BEFORE THE
DEPARTMENT OF BUSINESS OVERSIGHT
STATE OF CALIFORNIA

In the Matter of the Statement of Issues of: THE CALIFORNIA COMMISSIONER OF BUSINESS OVERSIGHT, Complainant, v. NEIL GODBOLE, Respondent,	OAH No.: 2012110648

DECISION

The attached Proposed Decision of the Administrative Law Judge of the Office of Administrative Hearings, dated November 20, 2013, is hereby adopted by the Department of Business Oversight as its Decision in the above-entitled matter pursuant to Government Code Section 11517(c)(2)(A).

This Decision shall become effective on **April 5, 2014**.

IT IS SO ORDERED this **6th** day of **March, 2014**.

COMMISSONER OF BUSINESS OVERSIGHT

/s/
Jan Lynn Owen

BEFORE THE
DEPARTMENT OF BUSINESS OVERSIGHT
STATE OF CALIFORNIA

In the Matter of the Statement of Issues of: THE CALIFORNIA COMMISSIONER OF BUSINESS OVERSIGHT, Complainant, v. NEIL GODBOLE, Respondent,	Case No. GODBOLE10715 OAH No. 2012110648

PROPOSED DECISION

Administrative Law Judge Cheryl R. Tompkin, State of California, Office of Administrative Hearings heard this matter on July 30-31, 2011, in Oakland, California.

Marisa I. Urteaga-Watkins, Corporations Counsel, and Kirk Wallace, Senior Corporations Counsel, represented complainant Jay Lynn Owen, California Commissioner of Business Oversight, Department of Business Oversight.

Jahan Raissi, Attorney at Law, represented respondent Neil Godbole, who was present at the hearing.

The record was held open to August 30, 2013, to permit respondent to submit a post-trial brief and complainant to submit a reply brief. Respondent's post-trial brief was timely submitted and marked as Exhibit 19 for identification. Complainant's reply brief was timely submitted and marked as Exhibit B for identification. On September 10, 2013, respondent filed a reply to complainant's reply brief, which was marked as Exhibit C for identification. On September 11, 2013, complainant filed an objection to and request to strike respondent's reply brief, which was marked as Exhibit 20 for identification. The matter was deemed submitted on September 11. 2013.

FACTUAL FINDINGS

1. The California Commissioner of Business Oversight is authorized to administer and enforce the provisions of the Corporate Securities Law and the regulations promulgated thereunder. (Corp. Code, §25000 et seq.; Cal. Code Regs., tit. 10, § 260.000 et seq.) Investment advisers[1] who practice in California are subject to the provisions of the Corporate Securities Law and its associated regulations.

2. At all times relevant to these proceedings Neil Godbole (respondent) was a registered investment adviser licensed with the Securities and Exchange Commission (SEC) and the California Department of Corporations (department), which is now a part of the Department of Business Oversight.[2]

3. Trueblue Strategies, LLC (Trueblue), a California limited liability company, was an investment adviser firm founded by respondent. Trueblue's principal place of business was in Saratoga, California. Commencing in 2005 and at all times relevant to this proceeding, respondent was the managing member, and financial and operations principal of Trueblue, and was directly responsible for supervision and control of all the activities of Trueblue.

4. Trueblue was the investment advisor for Opulent Lite, LP, a California limited partnership, that operated as a hedge fund. Opulent Lite was also located in Saratoga, California.

5. On December 1, 2010, *In the Matter of Neil Godbole*, File No. 3-14147, the SEC issued an "Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 203(f) and 203(k) of the Investment Advisers Act of 1940, Making Findings and Imposing Remedial Sanctions and Cease-and-Desist Order" (SEC Order or Order) against respondent. The SEC Order was the result of the SEC accepting an offer of settlement (Offer) submitted to it by respondent after the SEC initiated proceedings against respondent for violations of the security laws.

6. Paragraph two of the SEC Order recites that respondent consents to entry of the Order without admitting or denying the findings contained therein. However, in the Order the SEC makes findings on the basis of the Order and respondent's Offer, including the following:

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[1] In California, the term "investment adviser" includes persons who, for compensation, engage in the business of advising others regarding the advisability of investing in, purchasing, or selling securities. (Corp. Code, § 25009.) Investment advisers in California are required to be licensed. (Corp. Code, § 25230.)

[2] Pursuant to the Governor's Reorganization Plan, on July 1, 2013, the Department of Corporations and Department of Financial Institutions became the Department of Business Oversight.

(a) The proceedings instituted by the SEC involved respondent's efforts to hide large trading losses in Opulent Lite, LP, a hedge fund he managed that had approximately $30 million in assets and 70 investors. In the February 2008 trading period, the fund suffered $8.3 million in losses. For the remainder of 2008, respondent unsuccessfully tried to "make up" the losses. In the end, Opulent Lite suffered a total of $14.5 million in trading losses in 2008. Investors were unaware of the losses throughout 2008 because respondent misstated both trading results and the fund's assets in materials he authored and sent to investors. In February 2009, respondent disclosed the fund's losses and its true financial condition to investors. The majority of investors withdraw their funds and by March 2009, the fund was liquidated.

(b) Beginning in 2005, respondent managed Opulent Lite through Trueblue. He was solely responsible for the fund's business operations, including trading decisions, record keeping, and communications with investors.

(c) Until 2008, respondent's trading strategy was to invest most investor funds in short-term treasury bonds which would mature at the end of the fund's monthly trading period. The remainder of the cash was invested in Standard and Poor index options which would expire at the end of the monthly trading period.

(d) During the February 2008 trading period, respondent lost approximately $8.3 million as a result of a series of highly unprofitable trades. However, he failed to disclose the loss to investors. He also misrepresented the new total value of the fund, telling investors the fund had a value of $28.7 million when it had an actual value of $18.5 million.

(e) In an effort to make up losses and stem further losses, respondent began to use what he called a "rollover strategy." Prior to 2008, respondent would end each monthly trading period fully in cash. In 2008, he began to open option positions toward the end of the trading period. Instead of expiring at the end of the monthly trading period, the option contracts had expiration dates extending into the next trading periods. The rollover strategy did not, in fact, stem losses.

(f) Respondent continued to misrepresent the fund's trading results and asset value throughout 2008. He repeatedly underreported Opulent Lite's trading losses to investors. For example, in September, respondent reported trading losses of $859,000, when in fact the fund had lost $4 million; at the same time, he reported the fund's assets value at $29 million, when in reality it had fallen to $19 million. Even in the few months when the fund experienced gains, respondent underreported those gains, allowing him to smooth the fund's returns and conceal the losses he had failed to report previously. By December 2008, when respondent had informed fund investors that the fund had an asset value of over $26 million, the fund had actually fallen below $14.4 million in assets - an 81 percent overstatement.

(g) In addition to misrepresenting the value of the fund, respondent also misrepresented the reason for the losses he did disclose. In early 2008, respondent implemented what he called a "rollover strategy," with option positions remaining open at the end of each monthly reporting period (rather than ending each month fully in cash, as the fund had previously done). During several trading periods throughout 2008, respondent blamed the losses on the "rollover strategy," minimizing these declines as merely artificial "paper" losses or "projected" losses tied to open option positions. In reality, these losses represented actual, realized trading losses.

(h) During the year, respondent caused the fund to pay his management fees based on the inflated fund value. In addition, he caused the fund to redeem units at the inflated value, to the detriment of investors who remained in Opulent Lite as well as the fund itself.

(i) In February 2009, respondent informed investors of the accurate results for 2008, disclosing both accurate trading losses and the fund's value. He also reimbursed the fund for overpayment of management fees. Although respondent disclosed that actual losses were incurred in early 2008, he attributed the losses for the year to the "rollover strategy" when actually there were additional realized losses throughout 2008. The fund was fully liquidated by March 2009.

(j) As a result of the conduct described above, respondent willfully violated sections 206(1) and (2), of the Investment Advisers Act of 1940, which prohibit fraudulent and misleading conduct by an investment adviser. He also willfully violated section 206(4) and Rule 206(4)-8 thereunder by providing false information to fund investors.[3]

7. The SEC Order directed respondent to cease and desist from violating the Investment Advisers Act of 1940 and Rule 206(4)-8 promulgated thereunder, and "barred [respondent] from association with any investment adviser, with the right to reapply for association after five (5) years to the appropriate self-regulatory

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[3] Rule 206 of the Act provides that it is unlawful for an investment adviser to employ any device, scheme or artifice to defraud any client or potential client, engage in any transaction, practice or course of business which operates as a fraud or deceit upon a client or potential client, or engage in any act, practice or course of business that is fraudulent, deceptive or manipulative. Rule 206(4)-8 of the Act defines a fraudulent, deceptive or manipulative act to include an investment adviser to a pooled investment vehicle engaging in any act, practice or course of business that is fraudulent, deceptive or manipulative with respect to any investor or prospective investor in the pooled investment vehicle.

A hedge fund is a pool investment vehicle.

organization, or if there is none, to the Commission." Respondent was also required to pay a civil money penalty of $40,000.

Respondent's Testimony

8. Respondent does not dispute that Opulent Lite experienced significant trading losses in 2008 or that he failed to adequately disclose or explain to investors how the options used in his rollover strategy were valued. And respondent admits the SEC was right in finding that there was a misrepresentation because he had to make a restatement of the value of the fund. However, respondent maintains the misrepresentation was unintentional; he denies ever intentionally setting out to mislead or defraud investors.

9. Respondent explained that in late 2003 or early 2004 he went to work for his father, who is also an investment adviser. In mid-2004, he obtained his Series 65, investment adviser license. Shortly thereafter, in 2005, when he was just 27 years old, he began serving as the investment adviser for Opulent Lite. From 2005 until 2008 the fund was profitable, yielding an annualized return of 13 to 14 percent. However, in January 2008 Opulent Lite suffered a 10 percent loss. This loss was reported to investors since respondent had not yet implemented his rollover strategy and the fund had ended the fully in cash. In February 2008 the stock market remained volatile and respondent experienced a large trading loss early in the month. In an effort to recoup his losses, respondent decided to implement his rollover strategy. He had previously used the rollover strategy successfully on a short term basis. Respondent did a schedule of rollovers that took him out to the middle of the year. He later extended the rollover schedule to the end of the year.

10. According to respondent, in early 2008 he informed investors that he was using the rollover strategy. However, respondent admits that he could have been a lot clearer about the rollover strategy and what the consequences could be. He states that he should have disclosed the projected net unit value, the risks associated with his rollover strategy and the return he was targeting. Respondent acknowledges that he did not give investors adequate information to make their investment decisions or an opportunity to pull their money out of the fund.

On cross examination, respondent acknowledged that he had a fiduciary duty to disclose to investors any information that he, as an investor, would want to know, and that his failure to disclose information about his trading losses to investors in Opulent Lite was a breach of that fiduciary duty. Despite this admission, respondent maintains that at all times when he was executing trades, he was acting within his fiduciary duty because he was trying to benefit investors. He repeatedly suggests that the primary fault with his approach was the lack of transparency.

11. In August 2008 respondent reported to investors that the fund would be at an all-time high valuation. The report was based on his projections, not the actual

value of the fund. Respondent explained that the values he projected and reported to investors would have been the accurate if his rollovers had succeeded. Respondent denies he misrepresented the value of the fund when he based valuation of the fund on his projections.

12. Respondent claims his rollover strategy was working until August because he was starting to recoup some of his losses and earned back several million of the $8 million he had lost; but then he lost even more.

September and October 2008 were terrible months for respondent because the options started to "explode in value" and respondent realized that his "projections were not going to pan out." Respondent had to close out the options, which he had stacked into December, at a loss.

13. Respondent based the fund value for the entire year of 2008 on his projections. During 2008 respondent was reporting a per unit value in the $130 to $140 range based on what he hoped to earn (his projections) by using the rollover strategy. These reports were provided to investors monthly. As late as December 2008, respondent was reporting a unit value of at least $130, when the actual value was only $66. When it became clear in December that he could not realize his projections, respondent decided to close out the options and do a restatement of the fund value.

14. Respondent admits that throughout 2008 he was paid his management fee based on his projected (inflated) valuation of the fund rather than on the actual value of the fund.[4] However, following the restatement of the fund's value, he returned the portion of the management fee that was based on a valuation in excess of the actual fund value.

Complainant's Witnesses

15. Sandra Ramalya, a Senior Examiner Supervisor for the department, testified as an expert witness for complainant. Ramalya explained that under current law, states have regulatory oversight of investment advisers within their state who manage mid-sized funds with assets of $25 to $100 million. California would thus have regulatory oversight of the investment adviser of a fund such as Opulent Lite, with assets of $30 million, located in California.

16. Under California law, the investment advisor serves as a fiduciary to investors in a hedge fund, which is a private investment vehicle. Because a hedge fund is a private investment offering, investors in a hedge fund cannot Google the value of the fund but must rely on the information provided to them by the investment

[4] During his tenure managing Opulent Lite, respondent earned $200,000 to $350,000 per year and lived in an expensive San Francisco apartment.

adviser. Therefore, it is essential that the investment adviser provide accurate and complete information. The adviser has a fiduciary duty to put the interests of the client investor ahead of his own. He is prohibited from self-dealing, misrepresentation, fraud, undisclosed conflicts of interest, manipulation or any action or course of conduct not in the best interest of the client. Engaging in such conduct can result in an investment adviser being barred or prohibited from practicing in California.[5] Any misrepresentation of information is a violation of law and a basis to pursue a bar against an investment adviser.

17. In this case, the Commissioner seeks to bar respondent from any position of employment, management, or control of any investment adviser, broker-dealer or commodity adviser. The Commissioner's intent in barring respondent is to protect investors from future losses. The Commissioner asserts a bar is warranted because responder failed to disclose losses and misrepresented the value of the fund, thereby depriving investors of the opportunity to mitigate losses and pursue their own investment objectives. (Investors were not able to make an informed decision about the amount of risk they would accept and could not mitigate the risk of loss; respondent's misrepresentations and omissions prevented investors from taking money out of the fund to minimize losses.) Respondent also engaged in self-dealing by paying himself management fees based on inflated fund values. Respondent's repeated misrepresentations and omissions are major factors the Commissioner's decision to pursue a bar.

18. Girdhari Gupta, an investor in Opulent Lite, also testified on behalf of the department. Gupta purchased approximately 2000 units of Opulent Lite at a cost of $132 to $144 per unit. He made a total investment of $277,000 in Opulent Lite. Gupta was an acquaintance of respondent's father, who is also an investment adviser. Gupta initially sought to invest in a fund managed by respondent's father, but was told the fund was closed. Respondent's father directed Gupta to respondent's fund, Opulent Lite. After investing in the fund in June 2007, Gupta received monthly emails from respondent advising how the fund was performing. Respondent also held quarterly and annual meetings for the fund.

19. In January 2008 respondent sent an email advising that the fund had dropped by 10 percent, but suggested this was normal market fluctuation. In succeeding months respondent sent emails reassuring investors about the continued positive performance of the fund. In August 2008, respondent sent an email stating the fund was about to hit an all-time high. In an October or November 2008 email respondent stated that the rock bottom unit value for the fund would be $136. However, in December 2008 Gupta received an email giving a $133 per unit value for the fund. Gupta contacted respondent and was told not to worry. Gupta trusted

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[5] Many investment advisers seek to practice in California because it has a large number of elderly residents with significant financial resources.

respondent's representations. He testified that if had known the extent of the fund's losses, he would have withdrawn his funds.

20. An annual meeting for the fund was held in January 2009. Respondent said very little at the meeting but his father kept stating that Opulent Lite was doing very well. However, in February 2009 Gupta received an email from respondent that stated a per unit value for Opulent Lite of $66. After receiving the email Gupta tried to contact respondent. Respondent was slow to respond, but ultimately Gupta was able to meet with respondent, and respondent's father and mother. They all told him not worry and assured him that they would "take care of [him]." However, neither respondent nor his parents contacted Gupta after the meeting. Gupta, who is retired, was negatively impacted by the financial losses he suffered in Opulent Lite. He estimates he lost $130 to $140,000 in Opulent Lite, which was a significant depletion of his liquid assets.

21. Gupta feels respondent was lying to investors on an ongoing basis as late as January 2009, when respondent personally told him that everything would be okay. He believes respondent knew he had suffered extensive losses well before January 2009. In Gupta's opinion, respondent repeatedly misrepresented fund performance (through both omission and providing incorrect information) and thereby did not give him the option of taking his money out of the fund.

22. Gupta was one of a group of investors who filed a lawsuit against respondent. Two test cases were submitted to arbitrators for resolution. It was Gupta's understanding that the arbitrators found in respondent's favor and against the investors on most counts. Subsequent to the arbitrators' determination, Gupta learned that respondent's father was threatening to sue the investors who had filed suit against respondent to attempt to recover the approximately $2 million in attorneys' fees he had spent on respondent's behalf. Gupta also learned that many investors were settling the lawsuit against respondent for a mutual release of claims in order to avoid any potential liability. Gupta decided he would like to settle on the same basis because he did not want to run the risk of having to pay respondent's substantial attorneys' fees and because respondent claimed not to have any money. However, respondent initially refused to settle with Gupta. Gupta believes this was because he attended every day of the arbitration, testified at the arbitration, and also urged other investors to get involved. Ultimately, Gupta had a meeting with respondents and his parents about settling the case. During the meeting respondent's family threatened to sue Gupta and Gupta felt very intimidated. As a condition of settlement, respondent and his parents demanded that Gupta have a friend at a newspaper contact respondent's father about a possible interview. Gupta was able to settle the action against respondent for a mutual release of claims.

Respondent's Witnesses

23. Suneel Kelkai testified on respondent's behalf. Keldai is a friend of respondent's father and has known respondent all his life. Respondent is like a son to him. Kelkai was an investor in Opulent Lite. Kelkai does not believe respondent tried to cheat investors or do anything for personal gain. He noted that he lost more money in the stock market on his other investments than he lost with respondent. Kelkai also noted that respondent held monthly meetings at which he would give a detailed report on the fund and answer questions, respondent reported losses of 12 to 13 percent in February 2008, respondent stated he was trying to recoup the losses and respondent tried to explain options. Kelkai believes respondent is an honest person.

24. Rajen Jaswa also testified on respondent's behalf. Jaswa has a charitable foundation that invested in Opulent Lite beginning in 2005. Opulent Lite yielded a 12 to 18 percent annual return until 2008. When respondent restated the fund value in 2009, resulting in a large drop in valuation, Jaswa was very concerned that money may have been siphoned out of the fund. He was one of a group of investors that filed suit against respondent. Two test cases were submitted to arbitrators for resolution. It was Jaswa's understanding that the arbitrators determined that although respondent had exercised poor judgment and failed to communicate with investors, respondent did not do anything illegal. The arbitrators found against respondent on two counts and against the investors on approximately 40 counts. Following the arbitrators' award, Jaswa decided it was best to settle his claim against respondent for a mutual release of claims because there was a possibility the investors might have to pay respondent's attorney fees. No money changed hands in the settlement.

Based on the arbitrators' determination, Jaswa now believes that there was no theft and no deliberate illegal acts by respondent, and that respondent was not trying to cheat investors, but was instead trying to recoup his losses through use of the rollover strategy. Jaswa feels this was more a case of respondent "not communicating facts" to investors, possibly due to respondent's inexperience. However, Jaswa also testified that Opulent Lite was supposed to be a low risk investment and that he would have pulled out his money in 2008 if he had been aware of the fund's losses. He also stated that in his opinion, there were some judgments made by respondent regarding what respondent communicated to investors that were not proper. He feels that if respondent had communicated the proper information "investors would have had the opportunity to make a different decision."

Other Matters

25. Respondent currently works with bands and produces music. He earns enough money to pay his rent and purchase necessities but his ultimate goal is to obtain a 9 to 5 job and do music at night. Respondent does not have a current intention to become an investment adviser in the future. However, entry of a

permanent bar by the Commissioner would limit that as a future option. Respondent is also concerned that if a permanent bar is entered by the Commissioner, that fact will be readily available on the internet and could impact his future employment opportunities in other fields. Respondent has a bachelor's degree from the University of California, Los Angeles in cognitive science, with a specialty in computer modeling. In the past respondent worked briefly at Google and at Calypso, a financial software company. Respondent admits he made "mistakes of judgment" but feels appropriate remedial measures have already been established by the SEC and through arbitration.

26. Complainant objects to consideration of respondent's reply to complainant's reply brief because it was not authorized under the briefing schedule, was filed after the deadline for submission of briefs, would allow respondent to exceed the page limit set for briefs, and would allow respondent to have the "final word" even though complainant has the burden of proof. Complainant asks that respondent's reply be stricken. Complainant's arguments are persuasive. Complainant's request to strike respondent's reply brief is granted. Respondent's reply brief was not considered in reaching a decision in this matter.

LEGAL CONCLUSIONS

1. The Commissioner seeks to bar respondent from any position of employment, management, or control of any investment adviser, broker-dealer or commodity adviser pursuant to Corporations Code sections 25212, subdivision (d), and 25213.

Corporations Code section 25212 provides in pertinent part:

> The commissioner may, after appropriate notice and opportunity for hearing, by order censure, deny a certificate to, suspend for a period not exceeding 12 months or revoke the certificate of, any broker-dealer if the commissioner finds that the censure, denial, suspension or revocation is in the public interest and that the broker-dealer . . . has done any of the following: . . .
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> (d) Is or has been subject to (1) any order of the Securities and Exchange Commission or the securities administrator of any other state denying registration to, or revoking or suspending the registration of, the person as a broker, dealer, agent or investment adviser, . . . (3) any other order of the commission or any administrator, association, or exchange referred to in this subdivision which is or has been necessary for the protection of any investor.

Corporations Code section 25213 provides:

> The commissioner may, after appropriate notice and opportunity for hearing, by order censure, or suspend for a period not exceeding 12 months, or deny or bar from any position of employment, management, or control of any broker-dealer or investment adviser, any officer, director, partner, agent, employee of, or other person performing similar functions for, a broker-dealer, or any other person, if the commissioner finds that the censure, suspension, denial, or bar is in the public interest and that the person . . . is subject to any order specified in subdivision (d) of Section 25212.

2. In this case, the Commissioner has determined that it is in the public interest to permanently bar respondent from any position of employment, management, or control of any investment adviser, broker-dealer or commodity adviser due to his repeated misrepresentations and omissions in connection with management of Opulent Lite. Respondent argues that a permanent bar is inappropriate because he did not intentionally mislead investors, he has accepted responsibility for his actions, and there was no theft of assets, intentional fraud or personal gain; rather fund losses were the result of normal trading activities. He further argues that any penalty imposed by the Commissioner should be coextensive with the penalty imposed by the SEC because the SEC conducted a lengthy investigation, after which it determined a five year bar, and not a permanent bar, was the appropriate penalty. Respondent also argues that the finding of the arbitrators that there was no intent on respondent's part to defraud investors, is further evidence that this is not the type of egregious case that warrants a permanent bar. Respondent suggests that because the Commissioner did not conduct its own extensive investigation, its review of this matter was somehow inadequate or unfair and therefore unreasonable. Finally, respondent argues that the factors set forth in *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979) should be applied in this case to determine an appropriate penalty because no California case has set forth specific factors to be considered in making a decision whether to bar an investment adviser. Respondent argues that if those factors are considered, a permanent bar cannot be found to be appropriate. Respondent identifies the *Steadman* factors as (1) the egregiousness of the respondent's actions, (2) the isolated or recurrent nature of the infraction, (3) the degree of scienter (intent) involved, (4) the sincerity of the respondent's assurances against future violations, (5) the respondent's recognition of the wrongful nature of his conduct, and (6) the likelihood of future violations.

3. Complainant argues that the federal standard set forth in *Steadman* does not apply to California, and notes that respondent has failed to cite any legal authority showing that it does. Complainant also argues that the plain language of the California statutes authorizes the Commissioner to permanently bar an investment adviser solely on the basis of an SEC Order, and since the SEC Order in this case demonstrates intentional misrepresentation by respondent, resulting in the loss to

investors of millions of dollars, a permanent bar is appropriate. Complainant points out the Commissioner has wide discretion under Corporations Code sections 25212, subdivision (d), and 25213, to determine an appropriate penalty for an investment adviser who is subject to an SEC order. And complainant notes respondent has cited no legal authority for the proposition that the Commissioner may not impose a more severe penalty than the penalty imposed by the SEC.

4. After considering all of the evidence, it is determined that the Commissioner acted reasonably and appropriately in determining that it is in the public interest to permanently bar respondent from any position of employment, management, or control of any investment adviser, broker-dealer or commodity adviser. Corporations Code sections 25212, subdivision (d), and 25213, give the Commissioner broad discretion to decide the appropriate penalty for an investment adviser who is subject to an SEC order, including discretion to bar an investment adviser. Respondent cites no legal authority requiring that discretion to be governed by the federal standard. However, even if that standard were applied, it would support the Commissioner's decision to bar respondent as an investment advisor.

The evidence established that respondent misrepresented the value of Opulent Lite on multiple occasions (a monthly basis) by providing investors with valuations based on projections rather than the actual value of the fund. In addition, respondent repeatedly failed to provide critical information to the investors. He failed to provide a clear explanation of his rollover strategy, the potential risks of that strategy, actual fund value, and actual fund losses. He intentionally engaged in conduct that denied investors the opportunity to decide what risks to take with their money or minimize their losses. Two investors (one of whom was respondent's witness) testified that they would have taken their money out of the fund if respondent had provided accurate information and they had known the actual extent of fund losses. By hiding fund losses, respondent was able to continue to manage investor funds (and earn a fee on those funds) that otherwise would not have been available. Respondent's misrepresentations and omissions were intentional, deliberate and repeated and therefore egregious in nature. They were not isolated incidents, but recurrent in nature. Respondent was fully aware when he provided valuation information to investors that it did not accurately reflect the true value of Opulent Lite, and that he was not providing information about fund losses that he should have provided. Although respondent suggests that there will not be additional violations if he is allowed serve as an investment adviser in the future, the fact that he characterizes his misconduct as "mistakes" or simply a "lack of transparency" undermines his assertion. His characterization of his conduct suggests that he does not truly recognize the wrongful nature of his conduct and that there is a likelihood of future violations. A bar is therefore found to be an appropriate penalty.

5. By reason of the matters set forth in Legal Conclusion 4 and Factual Findings 5 through 22 and 24, cause has been established to permanently bar respondent from any position of employment, management, or control of any investment adviser,

broker-dealer or commodity adviser, pursuant to Corporations Code sections 25212, subdivision (d) and 25213.

ORDER

The decision of the Commissioner to permanently bar respondent Neil Godbole from any position of employment, management, or control of any broker-dealer, investment adviser or commodity adviser is affirmed. Neil Godbole is hereby permanently barred from any position of employment, management, or control of any broker-dealer, investment adviser or commodity adviser.

DATED: November 20, 2013

/s/
CHERYL TOMPKIN
Administrative Law Judge
Office of Administrative Hearings