Order, and, without admitting or denying the findings of fact or conclusions of law, agree to abide by its terms in settlement of any possible violations concerning the matters detailed herein.

FINDINGS OF FACT

1. VFG is a Delaware limited liability company ("LLC") registered to do business in Arkansas.
2. Gamber is the managing member of VFG, owning 100% of the company as of February 20, 2013. At all times referenced herein, Gamber held at least a 32% interest in VFG. Gamber has been the managing member since February 28, 2012.
3. Richard Younkman ("Younkman") is a resident of Dallas, Texas. Younkman is not registered with the Department in any capacity. In addition, Younkman has not been registered on CRD with any state securities administrator since 2009. Younkman was an agent of VFG.
4. An individual who wants to sell his or her income stream ("seller") appointed VFG as an authorized "buying agent" to submit a contingent offer to a third-party buyer ("buyer").
5. VFG created a platform that facilitated transactions between buyers and sellers of income streams derived from assets that have fixed payment amounts and terms, such as retirement or military pension streams ("platform"). VFG determined the present value

- of the income streams and sold the streams to interested buyers through the platform.
6. VFG provided the potential buyer with a "closing book" comprised of all the information gathered from the seller regarding the income stream. As represented by VFG, the information contained therein is "all of the information that the [b]uyer needs to make an informed decision on whether to follow through with the purchase." The buyer and seller do not directly communicate during this process. All information and contracts are provided by VFG. All paperwork bears the VFG logo. Furthermore, counsel for VFG encouraged an agent to complete most of the paperwork, so buyers only were required to sign the paperwork.
 7. VFG provided the buyer with a purchase application, and VFG accepted the offer to purchase on behalf of the seller.
 8. Once an income stream was purchased, the buyer would forward the purchase-price amount to VFG which set up an escrow account with an escrow company to hold that amount and make certain distributions and payments.
 9. The buyer did not acquire title or ownership of the underlying asset that provided the income stream but acquired a contractual right to receive the income stream from the annuity or pension.
 10. Once the seller assigned the right to receive the income stream to the buyer, the seller created an escrow account in his or her name and control. The seller granted the escrow company a special, durable power of attorney enabling the escrow company to manage that account and the income-stream funds received. VFG worked with the buyer to instruct the escrow company to direct payments of a monthly amount to the buyer for the term agreed upon at the time of sale.
 11. The buyer had the option for VFG to facilitate payments of premiums for a life insurance policy on the seller of the income stream because the income streams are life contingent. Further, the buyer had the option to purchase a two-year contestability wrapper through VFG from an insurance company. VFG then coordinated the purchase of the life insurance policies and collateral assignments of pre-existing life insurance policies.
 12. Because the buyer did not acquire title or ownership of the underlying asset that provided the income stream, a seller could redirect the stream back to the seller at any time, leaving the buyer with only a legal claim.
 13. VFG drafted all of the required paperwork and facilitated the execution of the contracts and agreements by involved parties. Additionally, VFG received a percentage commission from all sales at closing.
 14. VFG offered and sold income streams to investors through selling agents, like Younkman. VFG authored and provided selling agents with all the documents necessary to offer and sell these income streams to investors.
 15. As of August 20, 2012, VFG had facilitated approximately 317 sales in 31 states for an estimated total of \$34,245,351.48 and received an estimated \$6,724,049.71 in commissions. VFG paid additional commissions to an estimated eighty-one agents between February 2011 and July 2012. Multiple sales were made to two Arkansas residents during that time.
 16. On or about April 20, 2012, and May 18, 2012, VFG and Younkman offered and sold income streams to a married couple residing in Horatio, Arkansas, Arkansas Resident 1 ("AR1"). AR1 invested approximately \$63,000 in April and approximately \$87,000 in May with VFG and Younkman. As part of the offer and sale of the income streams to AR1, VFG and Younkman provided a Closing Book to AR1.
 17. The Closing Book included a document prepared by VFG and titled Purchase Application. On page one of the Purchase Application it states, "A purchase of Payments is only suitable for persons who have adequate financial means and who will not need immediate liquidity from this asset. There is no public market for this asset, and we cannot assure that one will develop, which means that it may be difficult for you to sell your asset." This statement omitted and failed to provide AR1 with full and complete disclosure of material facts, including, but not limited to, that the assignment of federal

pensions or pension payments are prohibited by federal law, and the full extent of the illiquid nature of VFG's investments. Although VFG's statement uses some disclosure language that is similar to that found in many private placement securities offering documents, no suitability information was ever gathered from AR1 by VFG or Younkman. Since VFG included this language on its Purchase Application, VFG clearly understood that their investments were not suitable for every investor. In spite of this fact, VFG and Younkman never ask AR1 for their yearly income, liquid net worth, age, and investment experience.

18. On page two of the VFG Purchase Application, it discusses individual life insurance policy coverage on the seller of the income stream. In addition, on the same page of the Purchase Application it discusses wrap insurance policy protection provided by Lloyd's of London for the first two years of AR1's investments. However, VFG omitted and failed to provide AR1 with full and complete disclosure of material facts, including, but not limited to, details on the insurance coverage or the payment of premiums for this insurance. Also, VFG did not disclose the risks that the seller's life insurance policy might not actually be purchased, premium payments might not be sent, the seller's insurance policy might lapse, or the seller's insurance policy might not be honored for some other reason. Further, VFG provided AR1 no details or proof that VFG ever had a wrap insurance policy with Lloyd's of London on the sellers of the income streams purchased by AR1. Finally, VFG omitted and failed to disclose the fact that a life insurance policy provides no protection against the seller unilaterally stopping or redirecting the income stream payments away from AR1.
19. The Closing Book also included a document prepared by VFG and titled Contract for Sale of Payments. On page two, paragraph number five of the Contract for Sale of Payments it states, "For the consideration described in the Sales Assistance Agreement, Seller shall transfer and sell to Buyer at Closing one hundred percent (100%) of Seller's right, title, and interest in and to the Payments". This is clearly a misstatement in view of federal laws prohibiting the assignment or transfer of federal pensions. Also, this section of VFG's Contract for Sale of Payments fails to adequately disclose to AR1 the risk that the sellers of income streams could at any time redirect the payments away from AR1. In the event that the sellers redirected these income stream payments, then AR1's only recourse would be a civil suit against the sellers.
20. On page three of the Contract for Sale of Payments it also states, 10.2. BOTH PARTIES INTEND THAT THE TRANSACTION(S) CONTEMPLATED BY THIS CONTRACT FOR SALE SHALL CONSTITUTE VALID SALE(S) OF PAYMENTS AND SHALL NOT CONSTITUTE IMPERMISSIBLE ASSIGNMENT(S), TRANSFER(S), OR ALIENATION OF BENEFITS BY SELLERS AS CONTEMPLATED BY APPLICABLE LAWS; HOWEVER, CERTAIN RISKS EXIST." While this document prepared by VFG mentions risks, VFG omitted and failed to provide AR1 with full and complete disclosure of any specific risks. In addition, this section misstates federal laws and court cases that clearly prohibit the assignment or transfer of federal pension payments sold by VFG and Younkman to AR1. Therefore, in spite of the language of this section of VFG's Contract for Sale of Payments, the sellers and not AR1 would maintain all rights and claims to these pension payments.
21. On page three of the Contract for Sale of Payments it states, "10.3. BY EXECUTING THIS CONTRACT FOR SALE, BUYER AND SELLER ACKNOWLEDGE THAT BUYER AND SELLER ARE AWARE OF AND EXPRESSLY ACCEPT ALL RISKS ASSOCIATED WITH THE TRANSACTION(S) CONTEMPLATED HEREIN." While this section of the document prepared by VFG mentions risks, VFG omitted and failed to provide AR1 with full and complete disclosure of any specific risks.
22. In eight separate transactions ranging from on or about June 6, 2011, to August 2, 2012, VFG offered and sold income streams to an Arkansas resident, Arkansas Resident 2 ("AR2"). AR2 invested approximately \$297,000 during that time. A search of the records of the Arkansas Securities Department ("Department") shows that

23. VFG has never registered or filed a proof of exemption in accordance with the Act and has never notice filed in accordance with federal law in connection with a covered security for offers and sales of securities in Arkansas.

LEGAL AUTHORITY AND CONCLUSIONS OF LAW

24. Ark. Code Ann. § [23-42-102](#)(17)(A)(xi) includes investment contract within the definition of a security. Based upon the totality of the services offered pursuant to the platform, the transactions are investment contracts, and are therefore a security pursuant to the Act.
25. VFG is a person as defined in Ark. Code Ann. § [23-42-102](#)(13).
26. Rule 102.01(11)(B) presumes control of a person when any individual has the right to vote 25% or more of the voting securities of such person.
27. Ark. Code Ann. § [23-42-501](#) provides that it is unlawful for any person to offer or sell any security unless it is registered, exempt, or a covered security.
28. None of the income streams offered for sale by VFG through the platform were registered, exempt from registration, or a covered security. Therefore, VFG and Gamber violated Ark. Code Ann. § [23-42-501](#).
29. Ark. Code Ann. § [23-42-301](#)(b)(1) states it is unlawful for an issuer to employ an unregistered agent except a nonresident agent who is registered by any other state securities administrator and who effects transactions in this state exclusively with registered broker-dealers. VFG violated Ark. Code Ann. § [23-42-301](#)(b)(1) when it employed Younkman to offer and sell securities to AR1 as detailed in this Order.
30. Ark. Code Ann. § [23-42-507](#)(2) states that it is unlawful for any person, in connection with the sale of any security, directly or indirectly, to make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statement made, in the light of the circumstances under which it was made, not misleading. VFG and Younkman violated Ark. Code Ann. § [23-42-507](#)(2) when they omitted to disclose material information and they made material misstatements to AR1 as detailed in this Order.
31. Ark. Code Ann. § [23-42-209](#)(c) permits the informal disposition of a proceeding or allegations by settlement or consent.

ORDER

The facts set out in paragraphs one through twenty-three support the conclusions of law set out in paragraphs twenty-four through thirty-one. The Commissioner finds this Order necessary and appropriate in the public interest for the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act and Rules. The Staff and Respondents are desirous of settling this matter as hereafter set forth and agree to the entry of this Order. It is agreed that Respondents enter into this Order freely and voluntarily and with a full understanding of its terms and significance. It is further agreed that the Commissioner has jurisdiction to enter this Order. In consideration of the foregoing, Respondents waive their rights to a hearing in this matter and to judicial review of this Order.

IT IS THEREFORE ORDERED that VFG shall offer restitution to AR1 and AR2 as if the contracts had been rescinded within twenty (20) days of the entry of this Order; VFG shall provide the Staff with proof that these offers of restitution equivalent to rescission have been made within thirty (30) days of the entry of this Order; Order No. S-12-0015-13-OR02, *In the Matter of VFG, LLC f/k/a Voyager Financial Group, LLC, Andrew Gamber, Kevin McNay, Robert Henry, and Jonathan Sheets*, is affirmed as to Respondents requiring that they cease and desist from the sales of unregistered securities in violation of the Act and Rules; Order No. S-12-0015-14-OR06, *In the Matter of VFG, LLC f/k/a Voyager Financial Group, LLC, and Richard Younkman*, is affirmed as to Respondents requiring that they cease and desist from employing an unregistered agent and the selling of securities through the use of misstatements and omissions of material information in violation of the Act and Rules.



A. Heath Abshire
Arkansas Securities Commissioner

June 23, 2014

Date

Andrew Gamber, individually and on behalf of VFG, LLC f/k/a Voyager Financial Group, LLC, as its managing member, hereby agrees to the entry of this Consent Order, and consent to all terms, conditions, and orders contained therein, and waives any right to an appeal of this Order.



Andrew Gamber

6-19-14

Date

Approved as to Content and Form:

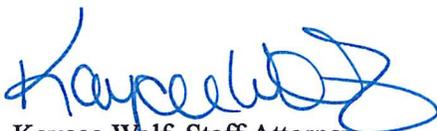


Douglas Buford, Attorney for

VFG and Gamber

6/20/14

Date



Kaycee Wolf, Staff Attorney

Arkansas Securities Department

6/23/2014

Date

Scott Freydl
Scott Freydl, Staff Attorney
Arkansas Securities Department

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