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BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT

10

OF THE STATE OF CALIFORNIA

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In the Matter of THE COMMISSIONER OF) DESIST AND REFRAIN ORDER PURSUANT
BUSINESS OVERSIGHT OF THE STATE OF) TO CORPORATIONS CODE SECTION
13 CALIFORNIA,) 25532;

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Complainant,

) CLAIM FOR ANCILLARY RELIEF
) PURSUANT TO CORPORATIONS CODE

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vs.

) SECTION 25254; and

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WAYUP Wealth Building Group; and
Ed Wei,

) ORDER LEVYING ADMINISTRATIVE
) PENALTIES PURSUANT TO
) CORPORATIONS CODE SECTION 25252

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Respondents.

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The Commissioner of Business Oversight of the State of California (“Commissioner”), is
22 informed and believes, and based on such information and belief, finds as follows:

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I.

25

FACTUAL BACKGROUND

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1. WAYUP Wealth Building Group (“WWB”) is at all relevant times herein a sole
27 proprietorship and fictitious business name owned by Ed Wei with a principal place of business
28 located at 2618 San Miguel Drive, Suite 393, Newport Beach, California 92660-5437.

1 2. Ed Wei (“Wei”) is the president and chief compliance officer of WWB with a
2 principal place of business located at 2618 San Miguel Drive, Suite 393, Newport Beach, California
3 92660-5437.

4 3. On or around July 9, 2013, WWB submitted an application to the California
5 Department of Business Oversight (“Department”) for an investment adviser license by filing
6 electronically on FINRA’s Web Central Registration Depository (“CRD”)¹ system. This was the first
7 application ever submitted by WWB for an investment adviser license. On or around September 10,
8 2013, while WWB’s application was pending, Wei submitted to the Department a Form U4 giving
9 notice of employment with WWB.

10 4. The application disclosed that as of June 30, 2013, WWB had six client accounts and
11 \$750,000 in assets under discretionary management.

12 5. On or around August 19, 2013 the Department requested in writing that WWB submit
13 a list of WWB’s clients’ names and addresses, dates on which WWB’s services began, types of
14 services offered and provided, and the amount of related income collected to date.

15 6. On or around August 25, 2013, Wei responded in writing to the Department’s request
16 by stating the following: (1) Wei’s clients included two New York residents for whom he managed
17 retirement accounts starting from July 31, 2011 and collected fees totaling \$3,967 during the year
18 2011, and two family members, one of whom is a California resident, from whom he did not collect
19 fees; (2) Wei stated that he began doing business in California as an investment adviser on June 5,
20 2010; (3) Wei’s investment services included “managing mutual fund holdings as regular and
21 retirement portfolios;” and (4) Wei collected a total of \$3,967 in income for investment services in
22 2011.

23 7. On or around October 10, 2013, the Department requested in writing that Wei submit
24 documentation of any fees collected for investment services during the years 2012 and 2013.

25 8. On or around October 21, 2013, Wei responded to the Department by submitting
26 _____

27 ¹ “FINRA operates Web CRD, the central licensing and registration system for the U.S. securities industry and its
28 regulators. It contains the registration records of more than 6,800 registered broker-dealers and the qualification,
employment, and disclosure histories of more than 660,000 active registered individuals.”
<http://www.finra.org/Industry/Compliance/Registration/CRD/>

1 documentation of invoices to the New York residents totaling \$1,295 in 2012, and \$2,579 in 2013.

2 9. At all relevant times herein, Wei and WWB conducted business in California.

3 10. At all relevant times herein, neither the Department nor the United States Securities
4 and Exchange Commission have issued an investment adviser certificate to either WWB or Wei.

5 **II.**

6 **DESIST AND REFRAIN ORDER**

7 The Commissioner is authorized to administer and enforce the provisions of the Corporate
8 Securities Law of 1968, Corporations Code sections 25000 et seq. (“CSL”) and the regulations
9 thereunder at Title 10, California Code of Regulations (“CCR”).

10 California Corporations Code section 25009, subdivision (a) provides in pertinent part:

11 “Investment adviser” means any person who, for compensation, engages
12 in the business of advising others, either directly or through publications
13 or writings, as to the value of securities or as to the advisability of
investing in, purchasing or selling securities”

14 California Corporations Code section 25230, subdivision (a) provides:

15 It is unlawful for any investment adviser to conduct business as an
16 investment adviser in this state unless the investment adviser has first
17 applied for and secured from the commissioner a certificate, then in effect,
18 authorizing the investment adviser to do so or unless the investment
19 adviser is exempted by the provisions of Chapter 1 (commencing with
Section 25200) of this part or unless the investment adviser is subject to
Section 25230.1.

20 California Corporations Code section 25202, subdivision (a) provides:

21 An investment adviser shall not be subject to Section 25230 if (1) the
22 investment adviser does not have a place of business in this state and (2)
23 during the preceding 12-month period has had fewer than six clients who
are residents of this state.

24 California Corporations Code section 25230.1 states in pertinent part:

25 (a) A person that is registered under Section 203 of the Investment
26 Advisers Act of 1940 as an investment adviser is not subject to the
27 requirement of obtaining a certificate under Section 25230, but may not
28 conduct business in this state unless the person has fewer than six clients
as specified in Section 25202 or unless the person first complies with
subdivision (b). An investment adviser representative that has a place of

1 business in this state may be required to obtain a certificate pursuant to
2 Section 25231.

3 (b) A person subject to subdivision (a) shall:

4 (1) File with the commissioner an annual notice, consisting of those
5 documents filed with the Securities and Exchange Commission pursuant
6 to the securities laws that the commissioner by rule or order deems
appropriate or, in lieu thereof, a form prescribed by the commissioner, and
a consent to service of process under Section 25240

7 California Corporations Code section 25532, subdivision (b) states:

8 If, in the opinion of the commissioner, a person has been or is acting as a
9 broker-dealer or investment adviser, or has been or is engaging in broker-
10 dealer or investment adviser activities, in violation of Section 25210,
11 25230, or 25230.1, the commissioner may order that person to desist and
12 refrain from the activity until the person has been appropriately licensed or
the required filing has been made under this law.

13 The foregoing facts establish that Wei and WWB have conducted business as an investment
14 adviser in this state without first securing from the Commissioner a certificate, then in effect,
15 authorizing them do so or unless they are exempt, in violation of Corporations Code section 25230.
16 Moreover, neither Wei nor WWB are exempt from Corporations Code section 25230.

17 Pursuant to California Corporations Code section 25532, WAYUP Wealth Building Group
18 and Ed Wei are hereby ordered to desist and refrain from acting as an investment adviser in the State
19 of California unless and until they have first applied for and secured from the Commissioner a
20 certificate authorizing them to act as an investment adviser, or unless exempt. This Order is
21 necessary, in the public interest, for the protection of investors, and consistent with the purposes,
22 policies, and provisions of the CSL.

23 **III.**

24 **CLAIM FOR ANCILLARY RELIEF IN THE FORM OF DISGORGEMENT**

25 California Corporations Code section 25254, subdivision (a) provides:

26 If the commissioner determines it is in the public interest, the
27 commissioner may include in any administrative action brought under this
28 part a claim for ancillary relief, including, but not limited to, a claim for
restitution or disgorgement or damages on behalf of the persons injured by

1 the act or practice constituting the subject matter of the action, and the
2 administrative law judge shall have jurisdiction to award additional relief.

3 The Commissioner hereby makes a claim for disgorgement by WAYUP Wealth Building
4 Group and Ed Wei of all fees collected from clients while engaged in unregistered investment advisory
5 activities, in an amount of \$7,841, or according to proof.

6 **IV.**

7 **ORDER LEVYING ADMINISTRATIVE PENALTIES**

8 California Corporations Code section 25252 provides in pertinent part:

9 The commissioner may, after appropriate notice and opportunity for
10 hearing, by orders, levy administrative penalties as follows: . . .
11 (b) Any broker-dealer or investment adviser that willfully violates any
12 provision of this division to which it is subject, or that willfully violates
13 any rule or order adopted or issued pursuant to this division and to which
14 it is subject, is liable for administrative penalties of not more than five
thousand dollars (\$5,000) for the first violation, not more than ten
thousand dollars (\$10,000) for the second violation, and not more than
fifteen thousand dollars (\$15,000) for each subsequent violation

15 Pursuant to California Corporations Code section 25252, the Commissioner hereby levies
16 administrative penalties against WAYUP Wealth Building Group and Ed Wei in the aggregate amount
17 of \$5,000 for the willful violation of California Corporations Code section 25230. This amount shall
18 be paid to the Commissioner within sixty (60) days of the date of this Order.

19 This Order is necessary, in the public interest, for the protection of investors, and consistent
20 with the purposes, policies, and provisions of the CSL.

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22 Dated: October 30, 2013
Los Angeles, California

23 JAN LYNN OWEN
24 Commissioner of Business Oversight

25 By: _____
26 MARY ANN SMITH
27 Deputy Commissioner
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