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Deputy Commissioner  
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6 Attorneys for Complainant

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

10 In the Matter of: ) CRD NO. 138425  
11 THE COMMISSIONER OF BUSINESS )  
OVERSIGHT, )  
12 )  
Complainant, ) SETTLEMENT AGREEMENT  
13 )  
v. )  
14 JMR CAPITAL MANAGEMENT, INC., )  
15 )  
Respondent. )  
16

17 This Settlement Agreement is entered between the Department of Business Oversight  
18 (Department) through the Commissioner of Business Oversight (Commissioner) on the one hand and  
19 JMR Capital Management Inc. (JMR Capital) on the other (the Parties), and is made with respect to  
20 the following:

21 RECITALS

22 A. Respondent JMR Capital Management, Inc. (JMR Capital) is a California corporation  
23 with a principal place of business located at 44 Montgomery Street, Suite 3705, San Francisco,  
24 California 94104.

25 B. JRM Capital is an investment adviser licensed by the Commissioner on June 14, 1994  
26 pursuant to the Corporate Securities Law of 1968 (CSL) (Corp. Code, § 25000 et seq.).

27 C. Marc A. Roth is President and Chief Executive Officer of JMR Capital and, as such, is  
28 authorized to enter into this Settlement Agreement on behalf of JMR Capital.

1 D. On or about April 4, 2016, the Commissioner commenced a regulatory examination  
2 (2016 examination) of JMR Capital's books and records which revealed that JMR Capital continued  
3 to commit violations previously discovered during regulatory examinations in or about July 1996 and  
4 February 3, 2003, including failure to maintain books and records in violation of California Code of  
5 Regulations, title 10, section 260.241.3, and failure to file annual reports with the Commissioner in  
6 violation of California Code of Regulations, title 10, section 260.241.2. In addition, JMR Capital  
7 failed to make, keep and submit documents for the specified time required by the Commissioner in  
8 violation of Financial Code section 25241.

9 E. On October 25, 2017, the Commissioner issued an Order to Discontinue Violations  
10 (Order to Discontinue), Notice of Intent to Make Order Final, Statement of Facts in Support of Order  
11 to Discontinue Violations Pursuant to Corporations Code Section 25249; Statement in Support of  
12 Notice of Intention to Issue Order Levying Penalties Pursuant to Corporations Code Section 25252  
13 and accompanying documents (collectively, Administrative Action), attached hereto as Exhibit A.

14 F. On or about October 31, 2017, JMR Capital was served the Administrative Action.  
15 On or about November 29, 2017, JMR Capital requested a hearing on the Administrative Action.

16 G. JMR Capital agrees to enter into this Settlement Agreement as a resolution of the  
17 Administrative Action without the need for further litigation.

18 H. The Commissioner finds this Settlement Agreement is appropriate, in the public  
19 interest and consistent with the purposes fairly intended by the policy and provisions of the CSL.

#### 20 TERMS AND CONDITIONS

21 1. Purpose. The purpose of this Settlement Agreement is to resolve the foregoing issues  
22 in a manner that avoids the expense of a hearing, uncertainty of litigation and possible further court  
23 proceedings.

24 2. Order to Discontinue. JMR Capital agrees to discontinue violations of Corporations  
25 Code section 25241 and California Code of Regulations, title 10, sections 260.241.3 and 260.241.2  
26 relating to its books and records and annual reports, and further stipulates to the finality of the Order  
27 to Discontinue issued on October 25, 2017 attached as Exhibit A.

28 3. Penalties. JMR Capital shall pay a penalty to the Commissioner in the amount of

1 \$20,000.00, which shall be due within 20 calendar days of the effective date of this Settlement  
2 Agreement, as such date is defined in Paragraph 16, made payable in the form of a cashier's check or  
3 Automated Clearing House deposit to the "Department of Business Oversight" and transmitted to the  
4 attention of: ATTN: Accounting – Litigation, at the Department of Business Oversight located at  
5 1515 K Street, Suite 200, Sacramento, California 95814. Notice of all payments shall be sent to:  
6 Lindsay Herrick, Counsel, Enforcement Division, Department of Business Oversight 1515 K Street,  
7 Suite 200, Sacramento, California.

8 4. Waiver of Hearing Rights. JMR Capital acknowledges that the Commissioner is  
9 ready, willing and able to proceed with the hearing in this matter, and JMR Capital hereby waives the  
10 right to a hearing, and to any reconsideration, appeal, or other right to review which may be afforded  
11 pursuant to the CSL, the California Administrative Procedure Act, the California Code of Civil  
12 Procedure, or any other provision of law; and by waiving such rights, JMR Capital effectively  
13 consents to this Settlement Agreement becoming final.

14 5. Failure to Comply with Settlement Agreement. JMR Capital agrees that if it fails to  
15 meet any requirement of Paragraph 3 above, the license of JMR Capital shall be summarily  
16 suspended, and that an order levying penalties in the amount of \$30,000.00 as specified in Exhibit A  
17 shall be issued and become final. JMR Capital hereby waives any notice and hearing right to contest  
18 the immediate suspension of its license and finality of said orders which may be afforded under the  
19 CSL, the California Administrative Procedures Act, the California Code of Civil Procedure or any  
20 other law.

21 6. Future Actions by the Commissioner. The Parties acknowledge and agree that nothing  
22 contained in this Settlement Agreement shall operate to limit the Commissioner's ability to assist any  
23 other agency, (county, state or federal) with any prosecution, administrative, civil or criminal,  
24 brought by any such agency against JMR Capital based upon the subject matter hereof or otherwise.  
25 This Settlement Agreement shall not limit the ability of the Commissioner to bring any administrative  
26 or civil action to enforce compliance with this Settlement Agreement or to seek penalties for its  
27 violation. Further, the Commissioner reserves the right to bring any future action(s) against JMR  
28 Capital or any of the managers, officers, directors, shareholders or employees of JMR Capital for all

1 unknown or future violations of the CSL.

2 7. Independent Legal Advice. JMR Capital represents, warrants, and agrees that it has  
3 had the opportunity to seek independent advice from legal counsel and/or representative with respect  
4 to the advisability of executing this Settlement Agreement.

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

15 9. Modifications and Qualified Integration. No amendment, change or modification to  
16 this Settlement Agreement shall be valid or binding to any extent unless it is in writing and signed by  
17 all the Parties affected by it.

18 10. Full Integration. This Settlement Agreement is the final written expression and the  
19 complete and exclusive statement of all the agreements, conditions, promises, representations, and  
20 covenants between the Parties with respect to the subject matter hereof, and supersedes all prior or  
21 contemporaneous agreements, negotiations, representations, understandings, and discussions between  
22 and among the Parties, their respective representatives, and any other person or entity, with respect to  
23 the subject matter covered hereby.

24 11. No Presumption from Drafting. In that the Parties have had the opportunity to draft,  
25 review and edit the language of this Settlement Agreement, no presumption for or against any party  
26 arising out of drafting all or any part of this Settlement Agreement will be applied in any action  
27 relating to, connected, to, or involving this Settlement Agreement. Accordingly, the Parties waive the  
28 benefit of Civil Code section 1654 and any successor or amended statute, providing that in cases of

1 uncertainty, language of a contract should be interpreted most strongly against the party who caused  
2 the uncertainty to exist.

3 12. Terms, Headings and Governing Law. All terms used, but not defined herein, shall  
4 have the meaning assigned to them by the CSL. The headings to the paragraphs of this Settlement  
5 Agreement are inserted for convenience only and will not be deemed a part hereof or affect the  
6 construction or interpretation of the provisions hereof. This Settlement Agreement shall be construed  
7 and enforced in accordance with, and governed by, the laws of the State of California.

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

12 14. Public Record. JMR Capital acknowledges that this Settlement Agreement is a public  
13 record. JMR Capital further understands and agrees to not make any statement or representation that  
14 is inconsistent with the Settlement Agreement.

15 15. Voluntary Agreement. The Parties each represent and acknowledge that in executing  
16 this Settlement Agreement, each does so completely voluntarily and without any duress or undue  
17 influence of any kind from any source.

18 16. Effective Date: This Settlement Agreement shall become effective when executed by  
19 the Commissioner or her designee and transmitted by electronic mail (email) to JMR Capital at  
20 mroth@jmrcap.com.

21 Dated: 1/12/18 JAN LYNN OWEN  
22 Commissioner of Business Oversight

23 By: \_\_\_\_\_  
24 MARY ANN SMITH  
25 Deputy Commissioner  
26 Enforcement Division

26 Dated: 1/11/18 JMR CAPITAL MANAGEMENT, INC.

27 By: \_\_\_\_\_  
28 MARC A. ROTH  
President and Chief Executive Officer

**EXHIBIT A**

1 MARY ANN SMITH  
Deputy Commissioner  
2 MIRANDA LEKANDER  
Assistant Chief Counsel  
3 LINDSAY B. HERRICK (State Bar No. 224986)  
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4 1515 K Street, Suite 200  
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12 In the Matter of: ) CRD NO. 138425  
13 THE COMMISSIONER OF BUSINESS )  
OVERSIGHT, )  
14 Complainant, ) ORDER TO DISCONTINUE VIOLATIONS  
15 v. ) PURSUANT TO CORPORATIONS CODE  
16 ) SECTION 25249  
17 JMR CAPITAL MANAGEMENT, INC., )  
18 Respondent. )

20 TO: JMR Capital Management, Inc.  
21 44 Montgomery Street, Suite 3705  
22 San Francisco, California 94101

23 The Commissioner of Business Oversight finds that:

24 JMR Capital Management, Inc. has:

25 (1) Failed to make, keep and submit a general ledger and cash reconciliations in violation  
26 of Corporations Code section 25241, subdivision (a);

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28 (2) Failed to maintain a general ledger, balance sheet and income statements in violation

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of California Code of Regulations, title 10, section 260.241.3; and,

- (3) Failed to timely submit annual reports in violation of California Code of Regulations, title 10, section 260.241.2.

NOW, BASED ON THE FOREGOING, AND GOOD CAUSE APPEARING, it is hereby ORDERED under the provisions of Corporations Code section 25249, that JMR Capital Management, Inc. immediately discontinue the violations set forth above.

Dated: October 25, 2017  
Sacramento, California

JAN LYNN OWEN  
Commissioner of Business Oversight

By \_\_\_\_\_  
Mary Ann Smith  
Deputy Commissioner  
Enforcement Division