



700 S. W. Jackson  
Suite 300  
Topeka, KS 66603-3796

Office of the State  
Bank Commissioner

Phone: (785) 380-3939  
Fax: (785) 371-1229  
www.osbckansas.org

David L. Herndon, Bank Commissioner

Laura Kelly, Governor

April 10, 2022

The Honorable Ty Masterson  
President of the Senate  
State Capitol  
Room 332-E  
Topeka, KS 66612

*SENT VIA EMAIL: Ty.Masterson@senate.ks.gov*

## **Re: TEFFI Pilot Program and Beneficient Status Update**

Dear President Masterson,

I am writing to give a status update on the TEFFI pilot program and its sole participant, Beneficient Fiduciary Financial, LLC (hereinafter “BFF”). While some of our original concerns from this time last year have been resolved, new and more deeply concerning issues have arisen.

### Accounting

Accounting concerns remain and have deepened. BFF and its parent, Beneficient, have still not produced audited financial statements. Beneficient’s accounting firm has declined to stand for reappointment, and Beneficient has only recently arranged a new firm to complete its financial audit. Compounding these troubles is a recent lawsuit, filed in Delaware, alleging that Beneficient has had trouble with producing timely audited financials since at least 2018.<sup>1</sup>

GWG also has financial concerns of its own. In January 2022, GWG announced that its accounting firm declined to stand for reappointment as well prior to completing its 2021 audit. GWG’s financial audit from the previous year, 2020, cited an “ongoing concern” on the company’s ability to continue.<sup>2</sup> In February 2022, GWG sent a letter to its investors stating it was “evaluating restructuring alternatives” in order to meet financial obligations.<sup>3</sup> Now in April 2022, GWG appears prepared to declare bankruptcy.<sup>4</sup> This will complicate its financial capabilities, may have an indirect financial impact on Beneficient, and could lead to legal action beyond the lawsuits already filed (which are discussed below).

The exact relationship between GWG and Beneficient has never been made clear. As evidenced by multiple public filings, the companies are financially intertwined and have been historically managerially intertwined. But the continued absence of audited financial statements has made their exact relationship difficult to determine.

### Charitable Contributions

Beneficient has repeatedly asserted that it has contributed \$15 million in qualified charitable distributions, including to the Kansas Department of Commerce (hereinafter “Commerce”). This amount comes from the \$9 million required under the TEFFI Act and \$6 million from Beneficient’s initial fidfin transaction.<sup>5</sup> The OSBC has discussed these distributions with Commerce. Beneficient has told Commerce that the

funds to Commerce are in escrow and will be transferred soon, but to date, Commerce has not received any funds or any evidence of assets or beneficial interests in its name.

The distributions contemplated in the TEFFI Act by BFF were meant for the benefit of Hesston, Kansas, the initial Economic Growth Zone. It is unclear whether Beneficient has distributed funds to Hesston, but Beneficient has suggested that Hesston should provide \$4 million of its own funds and request \$12 million from the state.<sup>6</sup>

#### Lack of Transactions / Delay of Examination

Under the TEFFI Act, the pilot program cannot end without an examination of BFF. Unfortunately, this can only be accomplished with at least some book of business by BFF for the OSBC to examine. Despite assertions by BFF that it had substantial business lined up, so far, we have seen only one external transaction. We also have not received any inquiries or applications from any other companies interested in coming into the state as subsequent TEFFI's.

#### Investigations and Lawsuits

Public filings from November 2021 reveal an SEC investigation into GWG. The SEC served GWG with multiple subpoenas regarding "various accounting matters" relating to both GWG and Beneficient, beginning in October 2020.<sup>7</sup> This investigation has now persisted for at least a year and half. Several members of BFF's current directors and officers were still part of GWG when the investigation began.

The previous NASDAQ delisting notice that GWG received last year was resolved, but GWG has been served with a new delisting notice from NASDAQ this week.<sup>8</sup>

The Delaware lawsuit from March 2022 (mentioned previously) also alleges that Beneficient and its partners defaulted on an agreement in 2019. This agreement contained conditions that, in the event of default, Beneficient and its subsidiaries must "cease to finance or otherwise acquire future private equity or other alternative asset loans" – which appears to be the very thing TEFFIs were created to do. While this is still an allegation at this point, it raises concerns regarding the ability of Beneficient to conduct TEFFI operations without violating a preexisting contract.

A class action lawsuit, filed in February 2022 in Texas, names GWG and several directors and officers of the company as defendants. Some of these directors and officers have since resigned from GWG and are now directors and officers of BFF. Prior to their resignations from GWG they held positions at both GWG and Beneficient. While still allegations at this point, the lawsuit alleges "fraud" and "misrepresentations" by these individuals in relation to an offering by GWG, referred to as "L-bonds."<sup>9</sup> The lawsuit relates to GWG's admitted failure to pay \$13.6 million in principal and interest on its more than \$1 billion portfolio of now-defaulted L-bonds.<sup>10</sup>

These investigations and lawsuits have been the subject of recent articles by the Kansas City Star,<sup>11</sup> Wichita Eagle,<sup>12</sup> and Wall Street Journal,<sup>13</sup> among other news outlets.

#### Letters to Beneficient

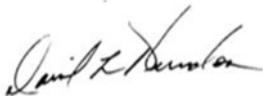
Considering this recent information, the OSBC has sent letters to specific BFF officers and directors. These letters request explanations on certain confidential matters in the TEFFI application. BFF's board of directors as a whole was sent a separate letter indicating such request without the confidential information contained in the individual letters. We are requesting their written responses be made as soon as possible, but in no event later than sixty days as required by the banking code.

## Background Checks

This office has been able to acquire alternative background checks for Beneficiary's key personnel as agreed to at the Joint Committee on Fiduciary Financial Institutions Oversight on December 7, 2021. The alternative background checks provide some of the picture, but it's evident they are lacking compared to official, FBI background checks. FBI background checks will not be a possibility until at least July 2022, once the updates to the TEFPI Act in HB 2489 take effect.

I welcome your feedback or questions and can be reached at (785) 380-2004 or david.herndon@osbckansas.org.

Sincerely,



David L. Herndon  
State Bank Commissioner

Cc: Governor Laura Kelly  
Lt. Gov. David Toland, Secretary of the Department of Commerce  
Rep. Ron Ryckman, Speaker of the House  
Sen. Jeff Longbine, Chair, Senate Committee on Financial Institutions and Insurance (FI&I)  
Sen. Michael Fagg, Vice Chair, Senate Committee on FI&I  
Sen. Cindy Holscher, Ranking Minority Member, Senate Committee on FI&I  
Sen. Jeff Pittman, Ranking Minority Member, Senate Committee on FI&I  
Rep. Jim Kelly, Chair, House Committee on Financial Institutions and Rural Development (FIRD)  
Rep. Nick Hoheisel, Vice Chair, House Committee on FIRD  
Rep. Rui Xu, Ranking Minority Member, House Committee on FIRD

<sup>1</sup> *Paul Capital Advisors, L.L.C. v. Holland*, No. 2022-0167 (Del. Ch. filed Mar. 4, 2022).

<sup>2</sup> GWG Holdings, Current Report (Form 8-K) (Jan. 6, 2022), [https://www.sec.gov/Archives/edgar/data/0001522690/000121390022000984/ea153657-8k\\_gwgholdings.htm](https://www.sec.gov/Archives/edgar/data/0001522690/000121390022000984/ea153657-8k_gwgholdings.htm).

<sup>3</sup> GWG Holdings Form 8-K for Current Report (Feb. 14, 2022), [https://www.sec.gov/Archives/edgar/data/0001522690/000121390022007231/ea155406-8k\\_gwghold.htm](https://www.sec.gov/Archives/edgar/data/0001522690/000121390022007231/ea155406-8k_gwghold.htm).

<sup>4</sup> Alexander Gladstone, *GWG Prepares for Bankruptcy After Missing Payments to Individual Investors*, Wall Street Journal (updated Apr. 4, 2022), <https://www.wsj.com/articles/gwg-prepares-for-bankruptcy-after-missing-payments-to-individual-investors-11649086394>.

<sup>5</sup> The Beneficient Company Group, *The Beneficient Company Group Announces Initial \$15 Million Community Reinvestment to Kansas as Part of the TEFPI Act* (Jan. 20, 2022), <https://www.trustben.com/insights/the-beneficient-company-group-announces-initial-15-million-community-reinvestment-to-kansas-as-part-of-the-teffi-act/>.

<sup>6</sup> Blake Spurney, *Hesston Asking State For \$12 Million Grant*, Harvey County Now (Feb. 23, 2022), <https://harveycountynow.com/all-news/hesston-asking-state-for-12-million-grant>.

<sup>7</sup> GWG Holdings, Annual Report for Fiscal Year Ended December 31, 2020 (Form 10-K) (Nov. 5, 2021), <https://www.sec.gov/Archives/edgar/data/0001522690/000152269021000008/gwgh-20201231.htm>.

<sup>8</sup> GWG Holdings, Current Report (Form 8-K) (Apr. 6, 2022), [https://www.sec.gov/Archives/edgar/data/0001522690/000121390022018490/ea158124-8k\\_gwghold.htm](https://www.sec.gov/Archives/edgar/data/0001522690/000121390022018490/ea158124-8k_gwghold.htm).

<sup>9</sup> *Bayati v. GWG Holdings, Inc.*, No. 3:22-cv-00410 (N.D. Tex. filed Feb. 18, 2022), <https://storage.courtlistener.com/recap/gov.uscourts.txnd.359302/gov.uscourts.txnd.359302.1.0.pdf>.

<sup>10</sup> GWG Holdings, Current Report (Form 8-K) (Jan. 18, 2022), [https://www.sec.gov/Archives/edgar/data/0001522690/000121390022002266/ea154089-8k\\_gwghold.htm](https://www.sec.gov/Archives/edgar/data/0001522690/000121390022002266/ea154089-8k_gwghold.htm) (missed payments); GWG Holdings, Prospectus Supplement (Forms 424B3) (Nov. 24, 2021), [https://www.sec.gov/Archives/edgar/data/0001522690/000121390021061772/ea151158-424b3\\_gwgholding.htm](https://www.sec.gov/Archives/edgar/data/0001522690/000121390021061772/ea151158-424b3_gwgholding.htm) (amount of outstanding L bonds); Gladstone, *GWG Prepares for Bankruptcy* (more than \$2 billion in liabilities after default).

- 
- <sup>11</sup> Katie Bernard and Jonathan Shorman, *After KS welcomed financial firm, CEO accused of defrauding investors at past company*, Kansas City Star (updated Mar. 20, 2022), <https://www.kansascity.com/news/politics-government/article259472294.html>.
- <sup>12</sup> Katie Bernard and Jonathan Shorman, *After KS welcomed financial firm, CEO accused of defrauding investors at past company*, The Wichita Eagle (updated Mar. 20, 2022), <https://www.kansas.com/news/politics-government/article259472294.html>.
- <sup>13</sup> Alexander Gladstone, *GWG Seeks Rescue Financing After Missing Debt Payments to Individual Investors*, Wall Street Journal (updated Jan. 27, 2022), <https://www.wsj.com/articles/gwg-seeks-rescue-financing-after-missing-debt-payments-to-individual-investors-11643311327>.