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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 THE COMMISSIONER OF BUSINESS)
OVERSIGHT,) STATEMENT IN SUPPORT OF ORDER TO
14) DISCONTINUE VIOLATIONS PURSUANT
Complainant,) TO CORPORATIONS CODE SECTION 25249
15 v.)
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
23 Alii Consulting ("Alii") (CRD No. 136082), was and is a licensed investment adviser. Diez is, and at
24 all relevant times was, the owner and Senior Advisor of Alii. Diez has an investment adviser
25 certificate (CRD No. 2956667) issued by the Department pursuant to Corporations Code section
26 25230.

27 2. On or about May 17, 2010 and October 28, 2013, the Department commenced
28 regulatory examinations of Diez and Alii. The examinations revealed that Diez and Alii violated the

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Corporate Securities Law of 1968 (“CSL”) (Corp. Code, § 25000 et seq.) and the rules and regulations promulgated thereunder.

3. 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.

4. 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.

5. 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.

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

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

. . .

(10) All written agreements (or copies thereof) entered into by the investment adviser with any client or otherwise relating to the business 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 the
4 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.

28 11. Corporations Code section 25249 authorizes the Commissioner to issue an order
directing any investment adviser to discontinue any violation of any provision of the CSL and any
rules promulgated thereunder. Specifically, Corporations Code section 25249 provides, in pertinent
part:

1 If, after examination or investigation, the commissioner has reasonable
2 grounds to believe that any . . . investment adviser has violated any law
3 or rule binding upon it, the commissioner shall, by written order
4 addressed to the . . . investment adviser, direct the discontinuance of the
5 violation. The order shall be effective immediately, but shall not
6 become final except in accordance with the provisions of Section
7 25251.

8 12. Corporations Code section 25251 provides, in relevant part, as follows:

9 (a) No order issued pursuant to Section 25249 or 25250 may become
10 final except after notice to the affected . . . investment adviser of the
11 commissioner's intention to make the order final and of the reasons for
12 the finding. The commissioner shall also notify the . . . investment
13 adviser that upon receiving a request the matter shall be set for hearing
14 to commence within 15 business days after receipt of the request. The .
15 . . . investment adviser may consent to have the hearing commence at a
16 later date. If no hearing is requested within 30 days after the mailing or
17 service of the required notice, and none is ordered by the commissioner,
18 the order may become final without a hearing and the . . . investment
19 adviser shall immediately discontinue the practices named in the order.
20 If a hearing is requested or ordered, it shall be held in accordance with
21 the provisions of the Administrative Procedure Act (Chapter 5
22 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of
23 the Government Code), and the commissioner shall have all of the
24 powers granted under that act. If, upon the conclusion of the hearing, it
25 appears to the commissioner that the . . . investment adviser is
26 conducting business in an unsafe and injurious manner or is violating
27 any law of this state, or any rule binding upon it, the commissioner
28 shall make the order of discontinuance final and the . . . investment
adviser shall immediately discontinue the practices named in the order.

(b) The . . . investment adviser may within 10 days after an order is
made final commence an action to restrain enforcement of that order. If
the enforcement of that order is not enjoined within 10 days by the
court in which the action is brought, the . . . investment adviser shall
comply with the order.

13. By reason of the foregoing, Diez and Alii have 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
issuance of an Order to Discontinue Violations. Diez and Alii, by obtaining their investment
advisory license certificate, were obligated to have knowledge of, and to comply with, the provisions

1 of the CSL and the regulations thereunder to maintain their investment adviser certificate.
2 Furthermore, the Department had given Diez and Alii prior notice of the requirements of
3 Corporations Code section 25241 and California Code of Regulations, title 10, section 260.241.4,
4 subdivisions (a) and (e). Diez and Alii have continued to violate this regulation, despite the
5 Department's notification.

6 14. Therefore, pursuant to Corporations Code section 25249, the Commissioner has
7 issued an order directing Diez and Alii to discontinue violating Corporations Code sections 25238
8 and 25241, and California Code of Regulations, title 10, sections 260.238, subdivisions (h) and (o),
9 260.241.3, subdivision (a)(10), and 260.241.4, subdivisions (a) and (e).

10 WHEREFORE, good cause showing, and pursuant to Corporations Code section 25251, the
11 Commissioner hereby notifies Diez and Alii of her intention to make final the Order to Discontinue
12 Violations Pursuant to Corporations Code Section 25249.

13 Dated: February 7, 2017
14 Sacramento, California

JAN LYNN OWEN
Commissioner of Business Oversight

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16 By: _____
17 JOANNE ROSS
18 Senior Counsel
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