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BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
OF THE STATE OF CALIFORNIA

In the Matter of)
THE COMMISSIONER OF BUSINESS)
OVERSIGHT,)
Complainant,)
v.)
STEVEN PAUL GRAGER and DELPHI)
WEALTH ADVISORS, INC.)
Respondents.)

CASE NO.)

ACCUSATION IN SUPPORT OF INTENTION TO ISSUE ORDERS:

1. REVOKING THE INVESTMENT ADVISER CERTIFICATE OF DELPHI WEALTH ADVISORS, INC. PURSUANT TO CORPORATIONS CODE SECTION 25232;

2. BARRING STEVEN PAUL GRAGER FROM ANY POSITION OF EMPLOYMENT, MANAGEMENT OR CONTROL OF ANY INVESTMENT ADVISER, BROKER-DEALER OR COMMODITY ADVISER PURSUANT TO CORPORATIONS CODE SECTION 25232.1

1 JAN LYNN OWEN, the Commissioner of Business Oversight (“Commissioner”) alleges and
2 charges as follows:

3
4 **I. JURISDICTION AND VENUE**

5 1. The Commissioner brings this action to revoke the certificate of investment adviser
6 previously issued to Respondent DELPHI WEALTH ADVISORS, INC. pursuant to the provisions of
7 California Corporations Code section 25232 and to bar Respondent STEVEN PAUL GRAGER from
8 any position of employment, management or control of any investment adviser, broker-dealer or
9 commodity adviser pursuant to Corporations Code section 25232.1, and the rules and regulations
10 promulgated thereunder.

11 2. The Commissioner is authorized to administer and enforce the provisions of the
12 Corporate Securities Law of 1968, Corporations Code section 25000 et seq., and the regulations
13 thereunder at California Code of Regulations, title 10, section 260.000 et seq.

14 3. DELPHI WEALTH ADVISORS, INC. (“Delphi Wealth”) was incorporated in
15 Nevada on May 18, 2012, and has a business address of 370 Diablo Road, Suite 207, Danville,
16 California 94526. STEVEN PAUL GRAGER (“Steven Grager”) is the president, control person, and
17 100% owner of Delphi Wealth.

18 4. On April 2, 1999 the California Department of Corporations (now the Department of
19 Business Oversight) certified Delphi Wealth (then named Capital Advisers Group, LLC) as an
20 Investment Adviser, and Steven Grager as an Investment Adviser Representative. According to
21 Steven Grager’s most recent filing with the Financial Industry Regulatory Authority (“FINRA”) on
22 May 18, 2012, Delphi Wealth had 26 to 100 clients, all of whom were individuals of not high net
23 worth. The advisory services provided were financial planning, market timing, and portfolio
24 management, managing assets totaling \$7,000,000 (with discretionary authority, to determine the
25 securities to be bought or sold, of \$6,000,000, and non-discretionary control of \$1,000,000).
26 Compensation was received through fixed fees and based on a percentage of assets under
27 management.

28

1 5. Corporations Code section 25231(b) provides that all investment adviser and
2 investment adviser representative applications, amendments, reports, notices, and related filings,
3 required by the Commissioner, shall be filed electronically with and transmitted to the Investment
4 Adviser Registration Depository, operated by FINRA for federal and state investment adviser
5 registrations. FINRA is a national self-regulatory membership association of broker-dealers,
6 authorized by the 1938 Maloney Act amendments to the Securities Exchange Act of 1934 to
7 supervise the conduct of its members subject to the oversight of the United States Securities and
8 Exchange Commission.

9
10 **II. THE INVESTMENT ADVISER CERTIFICATE OF DELPHI WEALTH
11 SHOULD BE REVOKED PURSUANT TO CORPORATIONS CODE SECTION
12 25232 AND STEVEN GRAGER SHOULD BE BARRED FROM ANY POSITION
13 OF EMPLOYMENT, MANAGEMENT OR CONTROL OF ANY INVESTMENT
14 ADVISER, BROKER-DEALER OR COMMODITY ADVISER PURSUANT TO
15 CORPORATIONS CODE SECTION 25232.1.**

16 6. Corporations Code section 25232 provides, in pertinent part:

17 “The commissioner may, after appropriate notice and opportunity for hearing, by order
18 censure, deny a certificate to, or suspend for a period not exceeding 12 months or revoke the
19 certificate of, an investment adviser, if the commissioner finds that the censure, denial,
20 suspension, or revocation is in the public interest and that the investment adviser, whether
21 prior or subsequent to becoming such, or any partner, officer or director thereof or any person
22 performing similar functions or any person directly or indirectly controlling the investment
23 adviser, whether prior or subsequent to becoming such, or any employee of the investment
24 adviser while so employed has done any of the following:...

25 (d) Is or has been subject to...(2) any order of any national securities association...
26 suspending or expelling him or her from membership in that association or exchange or from
27 association with any member thereof....

28 (e) Has willfully violated any provision of...(the Corporate Securities Law of 1968)
Title 4 (commencing with Section 25000) or any rule or regulation under any of those
statutes, or any order of the commissioner which is or has been necessary for the protection of
any investor....”

 7. Corporations Code Section 25232.1 provides, in pertinent part:

 “The commissioner may, after appropriate notice and opportunity for hearing, by order
censure, or suspend for a period not exceeding 12 months, or bar from any position of
employment, management or control of any investment adviser, broker-dealer or commodity
adviser, any officer, director, partner, employee of, or person performing similar functions
for, an investment adviser, or any other person, if he or she finds that the censure, suspension
or bar is in the public interest and that the person has committed any act or omission

1 enumerated in subdivision ... (e) ... of Section 25232... or is subject to any order specified in
 2 subdivision (d) of Section 25232.”

3 **A. The FINRA Consent Order Suspending Steven Grager and Delphi Securities for**
 4 **Forgeries is Grounds for Revocation under Section 25232(d) and Bar under 25232.1**

5 8. Beginning in 1987 Steven Grager was associated, in various representative and
 6 principal capacities, with several FINRA registered broker-dealers, including Financial Network
 7 Investment Corporation (FNIC) from December 2007 to June 2011. On behalf of Delphi Securities
 8 Corporation (“Delphi Securities”), Steven Grager submitted an application for Broker-Dealer
 9 registration that was approved by FINRA on December 16, 2011.

10 9. Shortly thereafter, on July 27, 2012 Steven Grager signed a Letter of Acceptance
 11 Waiver and Consent (“Consent Order”) with FINRA, formally accepted by FINRA on August 24,
 12 2012, wherein Steven Grager was suspended from association with any member of FINRA in any
 13 capacity for a period of 18 months. The suspension was based on a series of letters Steven Grager
 14 forged.

15 10. The findings in the Consent Order state that following termination of association with
 16 FNIC in June of 2011, FNIC remained the dealer of record, receiving fees and commissions on
 17 transactions in directly held mutual fund accounts. In January and February 2012, Steven Grager
 18 prepared letters with falsely affixed signatures of a representative of FNIC, without her knowledge or
 19 consent, and sent the forged letters to several customers purporting to authorize the transfer of dealer
 20 of record from FNIC to Delphi Securities. Some fees and commissions were thereafter received by
 21 Delphi Securities, before FINRA was made aware of the forgeries.

22
 23 **B. Grager Knowingly Made Improper Misrepresentations to Department**
 24 **Examiners that are Grounds for Revocation under Section 25232(e) and Bar under 25232.1**

25 11. Corporations Code Section 25404(b) provides as follows:

26 “(b) It is unlawful for any person to knowingly make an untrue statement to the
 27 commissioner during the course of licensing, investigation, or examination, with the
 28 intent to impede, obstruct, or influence the administration or enforcement of any
 provision of this division.”

1 12. On August 28, 2012 Department of Business Oversight Examiner Brett O’Sullivan
2 and Auditor Ranjit Bains interviewed Steven Grager at his office in the San Ramon office of Delphi
3 Wealth, his California certified investment adviser firm, and began an examination of its accounts,
4 books and other records, as authorized by Corporations Code section 25241.

5 13. At the interview on August 28, 2012 Steven Grager was asked: “Has the firm or any of
6 its representatives been involved in any regulatory investigation, action, litigation or the subject of
7 any civil complaint, arbitration, or criminal proceeding in the last two years? If yes, describe.” In
8 response, Steven Grager stated only that there was a pending complaint made by R.G. against the
9 broker-dealer Delphi Securities Corp., and when asked to produce the files of all investment adviser
10 clients, Delphi Wealth did not produce a file for client R.G.

11 14. Steven Grager took an inconsistent position during a FINRA arbitration proceeding
12 initiated by R.G. stating that the trades made on behalf of R.G. were “done through an investment
13 advisory firm, separate entity from the broker-dealer, not owned by the broker-dealer.” Moreover, on
14 September 25, 2012 Interactive Brokers (“IB”, a California registered broker-dealer that provides all
15 custodial services for Delphi Wealth), responding to Examiner O’Sullivan’s request for all Delphi
16 Wealth accounts, produced Master account number F588456, the account of Delphi Wealth Financial
17 Advisor, that includes all Delphi Wealth managed accounts, including three accounts belonging to
18 R.G. and his wife C.G., to wit: 1.) R.G. IRA account, 2.) C.G. IRA account, and 3.) R.G. and C.G.
19 joint account. On the IB application forms for R.G./C.G., Delphi Wealth Advisors was designated as
20 the “Name of the Advisor’s Firm” and Steven Grager was designated as the “Name of Your Financial
21 Advisor.” The master account showed that Delphi Wealth had purchased on behalf of each of the
22 three R.G./C.G. accounts unsuitable ETF shares comprising approximately 97% of their portfolio.

23 15. FINRA records show that R.G. and C.G. filed a claim with FINRA (Arbitration # 12-
24 01119) against Stephen Grager and Delphi Wealth Advisors alleging mismanagement of their
25 accounts by investing their total retirement portfolio into risky and unsuitable Direxion ET Funds 3x,
26 the same or similar ETFs Grager purchased on behalf of many of his other Investor Advisor clients as
27 discussed below. R.G. wrote to FINRA that on October 2-4, 2012, Delphi Wealth purchased these
28

1 ETFs, without his knowledge or consent, and that he lost 43% of their value within 96 hours, and
2 because Grager did not report the losses, R.G. did not discover the loss until October 28, 2011. In
3 February 2013, a FINRA arbitration panel awarded R.G./C.G. their entire claimed loss of \$109,555
4 against “Delphi Wealth Advisors a/k/a Delphi Securities.” During the Department of Business
5 Oversight examination, in an effort to impede and obstruct the enforcement of California securities
6 law, Stephen Grager knowingly made untrue statements as to the existence and nature of the
7 complaints of investment adviser clients R.G./C.G..

8 16. In addition, Steven Grager omitted to disclose to Department Examiners a civil
9 judgment of \$262,078 filed against him in the Santa Clara County Superior Court by H. S. on March
10 2, 2012.

11
12 **C. Grager Willfully Made Investments Unsuitable for his Clients that are Grounds**
13 **for Revocation under Section 25232(e) and Bar under 25232.1**

14 17. Corporations Code section 25238 provides that no licensed investment adviser (or
15 person associated with the investment adviser) shall engage in investment adviser activities “in
16 contradiction of such rules as the commissioner may prescribe designed to promote fair, equitable
17 and ethical principles.” The activities so prescribed are found and listed in California Code of
18 Regulations, title 10 (Investment), (“CCR”) section 260.238, subsections (a) through (o). In pertinent
19 part 10 CCR 260.238 (a) reads as follows:

20 “The following activities do not promote ‘fair, equitable or ethical principles’ as that phrase is
21 used in Section 25238 of the Code:

22 (a) Recommending to a client to whom investment supervisory, management or consulting
23 services are provided in the purchase, sale or exchange of any security without reasonable
24 grounds to believe that the recommendation is suitable for the client on the basis of
25 information furnished by the client after reasonable inquiry concerning the client’s investment
26 objectives, financial situation and needs and any other information known or acquired by the
27 adviser after reasonable examination of such of the client’s records as may be provided to the
28 adviser.”

18. Starting in July 2011, Delphi Wealth moved its clients from TD Ameritrade to IB,
where most of them remained in cash until late September/early October of 2011. At that time,

1 Steven Grager, using client assets, began purchasing speculative “leveraged Bear market ETFs”.
2 Some clients were exclusively invested in these exchange-traded funds (“ETFs”). Unlike an ETF that
3 seeks investment results based on how well an index performs, these bear market ETFs were
4 designed to seek investment results inverse of index performance. These leveraged ETFs enabled
5 Delphi Wealth to buy an ETF with leverage at multiples of two or three times, significantly
6 increasing the amount of possible gain or loss. Many of the ETFs purchased by Delphi Wealth were
7 targeted at markets more volatile than the broad based U.S. indexes (DJIA, S&P 500, etc.).
8 Unfortunately the S&P 500 gained 10.91% from September 30, 2011 to October 31, 2011, and all
9 ETFs purchased by Delphi Wealth were purchased on either September 30, 2011 or October 3, 2011,
10 causing some clients to suffer losses in excess of 30% in one month.

11 19. Moreover, the ETFs purchased were used in a strategic manner inconsistent with their
12 directed use. As stated in the Direxion Prospectus relating to nearly all ETFs purchased by Delphi
13 Wealth:

14 “The Fund seeks daily leveraged investment results and does not seek to achieve its
15 stated investment objective over a period of time greater than one day. The Fund is different
16 and much riskier than most exchange-traded funds.

17 The Fund is designed to be utilized only by knowledgeable investors who understand
18 the potential consequences of seeking daily leveraged investment results, understand the
19 risks associated with shorting and the use of leverage, and are willing to monitor their
20 portfolios frequently. The Fund seeks daily leveraged investment results relative to the Index
21 and is different and riskier than similarly benchmarked exchange-traded funds that do not
22 leverage. Therefore, the Fund is not intended to be used by, and is not appropriate for,
23 investors who do not intend to actively monitor and manage their portfolios.”

24 20. Many of Delphi Wealth’s clients were elderly and inexperienced. Investing any investor
25 assets, much less all the assets of some investors, in these speculative and extremely risky ETFs was
26 clearly unsuitable for Delphi Wealth’s clients, and in breach of an investment adviser’s fiduciary duty
27 to his clients, including the following:

- 28 1.) T.C. and wife J.C., 85 and 70 years old, signed a suitability form dated July 6, 2008
indicating they were retired, had an annual net income of \$50,000 to \$100,000,
estimated liquid assets of under \$500,000, and a moderate risk tolerance. As of
October 31, 2011, the T.C. IRA and J.C. IRA accounts managed by Delphi Wealth

1 were predominately (98%) invested in several leveraged bear market ETFs. For the
 2 month of October 2011 their IRA losses were approximately 33%, and the ETFs were
 sold in February 2012.

- 3 2.) M.S. is 72 years old. Per the signed suitability form dated June 11, 2007, M.S. was
 4 retired and had a net worth of over \$4 million, but in a signed IB application dated
 5 July 27, 2011 M.S. states that he has an annual income of \$50,000 to \$100,000, and
 6 total assets of \$1 million. On October 3, 2011, Delphi Wealth purchased equal cost
 7 basis shares in several leveraged bear market ETFs, which at the time comprised 97%
 of the account assets of M.S. For the month of October 2011 M.S. suffered losses of
 37.96%, and the ETF shares were sold in February 2012.
- 8 3.) R.K. and wife R.K. signed a suitability form dated June 6, 2008 indicating they were
 9 66 and 68 years old respectively, retired, had a net income of \$50,000 to \$250,000,
 and a moderate risk tolerance. A review of their separate IRA accounts indicate that
 10 on October 3, 2011, Delphi Wealth purchased equal cost basis shares in several
 11 leveraged bear market ETFs, at which time comprised approximately 97% of their
 IRA account assets. For the month of October 2011 their IRA losses were
 12 approximately 36% and their ETF shares were sold in June 2012.
- 13 4.) C.K. signed a suitability form dated May 25, 2010 indicating she is 72 years old,
 14 retired, with an annual income of \$50,000 to \$100,000, and had moderate risk
 15 tolerance. A review of the C.K. IRA and Trust account indicates that on October 3,
 2011 Delphi Wealth purchased equal cost basis shares in several leveraged bear
 16 market ETFs, at which time comprised approximately 97% of C. K.'s IRA and Trust
 17 account assets. For the month of October the C.K. IRA and Trust account losses were
 37.26% and 37.58%, respectively, and the ETF shares were sold in June 2012.
- 18 5.) The D.T. and N.T. Family Trust signed a suitability form dated November 29, 2009
 19 stating they were 84 and 91, respectively, retired, and had a moderate risk tolerance.
 20 On October 3, 2011, Delphi Wealth purchased shares in a leveraged bear market ETF,
 21 which at the time amounted to 97% of the Trust account assets. For the month of
 October 2011, the Trust losses were 18.26%, and the ETF was sold in June 2012.

22
 23 **D. Grager Willfully Charged Fees Not According to Signed Contracts and that is**
 24 **Grounds for Revocation under Section 25232(e) and Bar under 25232.1**

25 21. In pertinent part 10 CCR 260.238 (n) reads as follows:
 26 "The following activities do not promote 'fair, equitable or ethical principles' as that phrase is
 used in Section 25238 of the Code:....

27 (n) Entering into, extending or renewing any investment advisory contract, other than a
 28 contract for impersonal advisory service, unless such contract is in writing and discloses, in

1 substance, the services to be provided, the term of the contract, the advisory fee or the formula
2 for computing the fee the amount or the manner of calculation of the amount of the prepaid
3 fee to be returned in the event of contract termination or non-performance, whether the
4 contract grants discretionary power to the adviser or its representatives.”

5 22. Prior to March 30, 2011, Delphi Wealth operated its investment advisory business
6 under the name Capital Advisors. The Department’s review of Delphi Wealth’s client files indicates
7 that the majority of the clients signed agreements at the time the firm was known as Capital Advisors.
8 The standard fee schedule of the Capital Advisors agreement provided for an annual percentage fee,
9 depending on the amount of assets under management, of from 1.00% to 1.75%.

10 23. During the examination, Delphi Wealth provided the Department with a sample of its
11 current, updated contract, which showed a standard fee schedule providing for an annual percentage
12 fee, depending on the amount of assets under management, of from 1.00% to 2.25%.

13 24. The Department’s review of Delphi Wealth’s client files indicates that it currently
14 charges advisory fees based on, or in excess of, the current Delphi Wealth fee schedule regardless of
15 the signed contracts. When requested, Delphi Wealth did not provide evidence, written or otherwise,
16 that prior client contracts were amended or that clients approved a change in fees. In addition, the
17 Department’s fee analysis indicates that fees higher than the signed contract rates were in fact
18 charged to clients for the period from July 1, 2011 to June 30, 2012.

19 **E. Grager Willfully Overcharged Fees on Unmanaged Accounts and that is**
20 **Grounds for Revocation under Section 25232(e) and Bar under 25232.1**

21 25. In pertinent part 10 CCR 260.238 (j) reads as follows:

22 “The following activities do not promote ‘fair, equitable or ethical principles’ as that phrase is
23 used in Section 25238 of the Code:...

24 (j) Charging a client an advisory fee that is unreasonable in light of the type of services to
25 be provided, the experience and expertise of the adviser, the sophistication and bargaining
26 power of the client, and whether the adviser has disclosed that lower fees for comparable
27 services may be available from other sources.

28 26. In addition to clients with IB discretionary accounts, Delphi Wealth “manages” the sub-
accounts for various clients who maintain annuities with ING and charges those clients fees. Though

1 the Department Examiners were unable to collect sales information for all clients, information
2 collected indicates Steven Grager sold these annuities to clients via Delphi Securities (mostly during
3 the 2007-2008 period). The Department's period of review (July 2011 -- June 2012) indicates client
4 sub-accounts are 95%+ invested in the ING PIMCO Total Return Bond Portfolio. Considering the
5 unmanaged nature of the investments (there was no appearance of 'trading' in sub-accounts during
6 the period reviewed), it is unreasonable for Delphi Wealth to be charging a management fee on such
7 accounts. Moreover, some clients were charged management fees in excess of 3% (including one
8 client charged a fee of 10% on an annualized basis), and the Department considers any management
9 fee of over 3% excessive.

10
11 **F. Grager Willfully Failed to Provide Verification of Client Assets from a CPA and**
12 **that is Grounds for Revocation under Section 25232(e) and Bar under 25232.1**

13 27. Corporations Code section 25235 provides in pertinent part:

14 It is unlawful for any investment adviser, directly or indirectly, in this state:...

15 (d) To engage in any act, practice, or course of business which is fraudulent,
16 deceptive, or manipulative. The commissioner shall, for purposes of this subdivision,
17 by rule define and prescribe means reasonably designed to prevent such acts,
practices, and courses of business as are fraudulent, deceptive, or manipulative...."

18 28. Title 10 California Code of Regulations 260.237 provides as follows:

19
20 It shall constitute a fraudulent, deceptive or manipulative act, practice or
21 course of business, within the meaning of Section 25235 of the Code, for any
22 investment adviser who has custody or possession of any funds or securities, except
23 prepaid fees for periodic publications or other advisory services, in which any client
has any beneficial interest to do any act or take any action, directly or indirectly, with
respect to any such funds or securities, unless:...

24 (c) the investment adviser, immediately after accepting custody or possession
25 of funds or securities from any client, notifies the client in writing of the place and
26 manner in which the funds and securities will be maintained, and thereafter, if and
when there is any change in the place or manner in which the funds or securities are
being maintained, gives each client written notice thereof; and

27 (d) the investment adviser sends to each client, not less frequently than once
28 every three months, an itemized statement showing the funds securities in the custody

1 or possession of the investment adviser at the end of the period, and all debits, credits
2 and transactions in the client’s account during the period; and

3 (e) all funds and securities of clients are verified by an actual examination at
4 least once during each calendar year by an independent certified public accountant or
5 public accountant at a time which shall be chosen by the accountant without prior
6 notice to the investment adviser. A certificate of the accountant stating that such
7 person has made an examination of the funds and securities, and describing the nature
8 and extent of the examination, shall be filed with the Commissioner promptly after
9 each examination.

10 29. Delphi Wealth is deemed to have custody and possession of client funds and securities
11 because it is paid automatically from the client funds upon presentation of a bill to the custodian of
12 the client’s account. Delphi Wealth currently does not send invoices to clients reflecting any fees, the
13 assets the fee is based on, and how it is computed. The firm is also required to provide an annual
14 surprise verification of client assets, from an independent CPA, and submit this report to the
15 Department on an annual basis, but the Department has not received any such report.

16 **G. Grager Willfully Failed to Maintain Books and Records and that is Grounds for
17 Revocation under Section 25232(e) and Bar under 25232.1**

18 30. California Code of Regulations section 260.241.3 provides in pertinent part as follows:

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

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

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

26 (4) All check books, bank statements, cancelled checks and cash
27 reconciliations of the investment adviser as such.

28 (5) All bills or statements (or copies thereof), paid or unpaid, relating to the
business of the investment adviser as such.

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

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31. Delphi Wealth and Delphi Securities are separate entities, required to maintain separate financial books and records, on a current and accurate basis. The Department examination revealed that Delphi Wealth has failed to maintain the following records: balance sheets, income statements, a general ledger, bank reconciliation, and minimum requirement calculations.

PRAYER FOR RELIEF

WHEREFORE, based on each of the foregoing grounds, any one of which is in itself sufficient, the Commissioner of Business Oversight finds that grounds exist and that it is in the public interest to revoke the investment adviser certificate of Delphi Wealth Advisors, Inc. pursuant to Corporations Code section 25232(d) and (e), and that grounds exist and that it is in the public interest to bar Steven Paul Grager from any position of employment, management or control of any investment adviser, broker-dealer or commodity adviser pursuant to Corporations Code section 25232.1, for acts committed as specified in Corporations Code section 25232(d) and (e), as described above. The Commissioner hereby notifies Delphi Wealth Advisors, Inc. and Steven Paul Grager of its intention to make such Orders final.

Dated: August 26, 2013
San Francisco, California

JAN LYNN OWEN
Commissioner of Business Oversight

By: _____
EDWARD KELLY SHINNICK
Senior Enforcement Counsel