

1 MARY ANN SMITH  
Deputy Commissioner  
2 DOUGLAS M. GOODING  
Assistant Chief Counsel  
3 MIRANDA LEKANDER (State Bar No. 210082)  
Senior Counsel  
4 1515 K Street, Suite 200  
5 Sacramento, California 95814  
6 Telephone: (916) 322-8730  
7 Facsimile: (916) 445-6985  
Attorneys for Complainant

8 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT  
9 OF THE STATE OF CALIFORNIA

10  
11 In the Matter of THE COMMISSIONER OF )  
BUSINESS OVERSIGHT, )  
12 )  
Complainant, )  
13 v. )  
14 MARC SCOTT SARNER, )  
Respondent. )  
15 )  
16 )  
17 )

ACCUSATION TO BAR MARC SCOTT SARNER FROM ANY POSITION OF EMPLOYMENT, MANAGEMENT, OR CONTROL OF ANY INVESTMENT ADVISER, BROKER-DEALER, OR COMMODITY ADVISER PURSUANT TO CORPORATIONS CODE SECTION 25232.1

18 Jan Lynn Owen, the Commissioner (Commissioner) of the Department of Business Oversight  
19 (Department), alleges and charges as follows:

20 **I.**

21 **JURISDICTION AND VENUE**

22 1. The Commissioner is authorized to administer and enforce the provisions of the  
23 California Corporate Securities Law of 1968 (Corp. Code, § 25000 et seq.) (CSL) and the  
24 regulations promulgated thereunder (C.C.R., tit. 10, § 260.000 et seq.).

25 2. The Commissioner brings this action to bar Marc Scott Sarnier (Sarnier) from any position of  
26 employment, management, or control of any investment adviser, broker-dealer, or commodity  
27 adviser pursuant to Corporations Code section 25232.1.  
28

II.

STATEMENT OF FACTS

3. At all relevant times, Sarner (CRD# 4567083) was the sole owner and president of Beacon Financial Advisory Services, Inc. (Beacon) (CRD# 146292). Beacon first became registered in this state as an investment adviser firm on February 25, 2008. Beacon’s principal business was located at 41120 Elm Street, Suite H102, Murrieta, California, 92562.

4. At all relevant times, Sarner was licensed with the California Department of Insurance to sell insurance products through Northern California Asset Protection Insurance Services, which does business at the same address as Respondent.

5. At all relevant times, Image Development, Inc. (Image Development) is or was a California corporation located at 43390 Business Park Drive, Suite 101, Temecula, California, 92590. Image Development was in the business of selling securities in the form of debentures to raise capital to purportedly invest in distressed real property.

6. At all relevant times, Usee, Inc. (Usee) is or was a Texas corporation located at 15770 Dallas Parkway, Suite 600, Dallas, Texas, 75248. Usee was in the business of selling stock and promissory notes to fund development of Internet video-phone technologies.

7. Starting in or about January 2009, Image Development sold securities in this state in the form of debentures at the subscription price of \$10,000 per unit. According to the Image Development offering materials, investor money would fund the purchase and resell of “distressed properties in prime locations” for a “qualified IRR [internal rate of return] of a minimum of thirty percent.”

8. In the 2009 Image Development “Investor Information Booklet,” Sarner is identified as a member of the management team responsible for “Corporate Financial Development” and “sales and marketing.”

9. During the period of February 2009 through November 2009, Sarner advised eight of his insurance and/or advisory clients to purchase Image Development debentures totaling at least \$465,000.00. Promising that the debentures were a conservative investment that would yield higher returns, Sarner urged clients to obtain purchase funds by cashing out annuities, subjecting them to significant surrender penalties and taxes.

1 10. In connection with the Image Development transactions, Sarner received sales commissions  
2 of at least 7 percent of capital investment, which he failed to disclose to his clients.

3 11. Additionally, beginning in or about February 2010, Sarner advised three of his  
4 insurance/advisory clients to invest approximately \$280,000.00 in Usee securities.

5 12. In connection with the Usee transactions, Sarner received sales commissions of at least  
6 \$28,000, which he failed to disclose to his clients.

7 13. In or about February 2011, Sarner told his advisory clients that they could not redeem their  
8 investments in Image Development because the company had closed its office and absconded with  
9 investor funds.

10 14. On August 22, 2011, the Commissioner summarily revoked Beacon's investment adviser  
11 certificate pursuant to Corporations Code section 25242, subdivision (c)(2), based on failure to  
12 update Form ADV.

13 15. In April 2012, Usee also defaulted on investor obligations and entered into a settlement  
14 agreement with the United States Securities and Exchange Commission to resolve allegations that it  
15 had operated a fraudulent business in furtherance of a Ponzi scheme.

16 **III.**

17 **MAKING AN UNTRUE STATEMENT OF MATERIAL FACT OR OMITTING TO STATE A**  
18 **MATERIAL FACT NECESSARY TO MAKE THE STATEMENTS MADE, IN THE LIGHT**  
19 **OF THE CIRCUMSTANCES UNDER WHICH THEY WERE MADE, NOT MISLEADING**  
20 **IN CONNECTION WITH THE OFFER OR SALE OF A SECURITY IN VIOLATION OF**  
21 **CORPORATIONS CODE SECTION 25401, SUBDIVISION (b)**

22 16. Corporations Code section 25401, subdivision (b), provides:

23 It is unlawful for any person, in connection with the offer, sale, or purchase of a  
24 security, directly or indirectly, to do any of the following:

25 (b) Make an untrue statement of material fact or omit to state a material fact necessary  
26 to make the statements made, in light of the circumstances under which they were  
27 made, not misleading.

28 17. The Commissioner finds that in connection with the offers and/or sales of Image  
Development securities, Sarner made untrue statements of material fact or omitted to state material

1 facts necessary to make the statements made, in the light of the circumstances under which they  
2 were made, not misleading, including the following:

3 (a) Misrepresenting that Image Development debentures were “conservative” investments  
4 with an established company;

5 (b) Failing to disclose that Image Development’s corporate status had been suspended by the  
6 California Secretary of State on April 1, 2009, due to delinquent obligations to the Franchise Tax  
7 Board;

8 (c) Failing to disclose that Image Development’s president, Nathaniel David Gardner,  
9 discharged his personal debts through Chapter 7 bankruptcy in August 2004;

10 (d) Failing to disclose that Sarner was on the executive management team of Image  
11 Development; and,

12 (e) Failing to disclose that Sarner would receive a 7% “referral fee” for all capital received  
13 through sales of shares in Image Development as well as participation in profits.

14 **IV.**

15 **ENGAGING IN INVESTMENT ADVISORY ACTIVITIES IN**  
16 **CONTRADICTION OF FAIR, EQUITABLE, AND ETHICAL PRINCIPLES IN**  
17 **VIOLATION OF CORPORATIONS CODE SECTION 25238**

18 18. Corporations Code section 25238 provides in pertinent part:

19 No investment adviser licensed under this chapter and no natural person associated  
20 with the investment adviser shall engage in investment advisory activities . . . in this  
21 state in contradiction of such roles as the commissioner may prescribe designed to  
22 promote fair, equitable, and ethical principles.

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1                   A. MAKING RECOMMENDATIONS WITHOUT REASONABLE GROUNDS

2 19. California Code of Regulations, title 10, section 260.238 provides in pertinent part:

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

5                   (a) Recommending to a client to whom investment supervisory, management or  
6 consulting services are provided the purchase, sale . . . of any security without  
7 reasonable grounds to believe that the recommendation is suitable for the client on  
8 the basis of information furnished by the client after reasonable inquiry concerning  
9 the client’s investment objectives, financial situation and needs . . . .

10 20. The Commissioner finds that Sarner lacked reasonable grounds to believe that investing  
11 in Image Development and/or Usee, fledgling companies with unverified credentials and insufficient  
12 performance records, were suitable recommendations for clients that had expressed conservative  
13 investment objectives and/or had financial situations that could not bear the risks of a highly  
14 speculative investment.

15 21. Sarner had no reasonable grounds to believe that the securities offered by Image  
16 Development and/or Usee were suitable investments for clients based on the following:

17                   (a) The issuers had failed to register their securities or file exemption notices with state  
18 and/or federal regulators;

19                   (b) Routine due diligence efforts were not conducted, such as reviewing audited financial  
20 statements, confirming active corporate status, investigating the legal backgrounds of the principals,  
21 and/or vouching company assets; and,

22                   (c) Investors would be assessed significant surrender fees and taxes for cashing out  
23 annuities in order to obtain funds to invest in these offerings.

24 22. Based on the foregoing, the Commissioner is of the opinion that Sarner violated section  
25 25238 by engaging in activities that did not “promote fair, equitable or ethical principles” as defined  
26 by section 260.238, subdivision (a).

27 ///  
28 ///  
///  
///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

B. FAILING TO DISCLOSE COMMISSIONS IN WRITING

23. Section 260.238, subdivision (k), further provides that the following activities do not promote “fair, equitable or ethical principles,” as that phrase is used in section 25238.

(k) Failing to disclose to a client in writing before entering into or renewing an advisory agreement with that client any material conflict of interest relating to the adviser, its representatives or any of its employees, which could be reasonably expected to impair the rendering of unbiased and objective advice including:

- (1) Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; and,
- (2) Charging a client an advisory fee for rendering advice without disclosing that a commission for executing securities transactions pursuant to such advice will be received by the adviser . . . .

24. The Department conducted an examination of Sarner’s advisory business in June 2011 that disclosed receipt of sales commissions totaling at least \$58,000 from Usee and Image Development. Based on a review of Sarner’s books and records, the Department determined that at no point prior to entering into or revising an advisory agreement did Sarner disclose in writing to his clients the compensation arrangements connected with his advisory services or the commissions received from Usee or Image Development for executing securities transactions pursuant to such advice.

25. Based on the foregoing, the Commissioner finds that Sarner’s failure to disclose the commissions received from Usee and Image Development to clients in writing before entering into, or renewing, advisory agreements was in contradiction of “fair, equitable or ethical principles,” as defined by section 260.238, subdivision (k), and, thus, each instance thereof constitutes a violation of section 25238.

///  
///  
///  
///  
///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

V.

**MARC SCOTT SARNER SHOULD BE BARRED FROM ANY POSITION OF EMPLOYMENT, MANAGEMENT OR CONTROL OF ANY INVESTMENT ADVISER, BROKER-DEALER OR COMMODITY ADVISER PURSUANT TO CORPORATIONS CODE SECTION 25232.1**

26. Corporations Code section 25232.1 provides in pertinent part:

The commissioner may, after appropriate notice and opportunity for hearing . . . bar from any position of employment, management or control of any investment adviser . . . or 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 enumerated in subdivision (a), (e), (f), or (g) of [Corporations Code] Section 25232 or is subject to any order specified in subdivision (d) of Section 25232.

27. Corporations Code section 25232, subdivision (a), enumerates that a bar order may be supported against a person who is or has been subject to any order of any securities administrator of any other state “which is or has been necessary for the protection of any investor.”

28. On November 5, 2012, the Kansas Securities Commissioner issued a Notice of Intent to Impose Administrative Sanctions against Sarner for violations of state securities laws.

29. On July 15, 2014, Sarner entered into a Consent Order with the Kansas Securities Commissioner based on the following conclusions of law:

(a) The Image Development debentures sold by Respondent were securities;

(b) In connection with the offer or sale of these securities, Respondent made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in the light in which they were made, not misleading;

(c) Respondent engaged in an act, practice, or course of business that operated as a fraud or deceit on another person; and,

(d) Adequate grounds existed to invoke administrative sanctions against Respondent, and such order was in the public interest.

30. The Commissioner finds that the administrative action taken against Sarner by the Kansas Securities Commissioner in November 2012, as well as the July 2014 Consent Order, constitutes an

1 order issued by a securities administrator of any other state which is or has been necessary for the  
2 protection of any investor as defined by section 25232, subdivision (a).

3 31. Further, subdivision (d) of section 25232 specifies a bar order may be supported where a  
4 person has willfully violated any provision of the CSL or Title 4 (commencing with section 25000).

5 32. As alleged in detail above, the Commissioner is of the opinion that Sarner willfully violated  
6 the CSL as follows: (1) Recommending an investment to a client without reasonable grounds to do  
7 so in violation of sections 25238 and 260.238; and, (2) Failing to disclose to clients in writing the  
8 commissions received from Usee and Image Development in violation of sections 25238 and  
9 260.238.

10 33. Pursuant to section 25232.1, the Commissioner finds that Sarner is both subject to an order  
11 specified in subdivision (d) of section 25232 and has committed an act or omission enumerated in  
12 subdivision (a) of section 25232.

13 **VI.**

14 **CONCLUSION**

15 Based upon the foregoing, the Commissioner finds that it is in the public interest and grounds  
16 exist to bar Marc Scott Sarner from any position of employment, management or control of any  
17 investment adviser, broker-dealer or commodity adviser pursuant to Corporations Code section  
18 25232.1.

19 Dated: December 16, 2015  
20 Sacramento, California

JAN LYNN OWEN  
Commissioner of Business Oversight

21  
22  
23 By: \_\_\_\_\_  
24 MIRANDA LEKANDER  
25 Senior Counsel  
26 Enforcement Division  
27  
28