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8  
9 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT  
10 OF THE STATE OF CALIFORNIA

11 In the Matter of: ) CRD NO. 165694  
12 )  
13 THE COMMISSIONER OF BUSINESS ) STATEMENT IN SUPPORT OF ORDER  
OVERSIGHT, ) LEVYING ADMINISTRATIVE PENALTIES  
14 ) AND ORDER LEVYING ADMINISTRATIVE  
Complainant, ) PENALTIES UNDER CORPORATIONS  
15 ) CODE SECTION 25252  
16 v. )  
17 )  
18 CONTINUUM FINANCIAL PARTNERS, )  
LLC, )  
19 )  
Respondent. )  
20 )

21 Jan Lynn Owen, the Commissioner of Business Oversight (Commissioner), is informed and  
22 believes, and based upon such information and belief, alleges and charges Respondent Continuum  
23 Financial Partners, LLC (Continuum) as follows:

24 I.

25 **Jurisdiction and Venue**

26 1. The Commissioner brings this action under the provisions of Corporations  
27 Code section 25252, subdivision (b) of the Corporate Securities Law of 1968 (CSL)  
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1 (Corp. Code, § 25000 et seq.) and the rules and regulations promulgated thereunder.

2 2. The Commissioner is authorized to administer and enforce the provisions of the CSL  
3 and the rules issued under title 10 of the California Code of Regulations (CCR) that regulate the  
4 business and activities investment advisers in the State of California.

5 **II.**

6 **Statement of Facts**

7 3. Continuum is an investment adviser licensed by the Commissioner under section  
8 25230 of the CSL, since at least February 6, 2013. Continuum has its principal place of business  
9 located at 5170 Golden Foothill Parkway, El Dorado Hills, California.

10 4. Continuum’s sole owner and managing director is Christopher Torchiana (Torchiana).

11 5. The Commissioner commenced a regulatory examination of the licensee on or about  
12 March 10, 2014. The Commissioner’s audit staff noted several exceptions during the examination,  
13 which included incomplete books and records.

14 6. The Commissioner set forth the deficiencies found during the examination in a  
15 regulatory letter dated June 27, 2014. The exceptions set forth in the letter included Continuum’s  
16 failure to maintain a balance sheet or general ledger, as the Commissioner’s audit staff observed—  
17 during the examination—that the company could only provide a profit and loss statement dated  
18 December 31, 2013. In addition, Continuum failed to maintain bank reconciliations for its EverBank  
19 account ending in 4996. The company did not produce its monthly computations of Continuum’s  
20 “minimum financial requirement” as required under the CSL. The Commissioner gave the company  
21 15 days to respond to the regulatory letter.

22 7. Continuum timely responded to the June 27 regulatory letter, but the response failed to  
23 adequately address all of the concerns raised by the Commissioner’s June 27 letter. Some of the  
24 outstanding issues identified in the company’s July 11, 2014 response to the regulatory letter included  
25 Continuum’s failure to provide the year-to-date general ledger, as the ledger the company provided  
26 only covered the period from October 12, 2013 to December 31, 2013; the company’s failure to  
27 provide the general ledger, balance sheet, and profit and loss statements for January, February, and  
28

1 March 2014; and Continuum's continued failure to provide monthly reconciliations for the EverBank  
2 account ending in 4996.

3 8. The Commissioner, through audit staff, sent a follow-up demand to Continuum dated  
4 October 6, 2014, and Continuum responded to the letter on or about October 16, 2014. Based on the  
5 company's response to the follow-up letter, the Commissioner initiated a special examination of  
6 Continuum's business on or about May 12, 2015.

7 9. On or about May 12, in connection with the special examination, the Commissioner's  
8 audit staff requested, by e-mail, that Continuum provide certain books and records for the months  
9 ending January, February, and March 2015. Torchiana printed the Commissioner's e-mail requesting  
10 the company's books and records and highlighted the first five items on the list, noting in the upper  
11 right hand corner of the document that the requested items were "Not available at this time."

12 10. The items referenced in the Commissioner's May 12 e-mail, which Torchiana stated  
13 were unavailable, included the general ledger for 2015 (year-to-date, accrual basis); balance sheet for  
14 the months of January, February, and March 2015 (accrual basis); income statements for the months  
15 of January, February, and March 2015 (accrual basis); bank statements and reconciliations for the  
16 months of January, February, and March 2015; and the minimum financial requirement worksheets  
17 for the months of January, February, and March 2015. Under Corporations Code section 25241 and  
18 CCR 260.241.3, investment advisers are required to maintain such books and records as the  
19 Commissioner's audit staff demanded from the company on May 12.

20 11. According to Torchiana the financial records, referenced in the Commissioner's May  
21 12 e-mail, could not be produced because the certified public account responsible for preparing the  
22 company's financials "had a serious health issues [sic] to deal with in his household and left me  
23 without updated books." In subsequent communications with the Department, Torchiana assured the  
24 Commissioner's audit staff that the requested financials would be made available by June 11, 2015.

25 12. On or about June 20, 2015, Continuum provided the documents set forth in the  
26 Commissioner's May 12 e-mail. While the company produced the requested financials on or about  
27 June 20, the Commissioner's audit staff noted deficiencies in the company's records, which included  
28 Continuum's inability to maintain monthly bank reconciliations for its US Bank business checking

1 account ending in 1866 and the company's continued failure to maintain monthly worksheets  
2 containing the computations of the firm's minimum financial requirements under the CSL.

3 **III.**

4 **Applicable Statutes**

5 13. Corporations Code section 25241 provides in pertinent part:

6 (a) Every broker-dealer and every investment adviser licensed under  
7 Section 25230 shall make and keep accounts, correspondence,  
8 memorandums, papers, books, and other records and shall file financial  
9 and other reports as the commissioner by rule requires, subject to the  
10 limitations of Section 15(h) of the Securities Exchange Act of 1934  
11 with respect to broker-dealers and Section 222 of the Investment  
12 Advisers Act of 1940 with respect to investment advisers.

13 (b) All records so required shall be preserved for the time specified in  
14 the rule.

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

20 14. Corporations Code section 25252 provides in pertinent part:

21 The commissioner may, after appropriate notice and opportunity for  
22 hearing, by orders, levy administrative penalties as follows:

23 (b) Any broker-dealer or investment adviser that willfully violates any  
24 provision of this division to which it is subject, or that willfully violates  
25 any rule or order adopted or issued pursuant to this division and to  
26 which it is subject, is liable for administrative penalties of not more  
27 than five thousand dollars (\$5,000) for the first violation, not more than  
28 ten thousand dollars (\$10,000) for the second violation, and not more  
than fifteen thousand dollars (\$15,000) for each subsequent violation.

(c) The administrative penalties shall be collected by the commissioner  
and paid into the State Corporations Fund.

(d) The administrative penalties available to the commissioner pursuant

1 to this section are not exclusive, and may be sought and employed in  
2 any combination with civil, criminal, and other administrative remedies  
3 deemed advisable by the commissioner to enforce the provisions of this  
4 division.

4 (e) After the exhaustion of the review procedures provided in  
5 accordance with the provisions of the Administrative Procedure Act,  
6 Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of  
7 Title 2 of the Government Code, the commissioner may apply to the  
8 appropriate superior court for a judgment in the amount of the  
9 administrative penalty and costs awarded in a final decision and order  
10 compelling the respondent, or the named or cited person, to comply  
11 with the final decision of the commissioner brought under this division.  
12 The application shall include a certified copy of the final decision of  
13 the commissioner and shall constitute a sufficient showing to warrant  
14 the issuance of the judgment and order from superior court.

15 15. CCR section 260.241.3 provides in pertinent part:

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

19 (1) A journal or journals, including cash receipts and disbursements  
20 records, and any other records of original entry forming the basis of  
21 entries in any ledger.

22 (2) General and auxiliary ledgers (or other comparable records)  
23 reflecting asset, liability, reserve, capital, income and expense accounts.

24 (4) All check books, bank statements, cancelled checks and cash  
25 reconciliations of the investment adviser.

26 (6) All trial balances, financial statements, worksheets that contain  
27 computations of minimum financial requirements required under  
28 Section 260.237.2, of these rules, and internal audit working papers  
relating to the business of such investment adviser.

(e)(1) All books and records required to be made under the provisions

1 of subsections (a) to (c)(1), inclusive, of this section shall be  
2 maintained and preserved in an easily accessible place for a period of  
3 not less than five years from the end of the fiscal year during which the  
4 last entry was made on such record, the first two years in an appropriate  
5 office of the investment adviser.

6 (g)(1) The records required to be maintained and preserved pursuant to  
7 this rule may be produced or reproduced by photograph on film or, as  
8 provided in paragraph (g) (2) below, on magnetic disk, tape or other  
9 computer storage medium, and be maintained and preserved for the  
10 required time in that form. If records are produced or reproduced by  
11 photographic film or computer storage medium, the investment adviser  
12 shall:

13 (A) arrange the records and index the films or computer storage  
14 medium so as to permit the immediate location of any particular record;

15 (B) be ready at all times to promptly provide any facsimile enlargement  
16 of film or computer printout or copy of the computer storage medium  
17 which the Commissioner, the Commissioner's examiners or other  
18 representatives of the Commissioner may request;

19 (C) store separately from the original one other copy of the file or  
20 computer storage medium for the time required;

21 (D) with respect to records stored on computer storage medium,  
22 maintain procedures for maintenance and preservation of and access to,  
23 records so as to reasonably safeguard records from loss, alteration, or  
24 destruction, and

25 (E) with respect to records stored on photographic film, at all times  
26 have available for examination by the Commissioner, the  
27 Commissioner's examiners or other representatives of the  
28 Commissioner's its records pursuant to Section 25241 of the Code  
facilities for immediate, easily readable projection of the film and for  
producing easily readable facsimile enlargements.

(2) Pursuant to subsection (g) (1) an adviser may maintain and preserve  
on computer tape or disk or other computer storage medium records  
which, in the ordinary course of the adviser's business, are created by  
the adviser on electronic media or are received by the adviser solely on  
electronic media or by electronic data transmission.

1 (h)(1) Any book or other record made, kept, maintained and preserved  
2 in compliance with sections 260.241 and 260.241.1 of these rules,  
3 which is substantially the same as the book or other record required to  
4 be made, kept, maintained and preserved under this section, shall  
5 satisfy the requirements of this section.

6 (2) A record made and kept pursuant to any provision of subsection (a)  
7 of this section, which contains all the information required under any  
8 other provision of subsection (a), need not be maintained in duplicate in  
9 order to meet the requirements of the other provision of subsection (a)  
10 of the section.

11 (j) Any investment adviser who is subject to the minimum financial  
12 requirements of Section 260.237.2 shall, in addition to the records  
13 otherwise required under this section, maintain a record of the proof of  
14 money balances of all ledger accounts in the form of trial balances and  
15 a record of the computations of minimum net worth pursuant to Section  
16 230.237.2 of these rules (as of the trial balance date). The trial balances  
17 and computations shall be prepared currently at least once a month.

18 **IV.**

19 **Order Levying Administrative Penalties**  
20 **(For violations of Corporations Code section 25241 and CCR 260.241.3)**

21 16. The Commissioner realleges and reincorporates by reference paragraphs 1.-15. of this  
22 Statement In Support of Order Levying Administrative Penalties Under Corporations Code section  
23 25252 as though fully set forth herein.

24 17. Corporations Code section 25252, subdivision (b), authorizes the Commissioner to  
25 issue an order levying administrative penalties against any investment adviser for willful violations of  
26 the provisions of the CSL and any rules promulgated thereunder.

27 18. Based on the foregoing findings of fact, as set forth fully above in paragraphs 1.-15.,  
28 Continuum willfully violated Corporations Code section 25241 and CCR 260.241.3 by failing to  
produce the company's books and records, when the Commissioner demanded it do so, on or about  
May 12, 2015.

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WHEREFORE, good cause showing, and under Corporations Code section 25252, the Commissioner prays for an order levying administrative penalties against Continuum as follows:

That under Corporations Code section 25252, subdivision (b), the Commissioner levy administrative penalties of \$5,000.00 for the first violation of the CSL:

(a) First Violation: \$5,000.00 for one violation of Corporations Code section 25241 and CCR 260.241.3 as follows: On or about May 12, 2015, Continuum failed to produce books and records when it was required to do so.

The total amount of administrative penalties for Continuum’s violations of Corporations Code section 25241 and CCR 260.241.3 is \$5,000.00. These administrative penalties are necessary and in the public interest for the protection of consumers and are consistent with the purposes, policies, and provisions of the CSL.

Dated: June 23, 2017  
Los Angeles, California

JAN LYNN OWEN  
Commissioner of Business Oversight

By \_\_\_\_\_  
BLAINE A. NOBLETT  
Senior Counsel  
Enforcement Division