

1 MARY ANN SMITH  
2 Deputy Commissioner  
3 Attorney for Complainant

4 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION  
5 OF THE STATE OF CALIFORNIA

6 In the Matter of:

7 THE COMMISSIONER OF FINANCIAL  
8 PROTECTION AND INNOVATION,

9 Complainant,

10 v.

11 STATS INVESTMENTS LLC,

12 Respondent.

CRD NOS.: 286231, 6378467

ACCUSATION IN SUPPORT OF ORDER  
REVOKING THE INVESTMENT ADVISER  
CERTIFICATE OF STATS INVESTMENTS  
LLC

(CAL. CORP. CODE § 25232)

13 I.

14 **INTRODUCTION**

15 1. The Commissioner is authorized to administer and enforce the provisions of the  
16 Corporate Securities Law of 1968 (CSL) and the regulations promulgated thereunder<sup>1</sup>, which  
17 includes the licensure, examination, and regulation of investment advisers. *See* CAL. CORP. CODE §§  
18 25000-25707.<sup>2</sup>

19 2. This action is brought in order to issue an order revoking the investment adviser  
20 certificate issued to Stats Investments LLC (Stats), pursuant to section 25232, on the grounds that the  
21 revocation is in the public interest and Stats (i) is currently subject to the Commissioner's Order to  
22 Impose Conditions on Surrender of Certificate, dated March 4, 2024; and (ii) is or has violated  
23 several provisions of the CSL and corresponding regulations.

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27 <sup>1</sup> *See* CAL. CODE REGS. tit. 10, §§ 260.000-260.617. All further references will employ the format of 10 C.C.R. [section  
28 #].

<sup>2</sup> Unless stated otherwise, all section references are to the California Corporations Code.

## II.

**STATEMENT OF FACTS**

3           3.       On August 28, 2017, the Commissioner issued an investment adviser certificate to  
4 Stats (CRD Number 286231)<sup>3</sup> pursuant to the CSL. Accompanied with the certificate was a reminder  
5 of certain rules and regulations, including the following: (1) file annual amendments of its Form  
6 ADV<sup>4</sup>; (2) minimum net worth requirements; (3) file annual financial reports; and (4) make and keep  
7 true, accurate, and current books, ledgers, and records relating to Stats's investment advisory  
8 business.

9           4.       Shawn Matthew Oesterreicher (Oesterreicher) (CRD Number 6378467) is the owner  
10 of Stats.

11          5.       On or about February 2, 2024, the Commissioner commenced a routine examination of  
12 Stats under section 25241. However, the Commissioner was unable to commence the routine  
13 examination, due to the Stats's continued failure to respond to the Commissioner's demands for  
14 documents, as required under section 25241.

15          6.       On March 1, 2024, Stats filed a Form ADV-W<sup>5</sup> with the Commissioner.

16          7.       On March 4, 2024, the Commissioner issued to Stats an Order Imposing Conditions on  
17 Surrender of Certificate and served it by electronic mail.

18          8.       As of March 25, 2024, the Commissioner had not received a response to the  
19 Commissioner's demands on February 2, 2024 and March 4, 2024. The Commissioner sent a final  
20 demand letter by certified mail return receipt and electronic mail on March 25, 2024. The  
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23 <sup>3</sup> The Central Registration Depository (CRD) and Investment Adviser Registration Depository (IARD) are databases maintained by the  
24 Financial Industry Regulatory Authority (FINRA) since 2007 for all firms and individuals involved in the U.S. securities industry. It is  
used to store and maintain information on registered securities and broker firms, as well as individuals who dispense investing and  
financial advice.

25 <sup>4</sup> Form ADV is the uniform form used by investment advisers to register with both the Securities and Exchange Commission (SEC) and  
26 state securities authorities. Form ADV requires information about the investment adviser's business, ownership, clients, employees,  
27 business practices, affiliations, and any disciplinary events of the adviser or its employees. Investment advisers are required to update  
the Form ADV annually, as well as, whenever certain material changes occur. (See [https://www.sec.gov/about/forms/formadv-  
instructions.pdf](https://www.sec.gov/about/forms/formadv-instructions.pdf), pgs. 2 – 4.)

28 <sup>5</sup> Form ADV-W is the uniform form used by investment advisers to withdraw its registration or certificate to do business as an  
investment adviser with either SEC or state securities authorities.

1 Commissioner informed Stats that non-compliance with the examination would result in the issuance  
2 of an enforcement action.

3 **III.**

4 **VIOLATIONS OF THE CSL**

5 **A. Respondents Failed to File Annual Financial Reports**

6 9. Section 25241 provides, in part, that an investment adviser shall file reports as the  
7 Commissioner by regulation requires.

8 10. Under 10 C.C.R. 260.241.2, every licensed investment adviser subject to the  
9 provisions of 10 C.C.R. 260.237.2 shall file an annual financial report, prepared in accordance with  
10 generally accepted accounting principles and shall be audited by an independent certified public  
11 accountant; however, the financial statements need not be audited if the investment adviser only has  
12 discretionary authority over client funds or securities. The report shall be filed not more than 90 days  
13 after the investment adviser's fiscal year end.

14 11. On August 25, 2017, the Commissioner notified the Stats of the requirement to file  
15 annual financial statements with the Commissioner.

16 12. From at least August 28, 2017, through March 31, 2024, Stats was required to file  
17 annual financial reports prepared in accordance with general accepted accounting principles (GAAP).

18 13. Stats failed to file annual financial reports for fiscal years 2017 through 2023, within  
19 90 days after Stats's fiscal year end, in violation of section 25241 and 10 C.C.R. 260.241.2 (a)(3)-(4).

20 **B. Respondents Failed to Maintain Books and Records**

21 14. Section 25241 provides, in part, that an investment adviser make and maintain books  
22 and records, as the Commissioner by regulation requires.

23 15. Under 10 C.C.R. 260.241.3(a),(c),(j), an investment adviser shall make and keep true,  
24 accurate and current the books and records relating to such person's investment advisory business,  
25 including, but not limited to cash receipts and disbursements journals, general ledgers, balance sheet,  
26 income statement, cash reconciliations, trial balances, worksheets that contain computations of  
27 minimum financial requirements, originals of all written communications between the client and

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1 investment adviser relating to any recommendation made or proposed to be made, and all written  
2 agreements entered into by the investment adviser with any client.

3 16. On August 25, 2017, the Commissioner notified the Stats of the requirement to make  
4 and keep true, accurate, and current books, ledgers, and records relating to Stats's investment  
5 advisory business.

6 17. Stats failed to provide or show that it maintained the following:

7 a. Journals including cash receipts and disbursement journals, general ledgers,  
8 balance sheet, and income statement;

9 b. General and auxiliary ledgers (or other comparable records) reflecting asset,  
10 liability, reserve, capital, and income and expense accounts;

11 c. Check books, bank statements, cancelled checks and cash reconciliations of the  
12 investment adviser;

13 d. Bills or statements (or copies thereof), paid or unpaid, relating to the business  
14 of the investment adviser;

15 e. All trial balances, financial statements, worksheets that contain computations  
16 of minimum financial requirements required under 10 C.C.R. 260.237.2, of these rules, and internal  
17 audit working papers;

18 f. Originals of all written communication between the clients and the investment  
19 adviser relating to (i) any recommendation made or proposed to be made and any advice given or  
20 proposed to be given, (ii) any receipt, disbursement or delivery of funds or securities, or (iii) the  
21 placing or execution of any order to purchase or sell any security;

22 g. Evidences of powers of attorney for authorization to trade on any client's  
23 behalf;

24 h. Written agreements related to the business of the investment adviser with  
25 every client; and

26 i. Records of the securities purchased and sold, as well as the current securities  
27 positions for every client.

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1 18. Stats failed to make and keep true and accurate books and records after the  
2 Commissioner provided notice in 2017 of the requirement. Therefore, Stats willfully violated section  
3 25241 and 10 C.C.R. 260.241.3(a)(1)(2)(4)(5)(6)(7)(9)(10) and (c).

4 **C. Respondents Failed to Timely File Annual Amendments to Form ADV**

5 19. As stated above, section 25241 provides, in part, that an investment adviser shall file  
6 reports as the Commissioner by regulation requires.

7 20. 10 C.C.R. 260.241.4 (e) provides, in part, that an investment adviser shall file an  
8 annual updating amendment to its Form ADV, within ninety days of the end of the investment  
9 adviser's fiscal year.

10 21. The fiscal year end for Stats investment adviser business is December 31.

11 22. To be timely, licensees are required to file an annual updating amendment, within 90  
12 days of its fiscal year end.

13 23. On August 25, 2017, the Commissioner notified the Stats of the requirement to file an  
14 annual updating amendment to Stats's Form ADV.

15 24. Stats failed to file an annual updating amendment to Parts 1 and 2 of Stats's Form  
16 ADV, for fiscal years 2017 through 2018 and 2023; and Stats failed to annual updating amendment  
17 within 90 days of its fiscal year end to Parts 1 and 2 of Stats's Form ADV, for fiscal years 2019 and  
18 2022. By failing to file these amendments timely, Stats violated section 25241 and 10 C.C.R.  
19 260.241.4 (e).

20 **IV.**

21 **THE COMMISSIONER HAS GROUNDS TO REVOKE THE INVESTMENT ADVISER**  
22 **CERTIFICATE OF STATS INVESTMENTS LLC**

23 25. Section 25232 provides in pertinent part [emphasis added]:

24 *The commissioner may, after appropriate notice and opportunity for*  
25 *hearing, by order... revoke the certificate, of an investment adviser, if*  
26 *the commissioner finds that the... revocation is in the public interest and*  
27 *that the investment adviser, whether prior or subsequent to becoming*  
28 *such, or any partner, officer or director thereof or any person performing*  
*similar functions or any person directly or indirectly controlling the*  
*investment adviser, whether prior or subsequent to becoming such, or*  
*any employee of the investment adviser while so employed has done*

any of the following:

(d) *Is or has been subject to... (3) any other order of the commission... referred to in this subdivision which is or has been necessary for the protection of any investor.*

(e) *Has willfully violated . . . Title 4 (commencing with Section 25000)...*

(h) *Has violated any provision of this division or any rules thereunder.*

(Cal. Corp. Code § 25232(d),(e), and (h))

26. There are several grounds for revoking the investment adviser certificate of Stats Investments LLC: (1) Stats is currently subject to an order by the Commissioner – the Order to Impose Conditions on Surrender of Certificate, dated March 4, 2024; and (2) Stats violated several provisions of the CSL and the corresponding regulations.

27. Specifically, Stats violated the following: (1) section 25241(a); (2) 10 C.C.R. 260.241.2(a)(3)-(4); (3) 10 C.C.R. 260.241.3(a)(1)-(2), (4)-(7), (9), (10), and (j); and (4) 10 C.C.R. 260.241.4(e).

V.

**CONCLUSION**

Based upon the foregoing, the Commissioner finds that grounds exist, and that it is in the public interest, to enter an order revoking the investment adviser certificate of Stats Investments LLC pursuant to section 25232. The Commissioner hereby notifies Stats Investments LLC and Shawn Matthew Oesterreicher of her intention to make such orders final.

Date: October 9, 2024

CLOTHILDE V. HEWLETT  
Commissioner of Financial Protection and Innovation

By:

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Jerry Twomey  
Deputy Commissioner  
Broker-Dealer Investment Adviser Division