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

12 In the Matter of:

CRD NO. 292347

13 THE COMMISSIONER OF BUSINESS
14 OVERSIGHT,

ACCUSATION IN SUPPORT OF NOTICE OF
INTENTION TO ISSUE ORDER TO DENY
INVESTMENT ADVISOR CERTIFICATE
APPLICATION OF DANIEL IRVIN
MCCOURT DBA FINANCIAL PLANNING
ASSOCIATES

15 Complainant,

16 v.

17 DANIEL IRVIN MCCOURT DBA
18 FINANCIAL PLANNING ASSOCIATES
19 (CRD # 292347),

20 Respondent.
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24 The Complainant, the Commissioner of Business Oversight (Commissioner), files this
25 Accusation in Support of Notice of Intention to Issue Order to Deny the Investment Advisor
26 Certificate Application of Daniel Irvin McCourt DBA Financial Planning Associates, Central
27 Registration Depository (CRD) No. 292347 (Respondent), and alleges and charges as follows:

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I.

Statement of Facts

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3 1. Corporations Code section 25600 authorizes the Commissioner to administer and
4 enforce the provisions of the Corporate Securities Law of 1968 (Corp. Code, § 25000 et seq.) and the
5 regulations promulgated thereunder (Cal. Code Regs., tit. 10, § 260.000 et seq.).

6 2. On February 16, 2018, Respondent filed form ADV, an application to register as an
7 investment advisor, through the Investment Advisor Registration Depository (IARD) system under
8 CRD no. 292347. Respondent’s application was filed by and through Daniel Irvin McCourt
9 (McCourt), the sole proprietor, owner and Investment Advisor Representative of Respondent.

10 3. An individual review of McCourt revealed numerous prior disclosures, including a
11 prior regulatory action by the Financial Industry Regulatory Authority (FINRA)¹, in which McCourt
12 entered into an Order Accepting Offer of Settlement with FINRA on January 20, 2015. The Order
13 Accepting Offer of Settlement found that McCourt, while registered with a FINRA member firm,
14 violated FINRA rules by participating in private securities transactions without providing prior
15 written notice to his member firm and by providing false and falsified documents to a mortgage
16 company on behalf of one of his clients.

17 4. Specifically, the Order Accepting Offer of Settlement states that between the years
18 2005 and 2009, while employed by a FINRA-registered firm, McCourt accepted investments from
19 investors, including his registered firm’s customers, in his personal coffee business. The investments
20 were in the form of long-term promissory notes in the amount of at least \$1,294,610.10, of which
21 approximately \$1,102,032.18 consisted of funds from his firm’s customers. Prior to conducting these
22 private securities transactions, McCourt did not provide written notice to his firm of the investments,
23 nor did he provide written notice of his proposed role in, or the compensation that he would receive
24 from, the private securities transactions, as he was required to under FINRA Rules. As a result,
25 McCourt violated NASD Conduct Rules 3040 and 2110 and FINRA Rule 2010.

26 5. In addition, the Order Accepting Offer of Settlement states that one of McCourt’s
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28 ¹ FINRA is a self-regulatory organization that succeeded the National Association of Securities Dealers, Inc. (NASD) in 2007, overseeing brokerage firms and registered securities representatives.

1 customers at McCourt’s registered firm, who had also invested in McCourt’s private coffee business,
2 was retired and interested in buying a house, but was not employed and did not earn any income
3 through employment. In or around November 2010, the customer asked McCourt to provide
4 information to a mortgage loan company falsely stating that the customer was employed by McCourt
5 when, in fact, the customer never worked for McCourt. On or about November 14, 2010, McCourt
6 filled out and signed a “Request for Verification of Employment” form, which McCourt then sent by
7 facsimile, to the mortgage loan company, falsely stating that the customer was a full-time employee
8 working 40 hours a week for McCourt as an analyst assistant; that the customer earned \$35,000.00 in
9 2008, \$41,000.00 in 2009, and \$36,166.67 as of October 31, 2010; and that the customer’s
10 probability of continued employment with McCourt was “good.” By falsely representing these facts,
11 McCourt violated FINRA Rule 2010.

12 6. As a disciplinary sanction by FINRA for the violations set forth in the Order
13 Accepting Offer of Settlement, McCourt agreed to: (1) a two-year suspension from association with
14 all FINRA member firms in all capacities; and (2) pay a fine of \$50,000.00.

15 **II.**

16 **Grounds to Deny the Application for An Investment Advisor Certificate**

17 7. Corporations Code section 25232 provides in relevant part that the Commissioner
18 may, after appropriate notice and opportunity for hearing, deny a certificate to an investment advisor
19 if the Commissioner finds that the denial is in the public interest and that the investment adviser is or
20 has been subject to “...any order of any national securities association...suspending or expelling him
21 or her from membership in that association...” (Corp. Code, § 25232(d)); or alternatively, is or has
22 been subject to “any other order of the commission or any administrator, association, or exchange
23 referred to in this subdivision which is or has been necessary for the protection of any investor.”
24 (Corp. Code, § 25232(e).)

25 8. Based on the FINRA Order Accepting Offer of Settlement and Corporations Code
26 section 25232, subdivisions (d) and (e), the Commissioner finds that it is in the public interest to deny
27 Respondent’s application for an investment advisor certificate because Daniel Irvin McCourt, the sole
28 owner and control person of Respondent, violated the NASD and FINRA Rules as referenced in the

1 Order Accepting Offer of Settlement and was sanctioned with a two-year suspension and \$50,000.00
2 fine.

3 WHEREFORE, IT IS PRAYED that the investment advisor application of Respondent be
4 denied pursuant to Corporations Code section 25232, subdivisions (d) and (e).

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6 Dated: August 27, 2018

JAN LYNN OWEN
Commissioner of Business Oversight

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8 By _____
9 Robert R. Lux
10 Senior Counsel
11 Enforcement Division
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