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9  
10 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT  
OF THE STATE OF CALIFORNIA

11 In the Matter of ) CRD No. 112217  
12 )  
13 JACK WALKER BELLINGHAM, doing ) CONSENT ORDER  
14 business as BELLINGHAM INVESTMENT )  
MANAGEMENT, ) (1) REQUIRING DISGORGMENT OF  
15 Respondent. ) EXCESS FEES AND  
16 ) (2) ACCEPTING SURRENDER OF  
17 ) INVESTMENT ADVISER  
18 ) CERTIFICATE

19 Respondent Jack Bellingham, doing business as Bellingham Investment Management and  
20 Complainant the Commissioner of Business Oversight (“Commissioner”) enter into this Consent  
21 Order (“Order”) based on the following facts:

22 **I. INTRODUCTION**

23 1. Respondent Jack Walker Bellingham (CRD No. 731036), doing business as  
24 Bellingham Investment Management (CRD No. 112217) (referred to collectively hereafter as  
25 “Bellingham”) has a current principal office located at 246 Willow Tree Road, Milton, New York  
26 12547. Prior to Bellingham’s relocation to New York on or about December 23, 2014 Bellingham’s  
27 principal office was located at 38 Keys Street, Suite 112, San Francisco California 94429.  
28 Bellingham operates an investment adviser business under a certificate issued by the California

1 Department of Business Oversight (“Department”) pursuant to Corporations Code section  
2 25230.

3 2. For the purpose of settling the issues contained in this Order regarding the failure of  
4 Bellingham to maintain required books and records and the overcharging of fees to clients, without  
5 further litigation Bellingham consents to the Commissioner’s entry of this Consent Order (“Order”)  
6 made pursuant to Corporations Code sections 25532 subdivisions (d) and (e) and 25242, subdivision  
7 (a).

8 **II. JURISDICTION AND VENUE**

9 3. The Commissioner is authorized to administer and enforce the provisions of the  
10 Corporate Securities Law of 1968, Corporations Code sections 25000 et seq. ("CSL") and the  
11 regulations thereunder at title 10, California Code of Regulations, which includes the licensure and  
12 regulation of investment advisers.

13 4. Since on or before 2002 Bellingham has been operating as an investment adviser  
14 under a certificate issued by the Department and admits to the jurisdiction of the Department in this  
15 matter for the purposes of issuing and enforcing this order.

16 **III. STATEMENT OF FACTS**

17 **A. Difficulties in Producing Required Records During Examination**

18 5. Beginning on or about January 2015 the Department initiated a routine examination of  
19 Bellingham’s investment adviser business and books and records (Examination) pursuant to the  
20 Department’s authority under Corporations Code section 25241 which provides as follows:

21 (a) Every broker-dealer and every investment adviser licensed under  
22 Section 25230 shall make and keep accounts, correspondence,  
23 memorandums, papers, books, and other records and shall file financial  
and other reports as the commissioner by rule requires...

24 (b) All records so required shall be preserved for the time specified in the  
25 rule,

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

1           6.       The Examination of Bellingham encountered several difficulties in obtaining  
2 requested records including the following.

3                   a. Bellingham initially produced illegible scanned copies of documents.

4                   b. Bellingham later sent a box he reported contained documents by mail to the  
5 Department's offices in San Francisco. However, when the box was opened upon receipt by  
6 the Department, the box contained no documents but only powdered soap. Bellingham  
7 reported to the authorities that the documents he had mailed were lost or stolen, presumably  
8 due to the box being tampered with after mailing by Bellingham.

9                   c. The Department requested copies of the invoices for Bellingham's fees taken directly  
10 from client accounts, which Bellingham was required to send clients pursuant to Code of  
11 Regulation, section 260.237 subdivision (b)(3)(C). Bellingham initially delayed producing  
12 the invoices and when he did produce them they were in hand written form. Bellingham  
13 represented to the Department the invoices had been mailed to clients contemporaneous with  
14 the deductions from the client accounts as required. However, he provided no written records  
15 showing if or when the invoices had been mailed to clients.

16           7.       Bellingham was informed by the Department of its intent to proceed with an  
17 enforcement action if production of records did not improve. Bellingham subsequently hired an  
18 outside compliance company to assist with the production of records for the examination. However,  
19 the examination eventually confirmed Bellingham's violations of books and records keeping  
20 requirements, other billing irregularities and the overcharging of client fees as explained below.

21                   **B. Failure to Maintain Complete Copies of Fee Agreements.**

22           8.       The Examination confirmed Bellingham failed to keep complete copies of his client  
23 fee agreements. Specifically the fee agreements produced did not contain an attachment reference in  
24 the main body of the agreements which contained the fee schedule that specified the rate of fees to be  
25 charged the client. Bellingham claimed the original fee agreement sent to each client did have the fee  
26 schedule attachment. However, Bellingham's failure to maintain complete copies of client fee  
27 agreements is a violation of Corporations Code sections 25241, 25238 and Code of Regulations  
28 sections 260.241.3 and 260.238. Section 260.241.3 provides:

1 (a) Every licensed investment adviser shall make and keep true, accurate  
2 and current the following books and records relating to such person's  
investment advisory business:...

3 (10) All written agreements (or copies thereof) entered into by the  
4 investment adviser with any client or otherwise relating to the  
5 business of such investment adviser as such...

6 9. Corporations Code section 25238 prohibits investment advisers from engaging in activities  
7 in violation of rules enacted by the Commission to promote fair, equitable and ethical principles and  
8 provides as follows.

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

13 California Code of Regulations section 260.238 provides as follows.

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

16 (n) Entering into, extending or renewing any investment advisory contract,  
17 other than a contract for impersonal advisory services, unless such contract  
18 is in writing and discloses, in substance, the services to be provided, the  
19 term of the contract, the advisory fee or the formula for computing the fee  
20 the amount or the manner of calculation of the amount of the prepaid fee to  
be returned in the event of contract termination or non-performance,  
whether the contract grants discretionary power to the adviser or its  
representatives.

21 10. Bellingham's failure to keep complete copies of the written fee agreements that contained  
22 the attachment that specified the fees to be charged each client is a violation of the above reference  
23 code sections.

24 **C. Irregular Billing Practices and Charging Excessive Fees.**

25 11. The Examination also revealed irregularities in the way Bellingham charged fees to clients  
26 that varied from the terms of the agreements and industry practices. This included Bellingham  
27 charging some clients a management fee of 3% of the clients' assets under management annually.  
28 Bellingham had indicated in the form ADV form it had filed with the Department prior to the

1 Examination that its fees ranged from 1.5% to 2%. During the Examination Bellingham amended his  
2 ADV form to state it charged clients fees up to 3%. The Department considers 3% as a management  
3 fee above the industry standard for investment advisers of 1.5% to 2%. However, charging 3% is not  
4 considered a violation in itself.

5 12. Another irregularity was that the fee agreements indicated that Bellingham was to  
6 withdraw fees quarterly from funds in the client's brokerage accounts. However, it appeared from  
7 invoices and the clients' brokerage accounts statements that fees where not always withdrawn on a  
8 quarterly basis. Sometimes they appeared to have been withdrawn in a lump sum for several quarters  
9 at a time. Bellingham indicated that fees were not always withdrawn quarterly if the clients lacked  
10 sufficient cash in their accounts when the fees were due in order to avoid having to liquidate other  
11 investments in those accounts to pay the fees. However, a review of the client account statements  
12 indicated that there was sufficient cash in the client's accounts in some cases to have allowed the fees  
13 to be withdrawn quarterly, even when Bellingham had not done so.

14 13. The Examination of the client's brokerage account statements also revealed that  
15 Bellingham had withdrawn fees from the clients' brokerage accounts in excess of the amount  
16 specified in the fee agreements and invoices sent to clients. The total amount of fees Bellingham  
17 overcharged clients was \$64,120.14 over the course of the years covered by the Examination.  
18 Withdrawing fees from client accounts in excess of those specified in the fee agreements or invoices  
19 is a violation of Corporations code 25235 that prohibits "unlawful acts" by investment advisers,  
20 including practices that are "fraudulent deceptive or manipulative".

21 California Corporations Code section 25235 specified that it is unlawful for any  
22 investment adviser directly or indirectly:

- 23 (a) To employ any device, scheme, or artifice to defraud any client or  
24 prospective client.
- 25 (b) To engage in any transaction, practice, or course of business which  
26 operates or would operate as a fraud or deceit upon any client or  
27 prospective client...

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1 (c) To engage in any act, practice, or course of business which is  
2 fraudulent, deceptive, or manipulative. The commissioner shall,  
3 for the purpose of this subdivision, by rule define and prescribe  
4 means reasonably designed to prevent such acts, practices, and  
5 courses of business as are fraudulent, deceptive, or manipulative.

6 14. Bellingham's withdrawing fees directly from client accounts in excess of that authorized  
7 by the written fee agreements or specified in invoices is a fraudulent deceptive or manipulative  
8 practice in violation of section 25235. This conduct was also a violation of Corporations Code section  
9 25238 and the regulations promulgated thereunder (quoted in paragraph 12 above) that prohibit  
10 investment advisers from engaging in activities in violation of rules enacted by the Commissioner to  
11 promote fair, equitable and ethical principles. Specifically the regulations that require written fee  
12 agreements that specify the fees actually charged the clients.

13 15. The Department informed Bellingham of its findings and of its intent to bring an  
14 administrative enforcement action to require disgorgement of the excess fees charged to clients, in  
15 addition to other remedies authorized by the Corporations Code. In response Bellingham indicated  
16 his desire to cooperate with the Department to remedy any violations and to consent to the entry of  
17 this Order without the need to file the enforcement action or for other litigation.

#### 18 **IV. ORDER TO DISGORGE FEES CHARGED IN EXCESS OF FEE AGREEMENTS**

19 16. The Commissioner hereby finds based on the above statement of facts that  
20 Bellingham's withdrawal of fees directly from client brokerage accounts in excess of the amounts  
21 specified in the fee agreements or invoices is a fraudulent, deceptive or manipulative practice in  
22 violation of Corporations Code section 25235 as well as a violation of the rules enacted to promote  
23 fair, equitable and ethical principles by investment advisers under section 25238. Corporations Code  
24 section 25532 authorizes the Commissioner to bring administrative actions and issue orders requiring  
25 disgorgement or other damages on behalf of persons injured by violation of these code sections and  
26 provides in relevant parts as follows:

27 (d) If the commissioner determines that a person has engaged, is engaging or is  
28 about to engage in an act practice or course of business constituting a violation of  
this division or a rule adopted or order issued under this division, the commissioner  
may issue an order directing the person to desist and refrain from engaging in the

1 act, practice, or course of business, or take other action necessary or appropriate to  
2 comply with this division.

3 (e) If the commissioner determines it is in the public interest, the commissioner may  
4 include in any administrative action brought under this division a claim for ancillary  
5 relief, including, but not limited to, a claim for restitution or disgorgement or  
6 damages on behalf of the persons injured by the act or practice constituting the  
subject matter of the action....

7 (f)... The commissioner may file a copy of the final order with the clerk of the  
8 superior court or any court of competent jurisdiction. The order so filed has the  
9 same effect as a judgment of the court and may be recorded, enforced, or satisfied  
10 in the same manner as a judgment of the court.

11 17. Pursuant to Corporations Code section 25532, the Commissioner hereby orders  
12 Bellingham to disgorge to the affected clients the fees the Department found Bellingham charged in  
13 excess of the client fee agreements or invoices in the total amount of \$64,120.14 within 20 days of  
14 the issuance of this Order. It is also hereby ordered and agreed that Bellingham will provide a written  
15 report to the Department within 90 days of the issuance of this Order providing a description of the  
16 amounts of the refunded fees paid to each client, the clients address and contact information, and if  
17 any attempted refund was returned in the mail as undeliverable or refund check not cashed by the  
18 client. Any of the excess fees that cannot be returned to the affected clients after the 90 days is  
19 escheated to the state and will be paid to the Department by Bellingham and deposited in the State of  
20 California's General Fund pursuant to the provisions of the California Unclaimed Property Law  
21 (Code of Civ. Proc., § 1500 et seq.).

22 18. In the event Bellingham fails to comply with the terms of this Order with regard to the  
23 disgorgement of excess client fees, including but not limited to all provisions of paragraph 17 above,  
24 it is hereby stipulated and agreed by Bellingham that this Order may be converted to an enforceable  
25 civil judgment for the entire amount of \$64,120.14 pursuant to the procedure specified by  
26 Corporations Code section 25532 (f). It is further agreed and stipulated that such civil judgment may  
27 be entered by the court on an ex parte basis without the need of further notice or hearing to  
28 Bellingham. It is agreed by the Department that any of the excess fees that have already be disgorged

1 by Bellingham will count as and offset and a partial satisfaction of the total amount of the civil  
2 judgment entered in any subsequent proceeding to enforce the civil judgment.

### 3 **V. ORDER ACCEPTING SURRENDER OF INVESTMENT ADVISER CERTIFICATE**

4 19. The investment adviser certificate of Bellingham Investment Management (CRD  
5 number 112217) issued by the California Department of Business Oversight is hereby voluntarily and  
6 permanently surrendered by Bellingham and the surrender is accepted by the Commissioner. The  
7 surrender is effective immediately upon the issuance of this Order by the Department, pursuant to  
8 Corporations Code Section 25242 (a). Bellingham agrees to no longer engage in business as an  
9 investment adviser in California under that certificate without applicable exemption, and agrees not  
10 to reapply for an investment adviser certificate from the Department in the future.

### 11 **VI. TERMS AND CONDITIONS**

12 20. **Consent to Issuance of Order** Jack Walker Bellingham represents that he is a  
13 principal and owner of Bellingham Investment Management, has authority to consent to this Order  
14 on its behalf and acknowledges that it has been served with a copy of this Order. Bellingham hereby  
15 admits the jurisdiction of the Department and consents to entry of this Order by the Department as  
16 settlement of the issues contained in this Order.

17 21. **Waiver of Hearing Rights** Bellingham has read this Order, is aware of a right to a  
18 hearing and appeal in this matter if a formal enforcement action had been commenced to request the  
19 relief specified under this Order, and elects to permanently waive any right to a hearing and appeal  
20 including those under Corporations Code sections 25232, 25232.1 and 25233 and to judicial  
21 review of this matter pursuant to Code of Civil Procedure section 1094.5 with respect to the  
22 issuance of this Order.

23 22. **Future Actions by the Commissioner**. The Commissioner reserves the right to  
24 bring any future action(s) against Bellingham or any of its partners, owners, officers, directors,  
25 shareholders, employees, or successors for any and all unknown or future violations of the  
26 Corporations Code. This Order shall not serve to exculpate Bellingham or any of its partners,  
27 owners, officers, directors, shareholders, employees, or successors from liability for any and all  
28 unknown or future violations of the CSL.



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23. **Public Record**. Bellingham hereby acknowledges that this Order is and will be a matter of public record.

This Order is necessary in the public interest, for the protection of investors, and consistent with the purposes, policies, and provisions of the Corporate Securities Law of 1968.

Dated: June 30, 2016

JAN LYNN OWEN  
Commissioner of Business Oversight

By \_\_\_\_\_  
MARY ANN SMITH  
Deputy Commissioner  
Enforcement Division

Dated: June 29, 2016

By \_\_\_\_\_  
Jack Walker Bellingham  
Bellingham Investment Management