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

12 In the Matter of:) CRD Nos. 848811 and 116136
)
13 THE COMMISSIONER OF BUSINESS) CONSENT ORDER
OVERSIGHT,)
14)
15 Complainant,)
)
16 v.)
)
17 JAMES WALTER DARDEN III doing)
business as INTEGRITY FINANCIAL)
18 MANAGEMENT,)
19)
20 Respondent.)
)

21
22 Respondent James W. Darden III doing business as Integrity Financial Management (Darden)
23 and Complainant, the Commissioner of Business Oversight (Commissioner) (hereinafter, the Parties),
24 enter into this Consent Order based on the following facts:

25 **RECITALS**

26 A. The Commissioner licenses and regulates investment advisers under the Corporate
27 Securities Law of 1968 (CSL) (Corp. Code, § 25000 et seq.).

28 B. To become licensed by the Commissioner as an investment adviser, an individual must

1 submit an application form through the Investment Adviser Registration Depository (IARD). On
2 April 29, 1999, the Commissioner issued an investment adviser license to Darden.

3 C. On July 13, 2009, the Commissioner brought an action to revoke the investment adviser
4 license of Darden and to bar Darden from any position of employment, management or control of any
5 investment adviser, broker-dealer or commodity adviser (collectively, Orders). The Orders became
6 final on March 15, 2010, after an administrative hearing.

7 D. During March 2013, the Commissioner discovered that Darden continued to provide
8 investment adviser services to at least 11 clients without a license and in contravention of the
9 Commissioner's final Orders.

10 E. Darden admits to the jurisdiction of the Commissioner and desires to resolve this matter
11 without the necessity of an enforcement action and/or other litigation; and the Commissioner finds that
12 such resolution is in the public interest.

13 NOW, THEREFORE, for good cause and valuable consideration, and the terms and conditions
14 set forth herein, the Parties agree as follows:

15 **TERMS**

16 1. Purpose: The purpose of this Consent Order is to resolve the matter before the
17 Commissioner in a manner that avoids the expense of a hearing and possible further court proceedings.

18 2. Revocation and Bar Orders: Darden acknowledges and agrees to comply with the
19 Orders referenced in Paragraph C.

20 3. Desist and Refrain Order: Pursuant to Corporations Code section 25232, subdivision
21 (b), Darden agrees to desist and refrain from acting as an investment adviser in this state in violation
22 of Corporations Code section 25230.

23 4. Penalty for Further Investment Adviser Activities: Darden agrees that if the
24 Commissioner hereafter finds, within her sole discretion, that he has engaged in investment adviser
25 activities in violation of Orders referenced in Paragraph C, or the Desist and Refrain Order referenced
26 in Paragraph 3, Darden shall pay an administrative penalty of \$150,000.00 (Penalty) to the
27 Commissioner within 10 days of written demand by the Commissioner. The Penalty shall be paid by
28 check made payable to the "Department of Business Oversight," and mailed to the attention of

1 Accounting-Litigation, Department of Business Oversight, 1515 K Street, Suite 200, Sacramento,
2 California 95814. Notice of payment shall be concurrently made to Timothy LeBas, Senior Counsel at
3 Department of Business Oversight, 1515 K Street, Suite 200, Sacramento, California 95814.

4 5. Remedy for Breach: In the event Darden fails to comply with the terms of this Consent
5 Order with regard to any terms in this Consent Order, it is hereby agreed by Darden that this Consent
6 Order, including the Penalty stipulated in Paragraph 4, shall be deemed a final and enforceable order
7 pursuant to the procedure specified by Corporations Code section 25532, subdivision (f). It is further
8 agreed and stipulated that any civil judgment may be entered by the court on an ex parte basis without
9 the need of further notice or hearing to Darden. It is agreed by the Commissioner that any of the
10 penalties already paid by Darden will count as an offset and a partial satisfaction of the total amount of
11 the civil judgment entered in any proceeding to enforce or satisfy the civil judgment.

12 6. Waiver of Hearing Rights: Darden acknowledges that the Commissioner is ready,
13 willing and able to proceed with the filing of an enforcement action on the charges contained in this
14 Consent Order, and Darden hereby waives the right to a hearing, and to any reconsideration, appeal, or
15 other right to review which may be afforded pursuant to the CSL. Darden further expressly waives
16 any requirement for the filing of an Accusation or other action that may be afforded by Government
17 Code section 11415.60, subdivision (b), the California Administrative Procedure Act, the California
18 Code of Civil Procedure, or any other provision of law, and by waiving such rights, Darden effectively
19 consents to this Consent Order becoming final.

20 7. Future Actions by the Commissioner: The Commissioner reserves the right to bring
21 any future action(s) against Darden for any and all unknown or future violations of the CSL. This
22 Consent Order shall not serve to exculpate Darden from liability for any and all unknown or future
23 violations of CSL.

24 8. Independent Legal Advice: Each of the Parties represents, warrants, and agrees that it
25 has received or been advised to seek independent legal advice from its attorneys with respect to the
26 advisability of executing this Consent Order.

27 9. No Other Representation: Each of the Parties represents, warrants, and agrees that in
28 executing this Consent Order, it has relied solely on the statements set forth herein and the advice of

1 its own counsel. Each of the Parties further represents, warrants, and agrees that in executing this
2 Consent Order, it has placed no reliance on any statement, representation, or promise of any other
3 party, or any other person or entity not expressly set forth herein, or upon the failure of any party or
4 any other person or entity to make any statement, representation or disclosure of anything whatsoever.
5 The Parties have included this clause: (1) to preclude any claim that any party was in any way
6 fraudulently induced to execute this Consent Order; and (2) to preclude the introduction of parol
7 evidence to vary, interpret, supplement, or contradict the terms of this Consent Order.

8 10. Modifications and Qualified Integration: No amendment, change or modification of
9 this Consent Order shall be valid or binding to any extent unless it is in writing and signed by all of the
10 parties affected by it.

11 11. Full Integration: This Consent Order is the final written expression and the complete
12 and exclusive statement of all the agreements, conditions, promises, representations, and covenants
13 between the Parties with respect to the subject matter hereof, and supersedes all discussions between
14 and among the Parties, their respective representatives, and any other person or entity, with respect to
15 the subject matter covered hereby.

16 12. No Presumption From Drafting: In that the Parties have had the opportunity to draft,
17 review and edit the language of this Consent Order, no presumption for or against any party arising out
18 of drafting all or any part of this Consent Order will be applied in any action relating to, connected to,
19 or involving this Consent Order. Accordingly, the Parties waive the benefit of Civil Code section
20 1654 and any successor or amended statute, providing that in cases of uncertainty, language of a
21 contract should be interpreted most strongly against the party who caused the uncertainty to exist.

22 13. Counterparts: This Consent Order may be executed in any number of counter-parts by
23 the Parties, and when each party has signed and delivered at least one such counterpart to the other
24 party, each counterpart shall be deemed an original and taken together shall constitute one and the
25 same Consent Order. A fax signature shall be deemed the same as an original signature.

26 14. Terms, Headings and Governing Law: All terms used, but not defined herein, shall
27 have the meaning assigned to them by the CSL. The headings to the paragraphs of this Consent Order
28 are inserted for convenience only and will not be deemed a part hereof or affect the construction or

1 interpretation of the provisions hereof. This Consent Order shall be construed and enforced in
2 accordance with, and governed by, the laws of the State of California.

3 15. Authority for Consent Order: Each signator hereto covenants that he/she possesses all
4 necessary capacity and authority to sign and enter into this Consent Order. Each party warrants and
5 represents that such party is fully entitled and duly authorized to enter into and deliver this Consent
6 Order. In particular, and without limiting the generality of the foregoing, each party warrants and
7 represents that it is fully entitled to enter into the covenants, and undertake the obligations set forth
8 herein.

9 16. Public Record: Respondents hereby acknowledge that this Consent Order and the
10 exhibits attached hereto will be a matter of public record. Respondents further understand and agree
11 to not make any statement or representation that is inconsistent with this Consent Order.

12 17. Voluntary Agreement: The Parties each represent and acknowledge that he, she or it is
13 executing this Consent Order completely voluntarily and without any duress or undue influence of any
14 kind from any source.

15 18. Effective Date: This Consent Order shall not become effective until signed by all
16 parties and electronically emailed to James W. Darden, III, at jwd77@live.com.

17
18 Dated: September 25, 2017

JAN LYNN OWEN
Commissioner of Business Oversight

19
20 By _____
21 MARY ANN SMITH
22 Deputy Commissioner
23 Enforcement Division

24
25 Dated: September 7, 2017

By _____
26 JAMES W. DARDEN, III
27 in his individual capacity and on behalf of
28 INTEGRITY FINANCIAL MANAGEMENT