

1 established firms in the financial industry, including NYLife Securities from October 2007 to April 2008,
2 Voya Financial Advisors Inc. from April 2008 to May 2009, and LPL Financial LLC from May 2009 to March
3 2011.

4 2. Bayley Financial Inc. (“BFI”) was a Washington corporation, originally incorporated on
5 January 16, 2014, with its principal places of business in Seattle, Washington and Union, Washington.¹ Bayley
6 voluntarily dissolved BFI on January 31, 2019. BFI was a registered investment advisor in the State of
7 Washington until December 31, 2018, at which point its registration lapsed due to a failure to renew. BFI’s
8 Investment Adviser Registration Depository number is 156442. At all times relevant to this action, Bayley
9 was the sole owner, employee, and investment adviser representative of BFI.

10 Related Parties

11 3. Tahoe Resources, Inc. (“Tahoe”) was a Canadian corporation. Tahoe owned and operated gold
12 and silver mines operations in several different countries, including Canada, Guatemala, and Peru. Tahoe was
13 a publicly traded stock under the ticker symbol TAHO until February 2019, when it was purchased by Pan
14 American Silver Corp., another mining company.

15 4. TD Ameritrade, Inc. (CRD #7870) is a broker-dealer. Bayley and BFI (collectively “the
16 Respondents”) used TD Ameritrade as the asset custodian and trading platform for clients until late 2018,
17 when TD Ameritrade terminated their relationship due to the Respondents’ failure to meet margin calls in
18 client accounts.

19 Background Concepts

20 5. Suitability is a concept involving whether a given investment or mix of investments is
21 appropriate for a particular investor. In order to comply with suitability obligations, financial professionals
22

23 ¹ BFI was the successor firm to Bayley Financial LLC, which was originally formed on January 17, 2011 and subsequently became
inactive on February 6, 2014, after Bayley moved his business operations to BFI.

1 must generally (a) collect certain information about clients such as their financial status, tax status, and
2 investment objectives; and (b) have reasonable grounds to believe their investment recommendations are
3 suitable based on that information. For instance, a portfolio of risky stocks might be suitable for a young
4 investor who wants high returns and expects to have time to make up any losses, but that same portfolio might
5 be unsuitable for an investor approaching retirement who would not have time to make up losses, even if the
6 stocks would be expected to perform better on average than a more conservative portfolio. Failing to gather
7 suitability information will make it substantially more difficult for an advisor to manage a client’s portfolio
8 in a way that is consistent with their client’s goals.

9 6. Diversification, in the financial industry, refers to investing in a variety of different assets
10 rather than concentrating them in one asset. Diversification can take several different forms, such as
11 diversification within a sector (investing in the stock of many different technology companies), diversification
12 across industries (investing in the stock of technology, retail, and mining companies), and diversification
13 across asset classes (investing in stocks, corporate bonds, and treasury bills). Financial-industry regulators,
14 such as the Securities and Exchange Commission and the Financial Industry Regulatory Authority, have
15 published information on diversification and its potential benefits, along with the risks of overconcentration
16 in a particular asset or asset class.²

17 7. Margin trading is the practice of borrowing money from a financial firm (generally a broker-
18 dealer) in order to fund additional transactions in an account. The use of margin can substantially magnify an
19 investor’s gains or their losses. If the value of the investor’s margin account falls below a certain level, the
20 lender may issue a “margin call,” which requires the investor to sell some of the assets in the account or
21

22 ² See Securities and Exchange Commission, *Beginners' Guide to Asset Allocation, Diversification, and Rebalancing* (Aug. 28,
23 2009), <https://www.sec.gov/reportspubs/investor-publications/investorpubsassetallocationhtm.html>; Financial Industry Regulatory
Authority, *Concentrate on Concentration Risk*, <https://www.finra.org/investors/concentrate-concentration-risk>.

1 deposit additional funds to bring it back up to a minimum level. The lender for a margin account also generally
2 requires interest payments, often at very high rates, if an investor uses margin for long periods of time. Due
3 to the risk of substantial losses from margin trading, it is generally unsuitable for investors with low risk
4 tolerances and elderly or retired investors who are relying on their investment portfolio to fund their
5 retirement.

6 Summary

7 8. From at least the beginning of 2016 until their termination from the TD Ameritrade platform,
8 Bayley and BFI violated the suitability requirements of the Securities Act in multiple ways. First, they failed
9 to collect or update key suitability information from clients. Second, in June 2016, they concentrated client
10 portfolios in a triple-leveraged inverse exchange-traded fund of mining stocks, which was unsuitably risky
11 for at least some clients and resulted, for instance, in a retired client losing 17% of her portfolio in one day.
12 Third, they concentrated their clients entirely in Tahoe stock from late 2016 until their termination from the
13 TD Ameritrade platform, exposing their clients to unnecessary risk that the Tahoe stock would not perform
14 well. Fourth, they recommended the use of margin trading to purchase additional Tahoe stock, and failed to
15 perform any analysis of whether the use of margin trading was appropriate for the clients. Fifth, they
16 recommended to many clients that they convert their standard IRAs to Roth IRAs so the clients would not
17 have to pay future taxes on promised gains in the Tahoe stock, which resulted in substantial tax bills for those
18 clients without the promised gains. Bayley also misrepresented or failed to disclose material information in
19 recommending that clients maintain or increase their positions in Tahoe stock.

20 9. As a result of Bayley's unsuitable investing decisions, his clients experienced massive
21 investing losses. Many of his clients lost well over half of their portfolios from late 2016 to late 2018, at a
22 time when the stock market as a whole was performing extremely well.

1 Bayley's Failure to Collect Suitability Information

2 10. During his initial meetings with clients, Bayley failed to collect key suitability information
3 from clients, such as their investment objectives, risk tolerance, and investment time horizon. Bayley also
4 failed to regularly consult with clients to determine whether their goals or risk tolerance had changed. Bayley
5 was or should have been aware of the need to collect and update suitability information because he had
6 previously worked for multiple financial firms which collected such information as part of their ordinary
7 practices, and because his firm's own compliance manual and compliance checklist described the need to do
8 so.

9 11. Specifically, BFI's compliance manual provided that "[d]uring BF, INC's initial Client
10 meeting, we will gather information relative to the Client's Risk Tolerance and have them complete a Client
11 Agreement . . . BF, INC will attempt to contact its Clients no less than annually to review current investments,
12 any changes in Clients financial or risk tolerance condition [all sic]." BFI's compliance calendar also indicated
13 the need to "[c]onfirm clients' investment objectives and restrictions" at the beginning of their relationship
14 with BFI, and "[u]pdate clients' investment objectives and restrictions" at least once every three years. In
15 testimony before the Securities Division, Bayley indicated that he had purchased these materials from a
16 compliance consultant when establishing BFI, and did not establish any method for ensuring that the policies
17 and procedures in the manual were followed. Despite having a compliance manual which provided that he
18 was the Chief Compliance Officer and was "responsible for all compliance and supervisory functions," and a
19 checklist which described his responsibilities, Bayley testified that he was under the impression that TD
20 Ameritrade was responsible for BFI's compliance responsibilities. Bayley also claimed, in a letter to the
21 Securities Division, that he had never heard of the Securities Act of Washington, the laws which govern his
22 conduct as an investment adviser, and did not recall having read the section of his compliance manual which
23 described the need to review applicable state laws as part of the investment process. Additionally, before

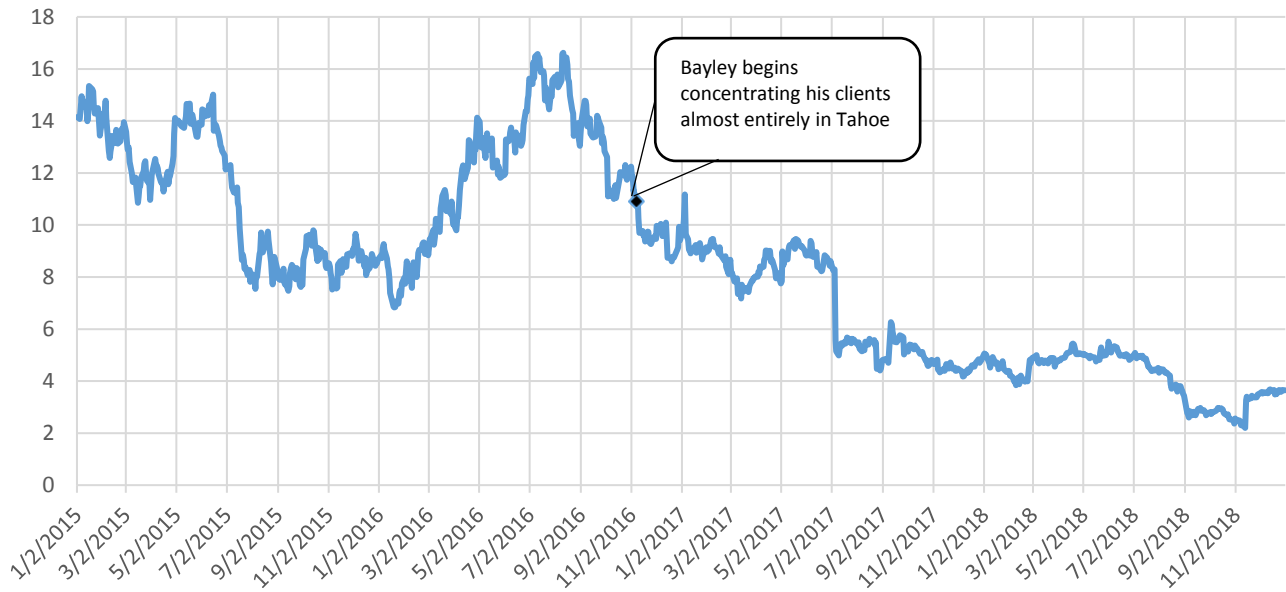
1 founding BFI in 2011, Bayley worked for several established financial firms for a combined total of
2 approximately three and a half years. As a result of working for these firms, Bayley was or should have been
3 aware of standard practices in the financial industry, such as collecting and updating suitability information
4 from clients.

5 12. Rather than tailoring his investment strategy to his individual clients' needs (for instance, by
6 making safer investments for older clients), Bayley took an identical or near-identical approach for all of his
7 clients. From at least the beginning of 2016 until his termination from the TD Ameritrade platform, Bayley
8 generally bought the same asset for every client's portfolio, and concentrated his clients' portfolios almost
9 entirely in the same asset. Bayley generally attempted to find assets which he believed were undervalued
10 based on the fundamentals of the company, although he also sought to profit from market momentum on at
11 least one trade.

12 Bayley's Unsuitable Trades in DUST

13 13. On at least one occasion, Bayley's failure to collect the required suitability information led to
14 him making unsuitably risky investments in the accounts of a retired client who, if Bayley had asked them,
15 would likely have indicated that they had a conservative or moderate risk tolerance. In particular, Bayley
16 made unsuitable investments in at least one client account in the Direxion Daily Gold Miners Index Bear 3x
17 exchange-traded fund (hereinafter "DUST," its ticker symbol). DUST is a fund which tracks the performance
18 of a basket of mining company stocks, and is designed to return three times the inverse of the performance of
19 that basket. For instance, if the mining stock basket gains 1% in a particular trading day, DUST will lose 3%
20 of its value, but it will gain 3% in value if the basket declines by 1%. Because it involves the use of high
21 leverage and risks substantial losses if the market performs well in a given day, DUST and similar investments
22 are often unsuitable for investors with conservative or moderate risk tolerances who cannot afford significant
23 losses—particularly when the entire portfolio is concentrated in such investments.

Tahoe Stock Daily Closing Price, 2015-2018



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

17. As of the end of 2016, almost all of the Respondents' client portfolios were almost entirely concentrated in Tahoe stock. The concentration of client portfolios in the stock of one mining company was unsuitable in multiple ways. First, concentrating a client entirely in one company's stock unnecessarily exposes them to various risks, such as the company underperforming, the stock price not significantly climbing even if the company performs well, or the advisor incorrectly evaluating the company's prospects. Second, for clients who are retired or approaching retirement and cannot afford major losses, it is often unsuitable to concentrate their portfolios entirely in stock because stock is generally considered the riskiest of the major asset classes.

18. During the summer of 2017, Tahoe was forced to close one of its mines, a silver mine in Guatemala, due to legal issues with indigenous tribes in the area. Although the mine was not necessarily permanently closed and could reopen depending on the outcome of court proceedings, Tahoe stock substantially declined after the closure. This decline illustrates another major risks of overconcentrating a

1 portfolio in one stock: unexpected events at a company can rapidly reduce the value of the portfolio in ways
2 that a more diversified portfolio could easily withstand.

3 19. When clients expressed concerns about declines in the value of Tahoe, or about having their
4 entire portfolio in one stock, Bayley repeatedly told them that the stock would go up and blamed various
5 causes for the stock's underperformance. For instance, at various times in emails to clients, Bayley blamed
6 corruption in the Guatemalan government, short-sellers, and George Soros funding protests against the
7 Guatemalan mine. Bayley repeatedly told clients, particularly throughout 2018, that Tahoe was a \$20 stock
8 and that the stock price was going to double, triple, or even quadruple. Bayley wrote the following to clients
9 at various points in 2017 and 2018:

- 10 a. "[Tahoe] is still a minimum \$12-17 stock when the mine reopens (remember gold output
11 is increasing 40% later this year) and \$20-22 stock if a little enthusiasm returns to the sector
12 by the end of the year"
- 13 b. "[Client should] buy more Tahoe for a short-term 50-70% pop . . . It's a \$20 stock you can
14 buy for \$4.40."
- 15 c. "In 2016 [Tahoe] went from \$6 to \$17 in less than 6 months so it can and will happen
16 again."
- 17 d. "[Tahoe] should be going up 50+% next month when the court rules to reopen one of its
18 mines. Later this year I expect it to go up to \$20+ for a 400% gain (if not this year then
19 2019 for sure). If you have any extra funds this is the time to front-load your Roth IRA
20 funding for this year before the stock jumps. My friend recently borrowed from his 401k
21 so he and his wife could max fund his Roth for 2017 and 2018 (\$22k minus their previous
22 contributions). Then he will pay back his 401k plus interest that gets credited 100% to his
23

1 own 401k. When Tahoe goes up into the \$20s, they will have a \$70k gain plus their \$22k
2 initial investment.”

3 e. “300-500% gains over the next couple of years would get you in the driver’s seat to retire
4 whenever you want. That’s why I’m staying course for you and my other clients. History
5 repeats and that’s the average expectation coming out of a bear market. It’s worth the wait
6 . . . history shows we will be heavily rewarded with substantial triple digit gains.”

7 f. “When [Tahoe]’s back to \$10, you’ll have a 35% gain. I anticipate Tahoe going to \$20+
8 later this year resulting in a 171% gain and liquidation value of \$146,000 off an initial
9 investment around \$54,000.”

10 g. “Since the stock is valued upon its cash flow, expect it to go up 100-150% by year end. If
11 some interest returns to the sector, like in 2016, then expect 400% by year end.”

12 h. “I got a message that you called in to liquidate your account. Please do not do that because
13 [Tahoe] stock is going up 50-100% very soon when a mine is allowed to reopen. The stock
14 price changes on how much cash it generates so when their big silver mine one reopens the
15 stock will jump up 50-60% immediately and that is expected to occur next week . . . The
16 court should rule next week and the company should immediately jump into the \$8, or 60%
17 higher and then slowly go up to \$20 sometime later this year or early next year. The
18 company plans to turn its dividend back on that is nearly 5% yield that you can take for
19 income.”

20 20. In making these representations about the Tahoe stock price, in particular his high degree of
21 certainty that the stock would rise, Bayley failed to disclose a variety of material information which would
22 have been relevant to investors’ level of trust in his recommendation. In particular, Bayley failed to disclose
23 that his price target for Tahoe stock was more than double that of independent analysts, which to Bayley’s

1 recollection were approximately \$9 per share as of early 2018. Bayley also failed to disclose that he had no
2 knowledge of the Guatemalan legal system and the laws involved in the proceeding. Bayley further failed to
3 disclose that he was planning to leave the investment adviser profession and felt a need to make a profit for
4 his clients before doing so, which had the potential to cause him to make unreasonably risky investments to
5 seek quick profits. Bayley also owned substantial amounts of Tahoe stock himself, but failed to disclose in
6 writing the material conflict of interest that resulted from his ownership, such as the possibility that selling
7 his clients' positions could cause the value of his own stock to decrease. By representing that the stock price
8 was certain to increase, Bayley was able to convince most of his clients to continue investing in Tahoe, or
9 even to increase their investments, leading to further losses in their portfolio.

10 Bayley's Unsuitable Recommendation of Roth IRA Conversions

11 21. Bayley also convinced approximately eight clients to convert their IRAs to Roth IRAs, on the
12 grounds that the Tahoe stock would go up significantly and they would not have to pay taxes on the gains
13 thereafter. Converting an IRA to a Roth IRA is allowed by tax laws, but requires the investor to count the
14 converted amount in their income for the year and pay taxes on it. For example, an investor with \$100,000 of
15 taxable salary income who converted a \$200,000 IRA to a Roth IRA would have \$300,000 in taxable income
16 for the year of the conversion.

17 22. In recommending the Roth conversion, Bayley failed to obtain sufficient information to
18 determine whether the conversion was appropriate for the customer, such as their tax status and available
19 liquid funds. In particular, Bayley failed to analyze whether the clients had sufficient liquid assets to pay their
20 tax bills if the stock did not go up. Bayley also based his recommendation partly on his belief that his clients
21
22
23

1 could change the Roth IRAs back to standard IRAs, but was unaware that the 2017 changes to the tax laws
2 prohibited this reconversion.³

3 23. The Tahoe stock did not go up as Bayley had predicted, and many of the clients are currently
4 facing substantial tax bills for the 2018 tax year. For example, Bayley recommended the Roth conversion to
5 B.S., a 75-year-old client who had been retired since 2003. As a result, B.S.'s tax bill this year was
6 approximately \$34,000. Due to the Roth conversion and Bayley's mismanagement of her account, B.S. has
7 been forced to return to work to cover her expenses.

8 Bayley's Unsuitable Use of Margin Trading

9 24. In January 2018, Bayley contacted his clients with non-IRA or Roth IRA accounts and
10 recommended that they buy even more Tahoe stock on margin. Based on these discussions, Bayley bought
11 Tahoe stock on margin in the account of three different clients throughout early 2018.

12 25. Bayley did not perform any suitability analysis for recommending the use of margin to
13 purchase Tahoe stock. In particular, Bayley failed to analyze the risks associated with margin trading, the
14 potential impact of interest payments on the borrowed margin funds, the potential consequences for his clients
15 if the stock went down or stayed flat, and whether the use of margin was appropriate at all for his retired and
16 elderly clients.

17 26. The use of margin trading was unsuitable for at least one of the Respondents' clients. For
18 example, P.C. (the retired client discussed in the above section on DUST) was one of the clients Bayley
19 convinced to buy additional Tahoe stock on margin. Because P.C. was retired and could not afford significant
20

21 ³ Bayley claimed in testimony that his understanding was based on a phone conversation with a TD Ameritrade employee, but he
22 did not document that conversation in any way. The repeal of the Roth recharacterization had been publicized in multiple outlets
23 well before Bayley made his recommendations. *See, e.g.,* Dan Caplinger, *The Roth IRA Trick Congress Is Planning to Take Away*,
The Motley Fool (Dec. 17, 2017, 4:17 PM), <https://www.fool.com/taxes/2017/12/17/the-roth-ira-trick-congress-is-planning-to-take-aw.aspx>.

1 losses, the use of margin to concentrate her account even further in Tahoe stock—thereby exposing her to
2 even greater risk than Bayley’s other clients—was unsuitable.

3 27. Additionally, Bayley’s long-term use of margin trading was unsuitable due to the substantial
4 required interest payments. For instance, at the beginning of January 2018, P.C. held 78,850 shares of Tahoe
5 stock, at \$4.79 per share, for a total of \$377,691.50. Bayley took out margin loans in January, March, and
6 April of 2018 to fund additional Tahoe purchases in P.C.’s account. The interest rate on the loan was initially
7 7.75%, but rose to 8% for the later loans. By the end of April 2018, P.C. owned 162,700 shares of Tahoe stock
8 at \$5.03 per share, but owed \$445,187.13 to TD Ameritrade on the margin loan, for a total account value of
9 \$373,193.87. Thus, even though the Tahoe stock had risen slightly during the year, P.C. had lost money in
10 her account, due largely to the margin interest payments. From January 2018 until the closure of her account
11 in October 2018, P.C. paid a total of \$21,500—over 5% of the value of her account at the beginning of the
12 year—in margin interest payments alone, even before accounting for losses on the value of the Tahoe stock.
13 Bayley failed to perform any analysis of the potential impact of margin interest payments on his client
14 accounts if Tahoe stock did not rise immediately.

15 28. Tahoe’s stock price stayed largely flat in May and June 2018, but declined slightly near the
16 end of July. As a result of the stock price decline and the high concentration of Tahoe in the accounts, TD
17 Ameritrade issued repeated margin calls in July and August 2018 for all three of Bayley’s margin-using client
18 accounts. Bayley failed to respond to the margin calls for several weeks, forcing TD Ameritrade to sell stock
19 in client accounts on multiple occasions. Bayley also failed to notify at least one client of the margin calls.

20 29. As a result of these failures to meet margin calls, TD Ameritrade notified Bayley in August
21 2018 that he would be terminated from the platform in October 2018, at which point his clients would be
22 converted to ordinary retail accounts. Bayley did not tell his clients that TD Ameritrade had terminated him
23 from the platform.

CONSENT ORDER

DEPARTMENT OF FINANCIAL INSTITUTIONS
Securities Division
PO Box 9033
Olympia, WA 98507-9033
360-902-8760

1 concentrate their clients' entire portfolio in one stock; and (d) recommending Roth IRA conversions without
2 first making reasonable inquiry to determine whether the recommendation was appropriate. Such practices
3 are grounds for the denial of the Respondents' investment adviser, investment adviser representative, broker-
4 dealer, or securities salesperson registration pursuant to RCW 21.20.110(1)(b).

5 5. The Respondents, as described above, violated RCW 21.20.020(1)(b) by repeatedly
6 misrepresenting to clients that the Tahoe stock would go up, while failing to provide the clients with material
7 information which would cause them to question Bayley's valuation of Tahoe stock and management of their
8 accounts.

9 6. The Respondents, as described above, violated RCW 21.20.020(1)(c) by engaging in dishonest
10 and unethical practices as defined by:

- 11 a. WAC 460-24A-220(1), by making unsuitable recommendations of Tahoe and DUST to clients
12 and failing to make reasonable inquiry concerning clients' investment objectives, financial
13 situation and needs; and
14 b. WAC 460-24A-220(17), by failing to enforce BFI's written policies and procedures.

15 7. The Respondents, as described above, violated WAC 460-24A-200 by failing to maintain
16 written information about investment advisory clients that formed the basis for making recommendations and
17 providing investment advice to such clients, and by failing to annually make reasonable efforts to confirm or
18 update such information.

19 Based upon the foregoing and finding it in the public interest:

20 **CONSENT ORDER**

21 IT IS AGREED AND ORDERED that Respondents Philip Bayley and Bayley Financial Inc., and their
22 agents and employees, shall cease and desist from violating RCW 21.20.702, the suitability section of the
23 Securities Act of Washington.

CONSENT ORDER

DEPARTMENT OF FINANCIAL INSTITUTIONS
Securities Division
PO Box 9033
Olympia, WA 98507-9033
360-902-8760

1 IT IS FURTHER AGREED AND ORDERED that Respondents Philip Bayley and Bayley Financial
2 Inc., and their agents and employees, shall cease and desist from violating RCW 21.20.020, the investment
3 adviser antifraud section of the Securities Act of Washington.

4 IT IS FURTHER AGREED AND ORDERED that Respondents Philip Bayley and Bayley Financial
5 Inc., and their agents and employees, shall cease and desist from violating WAC 460-24A-200.

6 IT IS FURTHER AGREED AND ORDERED that Respondents Philip Bayley and Bayley Financial
7 Inc., and their agents and employees, shall cease and desist from violating WAC 460-24A-220(1), (11) and
8 (17).

9 IT IS FURTHER AGREED AND ORDERED that the Securities Division shall deny any application
10 for registration as an investment adviser, investment adviser representative, broker-dealer, or securities
11 salesperson by Respondents Philip Bayley and Bayley Financial Inc., or any other entity under Philip Bayley's
12 actual or effective control.

13 IT IS FURTHER AGREED AND ORDERED that Respondent Philip Bayley shall be liable for and
14 shall pay investigative costs of \$1,000 prior to entry of this Consent Order.

15 IT IS FURTHER AGREED that the Securities Division has jurisdiction to enter this Consent Order.

16 IT IS FURTHER AGREED that Respondents Philip Bayley and Bayley Financial Inc. enter into this
17 Consent Order freely and voluntarily and with a full understanding of its terms and significance.

18 IT IS FURTHER AGREED that in consideration of the foregoing, Respondents Philip Bayley
19 and Bayley Financial Inc. waive their right to a hearing and to judicial review of this matter pursuant to RCW
20 21.20.440 and Chapter 34.05 RCW.

21 **WILLFUL VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.**

22

23 Signed this 14th day of July, 2019.

CONSENT ORDER

DEPARTMENT OF FINANCIAL INSTITUTIONS
Securities Division
PO Box 9033
Olympia, WA 98507-9033
360-902-8760

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

Signed by:

Bayley Financial, Inc.

/s
Philip Bayley
Owner

Signed by:

/s
Philip Bayley, Individually

SIGNED and ENTERED this 20th day of August, 2019.



William M. Beatty
Securities Administrator

Approved by:



Suzanne Sarason
Chief of Enforcement

Presented by:



Adam N. Yeaton
Financial Legal Examiner

Reviewed by:



CONSENT ORDER

DEPARTMENT OF FINANCIAL INSTITUTIONS
Securities Division
PO Box 9033
Olympia, WA 98507-9033
360-902-8760

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

Jack McClellan
Financial Legal Examiner Supervisor

CONSENT ORDER

DEPARTMENT OF FINANCIAL INSTITUTIONS
Securities Division
PO Box 9033
Olympia, WA 98507-9033
360-902-8760