

**BEFORE THE COMMISSIONER OF COMMERCE AND INSURANCE  
FOR THE STATE OF TENNESSEE**

**IN THE MATTER OF:**

**CHURCH OF GOD FOUNDATION, INC.**

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**Order No. 11-013**

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**CONSENT ORDER**

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The Tennessee Securities Division (“TSD”) and the Church of God Foundation, Inc. (“COGF”) agree, subject to the approval of the Commissioner of the Tennessee Department of Commerce and Insurance (“Commissioner”), to the entry of this Consent Order (“Order”) in accordance with TENN. CODE ANN. § 48-2-116 of the Tennessee Securities Act of 1980, as amended, TENN. CODE ANN. §§ 48-2-101, *et seq.* (the “Act”), which states that the Commissioner may from time to time make such orders as are necessary to carry out the provisions of the Act.

**GENERAL STIPULATIONS**

1. It is expressly understood that this Order is subject to the Commissioner’s acceptance and has no force and effect until such acceptance is evidenced by the entry of the Commissioner.
2. This Order is executed by the COGF for the purpose of avoiding further administrative action with respect to this cause. Furthermore, should this Order not be accepted by the Commissioner, it is agreed that presentation to and consideration of this Order by the Commissioner shall not unfairly or illegally prejudice the Commissioner from further participation or resolution of these proceedings.

3. COGF fully understands that this Order will in no way preclude additional proceedings by the Commissioner against the COGF for acts or omissions not specifically addressed in this Order or for facts and/or omissions that do not arise from the facts or transactions herein addressed.

4. COGF fully understands that this Order will in no way preclude proceedings by state government representatives, other than the Commissioner for the violations of the Act addressed specifically in this Order, against the COGF for violations of law under statutes, rules, or regulations of the State of Tennessee, which may arise out of the facts, acts, or omissions contained in the Findings of Fact and Conclusions of Law stated herein, or which may arise as a result of the execution of this Order by the COGF.

#### **GENERAL PROVISIONS**

WHEREAS, the COGF is a Tennessee non-profit corporation chartered on April 24, 2001, which at all pertinent times maintained its business address as 2490 Keith Street NW, P.O. Box 2430, Cleveland, TN 37243; and

WHEREAS, in August 2010, the COGF appointed Donald Aultman as the new Chairman and President of the COGF and he discovered that the COGF and its predecessor had issued church extension fund / promissory note investments in the form of Withdrawable Gifts Trusts ("WGT") for which qualification as an exempt security under the Act had not been sought or obtained with the TSD based on a mistaken belief that the exemption was a self-executing exemption not requiring any filings with the TSD; and

WHEREAS, upon discovery of the lack of qualification as an exempt security, the COGF

ceased issuing the WGT and hired an experienced securities attorney to assist the COGF in coming into compliance with qualifying for the exemption under the Act; and

WHEREAS, the COGF self-reported to the TSD the previous issuance of unregistered/non-exempt securities in the form of WGT to Tennessee investors and voluntarily provided all pertinent information to the TSD upon request; and

WHEREAS, the TSD, having conducted a review into the activities of the COGF in connection with the COGF's issuance of securities over a considerable period of time for which qualification as an exempt security under the Act had not been sought or obtained; and

WHEREAS, COGF identified transactions which were executed in violation of the Act as a result of the failure to qualify for the exemption for a church extension fund and agreed to the mandatory offer of rescission to such customers with terms and conditions that are consistent with the provisions as set out in TENN. CODE ANN. § 48-2-122 and the policy statement for rescission offers issued thereunder; and

WHEREAS, COGF has since taken substantially all of the steps required for becoming qualified as an exempt church extension fund under the Act, has expressed an intention to complete the qualification requirements before issuing any additional notes and shall comply with all legal and regulatory requirements under the Act, the Rules promulgated pursuant to the Act and the policy statements issued thereunder; and

WHEREAS, COGF has advised the TSD of its agreement to resolve the matter relating to its previous issuance of unregistered/non-exempt securities; and

WHEREAS, COGF expressly waives all further procedural steps, and expressly waives all rights to seek judicial review of or to otherwise challenge or contest the validity of the Consent

Order, the stipulations and imposition of discipline contained herein, and the consideration and entry of said Order by the Commissioner; and

WHEREAS, COGF elects to permanently waive any right to a hearing and appeal under TENN. CODE ANN. § 4-5-101 *et seq.* with respect to this Order;

NOW THEREFORE, the Commissioner, as administrator of the Act (TENN. CODE ANN. § 48-2-101 *et seq.*), hereby enters this Order:

### **FINDINGS OF FACT**

1. Title 48 of the Tennessee Code Annotated, the Tennessee Securities Act of 1980, as amended, (the "Act") TENN. CODE ANN. §§ 48-2-101, *et seq.* places the responsibility for the administration of the Act on the Commissioner. The TSD is the lawful agent through which the Commissioner discharges this responsibility. TENN. CODE ANN. § 48-2-115.

2. The TSD is authorized to bring this action based on a finding by the Commissioner that the action is in the public interest, necessary for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of the Act. TENN. CODE ANN. § 48-2-116.

3. On or about August 2010, the COGF appointed a new Board of Directors and named Donald Aultman ("Aultman") as the new Chairman and President.

4. Upon assuming the duties of his new position, Aultman discovered that the COGF and its predecessor, the Church of God Department of Stewardship ("COGDS") had been issuing WGT for approximately twenty-seven (27) years, paying interest in the range of five (5) to seven (7) percent, with the mistaken understanding that the church extension notes did not require registration because they were exempt securities.

5. Aultman, as of August 15, 2010, stopped the COGF from issuing any new WGT, hired an experienced securities attorney to assist the COGF in coming into compliance with qualifying for the exemption for church extension funds under the Act and self-reported to the TSD the previous unregistered/non-exempt sales of securities in Tennessee.

6. During the TSD's inquiry into this matter COGF has voluntarily complied with all requests for information, promptly began the process of qualifying for the church extension fund exemption provided under the Act and has provided complete cooperation in determining the number of Tennessee investors, the number of transactions and the dollar amount invested by Tennesseans in the WGT.

7. The only requirement for qualification for the exemption that has not been met as of the date of the drafting of this Order is the filing of audited financial statements for 2011.

8. Upon completion of its inquiry, the TSD has determined that thirty-six (36) Tennessee investors engaged in approximately one hundred and one (101) purchase transactions of WGT between 1983 and 2010, representing an outstanding total investment, as of June 2011, of more than three and a half million dollars (+ \$3,500,000.00).

9. The WGT sold by COGF qualify as securities under the Act because they have the requisite characteristics of all of the following: bonds, evidence of indebtedness and investment contracts.

10. The WGT sold by COGF were not registered with the TSD for sale in Tennessee and the COGF did not seek to obtain qualification for the exemption allowed in the Act for church extension funds. In order to qualify for the church extension fund exemption, a notice filing is required and certain information, as set out in the rules promulgated under the Act and the policy

statements issued thereunder, must be provided to the TSD prior to sale of the security in Tennessee.

11. The WGT sold by COGF were not covered securities pursuant to the Act.

12. COGF has agreed to the mandatory offer of rescission to all investors in the WGT and has already drafted and submitted to the TSD for review and approval the rescission offer letter to be sent to all Tennessee investors.

### **CONCLUSIONS OF LAW**

#### ***Pertaining to the Commissioner's Authority to Carry Out the Provisions of the Tennessee Securities Act of 1980***

1. The State of Tennessee has jurisdiction over this matter pursuant to the Tennessee Securities Act of 1980, as amended (the "Act") (TENN. CODE ANN. § 48-2-101 *et seq.*).

2. TENN. CODE ANN. § 48-2-116 provides that the Commissioner may make, promulgate, amend, and rescind such Orders as are necessary to carry out the provisions of the Act upon a finding that such Order is in the public interest, necessary for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of the Act.

#### ***Pertaining to Church of God Foundation's Sales of Unregistered Securities***

3. TENN. CODE ANN. § 48-2-102(8) states, in pertinent part, that "covered security" means any security:

(A) Listed, or authorized for listing on the New York Stock Exchange or the American Stock Exchange or listed on the National Market System of the Nasdaq Stock Market (or any successor to such entities);

(B) Listed, or authorized for listing on a national securities exchange (or tier or segment thereof) that has listing standards that the securities and exchange commission determines by rule (on its own initiative or on the basis of petition) are substantially similar to the listing standards applicable to securities described in subdivision (8)(A);

- (C) That is a security of the same issuer that is equal in seniority or that is a senior security to a security described in subdivision (8)(A) or (B);
- (D) Issued by an investment company that is registered, or that has filed a registration statement, under the Investment Company Act of 1940;
- (E) Sold to qualified purchasers, as defined by the securities and exchange commission; or
- (F) That is issued in connection with a transaction that is exempt from registration under the Securities Act of 1933 pursuant to:
  - (i) Paragraph (1) or (3) of § 4 of the Securities Act of 1933, and the issuer of such security files reports with the securities and exchange commission pursuant to § 13 of 15(d) of the Securities and Exchange Act of 1934, as amended;
  - (ii) Section 4(4) of the Securities Act of 1933;
  - (iii) Section 3(a) of the Securities Act of 1933, other than the sale of a security that is exempt from such registration pursuant to paragraph (4) or (11) of § 3(a) of the Securities Act of 1933, except that a municipal security that is exempt from registration under the Securities Act of 1933 pursuant to paragraph (2) of § 3(a) of that act is not a “covered security” with respect to the sale of such security in Tennessee if the issuer of such security is located in Tennessee;
  - (iv) Securities and exchange commission rules or regulations issued under paragraph (2) of § 4 of the Securities Act of 1933;

4. TENN. CODE ANN. § 48-2-102(17) states, in pertinent part, that a “security” means any note, stock, treasury stock, **bond**, debenture, **evidence of indebtedness**, a life settlement contract, as defined in former TENN. CODE ANN. § 56-50-102 [repealed], or any fractional pooled interest in a life insurance policy or life settlement contract, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, **investment contract**, voting-trust certificate, certificate of deposit for a security, certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; or, in general, any interest or instrument commonly known as a “security,” or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. [Emphasis added].

5. TENN. CODE ANN. § 48-2-104(a) states, in pertinent part, that it is unlawful for any person to sell any security in this state unless it is registered under the Act, the security or transaction is exempted under the Act, or the security is a covered security.

6. TENN. CODE ANN. § 48-2-104(b) states, in pertinent part, that the commissioner may...impose a civil penalty against any person found to be in violation of this section, or any regulation, rule or order adopted or issued under this section, in an amount not to exceed ten thousand dollars (\$10,000) per violation.

7. TENN. CODE ANN. § 48-2-122(a)(1) states, in pertinent part, that any person who:

(A) sells a security in violation of §§ 48-2-104...; shall be liable to the person purchasing the security from the seller to recover the consideration paid for the security, together with interest at the legal rate from the date of payment, less the amount of any income received on the security, upon the tender of the security, or, if the purchaser no longer owns the security, the amount that would be recoverable upon a tender, less the value of the security when the purchaser disposed of it and interest at the legal rate from the date of disposition.

8. TENN. COMP. R. & REGS. CH. 0780-04-02-.07 - NON-PROFIT EXEMPTION.

(1) All persons offering securities claimed to be exempt under *T.C.A. §48-2-103(a)7* shall, at least ten (10) days prior to any sale of such securities, file a notice on Form U-1 (including all applicable exhibits thereto) accompanied by the following additional information:

(a) A statement of the basis for the issuer's qualification for the EXEMPTION under *T.C.A. §48-2-103(a)7*;

(b) An undertaking to notify the Commissioner immediately upon the receipt of any stop order, denial, order to show cause, suspension, or revocation order, injunction or restraining order, similar order entered by or issued by any regulatory authority or by any court, concerning the securities covered by the notice or other securities of the issuer currently being offered to the public, and

(c) A statement of whether or not the issuer has ever been the subject of any order described in subparagraph (b) above.

(2) The issuer shall furnish at a minimum the following information to offerees:

(a) 1. If the issuer is selling Church Bonds, a disclosure document prepared in accordance with the Statement of Policy on Church



Bonds adopted by NASAA, as amended from time to time and as reported at paragraph 1001 of the CCH *NASAA Reports*. For purposes of this rule, the term "Church Bonds" shall mean certificates in the form of notes, bonds or similar instruments issued by a congregation or church that represents an obligation to repay a specific principal amount at a stated rate of interest.

2. If the issuer is selling General Obligation Financing Notes by Religious Denominations, a disclosure document prepared in accordance with the Guidelines for General Obligations Financing by Religious Denominations adopted by NASAA, as amended from time to time and as reported at paragraph 1951 of the CCH *NASAA Reports*. For purposes of this rule the term "General Obligation Financing" shall mean notes, certificates, or similar debt instruments issued by religious denominations that represent an obligation to repay a specific principal amount at a stated rate of interest.

(b) If the issuer is selling Health Care Facility Bonds, a disclosure document prepared in accordance with the Statement of Policy on Health Care Facility Offerings adopted by NASAA as amended from time to time and as reported at paragraph 2001 of the CCH *NASAA Reports*. For purposes of this rule, the term "Health Care Facility Bonds" shall mean certificates in the form of notes, bonds or similar instruments issued by a non-profit health care facility that represent an obligation to repay a specific principal amount at a stated rate of interest.

(c) If the issuer is other than as described in subparagraphs (a) and (b) above, the disclosure document must contain:

1. Financial statements of the issuer prepared in accordance with generally accepted accounting principles including, but not limited to, the following: (i) A balance sheet as of the end of the most recent fiscal year of the issuer; and (ii) A statement of income for each of the issuer's three most recent fiscal years.

2. A statement from the issuer setting forth the issuer's plan for paying the principal and interest due on the securities to be sold, including, but not limited to, anticipated sources of revenue to be used in paying such principal and interest, and supporting financial information; and

3. A statement as to whether or not the issuer or any affiliate or predecessor has had any material default during the past ten (10) years in the payment of:

(i) principal, interest, dividends or sinking fund installments on any security or indebtedness for borrowed money; or

(ii) rentals under material leases with terms of three (3) years or more.

(d) Legend. The offering document shall display on its cover substantially the following information, to the extent appropriate, in capital letters and, if printed, in boldface roman type at least as high as ten point modern type:

IN MAKING AN INVESTMENT DECISION INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE. THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. INVESTORS SHOULD BE AWARE THAT THEY MAY BE REQUIRED TO BEAR THE FINANCIAL RISK OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.

***COGF Sold Unregistered Securities***

9. The findings of facts as stated demonstrate that COGF offered to sell and sold securities in the form of church extension fund /promissory notes called Withdrawable Gifts Trusts (“WGT”) that were not registered with the TSD. It is unlawful to sell any security in this state unless it is registered with the TSD under TENN. CODE ANN. §§ 48-2-101 *et seq.*, or the transaction is exempted under TENN. CODE ANN. § 48-2-103 or it is a covered security. The WGT offered by the COGF were not registered with TSD, are not covered securities and were not exempted by statute because the COGF did not seek to obtain qualification for the church extension fund exemption available pursuant to the Act and such exemption requires affirmative action to qualify for the exemption.

10. COGF’s sales of unregistered securities provide adequate grounds under TENN. CODE ANN. § 48-2-104(a) for the entry of an Order requiring COGF to issue a rescission letter offering to buy back, with statutory interest of ten (10) percent per annum (less any interest/income previously

paid on the note), the investments of any Tennesseans who opt to take advantage of the rescission offer.

11. COGF's sales of unregistered securities provide adequate grounds under TENN. CODE ANN. § 48-2-104(b) for the imposition of civil penalties, not to exceed ten thousand dollars (\$10,000) per violation.

### **ORDER**

**NOW, THEREFORE**, on the basis of the foregoing, and COGF's waiver of the right to a hearing and appeal under the Tennessee Securities Act, the Tennessee Uniform Administrative Procedures Act, TENN. CODE ANN. §§ 4-5-101 *et seq.*, and COGF's admission of jurisdiction of the Commissioner, the Commissioner finds that COGF, for the purpose of settling this matter, admits the Findings of Fact and neither admits nor denies the Conclusions of Law herein, has agreed to the entry of this Order and that the following Order is appropriate, in the public interest and necessary for the protection of investors.

**IT IS ORDERED**, pursuant to TENN. CODE ANN. § 48-2-116(a) of the Act, that COGF:

1. **COMPLY** with the provisions of the Tennessee Securities Act, as amended;
2. **CEASE AND DESIST** in any future conduct of offering and/or selling any unregistered security in the State of Tennessee until such time as all securities offered and/or sold are effectively registered with the TSD or have been qualified for exemption under the Act;
3. **SUBMIT** to the TSD for review and approval a rescission offer letter to be addressed to all Tennessee investors who purchased the WGT investment from COGF;

4. **ISSUE** the rescission letter referenced in paragraph 3 to all Tennessee investors who purchased the WGT investment from COGF and repurchase the securities from any Tennessee investors opting to participate in the rescission offer within the time frame provided for in the Policy Statement issued by the TSD governing rescission offers.

5. Make a monetary contribution to the State of Tennessee Investor Education Fund in the amount of five thousand fifty dollars (\$ 5,050). Payment will be made within ten (10) days of the date this agreement is entered by the Commissioner, and payment shall be mailed to:

**State of Tennessee**  
**Department of Commerce and Insurance**  
**Securities Division – Registration Section**  
**Attn: Barbara A. Doak, Attorney**  
**6th Floor, Davy Crockett Tower, Suite 680**  
**500 James Robertson Parkway**  
**Nashville, Tennessee 37243**

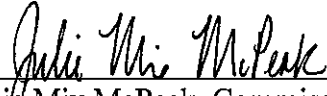
6. If payment is not made by COGF, the TSD may vacate this Order, at its sole discretion, upon ten (10) days' notice to COGF and without opportunity for an administrative hearing.

**IT IS FURTHER ORDERED**, that this Order represents the complete and final resolution of, and discharge with respect to all administrative and civil, claims, demands, actions and causes of action by the Commissioner against COGF for violations of the Act alleged by the TSD to have occurred with respect to the transactions involving the above-referenced facts. However, excluded from and not covered by this paragraph are any claims by the TSD arising from or relating to enforcement of the Order provisions contained herein.

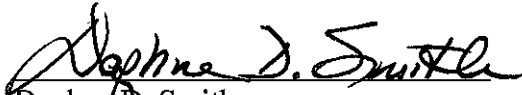
This Order is in the public interest and in the best interests of the parties, and

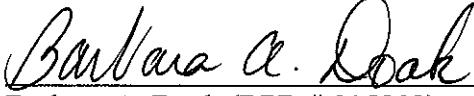
represents a compromise and settlement of the controversy between the parties and is for settlement purposes only. By the signatures affixed below, COGF affirmatively states that it has freely agreed to the entry of this Order, that it waives the right to a hearing on the matters underlying this Order and to a review of the Findings of Fact and Conclusions of Law contained herein, and that no threats or promises of any kind have been made to it by the Commissioner, the Division, or any agent or representative thereof. The parties, by signing this Order, affirmatively state their agreement to be bound by the terms of this Order and aver that no promises or offers relating to the circumstances described herein, other than the terms of settlement as set forth in this Order, are binding upon them.

ENTERED this 17<sup>th</sup> day of January, 2012.

  
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Julie Mix McPeak, Commissioner  
Department of Commerce and Insurance

**APPROVED FOR ENTRY:**

  
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Daphne D. Smith  
Assistant Commissioner for Securities  
Department of Commerce and Insurance

  
\_\_\_\_\_  
Barbara A. Doak (BPR # 015802)  
Chief Counsel for Securities

Department of Commerce and Insurance  
Office of Legal Counsel  
500 James Robertson Parkway, 8<sup>th</sup> Floor  
Nashville, Tennessee 37243  
(615) 741-2199/Fax (615) 741-4000

**CONSENT TO ENTRY OF ORDER BY  
CHURCH OF GOD FOUNDATION, INC.**

1. Church of God Foundation, Inc. ("COGF"), on behalf of itself, hereby acknowledges that it has been served with a copy of this Order, has read the foregoing Order, is aware of its right to a hearing and appeal in this matter, and has waived the same.

2. COGF, on behalf of itself, admits the jurisdiction of the State of Tennessee, admits the Findings of Fact and neither admits nor denies the Conclusions of Law contained in this Order; and

consents to entry of this Order by the Commissioner, Tennessee Department of Commerce and Insurance, as settlement of the issues contained in this Order.


3. COGF, on behalf of itself, states that no promise of any kind or nature whatsoever was made to induce it to enter into this Order and that it has entered into this Order voluntarily.

4. Donald S. Aultman represents that he is the President of COGF and that, as such, has been authorized by COGF to enter into this Order for and on behalf of COGF.

Dated this 5<sup>th</sup> day of JANUARY, 2012.

Church of God Foundation, Inc.

By:

  
Donald S. Aultman

Title:

PRESIDENT  
President  
Church of God Foundation, Inc.