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

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12 In the Matter of: ) CRD NOS.: 136082, 2956667  
13 THE COMMISSIONER OF BUSINESS )  
OVERSIGHT, ) STATEMENT IN SUPPORT OF ORDER  
14 ) LEVYING ADMINISTRATIVE PENALTIES  
Complainant, ) PURSUANT TO CORPORATIONS CODE  
15 v. ) SECTION 25252  
16 JOSEPH FRANCIS DIEZ, doing business as )  
17 ALII CONSULTING, )  
18 Respondent. )

19  
20 The Commissioner of Business Oversight ("Commissioner") of the Department of Business  
21 Oversight ("Department") alleges and charges as follows:

- 22 1. From at least September 15, 2005 to the present, Joseph F. Diez, doing business as Alii  
23 Consulting ("Alii") (CRD No. 136082), was and is a licensed investment adviser. Diez is, and at all  
24 relevant times was, the owner and Senior Adviser of Alii. Diez has an investment adviser certificate  
25 (CRD No. 2956667) issued by the Department pursuant to Corporations Code section 25230.  
26 2. On or about May 17, 2010 and October 28, 2013, the Department commenced  
27 regulatory examinations of Diez and Alii. The examinations revealed that Diez and Alii violated the  
28 Corporate Securities Law of 1968 ("CSL") (Corp. Code § 25000 et seq.) and the rules and

1 regulations promulgated thereunder.

2 3. Corporations Code section 25238, provides, in relevant part:

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

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

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

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

15 5. Corporations Code section 25241, provides, in relevant part:

16 Every . . . investment adviser licensed under Section 25230 shall make  
17 and keep accounts, correspondence, memorandums, papers, books, and  
18 other records and shall file financial and other reports as the  
19 commissioner by rule requires, subject to the limitations of . . . Section  
20 222 of the Investment Advisers Act of 1940.

20 6. California Code of Regulations, title 10, section 260.241.3, subdivision (a)(10),  
21 provides:

22 (a) Every licensed investment adviser shall make and keep true,  
23 accurate and current the following books and records relating to such  
24 person’s investment advisory business:

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

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

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

7                   . . . .  
8                   (e) A licensed investment adviser shall file an annual updating  
9 amendment, in accordance with the instruction in Form ADV, with  
10 IARD in accordance with its procedures for transmission to the  
11 Commissioner within ninety (90) days of the end of the investment  
12 adviser’s fiscal year.

13           8.       The advisory agreements used by Diez and Alii violated Corporations Code section  
14 25238 and California Code of Regulations, title 10, section 260.238, subdivisions (h) and (o), as they  
15 did not reflect the services being provided to certain clients. Specifically, the agreements did not  
16 reflect that Diez and Alii would be managing client assets on a non-discretionary basis through a  
17 securities brokerage, and the agreements claimed that Diez and Alii would provide a financial plan  
18 to certain clients, which Diez and Alii failed to do.

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

22           10.     Diez and Alii violated Corporations Code section 25241 and California Code of  
23 Regulations, title 10, section 260.241.4, subdivisions (a) and (e), by repeatedly failing to file annual  
24 amendments to update Part 2 of Form ADV for the years 2009 through 2013. Further, Diez and Alii  
25 failed to implement the new Part 2 brochure format after the new format became required. Even after  
26 being advised by the Department in writing that Diez and Alii needed to implement the new Part 2  
27 brochure format, Diez and Alii still updated the Part 2 brochure utilizing the outdated format.

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11. Corporations Code section 25252 authorizes the Commissioner to issue an order levying administrative penalties against any investment adviser for willful violations of any provision of the CSL and any rules promulgated thereunder. Specifically, Corporations Code section 25252 provides, in pertinent part:

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

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

12. By reason of the foregoing, Diez and Alii willfully violated 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), justifying the imposition of administrative penalties. Diez and Alii, by obtaining their investment advisory license certificate, were obligated to have knowledge of, and to comply with, the provisions of the CSL and the regulations thereunder to maintain their investment adviser certificate. Furthermore, the Department had given Diez and Alii prior notice of the requirements of Corporations Code section 25241 and California Code of Regulations, title 10, section 260.241.4, subdivisions (a) and (e). Diez and Alii have continued to violate this regulation, despite the Department's notification.

13. Therefore, pursuant to Corporations Code section 25252, the Commissioner seeks administrative penalties for Diez and Alii's willful violation 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).

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WHEREFORE, good cause showing, and pursuant to Corporations Code section 25252, the Commissioner of Business Oversight prays for an order levying administrative penalties in the total amount of \$15,000.00, for repeat and existing violations of the Corporations Code and the California Code of Regulations.

Dated: February 7, 2017  
Sacramento, California

JAN LYNN OWEN  
Commissioner of Business Oversight

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