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7 Attorneys for the Complainant

8  
9 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION  
10 OF THE STATE OF CALIFORNIA

11  
12 In the Matter of:

CRD NO.: 287588

13 THE COMMISSIONER OF BUSINESS  
14 OVERSIGHT,

CONSENT ORDER

15 Complainant,

16 v.

17 ARK FINANCIAL ADVISORS, LLC, an  
18 entity,

19 Respondent.  
20

21 This Consent Order is entered into between the Commissioner of Financial Protection and  
22 Innovation (Commissioner) and Ark Financial Advisors, LLC (Ark Financial) and is made with  
23 respect to the following facts:

24 **I.**

25 **RECITALS**

26 A. The Commissioner has jurisdiction over the licensing and regulation of persons  
27 engaged in the business of investment advising under the Corporate Securities Law of 1968  
28 (Corporations Code section 25000 et seq.).

1 B. Ark Financial holds a valid and unrevoked investment adviser certificate issued by  
2 the Commissioner on May 7, 2019, pursuant to Corporations Code section 25230. Ark Financial is  
3 an investment adviser business located 3520 Executive Center Dr., Suite 124, Austin, TX 78731.  
4 Ark Financial is a limited liability company.

5 C. Corporations Code section 25241 requires every investment adviser licensed by the  
6 Commissioner to maintain books and records, file reports with the Commissioner, and submit to  
7 examination by the Commissioner, as the Commissioner deems necessary or appropriate in the  
8 public interest or for the protection of investors.

9 D. Despite the Commissioner’s efforts starting on March 31, 2021 and continuing  
10 through the deadline to file the online examination, Ark Financial failed to timely complete and  
11 submit the online examination by the March 17, 2021 deadline.

12 E. On December 1, 2021, Ark Financial submitted its online examination.

13 F. The Commissioner finds that entering into this Consent Order is necessary, in the  
14 public interest, for the protection of investors and consistent with the purposes, policies, and  
15 provisions of the Corporate Securities Law of 1968.

16 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set  
17 forth herein, the parties agree as follows:

18 **II.**

19 **TERMS AND CONDITIONS**

20 1. Purpose. The parties intend to resolve this matter for the purpose of judicial economy  
21 and expediency and without the uncertainty and expense of a hearing or other litigation.

22 2. Order to Discontinue Violation. Ark Financial admits that it failed to file its online  
23 examination by the May 17, 2021 filing deadline, as required by Corporations Code section 25241.  
24 Pursuant to Corporations Code section 25249, Ark Financial is hereby ordered to discontinue  
25 violations of Corporations Code section 25241.

26 3. Administrative Penalty. Ark Financial shall pay an administrative penalty of  
27 \$1,000.00 no later than 30 days after the effective date of this Consent Order as defined in paragraph  
28 17. The penalty must be made payable in the form of a cashier’s check or Automated Clearing

1 House deposit to the Department of Financial Protection and Innovation and transmitted to the  
2 attention of Accounting – Litigation, at the Department of Financial Protection and Innovation, 1515  
3 K Street, Suite 200, Sacramento, California 95814. Notice of the payment must be concurrently sent  
4 to: Kelly Suk, Counsel, Department of Financial Protection and Innovation, 320 West Fourth Street,  
5 Suite 750, Los Angeles, California 90068.

6 4. Waiver of Hearing Rights. Ark Financial acknowledges that the Commissioner is  
7 ready, willing, and able to proceed with the filing of an administrative enforcement action on the  
8 charges contained in this Consent Order. Ark Financial hereby waives the right to any hearings, and  
9 to any reconsideration, appeal, or other right to review which may be afforded pursuant to the  
10 Corporate Securities Law of 1968, Administrative Procedure Act, including Government Code  
11 section 11415.60, subdivision (b); Code of Civil Procedure; or any other provision of law. By  
12 waiving such rights, Ark Financial effectively consents to this Consent Order and all the terms  
13 becoming final.

14 5. Failure to Pay Administrative Penalty. If Ark Financial fails to comply with  
15 paragraph 3, the Commissioner may summarily suspend it from engaging in business under its  
16 investment adviser certificate until it provides evidence of compliance to the Commissioner’s  
17 satisfaction. Ark Financial hereby waives any notice or hearing rights afforded under the  
18 Administrative Procedure Act, including Government Code section 11415.60, subdivision (b); Code  
19 of Civil Procedure; or any other provision of law to contest the summary suspension contemplated  
20 by this paragraph.

21 6. Full and Final Resolution. Except as stated in paragraph 5, this Consent Order is  
22 intended to constitute a full and final resolution of the matter described in it. The  
23 Commissioner will not bring any further action or proceeding concerning the matter unless she  
24 discovers violations by Ark Financial that do not form the basis for this Consent Order, including  
25 violations knowingly concealed from the Commissioner.

26 7. Assisting Other Agencies. Nothing in this Consent Order limits the  
27 Commissioner’s ability to assist any other government agency with any action brought by that  
28

1 agency against Ark Financial, including an action based on any of the acts, omissions, or events  
2 described in this Consent Order.

3 8. Independent Legal Advice. Each of the parties represents, warrants, and agrees that it  
4 has had an opportunity to seek independent advice from its attorney(s) and/or representatives with  
5 respect to the advisability of executing this Consent Order.

6 9. Reliance. Each of the parties represents, warrants, and agrees that in executing this  
7 Consent Order it has relied solely on the statement set forth herein and has had the opportunity to  
8 seek the legal advice of its own counsel. Each of the parties further represents, warrants, and agrees  
9 that in executing this Consent Order it has placed no reliance on any statement, representation, or  
10 promise of any other party, or any other person or entity not expressly set forth herein, or upon the  
11 failure of any party or any other person or entity to make any statement, representation, or disclosure  
12 of anything whatsoever. The parties have included this clause: (1) to preclude any claim that any  
13 party was in any way fraudulently induced to execute this Consent Order; and (2) to preclude the  
14 introduction of parol evidence to vary, interpret, supplement, or contradict the terms of this Consent  
15 Order.

16 10. Full Integration. This Consent Order is the final written expression and the complete  
17 and exclusive statement of all the agreements, conditions, promises, representations, and covenant  
18 between the Parties with respect to the subject matter hereof, and supersedes all prior or  
19 contemporaneous agreements, negotiations, representations, understandings, and discussions  
20 between and among the Parties, their respective representatives, and any other person or entity with  
21 respect to the subject matter covered hereby.

22 11. No Presumption Against Drafter. In that the parties have had the opportunity to draft,  
23 review, and edit the language of this Consent Order, no presumption for or against any party arising  
24 out of drafting all or any part of this Consent Order will be applied in any action relating to,  
25 connected to, or involving this Consent Order. Accordingly, the parties waive the benefit of Civil  
26 Code section 1654 and any successor or amended statutes, providing that in cases of uncertainty,  
27 language of a contract should be interpreted most strongly against the party who caused the  
28 uncertainty to exist.

1           12.    Voluntary Agreement. Ark Financial hereby enters in this Consent Order voluntarily  
2 and without coercion and acknowledges that no promises, threats, or assurances have been made by  
3 the Commissioner or any officer, or agent thereof, about this Consent Order.

4           13.    Waiver, Amendments, and Modifications. No waiver, amendment, or modification  
5 of this Consent Order will be valid or binding unless it is in writing and signed by each of the  
6 Parties. The waiver of any provision of this Consent Order will not be deemed a waiver of any  
7 other provision. No waiver by either party of any breach of, or of compliance with, any condition  
8 or provision of this Consent Order by the other party will be considered a waiver of any other  
9 condition or provision or of the same condition or provision at another time.

10          14.    Counterparts. This Consent Order may be executed in one or more separate  
11 counterparts, each of which when so executed, shall be deemed an original. Such counterparts shall  
12 together constitute a single document.

13          15.    Public Record. Ark Financial acknowledges that the Consent Order is public record.

14          16.    Headings. The headings to the paragraphs of this Consent Order are inserted for  
15 convenience only and will not be deemed a part hereof or affect the construction or interpretation of  
16 the provisions hereof.

17          17.    Governing Law. This Consent Order will be governed by and construed in  
18 accordance with California law. Each of the Parties hereto consents to the jurisdiction of such court,  
19 and hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient  
20 forum to the maintenance of such action or proceeding in such court.

21          18.    Effective Date. This Consent Order will become effective on the date it is signed by  
22 all parties and delivered by the Commissioner to Ark Financial by electronic mail at:  
23 [kmischnick@arkfinancial.com](mailto:kmischnick@arkfinancial.com).

24          19.    Settlement Authority. Each party represents that the person signing this Consent  
25 Order on its behalf has the authority and capacity to do so.

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Dated: December 2, 2021

CHRISTOPHER S. SHULTZ  
Acting Commissioner of Financial Protection and Innovation

By \_\_\_\_\_  
MARY ANN SMITH  
Enforcement Division  
Department of Business Oversight

Dated: December 2, 2021

Ark Financial Advisors, LLC

By \_\_\_\_\_  
David Bull  
CEO