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

12 In the Matter of) FILE NO. 139923
)
13 THE COMMISSIONER OF BUSINESS) SETTLEMENT AGREEMENT BETWEEN
14 OVERSIGHT,) HIGHLAND CAPITAL GROUP, INC. AND
) THE CALIFORNIA DEPARTMENT OF
15 Complainant,) BUSINESSS OVERSIGHT RESOLVING:
v.)
) 1. DESIST AND REFRAIN ORDER; and
16 Highland Capital Group, Inc.,) 2. ORDER LEVYING ADMINISTRATIVE
) PENALTIES
17 Respondent.)
18)
19)
20)

21 SETTLEMENT AGREEMENT

22 This SETTLEMENT AGREEMENT ("Agreement") is entered into by and between the
23 Complainant, California Department of Business Oversight ("Department"), by and through the
24 California Commissioner of Business Oversight ("Commissioner") and the Respondent, Highland
25 Capital Group, Inc., (hereinafter collectively the "Parties").

26 RECITALS

27 This Agreement is made with reference to the following facts:

28 A. This action is brought to order Respondent, Highland Capital Group, Inc.

1 (“Highland”) to:

2 i. Desist and refrain from unlicensed investment adviser activities pursuant
3 to CSL section 25532(b), and

4 ii. Pay penalties to the Department, for conducting unlicensed investment
5 adviser activities pursuant to section 25532(b), of ten thousand dollars (\$10,000) for all
6 violations of section 25230(a), combined.

7 B. Highland is a California corporation, incorporated on August 8, 2005, with its
8 principal place of business at 1875 Century Park East, Suite 700, Los Angeles, California
9 90067.

10 C. From June 25, 2007 to February 13, 2013, Highland conducted business as a
11 licensed investment adviser. However, Highland’s license was revoked on February 13, 2013
12 because it failed to pay its renewal fee.

13 D. On February 27, 2013 Highland filed an application for an investment adviser
14 certificate (license) with the Department. The application revealed that Highland continued to
15 engage in investment adviser activities and charge fees for its services, even though Highland
16 offered an assurance that no new fees would be collected.

17 E. When the Department inquired about Highland’s investment adviser activities,
18 Highland fully cooperated. Highland provided information showing that it had collected fees in
19 connection with thirty-eight accounts.

20 F. The Department finds, based upon the information provided by Highland, that
21 Highland was engaged in unlicensed investment adviser activity through the date hereof, in
22 violation of CSL section 25230(a).

23 G. Highland has not held a valid investment adviser certificate since February 13, 2013.

24 NOW, THEREFORE, for good and valuable consideration, and the terms and conditions set
25 forth herein, the Parties agree as follows:

26 TERMS AND CONDITIONS

27 1. **Purpose:** The purpose of this Agreement is to settle and resolve the issues
28 between the Parties hereto, for judicial economy and expediency, and to avoid the expense of a

1 hearing, and possible further court proceedings.

2 2. **Waiver of Hearing Rights:** Highland acknowledges the right to a hearing under the
3 Corporate Securities Law of 1968 in connection with the application for an investment adviser
4 certificate and hereby waives that right to a hearing, and to any reconsideration, appeal, or other
5 right to review which may be afforded pursuant to the Corporate Securities Law of 1968, the
6 California Administrative Procedure Act, the California Code of Civil Procedure, or any other
7 provision of law, and by waiving such rights, consent to the Penalties becoming final.

8 3. **Acknowledgement:** Without admitting the foregoing recitals of fact, Highland
9 stipulates to the issuance of the orders and acknowledges that this action can be used in future
10 proceedings that may be initiated by or brought before the Department. The Parties agree that this
11 Agreement and any acknowledgements hereunder shall not be admissible or binding against
12 Highland in any action(s) brought against Highland by third parties that are not signatories to this
13 Agreement or in any other proceedings except as expressly permitted by this paragraph 3 before the
14 Department.

15 4. **Certification:** Highland stipulates to undertake all appropriate steps designed to
16 assure full compliance with the laws of California in connection with the licensing of Highland’s
17 business as an investment adviser. Highland acknowledges that failure to comply under this
18 Agreement shall be a breach of this Agreement and shall be cause for the Commissioner to
19 immediately revoke any licenses held by, and/or deny any pending application(s) of Highland, its
20 successors and assigns, by whatever names they might be known. Highland hereby waives any
21 notice and hearing rights to contest such revocations and/or denial(s) which may be afforded under
22 the Corporate Securities Law of 1968, the California Administrative Procedure Act, the California
23 Code of Civil Procedure, or any other provision of law in connection with this action.

24 5. **Administrative Penalties:** Highland agrees to pay, without admitting any fault or
25 wrongdoing, to the Commissioner penalties totaling, in the aggregate, ten thousand dollars (\$10,000)
26 (“Penalties”). Such Penalties shall be paid by Highland within 30 days of the date of the Order. The
27 check shall be made payable to “The Department of Business Oversight,” and shall be sent by
28 Highland to the following address:

1 Timothy L. Le Bas, Senior Corporations Counsel
2 Department of Business Oversight
3 1515 K St., Suite 200
4 Sacramento, CA 95814

5 In the event the payment due date falls on a weekend or holiday, the payment shall be due the
6 next business day. Highland acknowledges that failure to timely pay the Penalties in this Agreement
7 shall be a breach of this Agreement and shall be cause for the Commissioner to immediately revoke
8 any licenses held by, and/or deny any pending application(s) of Highland, its successors and assigns,
9 by whatever names they might be known. Highland hereby waives any notice and hearing rights to
10 contest such revocations and/or denial(s) which may be afforded under the Corporate Securities Law
11 of 1968, the California Administrative Procedure Act, the California Code of Civil Procedure, or any
12 other provision of law in connection therewith.

13 6. **Future Actions by the Commissioner:** Other than as to the matters resolved
14 herein, the Commissioner reserves the right to bring any future action(s) against Highland and/or any
15 of the officers, directors, shareholders, or employees of Highland for any and all unknown or future
16 violations of the Corporate Securities Act of 1968. Other than as to the matters resolved herein, this
17 Agreement shall not serve to exculpate Highland or any of the officers, directors, shareholders, or
18 employees of Highland from liability for any and all unknown or future violations of the Corporate
19 Securities Act of 1968.

20 7. **Effective Date:** This Agreement shall not become effective until signed and
21 dated by each of the parties hereto.

22 8. **Settlement Agreement Coverage:** The Parties hereby acknowledge and agree that
23 this Agreement is intended to constitute a full, final, and complete resolution of this matter
24 (including, but not limited to, any and all assertions by the Department that Highland has allegedly
25 engaged in unlicensed investment adviser activity through the effective date of this Agreement).
26 The Parties further acknowledge and agree, except as provided in paragraph 3, above, that nothing
27 contained in this Agreement shall operate to limit the Commissioner's ability to cooperate with any
28 other agency, county, state or federal, with any prosecution, administrative, civil or criminal, brought
by any such agency against Highland based upon any of the activities alleged in this matter or

1 otherwise.

2 9. **Independent Legal Advice:** Each of the Parties represents, warrants, and agrees that
3 it has received or been advised to seek independent legal advice from its attorneys with respect to the
4 advisability of executing this Agreement.

5 10. **No Other Representation:** Each of the parties represents, warrants, and agrees that
6 in executing this Agreement it has relied solely on the statements set forth herein. Each of the
7 parties further represents, warrants, and agrees that in executing this Agreement it has placed no
8 reliance on any statement, representation, or promise of any other party, or any other person or entity
9 not expressly set forth herein, or upon the failure of any party or any other person or entity to make
10 any statement, representation or disclosure of anything whatsoever. The parties have included this
11 clause: (1) to preclude any claim that any party was in any way fraudulently induced to execute this
12 Agreement; and (2) to preclude the introduction of parol evidence to vary, interpret, supplement, or
13 contradict the terms of this Agreement.

14 11. **Modifications and Qualified Integration:** No amendment, change or modification
15 of this Agreement shall be valid or binding to any extent unless it is in writing and signed by all of
16 the parties affected by it.

17 12. **Full Integration:** This Agreement is the final written expression and the
18 complete and exclusive statement of all the agreements, conditions, promises, representations, and
19 covenants between the parties with respect to the subject matter hereof, and supersedes all
20 discussions between and among the parties, their respective representatives, and any other person or
21 entity, with respect to the subject matter covered hereby.

22 13. **No Presumption From Drafting:** In that the parties have had the opportunity to
23 draft, review and edit the language of this Agreement, no presumption for or against any party
24 arising out of drafting all or any part of this Agreement will be applied in any action relating to,
25 connected to, or involving this Agreement. Accordingly, the parties waive the benefit of Civil Code
26 section 1654 and any successor or amended statute, providing that in cases of uncertainty, language
27 of a contract should be interpreted most strongly against the party who caused the uncertainty to
28 exist.

1 14. **Counterparts:** This Agreement may be executed in any number of counter-
2 parts by the Parties, and when each party has signed and delivered at least one such counterpart to
3 the other party, each counterpart shall be deemed an original and taken together shall constitute one
4 and the same Agreement. This Agreement may be executed via original signatures exchanged by
5 facsimile or electronic means.

6 15. **Headings and Governing Law:** The headings to the paragraphs of this
7 Agreement are inserted for convenience only and will not be deemed a part hereof or affect the
8 construction or interpretation of the provisions hereof. This Agreement shall be construed and
9 enforced in accordance with, and governed by, the laws of the State of California.

10 16. **Authority For Settlement:** Each party warrants and represents that such party is
11 fully entitled and duly authorized to enter into and deliver this Agreement. In particular, and without
12 limiting the generality of the foregoing, each party warrants and represents that it is fully entitled to
13 enter into the covenants, and undertake the obligations set forth herein.

14 17. **Public Record:** Highland hereby acknowledges that this enforcement action
15 and Agreement will be a matter of public record.

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18. **Voluntary Agreement:** The Parties each represent and acknowledge that he, she, or it is executing this Agreement completely voluntarily and without any duress or undue influence of any kind from any source.

IN WITNESS WHEREOF, the Parties hereto have approved and executed this Agreement on the dates set forth opposite their respective signatures.

California Commissioner of Business Oversight

Dated: 12/16/13

By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

Dated: 12/5/13

Highland Capital Group, Inc.

By _____
JOHN McPHAIL, Managing Director
Highland Capital Group, Inc.