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California Corporations Commissioner
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8 BEFORE THE DEPARTMENT OF CORPORATIONS
9 OF THE STATE OF CALIFORNIA

11	In the Matter of the Accusation of)	CASE NO.
12	THE CALIFORNIA CORPORATIONS)	FILE NO. 130945
13	COMMISSIONER,)	
14	Complainant,)	
15	v.)	ACCUSATION
16	INNOVATIVE ADVISORY SERVICES, INC.,)	
17	INNOVATIVE ADVISORY SERVICES, LLC,)	
18	and RICHARD HATFIELD NICKLES, II as an)	
19	individual)	
20	Respondents.)	

21 Preston DuFauchard, the California Corporations Commissioner ("Commissioner") of the
22 Department of Corporations ("Department") alleges and charges as follows:

23 **I. JURISDICTION AND VENUE**

- 24 1. The Commissioner brings this action pursuant to the provisions of California Corporations
25 Code sections 25232 and 25232.1 and the rules and regulations promulgated thereunder.
- 26
27 2. The Commissioner is authorized to administer and enforce the provisions of the
28 Corporate Securities Law of 1968, Corporations Code section 25000 et seq., and the regulations
thereunder at California Code of Regulations, title 10, section 260.000 et seq.

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II. STATEMENT OF FACTS

3. This action is brought in order to revoke a certificate of investment adviser previously issued to Respondent Innovative Advisory Services, Inc. whose primary business name is currently Innovative Advisory Services, LLC (“collectively referred to as Innovative”) (CRD #130945) pursuant to Corporations Code section 25232 and to permanently bar Respondent Richard Hatfield Nickles, II (“Nickles”) from any position of employment, management or control of any investment adviser, broker-dealer or commodity adviser pursuant to Corporations Code section 25232.1.

4. Innovative Advisory Services, Inc. is a suspended California corporation doing business at 1851 East First Street, Suite 900, Santa Ana, California 92705. Since May 2004, Innovative has been certified with the California Department of Corporations as an Investment Adviser. Innovative is the successor to R. Nickles & Company. Richard Hatfield Nickles II (“Nickles”) owns and controls both companies.

5. As of March 2010, Innovative Advisory Services, LLC is the primary business name for Innovative Advisory Services, Inc.

6. At all relevant times, Richard Hatfield Nickles, II is the owner, officer and director of Innovative.

7. In September 2009, the Department of Corporations (“Department”) initiated a non-routine examination of Innovative, pursuant to allegations that Innovative and Nickles were publishing misleading advertisements and providing false statements to a client. Pursuant to the examination, the Department requested that Innovative and Nickles provide certain documents for review. Nickles and Innovative refused to provide the requested records.

1 8. From at least March 2008 to the present, Innovative and Nickles published misleading
2 advertisements in the Orange County Register and the Los Angeles Times. The advertisements
3 indicate that the investments offered by Innovative are U.S. Government Guaranteed. Nickles
4 admitted to posting the advertisements in an effort to induce the interest of prospective investors.
5 However, when people respond to the advertisement, Nickles attempts to sell them exchange traded
6 funds, which are not government guaranteed.

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8 9. From at least April through June 2009, Innovative and Nickles provided account statements
9 to a client that contained material discrepancies in the securities depicted in the said statements.
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11 **III. THE INVESTMENT ADVISER CERTIFICATE OF INNOVATIVE**
12 **ADVISORY SERVICES, INC. and INNOVATIVE ADVISORY SERVICES, LLC**
13 **SHOULD BE REVOKED PURSUANT TO CORPORATIONS CODE SECTION**
14 **25232 FOR ACTS COMMITTED AS SPECIFIED UNDER CORPORATIONS**
15 **CODE SECTION 25232, SUBDIVISIONS (e) and (h).**

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

17 “The commissioner may, after appropriate notice and opportunity for hearing, by
18 order . . . revoke the certificate of, an investment adviser, if the commissioner finds
19 that the . . . revocation is in the public interest and that the investment adviser, whether
20 prior or subsequent to becoming such, or any partner, officer or director thereof . . .
21 has done any of the following:...

22 (e) Has willfully violated any provision of the Securities Act of 1933, the securities
23 Exchange Act of 1934, the Investment Advisers Act of 1940 . . . or Title 4
24 (commencing with Section 2500) . . . or any rule or regulation under any of those
25 statutes . . . which is or has been necessary for the protection of any investor.

26 (h) Has violated any provision of this division or the rules thereunder”

27 11. Corporations Code section 25241, subdivisions (a) and (c) provide, in pertinent
28 part:

“(a) [E]very investment adviser licensed under Section 25230 shall make and
keep accounts, correspondences, memorandums, papers, books, and other
records

(c) All records referred to in this section are subject to any time and from time
to time to reasonable periodic, special, or other examinations by the
commissioner, within or without this state, as the commissioner deems
necessary or appropriate in the public interest or for the protection of
investors.”

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12. Corporations Code section 25235(b) provides in pertinent part:

It is unlawful for any investment adviser, directly or indirectly, in this state:
(b) To engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon any client or prospective client.

13. Investment Advisers Act of 1940, section 206 provides, in pertinent part:

“It shall be unlawful for any investment adviser, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly –
(1) to employ any device, scheme, or artifice to defraud any client or prospective client;
(2) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client;
(4) to engage in any act, practice, or course of business which is fraudulent, deceptive, or manipulative.”

14. Innovative, by use of newspaper advertisements in the Orange County Register and Los Angeles Times, willingly and falsely stated that the investment was “U.S. Government Guaranteed” in an effort to fraudulently induce the interest of prospective investors to obtain the services of Innovative, violating section 206 of the Investment Advisers Act of 1940 and Corporations Code section 25235(b). Consequently, pursuant to Corporations Code sections 25232(e) and (h), the Commissioner is authorized to revoke Innovative’s investment adviser certification.

15. Innovative, provided an account statement to a client that contained material discrepancies in the securities depicted in the statements in part, by misrepresenting the maturity dates on the securities and providing false identification numbers for the securities, in violation of Corporations Code section 25235(b). Consequently, pursuant to Corporations Code section 25232(e) and (h), the Commissioner is authorized to revoke Innovative’s investment adviser certification.

16. As an investment adviser licensed in California under Corporations Code section 25230, Innovative is subject to the records and disclosure requirements under Corporations Code section 25241. Innovative’s refusal to provide documents upon the Department’s request constitutes a

1 violation of section 25241(c). Consequently, pursuant to Corporations Code section 25232(e) and
2 (h), the Commissioner is authorized to revoke Innovative’s investment adviser certification.

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4 **IV. RESPONDENT NICKLES SHOULD BE BARRED FROM ANY**
5 **POSITION OF EMPLOYMENT, MANAGEMENT OR CONTROL OF ANY**
6 **INVESTMENT ADVISER, BROKER-DEALER OR COMMODITY ADVISER**
7 **PURSUANT TO CORPORATIONS CODE SECTION 25232.1 FOR ACTS**
8 **COMMITTED AS SPECIFIED UNDER CORPORATIONS CODE SECTION**
9 **25232, SUBDIVISION (e).**

10 17. Corporations Code section 25232.1 provides, in pertinent part:

11 “The commissioner may, after appropriate notice and opportunity for hearing .
12 . . bar from any position of employment, management or control of any
13 investment adviser, broker-dealer or commodity adviser, any officer, director,
14 partner, employee of, or person performing similar functions for, an
15 investment adviser . . .if [the commissioner] finds that the . . . bar is in the
16 public interest and that the person has committed any act or omission
17 enumerated in subdivision (a), (e), (f), or (g) of Section 25232”

18 18. Nickles, as the owner, manager and officer of Innovative, by use of newspaper
19 advertisements in the Orange County Register and Los Angeles Times, willingly and falsely stated
20 that the investment was “U.S. Government Guaranteed” in an effort to fraudulently induce the
21 interest of prospective investors to obtain the services of Innovative, violating section 206 of the
22 Investment Advisers Act of 1940 (as specified under Corporations Code Section 25232(e)) and
23 Corporations Code section 25235(b). Consequently, pursuant to Corporations Code section 25232.1,
24 the Commissioner is authorized to bar Nickles from any position of employment, management, or
25 control of any investment adviser, broker-dealer, or commodity dealer.

26 19. Nickles, provided an account statement to a client that contained material discrepancies
27 in the securities depicted in the statements in part, by misrepresenting the maturity dates on the
28 securities, in violation of section 206 of the Investment Advisers Act of 1940 and Corporations Code

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section 25235(b). Consequently, pursuant to Corporations Code section 25232.1, the Commissioner is authorized to bar Nickles from any position of employment, management, or control of any investment adviser, broker-dealer, or commodity dealer.

V. CONCLUSION

Based upon the foregoing, the Commissioner finds that grounds exist and that it is in the public interest to revoke the investment adviser certificate of Innovative, pursuant to Corporations Code section 25232 subdivisions (e) and (h), and to bar Nickles 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 under Corporations Code sections 25232(e) and (h) and 25235(b) and section 206 of the Investment Advisers Act of 1940. The Commissioner hereby notifies Innovative Advisory Services, Inc., Innovative Advisory Services, LLC and Richard Hatfield Nickles, II of its intention to make such Orders final.

Dated: April 6, 2010

PRESTON DuFAUCHARD
California Corporations Commissioner

By: _____
MARY ANN SMITH
Senior Corporations Counsel
Enforcement Division