

STATE OF OREGON
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
DIVISION OF FINANCIAL REGULATION

In the Matter of:

Case No. S-21-0013

MARK L. BAIN AND BAIN
WEALTH MANAGEMENT
GROUP, LLC,

FINAL ORDER TO CEASE AND
DESIST, FINAL ORDER ASSESSING
CIVIL PENALTIES, AND CONSENT
TO ENTRY OF ORDER

Respondents.

1 The Division of Financial Regulation (the “Division”), acting on behalf of the Director of the
2 Department of Consumer and Business Services for the State of Oregon (the “Director”), conducted an
3 investigation of Mark L. Bain (“Bain”) and Bain Wealth Management Group, LLC (“BWMG”)
4 (collectively, “Respondents”). The Division determined that Respondents violated provisions of Oregon
5 Revised Statutes (“ORS”) 59.005 to 59.505, 59.991 and 59.995 (the “Oregon Securities Law”) and the
6 Oregon Administrative Rules (“OAR”) promulgated under those laws.

7 Respondents submit to the Director’s jurisdiction and agree to waive their rights to notice and an
8 administrative hearing under ORS 183.415 and, without either admitting or denying the facts herein, wish
9 to resolve this matter by consenting to entry of this Consent Order.

10 Now, therefore, as evidenced by the authorized signature(s) subscribed herein, the Director issues
11 the following Findings of Fact, Conclusions of Law, and Final Orders.

BACKGROUND

12 The Division received a complaint regarding BWMG and Bain from an elderly Oregonian
13 investor identified herein as “DC.” DC claimed, among other things, that Respondents invested her
14 money inappropriately and in a manner that conflicted with her stated risk tolerance and directions. DC
15 informed Respondents that she had a limited, fixed income, and that she desired only very low risk
16 investments. Respondents placed nearly all of her funds into products known as alternative investments,
17 which are illiquid, high risk, and generally not appropriate for retail investors with DC’s characteristics.
18



1 Such alternative investments can be difficult to understand and are not always apparent to investors. The
2 Division conducted an investigation into Respondents' securities business activities and discovered that
3 Respondents placed several other investors into these risky alternative investments, which, based on the
4 Division's analysis, were not suitable for them based on their financial situations, risk tolerances, time
5 horizons, and other needs, nor were they suitable based on the suitability standards the Division imposes
6 for Oregonian investors for those particular products. As demonstrated in more detail below, the Division
7 concluded that Respondents violated the Oregon Securities Law by making these unsuitable
8 recommendations and sales to their clients.

9 FINDINGS OF FACT

10 The Director FINDS that:

11 1. At all relevant times, Respondent BMWG (firm Central Registration Depository
12 ("CRD") number 281066) was licensed as a State Investment Adviser in Oregon.¹

13 2. At all relevant times Respondent Bain (individual CRD number 3139332) has been
14 licensed with the Division as a state investment adviser representative associated with BMWG.²

15 3. At all relevant times, Bain has been an owner and member of BMWG.

16 4. On or about April 4, 2017, an individual Oregon investor identified herein as DC hired
17 Respondents to serve as her investment advisor. DC was born in December 1946. At the time she
18 hired Respondents, DC was 70 years old, lived alone, and was physically disabled. DC disclosed
19 to Respondents that she was chronically ill, that she had not worked since she was 30, and that her
20 sole source of income was from social security. She told Respondents that she had inherited some
21 money that she wanted to invest and use the income from those investments to live.

22 5. Upon engaging Respondents as her investment advisers, DC explained to Respondents

¹ On November 20, 2019, BMWG terminated its Oregon registration.

² Bain is currently a registered investment adviser representative associated with CWM, LLC, d/b/a Bain Wealth Management, and Cetera Advisor Networks LLC.



1 that she was interested only in very low-risk investments. Respondents' notes reflect that DC
2 sought "very low risk" investments.

3 6. DC further explained to Respondents that she needed a monthly income of
4 approximately \$2,500.

5 7. Respondents make use of software known as "Riskalyze" when conducting a suitability
6 analysis for a client. For that analysis, the client first completes a questionnaire. The software then
7 uses the client's responses and applies "advanced quantitative risk technology" to generate a score
8 between 1 and 99, with higher numbers indicating higher risk tolerance. The Riskalyze score
9 indicates an investor's comfort level of risk and loss. According to the Riskalyze website, a risk
10 score "is a simple way to communicate what percentage of potential downside risk a client is
11 comfortable with over a six-month period."³ For example, a score of 20 indicates that over the
12 next six months, the investor is comfortable risking a loss of -1.50%, whereas a score of 85
13 indicates the investor is comfortable risking a loss of -20.00% over the same time period. While
14 higher scores indicate higher potential losses, they also have the potential for greater gains.

15 8. On or about April 25, 2017, DC completed the Riskalyze software questionnaire. The
16 Riskalyze software analysis assigned DC a risk score of 18 out of 99. According to that analysis,
17 this meant that DC should have a very conservative portfolio and that she was comfortable risking
18 a loss of up to -1.00% in exchange for the opportunity to gain +3.00% over a six-month period.
19 The software further indicated that DC's target asset allocation was 9.84% equities, 72.4% bonds
20 (fixed-income), 17.51% cash, and 0.17% other holdings. As indicated below, Bain later
21 acknowledged to the Division that such a low Riskalyze score supports a very conservative
22 portfolio comprised of bonds.

³ <https://blog.riskalyze.com/riskalyze-101-risk-number> (Accessed on October 1, 2021).



1 9. In addition to the Riskalyze software, Respondents use an internal form known as an
2 Investment Policy Statement (“IPS”) to conduct suitability analyses and assign asset allocations
3 for their clients. That form states that an IPS “describes the investment philosophies and
4 investment management procedures to be utilized for the funds...as well as the long-term goals of
5 the investor.” The form further states that the purpose of the IPS “is to outline an investment
6 allocation strategy that meets your stated goals and objectives while taking into consideration your
7 risk tolerance level, time horizon and your needs and preferences.” The IPS is “a summary of the
8 investment philosophy that the financial representative will seek to pursue on behalf of the
9 investor.”

10 10. On or about May 4, 2017, DC and Respondents completed and signed an IPS.
11 According to that IPS, Respondents recommended that DC should have an asset allocation of 60%
12 equities and 40% fixed income.

13 11. This 60% equities / 40% fixed income is contrary to the analysis performed by the
14 Riskalyze software, as it suggests a more aggressive investment strategy with a significant increase
15 in equities as compared to the Riskalyze analysis. This asset allocation is also contrary to the
16 information that DC provided Respondents, such as her request for a very conservative, low-risk
17 portfolio, because the higher percentage of equities and lower percentage of fixed income
18 investments is accompanied by an increased risk of loss.

19 12. On or about May 5, 2017, DC invested \$430,000 with Respondents.⁴

20 13. By the end of that same month, May 2017, Respondents had placed 97.96% of DC’s
21 investment in assets identified as “Other Holdings,” and 0% in either equities or fixed income
22 assets, with the remaining 2.04% held as cash and cash alternatives.

⁴ Respondents did not actually hold the funds; TD AmeriTrade, Inc. served as the custodian.



1 14. “Other Holdings” are also known as alternative investments. These are assets that do
2 not fall into a conventional investment category, such as stocks, bonds (fixed-income), or cash.
3 Alternative investments consist of non-publicly traded investments, including real estate
4 investment trusts, private corporations, limited partnerships, commodities, and derivative
5 contracts. Such assets are illiquid, as no market exists on which they may be sold, and they are
6 often not registered, regulated, or reviewed by state and federal regulators in the same way as
7 conventional securities. These investments are high risk and are generally appropriate for
8 institutional investors and individuals with high net worth or high personal income, such as
9 accredited or sophisticated investors, who can afford to lose their entire investments and who are
10 capable of analyzing and understanding the risks inherent in such investments.

11 15. In particular, Respondents initially used \$421,406 of DC’s \$430,000 to purchase these
12 alternative investments as follows:

- 13 A. HMS Income Fund, Inc. with an initial investment of \$168,542;
- 14 B. FS Global Credit Opportunities FUND-ADV with an initial investment of \$105,377;
- 15 and
- 16 C. FS Investment Corporation III with an initial investment of \$147,487.

17 16. The foregoing investments all have general suitability standards. These require, among
18 other things, that the investor can reasonably benefit from the investment based on his or her
19 overall investment objectives, that the investor can bear the risk of the investment, and that the
20 investor has an understanding of the risks, including the risk that the entire investment may be lost
21 and the lack of liquidity of the investment.

22 17. In addition to such general suitability standards, Oregon typically requires that issuers
23 of such alternative investments impose heightened suitability standards on their investors.



1 Specifically, Oregon generally requires a concentration limit such that an investor must limit his
2 or her investment in any such issuer to 10% of his or her net worth.

3 18. There was such a concentration limit imposed on each of the foregoing issuers other
4 than FS Global Credit Opportunities Fund-ADV.⁵ In other words, an investment in either of the
5 other two issuers that exceeds 10% of an investor's net worth or liquid net worth is not suitable
6 for an Oregonian investor.

7 19. By allocating nearly all of DC's investment funds into these alternative investments,
8 Respondents failed to comply with the Riskalyze software's recommendations, the allocation
9 indicated on the IPS, DC's expressly stated financial situation and desires, the suitability standards
10 set forth in the alternative investments' prospectuses, and Respondents' own analysis of an
11 appropriate asset allocation for DC.

12 20. The foregoing allocation of DC's funds was not suitable for DC based on her
13 investment objectives, financial situation and needs, age, and other information known to
14 Respondents.

15 21. This high percentage of allocation of DC's funds in other holdings or alternative
16 investments persisted for years. By the end of 2017, 98.1% of the funds Respondents managed for
17 DC were held in alternative investments, with none held in equities or fixed-income assets and
18 1.09% in cash or equivalents. Likewise, at the end of 2018, Respondents had allocated DC's funds
19 such that 99.8% were invested in alternative assets, none were in equities or fixed income assets,

⁵ It does not appear that Oregon imposed the same 10% concentration limit on FS Global Credit Opportunities Fund-ADV. However, that fund – like the others – requires investors to satisfy certain suitability standards. These include but are not limited to the following requirements: that investors “(1) can reasonably benefit from an investment in the Company based on such investor's overall investment objectives and portfolio structuring; (2) is able to bear the economic risk of the investment based on the prospective Shareholder's overall financial situation; and (3) has apparent understanding of (a) the fundamental risks of the investment, (b) the risk that such investor may lose his or her entire investment, (c) the lack of liquidity of the Shares, (d) the background and qualifications of FS Global Advisor and GSO and (e) the tax consequences of the investment.” DC did not satisfy these suitability standards.



1 and 0.2% was held in cash and equivalents.

2 22. During 2019, DC began to withdraw as much money as she believed she was able from
3 the alternative investments throughout the year, amounting to approximately 45% of her invested
4 funds. DC maintains that she did so because she was not satisfied with how Respondents were
5 managing her money. DC asserts that she was only able to withdraw limited amounts of money at
6 a time, as the alternative investments are not liquid and could generally only be sold at certain
7 times, such as when the issuers agreed to repurchase shares. Still, by the end of 2019, Respondents
8 had allocated DC's funds such that 52.1% were invested in alternative assets, 0% were in equities,
9 and 47.9% were in fixed income.

10 23. On or about August 24, 2020, DC filed a complaint with the Division, alleging, among
11 other things, that the investments Respondents placed her in were not appropriate for her.

12 24. The Division subsequently conducted an investigation into Respondents' securities-
13 related business activities.

14 25. In the course of that investigation, Bain indicated that Riskalyze scores are not
15 generally lower than 25, and he opined that a score of 20-25 would suggest a very conservative
16 portfolio consisting entirely of bonds/fixed-income assets.

17 26. Bain further acknowledged to the Division that there were no liquid investments
18 available in the market that would produce enough money to satisfy DC's stated income needs
19 while remaining at a risk level acceptable to her.

20 27. Nevertheless, despite not being able to identify any appropriate investment products
21 that were suitable for DC and that satisfied her stated income objectives and risk comfort,
22 Respondents accepted DC as a client and placed her in the foregoing alternative investments.

23 28. Respondents' notes indicate that DC informed them that she believed she would be



1 receiving an inheritance in the future. Respondents claim they relied on DC's statements and
2 apparently made decisions about how to invest DC's funds in anticipation of her receiving an
3 influx of cash at some future date. However, at no relevant time did DC actually receive that
4 inheritance, yet Respondents continued to invest DC's funds aggressively as outlined above. In
5 fact, Respondents' notes indicate that they allocated DC's portfolio using "an extremely high
6 allocation to illiquid alternative investments" which would only "be at an acceptable level" if she
7 actually received the inheritance and then invested it in liquid assets.

8 29. In other words, Respondents knew and acknowledged that the investments they
9 recommended and purchased for DC were not suitable for her based on her current assets, needs,
10 risk tolerance, and circumstances, and would only make sense if she received a large influx of cash
11 (which she never received).

12 30. Over a three-year period, from May 2017 through May 2020, DC's portfolio managed
13 by Respondents experienced a total realized loss of \$11,697.58 and unrealized loss of \$55,124.87,
14 for a total loss of \$66,822.45, reflecting 15.54% of her total investment.⁶

15 31. The Division's investigation examined several other clients of Respondents, including
16 those identified herein as RDW, RM, JLH, LCB, RSC, MKS, WJT, BJM, RRW, and BE.⁷

17 32. According to an IPS form dated April 11, 2016, Respondents determined that their
18 clients RDW should have their assets allocated as 60% equities and 40% fixed income. By the end
19 of December 2018, Respondents had invested RDW's funds such that 55.8% were allocated to
20 alternative investments, with 34% invested in equities and 9.5% invested in fixed income assets,
21 with the remaining 0.8% held in cash and equivalents. By the end of December 2019, Respondent

⁶ Respondents calculate DC's net out of pocket loss, accounting for withdrawals and dividends earned, during the same time period as \$3,959.97.

⁷ Clients identified with three initials represent married couples/two investors.



1 had allocated RDW's funds such that 61.0% were allocated to alternative investments, 24.4% were
2 invested in equities, 14.0 % was invested in fixed income, and 0.6% was held in cash and
3 equivalents.

4 33. According to an IPS dated May 5, 2016, Respondents determined that their client RM
5 should have his assets allocated as 60% equities and 40% fixed income. By the end of December
6 31, 2018, Respondents had invested RM's funds such that 13.6% were allocated to alternative
7 investments, with 13.1% invested in equities and 73.2% invested in fixed income assets, with the
8 remaining held in cash and equivalents. By the end of December 2019, Respondent had allocated
9 RM's funds such that 61.9% were allocated to alternative investments, 37.4% were invested in
10 equities, 0% was invested in fixed income, and 0.7% was held in cash and equivalents.

11 34. According to an IPS form dated October 3, 2016, Respondents determined that their
12 clients JLH should have their assets allocated as 60% equities and 40% fixed income. By the end
13 of December 2018, Respondents had invested JLH's funds such that 88.3% were allocated to
14 alternative investments, with 0% invested in equities and 4.2% invested in fixed income assets,
15 with the remaining 7.5% held in cash and equivalents. By the end of December 2019, Respondent
16 had allocated JLH's funds such that 82.7% were allocated to alternative investments, 0% were
17 invested in equities, 6.4% was invested in fixed income, and 11.0% was held in cash and
18 equivalents.

19 35. According to an IPS form dated November 7, 2016, Respondents determined that their
20 clients LCB should have their assets allocated as 60% equities and 40% fixed income. By the end
21 of December 2018, Respondents had invested LCB's funds such that 75.6% were allocated to
22 alternative investments, with 16.7% invested in equities and 5.7% invested in fixed income assets,
23 with the remaining 1.9% held in cash and equivalents. By the end of December 2019, Respondent



1 had allocated LCB's funds such that 28.4% were allocated to alternative investments, 48.5% were
2 invested in equities, 15.9% was invested in fixed income, and 7.3% was held in cash and
3 equivalents.

4 36. According to an IPS dated February 14, 2017, Respondents determined that their clients
5 RSC should have their assets allocated as 60% equities and 40% fixed income. By the end of
6 December 2018, Respondents had invested RSC's funds such that 97.7% were allocated to
7 alternative investments, with 0.5% invested in equities and 1.1% invested in fixed income assets,
8 with the remaining held in cash and equivalents. By the end of December 2019, Respondent had
9 allocated RSC's funds such that 86.2% were allocated to alternative investments, 13.6% were
10 invested in equities, 0% was invested in fixed income, and 0.2% was held in cash and equivalents.

11 37. According to an IPS form dated June 1, 2017, Respondents determined that their clients
12 MKS should have their assets allocated as 60% equities and 40% fixed income. By the end of
13 December 2018, Respondents had invested MKS's funds such that 99.2% were allocated to
14 alternative investments, with 0% invested in equities and 0% invested in fixed income assets, with
15 the remaining held in cash and equivalents. By the end of December 2019, Respondent had
16 allocated MKS's funds such that 76.5% were allocated to alternative investments, 19.3% were
17 invested in equities, 0% was invested in fixed income, and 4.2% was held in cash and equivalents.

18 38. According to an IPS form dated October 19, 2017, Respondents determined that their
19 clients WJT should have their assets allocated as 20% equities and 80% fixed income. WJT and
20 Bain signed that IPS. By the end of December 2018, Respondents had invested WJT's funds such
21 that 62.2% were allocated to alternative investments, with 37% invested in equities and 0%
22 invested in fixed income assets, with the remaining 0.7% held in cash and equivalents. By the end
23 of December 2019, Respondent had allocated WJT's funds such that 99.3% were allocated to



1 alternative investments, none were invested in either equities or fixed income, and 0.7% was held
2 in cash and equivalents.

3 39. According to an IPS form dated July 2, 2018, Respondents determined that their clients
4 BJM should have their assets allocated as 40% equities and 60% fixed income. By the end of
5 December 2018, Respondents had invested BJM's funds such that 73.5% were allocated to
6 alternative investments, with 24.1% invested in equities and 0% invested in fixed income assets,
7 with the remaining 2.4% held in cash and equivalents. By the end of 2019, Respondent had
8 allocated BJM's funds such that 98.1% were allocated to alternative investments, none were
9 invested in either equities or fixed income, and 1.9% was held in cash and equivalents.

10 40. According to an IPS form dated August 20, 2018, Respondents determined that their
11 clients RRW should have their assets allocated as 40% equities and 60% fixed income. By the end
12 of December 2018, Respondents had invested RRW's funds such that 68.1% were allocated to
13 alternative investments, with 5% invested in equities and 25.8% invested in fixed income assets,
14 with the remaining 1.0% held in cash and equivalents. By the end of December 2019, Respondent
15 had allocated RRW's funds such that 73.2% were allocated to alternative investments, 3.3% were
16 invested in equities, 22.6 % was invested in fixed income, and 0.9% was held in cash and
17 equivalents.

18 41. According to an IPS form dated September 10, 2018, Respondents determined that their
19 client BE should have her assets allocated as 60% equities and 40% fixed income. By the end of
20 December 2018, Respondents had actually invested BE's funds such that that 92.4% were
21 allocated to alternative investments, with only 3.5% and 3.7% allocated to equities and fixed
22 income, respectively, and the balance held in cash. By the end of 2019, Respondents had allocated
23 BE's funds such that 75.7% were allocated to alternative investments while 19.2% and 4.5% were



1 allocated to equities and fixed income, respectively.

2 42. For all of the foregoing clients, Respondents actual asset allocation was significantly
3 different from the agreed-upon allocation per the clients' IPS forms and was not aligned with their
4 Riskalyze scores. This is depicted in the following chart:

Client(s)	Riskalyze score	Agreed upon allocation in IPS (equities / fixed income)	2018 actual allocation (equities / fixed income)	2018 actual alternative asset allocation	2019 actual allocation (equities / fixed income)	2019 actual alternative asset allocation
DC	18	60% / 40%	0% / 0%	99.8%	0% / 47.9%	52.1%
BE	unknown	60% / 40%	3.5% / 3.7%	92.4%	19.2% / 4.5%	75.7%
BJM	22	40% / 60%	24.1% / 0%	73.5%	0% / 0%	98.1%
WJT	unknown	20% / 80%	37.0% / 0%	62.2%	0% / 0%	99.3%
RRW	25	40% / 60%	5.0% / 25.8%	68.1%	3.3% / 22.6%	73.2%
RDW	33	60% / 40%	34.0% / 9.5%	55.8%	24.4% / 14.0%	61.0%
JLH	21	60% / 40%	0% / 4.2%	88.3%	0% / 6.4%	82.7%
LCB	35	60% / 40%	16.7% / 5.7%	75.6%	48.5% / 15.9%	28.4%
MKS	29	60% / 40%	0% / 0%	99.2%	19.3% / 0%	76.5%
RM	21	60% / 40%	13.1% / 73.2%	13.6%	37.4% / 0%	61.9%
RSC	23	60% / 40%	0.5% / 1.1%	97.7%	13.6% / 0%	86.2%

5 43. By allocating their clients' assets as outlined above, Respondents failed to comply with
6 the Riskalyze software's recommendations, the allocation indicated on the IPS forms, and
7 Respondents' own analysis of an appropriate asset allocation for their clients. Accordingly, the
8 foregoing asset allocations were not suitable for these clients based on their investment objectives,
9 financial situation and needs, ages, and other information known to Respondents.

10 44. Respondents maintain that – other than DC – none of the foregoing clients complained
11 about their portfolios' asset allocation or returns, experienced losses, or otherwise indicated to
12 Respondents dissatisfaction with Respondents' investment management or advice.

13 45. The Division has not received any complaints from any of the foregoing clients – other
14 than DC – about their portfolios' asset allocation or returns, nor have those clients otherwise
15 indicated to the Division dissatisfaction with Respondents' investment management or advice.



1 **CONCLUSIONS OF LAW**

2 The Director CONCLUDES that:

3 46. At all relevant times, under ORS 59.015(20)(a), Respondent BWMG was a state
4 investment adviser.

5 47. At all relevant times, under ORS 59.015(18)(a), Respondent Bain was an investment
6 advisor representative employed by or associated with BWMG.

7 48. Under ORS 59.015(19)(a), “security” means a note, stock, treasury stock, bond, or, in
8 general, any interest or instrument commonly known as a “security.”

9 49. The investments contained in the accounts that Respondents managed, including those
10 belonging to DC, RDW, RM, JLH, LCB, RSC, MKS, WJT, BJM, RRW, and BE, constitute
11 “securities” under ORS 59.015(19)(a). These include but are not limited to those assets
12 characterized as equities, fixed-income, and other holdings or alternative investments.

13 50. Under OAR 441-205-0145(1), a person who is a State Investment Adviser or an
14 Investment Adviser Representative for a State Investment Adviser is a fiduciary and has a duty to
15 act primarily for the benefit of the Adviser’s clients. Accordingly, both Respondents are fiduciaries
16 under OAR 441-205-0145(1).

17 51. Under OAR 441-205-0145(1)(a), a state investment adviser or its investment adviser
18 representatives shall not engage in unethical business practices, including recommending to a
19 client to whom investment supervisory, management, or consulting services are provided the
20 purchase, sale, or exchange of any security without reasonable grounds to believe that the
21 recommendation is suitable for the client on the basis of information furnished by the client after
22 reasonable inquiry concerning the client’s investment objectives, financial situation, and needs,
23 and any other information known by the investment adviser.

24 52. By recommending to DC, RDW, RM, JLH, LCB, RSC, MKS, WJT, BJM, RRW, and



1 BE the purchase of securities – including the significant allocation in their portfolios of alternative
2 investments – without having reasonable grounds to believe that those securities were suitable for
3 those clients on the basis of information furnished by them after reasonable inquiry concerning
4 their investment objectives, financial situation, needs, and other information known by
5 Respondents, Respondents engaged in unethical business practices under OAR 441-205-
6 0145(1)(a).

7 53. By making such unsuitable recommendations to DC, RDW, RM, JLH, LCB, RSC,
8 MKS, WJT, BJM, RRW, and BE without a reasonable basis for the same and by failing to make
9 investment decisions consistent with those clients’ objectives, strategies, risk tolerance, and other
10 known relevant factors, Respondents failed to act primarily for the benefit of those clients and
11 breached their fiduciary duty owed to them under OAR 441-205-0145(1).

12 54. Under ORS 59.205(2), the Director may deny, suspend, or revoke, or impose conditions
13 or restrictions on, a license of a person as a state investment adviser or investment adviser
14 representative if the Director finds that the licensee has engaged in dishonest, fraudulent, or illegal
15 practices or conduct in any business or profession or unfair or unethical practices or conduct in
16 connection with the purchase or sale of any security.

17 55. Under OAR 441-205-0010, as used in section (2) of ORS 59.205, the terms “dishonest,
18 fraudulent, or illegal practices or conduct,” and “unfair or unethical practices or conduct,”
19 separately or in any combination thereof, shall include, but not be limited to, those acts defined
20 herein as “manipulative, deceptive, or fraudulent device or contrivance” or “fraudulent, deceptive
21 or manipulative act or practice.”

22 56. Because Respondents engaged in unethical business practices under OAR 441-205-
23 0145(1)(a) and because they breached their fiduciary duties owed under ORS 441-205-0145(1),



1 Respondents are subject to suspension, revocation, conditioning, or restricting of their licenses as
2 a state investment adviser and investment adviser representative under ORS 59.205(2).

3 57. Under ORS 59.205(13), the Director may deny, suspend, or revoke, or impose
4 conditions or restrictions on, a license of a person as a state investment adviser or if the Director
5 finds that the licensee has failed to reasonably supervise its investment adviser representatives.

6 58. By permitting Bain to sell allegedly unsuitable securities to clients as described above,
7 and by otherwise failing to detect or correct the same, BWMG failed to reasonably supervise Bain,
8 in violation of ORS 59.205(13) and is therefore subject to license action.

9 59. Under ORS 59.135(2), it is unlawful for any person, directly or indirectly, in
10 connection with the purchase or sale of any security or the conduct of a securities business or for
11 any person who receives any consideration from another person primarily for advising the other
12 person as to the value of securities or their purchase or sale, whether through the issuance of
13 analyses or reports or otherwise, to make any untrue statements of material fact or to omit to state
14 a material fact necessary to make the statements true, in the light of the circumstances under which
15 they are made, not misleading.

16 60. By recommending the purchase, sale, or exchange of securities to their clients, as
17 identified above, without having reasonable grounds to believe that those recommendations were
18 suitable, and doing so without informing those clients of the attendant risks, applicable suitability
19 standards, and other information necessary to determine and understand whether those investments
20 were appropriate, Respondents made untrue statements of material fact or omitted to state material
21 facts necessary to make the statements true, in violation of ORS 59.135(2).

22 61. Under ORS 59.135(3), it is unlawful for any person, directly or indirectly, in connection
23 with the purchase or sale of any security or the conduct of a securities business or for any person



1 who receives any consideration from another person primarily for advising the other person as to
2 the value of securities or their purchase or sale, whether through the issuance of analyses or reports
3 or otherwise, to engage in any act, practice, or course of business which operates or would operate
4 as a fraud or deceit upon any person.

5 62. By recommending the purchase, sale, or exchange of securities to their clients, as
6 identified above, without having reasonable grounds to believe that those recommendations were
7 suitable, and doing so without informing those clients of the attendant risks, applicable suitability
8 standards, and other information necessary to determine and understand whether those investments
9 were appropriate, Respondents engaged in an act, practice, or course of business which operates
10 or would operate as a fraud or deceit on any person, in violation of ORS 59.135(3). Further, by
11 conducting analyses and generating reports using the Riskalyze software and their internal IPS
12 forms, and then by disregarding those analyses and reports by making recommendations or sales
13 of securities in ways that contradicted the same, Respondents engaged in an act, practice, or course
14 of business which operates or would operate as a fraud or deceit on any person, in violation of
15 ORS 59.135(3).

16 63. Under ORS 59.995(1)(a), any person who violates or who procures, aids, or abets the
17 violation of ORS 59.005 to 59.505, 59.710 to 59.830, 59.991 and 59.995, or any rule or order of
18 the Director shall be subject to a penalty of not more than \$20,000 for every violation, which shall
19 be paid to the General Fund of the State Treasury.

20 64. Under ORS 59.995(2), every violation described in subsection (1)(a) of this section is
21 a separate offense.

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24 ///



1 **ORDERS**

2 The Director issues the following ORDERS:

3 Order to Cease and Desist

4 65. Pursuant to ORS 59.245(4), the Director hereby ORDERS Respondents, and all entities
5 owned or controlled by Respondents, their successors and assignees, to CEASE AND DESIST
6 from violating, ORS 59.135, ORS 59.205, and OAR 441-205-0145.

7 Order Assessing Civil Penalties

8 66. Pursuant to the authority of ORS 59.995(1), the Director hereby ORDERS the assessment of
9 sixty thousand dollars (\$60,000) of CIVIL PENALTIES against Respondents, jointly and severally, for
10 violating ORS 59.135(2) and (3), ORS 59.205(13), and OAR 441-205-0145(1).

11 67. The Director SUSPENDS the collection of the foregoing sixty thousand dollars
12 (\$60,000) of civil penalties, provided:

13 A. Respondents pay restitution to the client identified herein as DC in the amount of
14 \$35,000 and Respondents shall, contemporaneously with their submission of this signed Consent
15 Order to the Director, provide the Division with documentation satisfactory to the Division to
16 demonstrate that Respondents caused to be delivered to DC the \$35,000 payment;

17 B. Respondents agree to refrain from advising or directing their clients to invest in
18 alternative investments in such a way that would result in those clients exceeding any
19 concentration limits the Division imposes on those funds, or that those funds self-impose, in
20 accordance with each of the funds' prospectuses, subscription forms, or other offering documents,
21 and Respondents agree to review the same for each client identified above;

22 C. Respondents shall, within ninety (90) days of Respondents' execution of this Consent
23 Order, submit documentation to the Division that confirms that Respondents have reviewed, or
24 made good-faith efforts to review, with each of the clients identified above their desired asset

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1 allocation and current portfolio holdings, including a specific review of each of the alternative
2 assets held and the benefits and risks of the same, and further demonstrate that Respondents made
3 recommendations to the clients whose holdings exceed the applicable concentration limits to
4 promptly, or at the next liquidity event for the asset, liquidate the alternative asset;

5 D. Respondents shall create and maintain proper client notes and suitability
6 determinations in easily accessible and identifiable formats as required by the Oregon Securities
7 Law; and

8 E. Respondents shall comply with all terms of this Consent Order and the Oregon
9 Securities Law.

10 68. The Director shall waive the foregoing suspended sixty thousand dollars (\$60,000) civil
11 penalty at the end of a period of three (3) years from the effective date of this Consent Order
12 provided that Respondents comply with the Oregon Securities Law and the terms and conditions
13 of this Consent Order.

14 69. If Respondents fail to comply with this Consent Order or otherwise fail to comply with
15 the Oregon Securities Law within the foregoing period of three (3) years, then the suspended civil
16 penalties shall become immediately due and payable and the Division may take additional action
17 against Respondents for violations of this Consent Order or the Oregon Securities Law.

18 **NONDISCHARGEABILITY**

19 70. Respondents agree the facts and violations set forth in this Order may be taken as true
20 without further proof in any bankruptcy case or subsequent civil litigation the Director may pursue
21 to enforce its rights to any payment or money judgment under the terms of this Order, including
22 but not limited to any nondischargeability complaint in any bankruptcy proceeding and that this
23 Order shall have collateral estoppel effect in any bankruptcy case.

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1 **FINAL ORDER**

2 71. This Order is a “Final Order” under ORS 183.310(6)(b). Subject to that provision, entry
3 of this Order in no way limits or prevents further remedies, sanctions, or actions which may be
4 available to the Director under Oregon law to enforce this Order, for violations of this Order, for
5 conduct or actions of Respondents that are not covered by this Order, or against any party not
6 covered by this Order.

IT IS SO ORDERED.

Dated this 28th day of November, 2023.

ANDREW R. STOLFI, Director
Department of Consumer and Business Services

/s/ Dorothy Bean
Dorothy Bean, Chief of Enforcement Division
of Financial Regulation

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1 **CONSENT TO ENTRY OF ORDER**

2 I, Mark Bain, state that I hold the title of owner and member and I am an authorized
3 representative of Respondent Bain Wealth Management Group, LLC (“BWMG”) with the authority to
4 sign this Consent Order on behalf of BWMG. I have read the foregoing Order and I fully understand the
5 contents hereof. I have been advised of the right to a hearing and of the right to be represented by
6 counsel in this matter, and I have been represented by counsel. BWMG voluntarily consents to the entry
7 of this Order without any force or duress, expressly waiving any right to a hearing in this matter, as well
8 as any rights to administrative or judicial review of this order. BWMG understands that this is a “Final
9 Order” under ORS 183.310(6)(b). BWMG understands that the Director reserves the right to take further
10 action to enforce this Order or to take appropriate action upon discovery that BWMG has committed
11 other violations of the Insurance Code. BWMG will fully comply with the terms and conditions stated
12 herein.

13 BWMG understands that this Order is a public document.

14 Signature: /s/ Mark Bain

15 Title: Senior Wealth Advisor, Managain Partner

16 State of Oregon

17 County of Marion

18
19 Signed or attested before me on this 7th day of November , 2023 by Mark Bain.

20
21 /s/ Nicholas Munyoung Rodgers

22 Notary Public

23
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1 **CONSENT TO ENTRY OF ORDER**

2 I, Mark Bain, state that I have read the foregoing Order and I fully understand the contents
3 hereof. I have been advised of the right to a hearing and of the right to be represented by counsel in this
4 matter, and I have been represented by counsel. I voluntarily consent to the entry of this Order without
5 any force or duress, expressly waiving any right to a hearing in this matter, as well as any rights to
6 administrative or judicial review of this order. I understand that this is a “Final Order” under ORS
7 183.310(6)(b). I understand that the Director reserves the right to take further action to enforce this Order
8 or to take appropriate action upon discovery that I have committed other violations of the Insurance
9 Code. I will fully comply with the terms and conditions stated herein.

10 I understand that this Order is a public document.

11 Signature: /s/ Mark Bain

12 State of Oregon

13 County of Marion

14
15 Signed or attested before me on this 7th day of November , 2023 by Mark Bain.

16
17 /s/ Nicholas Munyoung Rodgers

18 Notary Public

19
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