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7 Attorneys for Complainant

8 BEFORE THE DEPARTMENT OF CORPORATIONS
9 OF THE STATE OF CALIFORNIA

11 In the Matter of the Accusation of)
12 THE CALIFORNIA CORPORATIONS)
13 COMMISSIONER,)
14 Complainant,)
15 v.)
16 BRACK STANFORD & ASSOCIATES, INC.)
and BRACK STANFORD, as an individual,)
17 Respondents.)
18)
19)

FILE NO. 105688

ACCUSATION IN SUPPORT OF NOTICE OF INTENTION TO ISSUE ORDERS:

- 1. **REVOKING THE INVESTMENT ADVISER CERTIFICATE OF BRACK STANFORD & ASSOCIATES, INC.**
- 2. **BARRING BRACK STANFORD FROM ANY POSITION OF EMPLOYMENT, MANAGMENT OR CONTROL OF ANY INVESTMENT ADVISER, BROKER-DEALER OR COMMODITY ADVISER**

(California Corporations Code Sections 25232 and 25232.1)

22 Preston DuFauchard, California Corporations Commissioner ("Commissioner") of the
23 Department of Corporations ("Department") alleges and charges as follows:

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I. JURISDICTION AND VENUE

1. This action is brought to revoke the investment adviser certificate of Brack Stanford & Associates, Inc., ("Brack Stanford & Associates") pursuant to Corporations Code section 25232 and to bar Brack Stanford ("Stanford") (president, chief executive officer, chief financial officer, chief compliance officer, and sole managing member of Brack Stanford & Associates) from any position of employment, management, or control of any investment adviser, broker-dealer, or commodity adviser pursuant to Corporations Code section 25232.1.

2. Corporations Code section 25600 authorizes the Commissioner to administer and enforce the provisions of the Corporate Securities Law of 1968¹ (Corp. Code, §§ 25000 *et seq.*) and the regulations promulgated thereunder (Cal. Code Regs., tit. 10, §§ 260.000 *et seq.*).

3. Brack Stanford & Associates holds a valid and unrevoked investment adviser certificate issued by the Commissioner on December 10, 2004, pursuant to Corporations Code section 25230. Brack Stanford & Associates is an investment adviser business located at 793 Mesa Grande Drive, Palm Desert, California. Brack Stanford & Associates was an Illinois corporation, formerly registered to do business in California.

4. Stanford is Brack Stanford & Associates' president, chief executive officer, chief financial officer, chief compliance officer, and sole managing member.

5. On information and belief, beginning in or about at least 1995, Brack Stanford & Associates operated three investment advisory programs: Nor-Pac Limited Partnership, Nor-Pac Limited Partnership I, and Nor-Pac Limited Partnership II ("Nor-Pac Partnerships"). The Nor-Pac Partnerships are limited partnerships doing business at 793 Mesa Grande Drive, Palm Desert, California. Stanford is the Nor-Pac Partnerships' general partner.

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¹ Hereinafter "CSL."

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**II. FIRST CAUSE FOR REVOCATION: VIOLATIONS OF CORPORATIONS
CODE SECTION 25232, SUBDIVISIONS (b)(2)(A) and (b)(2)(B).**

6. Paragraphs 1 through 5 are hereby realleged and incorporated herein by reference as if set forth in their entirety.

7. Corporations Code section 25232, subdivisions (b)(2)(A) and (b)(2)(B), provide that the Commissioner may revoke the certificate of an investment adviser if held liable in a civil action by final judgment of a court. Subdivisions (b)(2)(A) and (b)(2)(B) of section 25232 state in relevant part:

The Commissioner may, after appropriate notice and opportunity for hearing, by order . . . revoke the certificate of, an investment adviser, if the commissioner finds that the . . . revocation is in the public interest and that the investment adviser . . . has done any of the following:

(b) Has been either . . . (2) held liable in a civil action by final judgment of a court based upon conduct showing moral turpitude, and the commissioner finds that the . . . civil action (A) involved the purchase or sale of any security, (B) arose out of the conduct of the business of a broker-dealer or investment adviser . . .

8. On or about December 29, 2009, in the civil case entitled *Jovicich v. Stanford, et al*, case number INC 076252, the Honorable Gary B. Tranbarger of the California Superior Court, County of Riverside, entered an order of final judgment against Brack Stanford & Associates and Stanford for having defrauded two of their investment advisory clients (hereinafter sometimes “plaintiffs” or “clients”). Judge Tranbarger ordered Brack Stanford & Associates and Stanford to pay compensatory damages to the plaintiffs in the amount of \$2,863,213.00 and Stanford to pay \$2,863,213.00 in punitive damages.

9. It was alleged that Stanford, by and through Brack Stanford & Associates, had advised the plaintiffs to purchase limited partnership interests in the Nor-Pac Partnerships, beginning in or about December of 1995 and continuing thereafter until at least 2007. Between 1995 and 2007 the plaintiffs invested approximately \$2,886,029.58 of their retirement savings with Brack Stanford & Associates and Stanford in the Nor-Pac Partnerships. Brack Stanford & Associates provided quarterly statements to its clients concerning the status of their investments. The statements showed

1 an opening balance, the amount of interest earned during the quarter, and a quarter-ending account
2 balance. The statements reflected a regular record of solid earnings for each account. However,
3 beginning in or about late 2007, Brack Stanford & Associates, by and through Stanford, stopped
4 providing account statements to the plaintiffs. Furthermore, Stanford refused to return his clients'
5 telephone calls or their written demands for account information.

6 10. During the course of the parties' litigation, the plaintiffs learned that their investments
7 in the Nor-Pac Partnerships no longer existed and that there was no longer any money in their
8 accounts held with Brack Stanford & Associates, despite the fact that they had received regular
9 account statements indicating that their Nor-Pac Partnerships continued to hold significant value.

10 11. At his deposition, Stanford testified under oath that the Nor-Pac Partnerships no
11 longer held any value:

12 Q. But what has Nor-Pac done? What does it have? What assets does Nor-
13 Pac have?

14 A. Nothing at this point.

15 Q. No assets?

16 A. No.

17 Q. So if – if I understand your testimony, the approximately – I guess it's five
18 million dollars or so that the [plaintiffs] had listed as, you know, investments
19 with Nor-Pac does not exist at this point. Correct?

20 A. It does with me. But no. The answer is no. There's nothing in that
21 account at this present time.

22 12. The Court found, by order of final judgment, that Brack Stanford & Associates and
23 Stanford had defrauded the plaintiffs in connection with the sale of securities through their
24 investment adviser business. Therefore, cause exists to revoke Brack Stanford & Associates'
25 investment adviser certificate pursuant to Corporations Code section 25232, subdivisions (b)(2)(A)
26 and (b)(2)(B).

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1 **III. SECOND CAUSE FOR REVOCATION: VIOLATIONS OF**
2 **CORPORATIONS CODE SECTION 25238 AND CALIFORNIA CODE OF**
3 **REGULATIONS, TITLE 10, SECTION 260.238, SUBDIVISION (o) (CORP. CODE, §**
4 **25232, SUBD. (e)).**

5 13. Paragraphs 1 through 12 are hereby realleged and incorporated herein by reference as
6 if set forth in their entirety.

7 14. Corporations Code section 25232, subdivision (e), provides that the Commissioner
8 may revoke an investment adviser certificate for any violation of the CSL, which is found in Title 4
9 of the Corporations Code, or for any of its rules. Subdivision (e) of section 25232 of the
10 Corporations Code states, in relevant part:

11 (e) Has willfully violated any provision of . . . Title 4 (commencing with Section
12 25000), . . . or of any rule or regulation under any of those statutes, or any order of the
13 commissioner which is or has been necessary for the protection of any investor.

14 15. Corporations Code section 25238 provides:

15 No investment adviser licensed under this chapter and no natural person
16 associated with the investment adviser shall engage in investment advisory
17 activities, or attempt to engage in investment advisory activities, in this state
18 in contradiction of such rules as the commissioner may prescribe designed to
19 promote fair, equitable and ethical principles.

20 16. California Code of Regulations, title 10, section 260.238 provides, in relevant part:

21 The following activities do not promote "fair, equitable or ethical principles,"
22 as that phrase is used in Section 25238 of the Code.

23 . . .

24 (o) Making any untrue statement of material fact or omitting a statement of
25 material fact necessary in order to make the statements made, in light of the
26 circumstances under which they are made, not misleading in the solicitation of
27 advisory clients.

28 17. On or about July 17, 1998, the United States Securities and Exchange Commission
("SEC") issued against Brack Stanford & Associates and Stanford an Order Instituting Proceedings,
Making Findings, Imposing Remedial Sanctions and Ordering Respondents to Cease and Desist
Pursuant to Sections 15(b) and 19(h) of the Securities and Exchange Act of 1934 and Sections
203(e), 203(f) of the Investment Advisers Act of 1940.

1 18. The SEC specifically found that Brack Stanford & Associates and Stanford had
2 disseminated false and misleading performance data in advertisements relating to two investment
3 advisory programs operated by Brack Stanford & Associates: Galaxy of Funds and Galaxy of Funds
4 II (“Galaxy of Funds”). The Galaxy of Funds were discretionary account programs in which clients’
5 assets were invested exclusively in shares of mutual funds. With respect to the advertisements,
6 Brack Stanford & Associates’ advertising materials contained Galaxy of Funds performance data for
7 periods prior to either program’s existence. Brack Stanford & Associates also advertised 1990
8 Galaxy of Funds performance figures that were between four (4) to seven (7) percentage points
9 higher than the Galaxy of Funds actual performance. Brack Stanford & Associates also failed to
10 disclose, in advertising the Galaxy of Funds, that the returns advertised were model portfolio returns
11 and did not represent the results of actual trading using client assets. As a result, such advertising
12 did not accurately reflect the impact that economic and market factors could have had on Brack
13 Stanford & Associates’ investment decisions if it had actually been managing clients’ assets.
14 Finally, the advertisements contained improper testimonials from unnamed persons who claimed to
15 have benefited from Brack Stanford & Associates’ services in the Galaxy of Funds program.

16 19. Beginning in or about 1995 and continuing thereafter until at least 2007, Brack
17 Stanford & Associates, by and through Stanford, advised its clients to invest in the Nor-Pac
18 Partnerships. At least three investors purchased limited partnership interests in the Nor-Pac
19 Partnerships during the relevant period.

20 20. In connection with the sale of the Nor-Pac Partnerships to its investment advisory
21 clients, Brack Stanford & Associates, by and through Stanford, failed to disclose the SEC’s July 17,
22 1998 Order issued against Brack Stanford & Associates and Stanford.

23 21. Brack Stanford & Associates violated section 25238 and California Code of
24 Regulations, title 10, section 260.238, subdivision (o), by omitting a statement of material fact
25 necessary in order to make the statements made, in light of the circumstances under which they are
26 made, not misleading in the solicitation of advisory clients. Such conduct constitutes a failure to
27 promote "fair, equitable or ethical principles," as that phrase is used in section 25238 of the Code
28 and thus a violation of Title 4 of the Corporations Code. Therefore, cause exists to revoke Brack

1 Stanford & Associates' investment adviser certificate pursuant to Corporations Code section 25232,
2 subdivision (e).

3 **IV. THIRD CAUSE FOR REVOCATION: VIOLATIONS OF CORPORATIONS**
4 **CODE SECTION 25241, SUBDIVISION (c) (CORP. CODE, § 25232, SUBD. (e)).**

5 22. Paragraphs 1 through 21 are hereby realleged and incorporated herein by reference as
6 if set forth in their entirety.

7 23. Corporations Code section 25232, subdivision (e), provides that the
8 Commissioner may revoke an investment adviser certificate for any violation of the CSL, which is
9 found in Title 4 of the Corporations Code, or for any of its rules. Subdivision (e) of section 25232 of
10 the Corporations Code states, in relevant part:

11 (e) Has willfully violated any provision of . . . Title 4 (commencing with Section
12 25000), . . . or of any rule or regulation under any of those statutes, or any order of the
13 commissioner which is or has been necessary for the protection of any investor.

14 24. Corporations Code section 25241 provides in relevant part:

15 (a) [E]very investment adviser licensed under Section 25230 shall make
16 and keep accounts, correspondence, memorandums, papers, books, and other
17 records and shall file financial and other reports as the commissioner by rule
18 requires . . .

19 (c) All records referred to in this section are subject at any time and from
20 time to time to reasonable periodic, special, or other examinations by the
21 commissioner, within or without this state, as the commissioner deems
22 necessary or appropriate in the public interest or for the protection of
23 investors.

24 25. On or about October 28, 2008, the Department commenced a regulatory examination
25 of Brack Stanford & Associates by mailing and faxing an appointment letter with an examination
26 request to its address of record. Stanford's counsel responded by letter on October 29, 2008, stating
27 that his client would not be available for an examination until November 4, 2008; therefore, Stanford
28 could not comment on the examiner's request for documents.

29 26. Thereafter the Department commenced a field examination of Brack Stanford &
30 Associates' premises on November 5, 2008 and November 6, 2008. The Department's examiner
31 provided a list of items to Stanford, requesting that Stanford produce certain books and records

1 related to Brack Stanford & Associates' investment advisory business. Stanford responded to the
2 request, stating that he would need to meet with his attorney before providing any of the requested
3 items.

4 27. Between the commencement of the field examination on November 5, 2008, and
5 Stanford's final written response to the examination request that was received on February 18, 2009,
6 the Department's examiner contacted Stanford, either in writing or via telephone, approximately
7 thirteen (13) times requesting books and records relating to the field examination. When the
8 Department finally received Stanford's responses to the initial document request on February 3,
9 2009, only one (1) of the items Stanford produced related to the examiner's detailed written request.
10 On or about February 9, 2009, the Department sent Stanford yet another written request for books
11 and records. The Department's examiner, on or about February 18, 2009, received Stanford's
12 written response in which he provided very few of the books and records and other documents
13 demanded by the examiner.

14 28. On behalf of Brack Stanford & Associates, Stanford's incomplete and deficient
15 responses to the Department's numerous written examination requests for books and records
16 constitutes a willful violation of Corporations Code section 25241, subdivision (c), and is thus a
17 violation of Title 4 of the Corporations Code. Therefore, cause exists to revoke Brack Stanford &
18 Associates' investment adviser certificate pursuant to Corporations Code section 25232, subdivision
19 (e).

20 **V. AS SPECIFIED UNDER CORPORATIONS CODE SECTION 25232.1, CAUSE**
21 **EXISTS TO BAR BRACK STANFORD FROM ANY POSITION OF**
22 **EMPLOYMENT, MANAGEMENT, OR CONTROL OF ANY INVESTMENT**
23 **ADVISER, BROKER-DEALER, OR COMMODITY ADVISER PURSUANT TO**
24 **CORPORATIONS CODE SECTIONS 25232, SUBDIVISIONS (b)(2)(A), (b)(2)(B) and**
25 **(e).**

26 29. Paragraphs 1 through 28 are hereby realleged and incorporated herein by reference as
27 if set forth in their entirety.

28 30. Corporations Code Section 25232.1 provides:

1 The commissioner may, after appropriate notice and opportunity for hearing, by order
2 censure, or suspend for a period not exceeding 12 months, or bar from any position of
3 employment, management or control of any investment adviser, broker-dealer or
4 commodity adviser, any officer, director, partner, employee of, or person performing
5 similar functions for, an investment adviser, or any other person, if he or she finds
6 that the censure, suspension or bar is in the public interest and that the person has
7 committed any act or omission enumerated in subdivision (a), (e), (f), or (g) of
8 Section 25232 or has been convicted of any offense or held liable in any civil action
9 specified in subdivision (b) of Section 25232 or is enjoined from any act, conduct or
10 practice specified in subdivision (c) of Section 25232 or is subject to any order
11 specified in subdivision (d) of Section 25232.

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13 31. Subdivisions (b)(2)(A) and (b)(2)(B) of section 25232 of the Corporations Code state,
14 in relevant part:

15 [H]eld liable in a civil action by final judgment of a court based upon conduct
16 showing moral turpitude, and the commissioner finds that the . . . civil action
17 (A) involved the purchase or sale of any security, (B) arose out of the
18 conduct of the business of a broker-dealer or investment adviser . . .

19 32. As set forth more fully in section II., paragraphs 6-12, *supra*, Stanford, by and
20 through his actions as the president, chief executive officer, chief financial officer, chief compliance
21 officer, and sole managing member of Brack Stanford & Associates has willfully violated section
22 25232, subdivisions (b)(2)(A) and (b)(2)(B) as a consequence of having been found liable in a civil
23 action by final judgment of a court for having defrauded two investment advisory clients in
24 connection with the sale of securities. Therefore, cause exists under section 25232, subdivisions
25 (b)(2)(A) and (b)(2)(B) to bar Stanford from any position of employment, management, or control of
26 any investment adviser, broker-dealer, or commodity adviser pursuant to Corporations Code section
27 25232.1.

28 33. Subdivision (e) of section 25232 of the Corporations Code states, in relevant part:

Has willfully violated any provision of . . . Title 4 (commencing with Section 25000),
. . . or of any rule or regulation under any of those statutes, or any order of the
commissioner which is or has been necessary for the protection of any investor.

34. As set forth more fully in section III., paragraphs 13-21, and section IV., paragraphs
22-28, *supra*, Stanford, by and through his actions as the president, chief executive officer, chief
financial officer, chief compliance officer, and sole managing member of Brack Stanford &

1 Associates, has willfully violated Title 4 of the Corporations Code sections 25238, 25241, and
2 California Code of Regulations, title 10, section 260.238, subdivision (o). Therefore, cause exists
3 under section 25232, subdivision (e), to bar Stanford from any position of employment,
4 management, or control of any investment adviser, broker-dealer, or commodity adviser pursuant to
5 Corporations Code section 25232.1.

6 **VI. RELIEF REQUESTED**

7 WHEREFORE, based upon the foregoing, the Commissioner finds it is in the public interest
8 to revoke the investment adviser certificate of Brack Stanford & Associates, Inc. pursuant to
9 Corporations Code section 25232, subdivisions (b)(2)(A), (b)(2)(B), and (e) and to bar Brack
10 Stanford from any position of employment, management, or control of any investment adviser,
11 broker-dealer, or commodity adviser pursuant to Corporations Code section 25232.1.

12 WHEREFORE, IT IS PRAYED that Brack Stanford & Associates, Inc.'s investment adviser
13 certificate be revoked pursuant to Corporations Code section 25232, subdivisions (b)(2)(A),
14 (b)(2)(B), and (e) and that Brack Stanford be barred from any position of employment, management,
15 or control of any investment adviser, broker-dealer, or commodity adviser pursuant to Corporations
16 Code section 25232.1.

17 Dated: July 16, 2010
18 Los Angeles, California

PRESTON DuFAUCHARD
California Corporations Commissioner

By: _____
BLAINE A. NOBLETT
Corporations Counsel
Enforcement Division

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