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8  
9 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT  
10 OF THE STATE OF CALIFORNIA  
11

12 In the Matter of: ) CRD NOS.: 136082, 2956667  
13 )  
14 THE COMMISSIONER OF BUSINESS ) ACCUSATION IN SUPPORT OF ORDER  
OVERSIGHT, ) REVOKING INVESTMENT ADVISER  
15 ) CERTIFICATE PURSUANT TO  
Complainant, ) CORPORATIONS CODE SECTION 25232  
16 )  
v. )  
17 )  
18 JOSEPH FRANCIS DIEZ, doing business as )  
ALII CONSULTING, )  
19 Respondent. )

20 **I.**

21 **Introduction**

22 1. The Commissioner (Commissioner) of the Department of Business Oversight  
23 (Department) brings this action to revoke the investment adviser certificate issued to Respondents  
24 JOSEPH FRANCIS DIEZ (Diez), doing business as ALII CONSULTING (Alii), pursuant to  
25 Corporations Code section 25232.  
26 2. The Commissioner is authorized to administer and enforce the provisions of the  
27 Corporate Securities Law of 1968, title 4, Corporations Code section 25000 et seq. (CSL), and the  
28 regulations thereunder at California Code of Regulations, title 10, section 260.000 et seq.

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**II.**

**Statement of Facts**

3. From at least September 15, 2005 to the present, Diez (CRD No. 2956667), doing business as Alii (CRD No. 136082), was and is an investment adviser licensed with the Department. Diez is, and at all relevant times was, the owner and Senior Advisor of Alii. Alii has an investment adviser certificate issued by the Department pursuant to Corporations Code section 25230.

4. On or about May 17, 2010 and October 28, 2013, the Department commenced regulatory examinations of Diez/Alii. The examinations revealed that Diez/Alii violated the Corporate Securities Law of 1968 and the rules and regulations promulgated thereunder.

5. Corporations Code section 25238 provides, in relevant part:

No investment adviser licensed under this chapter . . . shall engage in investment advisory activities, or attempt to engage in investment advisory activities, in this state in contradiction of such rules as the commissioner may prescribe designed to promote fair, equitable and ethical principles.

6. California Code of Regulations, title 10, section 260.238, subdivisions (h) and (o), provide, in relevant part, that the following do not promote “fair, equitable or ethical principles” pursuant to Corporations Code section 25238:

(h) Misrepresenting to any advisory client . . . the nature of the advisory services being offered . . . .

. . .

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

7. Corporations Code section 25241 provides, in relevant part:

Every . . . investment adviser licensed under Section 25230 shall make and keep accounts, correspondence, memorandums, papers, books, and

other records and shall file financial and other reports as the commissioner by rule requires, subject to the limitations of . . . Section 222 of the Investment Advisers Act of 1940.

1 8. California Code of Regulations, title 10, section 260.241.3, subdivision (a)(10),  
2 provides:

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

6 . . .  
7 (10) All written agreements (or copies thereof) entered into by the  
8 investment adviser with any client or otherwise relating to the business  
9 of such investment adviser as such.

10 9. California Code of Regulations, title 10, section 260.241.4, subdivisions (a) and (e),  
11 provide, in relevant part:

12 (a) Each . . . licensed investment adviser shall, upon any change in the  
13 information contained in its application for a certificate (other than  
14 financial information contained therein) promptly file an amendment  
15 to such application setting forth the changed information.

16 . . .  
17 (e) A licensed investment adviser shall file an annual updating  
18 amendment, in accordance with the instruction in Form ADV, with  
19 IARD in accordance with its procedures for transmission to the  
20 Commissioner within ninety (90) days of the end of the investment  
21 adviser's fiscal year.

22 10. The advisory agreements used by Diez/Alii violated Corporations Code section 25238  
23 and California Code of Regulations, title 10, section 260.238, subdivisions (h) and (o), as they did  
24 not reflect the services being provided to certain clients. Specifically, the agreements did not reflect  
25 that Diez/Alii would be managing client assets on a non-discretionary basis through a securities  
26 brokerage, and the agreements claimed that Diez/Alii would provide a financial plan to certain  
27 clients, which Diez/Alii failed to do.

28 11. Diez/Alii violated Corporations Code section 25241 and California Code of  
Regulations, title 10, section 260.241.3, subdivision (a)(10), by failing to make and keep true,  
accurate, and current written agreements with all clients.

12. Diez/Alii violated Corporations Code section 25241 and California Code of  
Regulations, title 10, section 260.241.4, subdivisions (a) and (e), by repeatedly failing to file annual  
amendments to update Part 2 of Form ADV for the years 2009 through 2013. Further, Diez/Alii

1 failed to implement the new Part 2 brochure format after the new format became required. Even after  
2 being advised by the Department in writing that Diez/Alii needed to implement the new Part 2  
3 brochure format, Diez/Alii continued to update the Part 2 brochure utilizing the outdated format.

4 13. Diez/Alii violated Corporations Code section 25241 and California Code of  
5 Regulations, title 10, section 260.241.4, subdivisions (a), by failing to update Form ADV to provide  
6 a current principal office and place of business.

7 14. On February 3, 2017, the Commissioner issued to Diez/Alii an Order to Discontinue  
8 Violations based on the violations listed above.

9 15. In addition, on February 7, 2017, the Commissioner issued to Diez/Alii a Notice of  
10 Intention to issue and a Statement in Support of an Order Levying Administrative Penalties for those  
11 violations.

12 16. The Order to Discontinue Violations and the Notice of Intention to issue and the  
13 Statement in Support of an Order Levying Administrative Penalties were served on Diez/Alii on  
14 February 8, 2017 by certified U.S. mail.

15 17. Diez/Alii had the right to request a hearing to challenge the Department's actions  
16 within 30 days of service; Diez/Alii failed to request a hearing.

17 18. The Order to Discontinue Violations is now final.

18 19. On April 27, 2017, the Commissioner issued to Diez/Alii a Final Order Levying  
19 Administrative Penalties Pursuant to Corporations Code Section 25252 (Final Order for Penalties),  
20 assessing penalties in the amount of \$15,000, due and payable within 30 days of the issuance of the  
21 Final Order.

22 20. To date, Diez/Alii have not paid the penalties, and therefore, Diez/Alii is in violation  
23 of the Commissioner's Final Order for Penalties.

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**III.**

**Revocation of Investment Adviser Certificate for Violations  
of Sections 25238 and 24241**

21. The Commissioner alleges and incorporates by reference paragraphs 1-20 of this Accusation In Support of Order Revoking Investment Adviser Certificate Pursuant to Corporations Code Section 25232 as though fully set forth herein.

22. Corporations Code section 25238 provides, in relevant part:

No investment adviser licensed under this chapter . . . shall engage in investment advisory activities, or attempt to engage in investment advisory activities, in this state in contradiction of such rules as the commissioner may prescribe designed to promote fair, equitable and ethical principles.

23. Corporations Code section 25241, subdivision (c), provides:

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

24. Corporations Code section 25232 provides, in pertinent 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, whether prior or subsequent to becoming such, or any partner, officer or director thereof or any person performing similar functions or any person directly or indirectly controlling the investment adviser, whether prior or subsequent to becoming such, or any employee of the investment adviser while so employed has done any of the following:

. . .  
(h) Has violated any provision of this division or the rules thereunder or, in the case of an applicant only, any similar regulatory scheme of the State of California or a foreign jurisdiction.

(Corp. Code § 25232, subd. (h).)

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25. The violations of Corporations Code sections 25238 and 25241, and California Code of Regulations, title 10, sections 260.238, subdivisions (h) and (o), 260.241.3, subdivision (a)(10), and 260.241.4, subdivisions (a) and (e), as set forth in paragraphs 1-20 above, are grounds for revocation of the investment adviser certificate of Joseph F. Diez (CRD No. 2956667), doing business as Alii Consulting (CRD No. 136082), pursuant to Corporations Code section 25232, subdivision (h).

26. Additionally, Diez/Alii continue to violate the CSL by not paying the penalties ordered by the Commissioner.

**V.**

**Conclusion**

Based upon the foregoing, the Commissioner finds that it is in the public interest to revoke the investment adviser certificate of Joseph Francis Diez (CRD No. 2956667), doing business as Alii Consulting (CRD No. 136082), pursuant to Corporations Code section 25232, subdivision (h), for violating Corporations Code sections 25238 and 25241, subdivision (c). The Commissioner hereby notifies Diez/Alii of her intention to make such revocation order final.

Dated: September 8, 2017  
Sacramento, California

JAN LYNN OWEN  
Commissioner of Business Oversight

By: \_\_\_\_\_  
JOANNE ROSS  
Senior Counsel  
Enforcement Division