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10 **BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT**
11 **OF THE STATE OF CALIFORNIA**

<p>13 In the Matter of</p> <p>14 THE CALIFORNIA COMMISSIONER OF BUSINESS OVERSIGHT,</p> <p>15</p> <p>16 Complainant,</p> <p>17 v.</p> <p>18 DAVID SCOTT CACCHIONE, an individual,</p> <p>19 Respondent.</p>	<p>OAH No. 2014100648</p> <p>CONSENT ORDER BARRING DAVID SCOTT CACCHIONE FROM ANY POSITION OF EMPLOYMENT, MANAGEMENT OR CONTROL OF ANY INVESTMENT ADVISER, BROKER-DEALER OR COMMODITY ADVISER PURSUANT TO CORPORATIONS CODE SECTIONS 25213 AND 25232.1</p>
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20 **I.**

21 **JURISDICTION AND VENUE**

22 The Commissioner of the Department of Business Oversight (“Commissioner”) is authorized
23 to administer and enforce the provisions of the Corporate Securities Law of 1968, Corporations
24 Code section 25000 et seq. (“CSL”) and the regulations thereunder at Title 10, California Code of
25 Regulations.

26 The Commissioner brings this action pursuant to the provisions of the CSL sections 25213
27 and 25232.1, and the rules and regulations promulgated thereunder.

28 The Commissioner regulates investment advisers, broker-dealers and commodity advisers in

1 California.

2 For the purpose of settling the issues contained in this Consent Order without further
3 litigation, David Scott Cacchione (“Cacchione”) admits to the jurisdiction of the Commissioner and
4 the subject matter of these proceedings and consents to the entry of this Consent Order made
5 pursuant to California Corporations Code sections 25213 and 25232.1.

6 **II.**

7 **STATEMENT OF FACTS**

8 1. In 1989, David Scott Cacchione (“Cacchione”) (CRD No. 1941729) became a
9 registered representative with the Financial Industry Regulatory Authority (“FINRA”), formerly the
10 National Association of Securities Dealers (“NASD”). Cacchione has been employed with various
11 registered broker-dealers since 1989.

12 2. In January 2004, Cacchione, without admitting or denying, consented to a thirty (30)
13 day suspension and was fined \$30,000.00 after the NASD found that he sold unregistered securities
14 to public customers without proper disclosure.

15 3. From December 2005 until June 2008, Cacchione was the Managing Director of
16 Merriman, Curhan, Ford & Co. (“Merriman”), an investment brokerage firm in San Francisco,
17 California.

18 4. In March 24, 2009, the United States Securities and Exchange Commission (“SEC”)
19 filed a civil complaint against Cacchione in the United States District Court, Northern District of
20 California. The complaint alleges that beginning in 2007 through 2008, Cacchione provided account
21 statements of Merriman customers to a third party, so the third party could fraudulently pledge the
22 securities held in the customers’ accounts in order to obtain more than \$45,000,000.00 in personal
23 loans. Cacchione also signed agreements with lenders falsely confirming that the third party owned
24 the assets in the innocent customer’s accounts. The SEC complaint alleged that beginning in 2006
25 through 2007, Cacchione engaged in unauthorized trading in several customer accounts in which he
26 purchased risky, thinly-traded stocks without his customers’ permission and netted more than
27 \$32,000.00 in unlawful commissions generated from the unauthorized trades. The SEC complaint
28 alleged that Cacchione’s conduct constituted violations of the Securities Act of 1933 (“Securities

1 Act”), section 17(a), and the Securities Exchange Act of 1934 (“Exchange Act”), section 10(b) and
2 Rule 10B-5 promulgated thereunder. (15 U.S.C. § 77q(a), 15 U.S.C. § 78j(b) and 17 C.F.R. §
3 240.10b-5, respectively.)

4 5. On April 1, 2009, Cacchione consented to entry of a final judgment in the SEC’s civil
5 action. Pursuant to the final judgment, Cacchione was permanently enjoined from violating, the
6 Securities Act, section 17(a), and the Exchange Act, section 10(b) and Rule 10b-5 thereunder.

7 6. On March 24, 2009, the United States Attorney’s Office filed criminal charges
8 against Cacchione in the United States District Court, Northern District of California. The United
9 States Attorney’s Office alleged that Cacchione knowingly and intentionally aided and abetted a
10 scheme and artifice to defraud lenders and guarantees in connection with a security in violation of
11 Title 18, United States Code, sections 1348 and 2. (18 U.S.C. §§ 1348, 2.) The crux of the United
12 States Attorney’s Office case against Cacchione centered around the same conduct involved in the
13 SEC’s civil case, discussed above.

14 7. On March 31, 2009, Cacchione pled guilty to securities fraud and aiding and abetting
15 and on October 7, 2009, Cacchione was sentenced to 60 months in prison and ordered to pay
16 approximately \$50,000,000.00 in restitution in the case brought by the United States Attorney’s
17 Office.

18 8. On March 24, 2014, Montara (CRD No. 171249) was formed as a limited liability
19 company under the laws of the State of Delaware.

20 9. On June 25, 2014, Montara requested registration with the SEC as an investment
21 adviser. The registration discloses that Montara’s principal office and place of business is at 325
22 Sharon Parke Drive, Suite 514, Menlo Park, California 94025. Further, in the registration, Cacchione
23 is disclosed as Montara’s managing member.

24 10. Based on the above, there are several, independent grounds to bar Cacchione:

25 a. Sections 25212 and 25232 subject a person to a bar from the investment
26 industry if the person has been convicted of a felony or held liable in a civil action by final judgment
27 based upon conduct showing moral turpitude and the Commissioner finds that the felony or civil
28 action involves the purchase or sale of any security or arose out of the conduct of the business of a

1 broker-dealer. (Cal. Corp. Code §§ 25212, subd. (b), and 25232, subd. (b).) Cacchione has a felony
2 conviction and has been held civilly liable for his part in a fraudulent scheme to falsify broker-dealer
3 account statements and fraudulently pledge the securities held in customers' accounts in order to
4 obtain more than \$45,000,000.00 in loans;

5 b. Sections 25212 and 25232 subject a person to a bar from the investment
6 industry if the person has been permanently enjoined by order of a court of competent jurisdiction
7 from engaging in or continuing any conduct or practice in connection with the purchase or sale of
8 any security. (Cal. Corp. Code §§ 25212, subd. (c), and 25232, subd. (c).) Cacchione has been
9 permanently enjoined in a final judgment entered by a court of competent jurisdiction for trading
10 securities in customer accounts without authorization;

11 c. Sections 25212 and 25232 subject a person to a bar from the investment
12 industry if the person is or has been the subject of any order of a national securities association
13 suspending that person from membership. (Cal. Corp. Code §§ 25212, subd. (d), and 25232, subd.
14 (d).) Cacchione was suspending from FINRA membership for a period of thirty (30) days; and

15 d. Sections 25212 and 25232 subject a person to a bar from the investment
16 industry if the person has willfully violated any provision of the Securities Act or Exchange Act.
17 (Cal. Corp. Code §§ 25212, subd. (e), and 25232, subd. (e).) As stated in b., above, Cacchione has
18 been found civilly liable for violating provisions of the Securities Act and the Exchange Act.

19 11. On September 26, 2014, the Commissioner issued an Accusation to bar Cacchione
20 from employment, management or control of any investment adviser, broker-dealer or commodity
21 adviser, pursuant to California Corporations Code sections 25213 and 25232.1.

22 12. On or about October 6, 2014, Cacchione was served with the Accusation. Cacchione
23 timely filed a Notice of Defense with the Commissioner regarding the Accusation.

24 **III.**

25 **STIPULATION AND CONSENT ORDER BARRING DAVID SCOTT CACCHIONE FROM**
26 **ANY POSITION OF EMPLOYMENT, MANAGEMENT OR CONTROL OF ANY**
27 **INVESTMENT ADVISER, BROKER-DEALER OR COMMODITY ADVISER**

28 WHEREAS, Cacchione, having advised the Commissioner that he desires to settle and
resolve this matter without the necessity of a hearing or other litigation, stipulates and consents to

1 the Commissioner making findings and entering this Consent Order;

2 WHEREAS, Cacchione admits the jurisdiction of the Commissioner over him and over the
3 subject matter of this Consent Order;

4 WHEREAS, Cacchione stipulates and elects to permanently waive any right to a hearing, any
5 reconsideration, appeal, or other rights which may be afforded pursuant to the California
6 Corporations Code sections 25532 and 25609, the California Administrative Procedure Act (Gov.
7 Code, § 11370 et seq.), the Code of Civil Procedure, or any other provision of law with respect to the
8 Accusation. However, nothing in this paragraph shall limit Cacchione’s ability to petition the
9 Commissioner for reinstatement pursuant to Corporations Code section 25232.2, subdivision (b), and
10 Government Code section 11522.

11 WHEREAS, all terms used, but not defined herein, shall have the meaning assigned to them
12 by the CSL;

13 WHEREAS, the Commissioner and Cacchione represent and warrant that each party has
14 received independent advice from its attorney(s) and/or other representatives prior to entering into
15 this Consent Order, and in executing this Consent Order relied solely on the statements set forth
16 herein and the advice of their own counsel and/or representative;

17 WHEREAS, Cacchione represents that no promises of any kind or nature whatsoever were
18 made to induce Cacchione to enter into this Consent Order, and that this Consent Order is a
19 voluntary act on the part of Cacchione;

20 WHEREAS, Cacchione agrees and acknowledges that nothing in this Consent Order shall
21 preclude the Commissioner or her agents, officers, or employees, to the extent authorized by law,
22 from referring any evidence or information regarding this matter to any other state or federal law
23 enforcement official, or from assisting, cooperating, or co-prosecuting with regard to any
24 investigation and/or action;

25 WHEREAS, Cacchione stipulates and agrees to the finality of this Consent Order. Cacchione
26 further understands and agrees that the Consent Order remains in effect and is public, and that
27 Cacchione shall not make any statement or representation that is inconsistent with this Consent
28 Order. Cacchione further understands that the Commissioner reserves the right to bring any future

1 action(s) against Cacchione for any and all unknown or future violations of the Corporate Securities
2 Act of 1968. This Consent Order shall not serve to exculpate Cacchione from liability for any and all
3 unknown or future violations of the Corporate Securities Act of 1968;

4 WHEREAS, this Consent Order may be executed in one or more counterparts, each of which
5 shall be an original but all of which, together, shall be deemed to constitute a single document. A fax
6 signature shall be deemed the same as an original signature; and

7 Based upon the foregoing, the Commissioner finds it is in the public interest to bar David
8 Scott Cacchione from any position of employment, management or control of any investment
9 adviser, broker-dealer or commodity adviser.

10 GOOD CAUSE APPEARING THEREFORE, IT IS ORDERED that David Scott Cacchione
11 is barred in the State of California from any position of employment, management or control of any
12 investment adviser, broker-dealer or commodity adviser pursuant to California Corporations Code
13 sections 23213 and 23232.1. This Consent Order shall become effective when executed by the
14 Commissioner or her designee.

15 Dated: 3/5/15

JAN LYNN OWEN
Commissioner of Business Oversight

17 By: _____
18 MARY ANN SMITH
19 Deputy Commissioner

20 Dated: 3/3/
21 ~~15~~

22 DAVID SCOTT CACCHIONE

23 Approved as to Form:

24 _____
25 Alex M. Calero
26 Counsel for the Department

27 _____
28 Mauricio S. Beugelmans, Beugelmans PLLC

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Counsel for David Scott Cacchione