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

11 In the Matter of:	)	CRD NO.: 147991
	)	
12 THE COMMISSIONER OF BUSINESS	)	STATEMENT IN SUPPORT OF ORDER
13 OVERSIGHT,	)	IMPOSING ADMINISTRATIVE PENALTIES
	)	PURSUANT TO CORPORATIONS CODE
14 Complainant,	)	SECTION 25252
15 v.	)	
	)	
16 MIRAE ASSET WEALTH MANAGEMENT	)	
17 (USA) INC.,	)	
	)	
18 Respondent.	)	
	)	

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

22 **I.**  
23 **Jurisdiction and Venue**

24 1. The Commissioner is authorized to administer and enforce the provisions of the  
25 California Corporate Securities Law of 1968 (Corp. Code, § 25000 et seq.) (CSL)<sup>1</sup> and the  
26 regulations promulgated thereunder at title 10 of the California Code of Regulations (Cal. Code  
27 Regs., tit. 10, § 260.000 et seq.).

28 \_\_\_\_\_  
<sup>1</sup> Unless otherwise indicated, all further statutory references are to the Corporations Code.



1 a. C.C.R, title 10, section 260.241.3, subdivision (a)(7), by failing to maintain all  
2 written communications received and copies of all written communications sent by Mirae  
3 relating to its investment advisory business;

4 b. C.C.R, title 10, section 260.241.3, subdivision (e)(2), by failing to make and  
5 keep true, accurate and current “books and records . . . [c]harter documents, minute books  
6 and stock certificate books of the investment adviser and of any predecessor, shall be  
7 maintained in the principal office of the investment adviser . . . .”

8 8. The examination also showed Mirae violated CSL section 25238 and C.C.R, title 10,  
9 section 260.238, subdivision (a), by recommending Aequitas Commercial Finance (ACF) as an  
10 investment to clients without having reasonable grounds to believe that the recommendations were  
11 suitable for their clients’ investment objectives, financial situation, and needs.

12 9. ACF was an investment product issued by Aequitas Commercial Finance LLC  
13 (Aequitas). The ACF investment encompassed selling private notes to investors by promising a high-  
14 yielding return to raise capital. The ACF purportedly used investor funds to engage in various  
15 financial transactions, which included buying other companies’ account receivables. The ACF  
16 private notes sold to investors had a fixed maturity date with a specific rate of return.

17 10. The examination confirmed that in December 2015, two clients purchased ACF  
18 private notes based on Lee’s recommendation. Lee, acting on Mirae’s behalf, advised clients to buy  
19 ACF private notes even though Mirae failed to properly review ACF’s offering materials. The  
20 clients lost 100 percent of their investments, for a combined investor loss of \$500,000.00.

21 11. Mirae failed to properly review the ACF due-diligence documentation in its  
22 possession – specifically the audit conducted by Deloitte & Touche LLP (Deloitte audit). The  
23 Deloitte audit gave a clear indication that investing in ACF was very risky. ACF private notes were  
24 not suitable because ACF purchased account receivables from companies that filed bankruptcy,  
25 stopped remitted payments for past due accounts, defaulted payments, and had other material  
26 adverse effects on ACF’s financial position.

27 12. The examination showed Mirae did not conduct a reasonable inquiry to the investors’  
28 investment objectives, financial situations, and needs before its clients lost their entire investments in

1 ACF private notes. Mirae did not require its clients to complete suitability forms or risk tolerance  
2 questionnaires before Mirae started providing investment advice.

3 **III.**

4 **The Commissioner is Authorized to Impose Administrative Penalties Against**  
5 **Any Investment Adviser for Willful Violations of Any Provisions of the CSL**

6 **A. Failing to Maintain Books and Records is Grounds for Administrative Penalties**  
7 **Under Corporations Code section 25252, subdivision (b).**

8 13. Paragraphs 1-12 are hereby realleged and incorporated herein by reference as if set  
9 forth in their entirety.

10 14. Corporations Code section 25241 provides in pertinent part:

11 Every . . . investment adviser . . . shall make and keep accounts,  
12 correspondence, memorandums, papers, books and other records . . . as the  
13 commissioner by rule requires . . . .

14 15. C.C.R, title 10, section 260.241.3 requires:

15 (a) Every licensed investment adviser shall make and keep true, accurate  
16 and current the following books and records relating to such  
17 person’s investment advisory business:

18 . . .

19 (7) Originals of all written communications received and copies of all  
20 written communications sent by such investment adviser relating to: (i)  
21 any recommendation made or proposed to be made and any advice given or  
22 proposed to be given, (ii) any receipt, disbursement or delivery of funds or  
23 securities, or (iii) the placing or execution of any order to purchase or sell any  
24 security . . .

25 . . .

26 (e)(2) Charter documents, minute books and stock certificate books of  
27 the investment adviser and of any predecessor, shall be maintained in  
28 the principal office of the investment adviser and preserved until at  
least three years after termination of the enterprise.

16. During the regulatory examination of Mirae in July 2016, the Commissioner  
requested copies of books and records relating to Mirae’s investment advisory business, including  
originals of all written communications received and copies of all written communications sent by

1 Mirae relating to any recommendation made or proposed to be made and any advice given or  
2 proposed to be given.

3 17. Mirae failed to maintain accurate books and records concerning client correspondence  
4 received and sent by Mirae relating to its investment recommendations made or proposed, and  
5 investment advice given or proposed.

6 18. In the same examination, the Commissioner requested to inspect the charter  
7 documents, minute books and stock certificate books of Mirae.

8 19. Mirae failed to provide and maintain its charter documents, minute books and stock  
9 certificate books at Mirae’s principal office.

10 20. Corporations Code section 25252 authorizes the Commissioner to issue an order  
11 levying administrative penalties against any investment adviser for willful violations of any  
12 provision of the CSL and any rules and regulations promulgated thereunder. Corporations Code  
13 section 25252 provides:

14 The commissioner may, after appropriate notice and opportunity for  
15 hearing, by orders, levy administrative penalties as follows:

16 ...

17 (B) Any broker-dealer or investment adviser that willfully violates any  
18 provision of this division to which it is subject, or that willfully  
19 violates any rule or order adopted or issued pursuant to this division  
20 and to which it is subject, is liable for administrative penalties of not  
21 more than five thousand dollars (\$5,000) for the first violation, not  
22 more than ten thousand dollars (\$10,000) for the second violation, and  
23 not more than fifteen thousand dollars (\$15,000) for each subsequent  
24 violation.

25 21. By reason of the foregoing, Mirae has willfully violated Corporations Code section  
26 sections 25241, C.C.R, title 10, section 260.241.3, subdivision (a)(7), and C.C.R, title 10, section  
27 260.241.3, subdivision (e)(2). Mirae as a licensee, was obligated to have knowledge of, and to  
28 comply with, the provisions of the CSL and the rules and regulations thereunder to maintain its  
investment adviser certificate.

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**B. Failing to Promote Fair, Equitable and Ethical Principles by Recommending Unsuitable Investments are Grounds for Administrative Penalties Under Corporations Code section 25252, subdivision (b).**

22. Paragraphs 1 through 21 are hereby realleged and incorporated herein by reference as if set forth in their entirety.

23. Corporations Code section 25238 provides, in pertinent part:

*No investment adviser licensed under this chapter and no natural person associated with the investment adviser shall engage in investment advisory activities, or attempt to engage in investment advisory activities, in this state in contradiction of such rules as the commissioner may prescribe designed to promote fair, equitable and ethical principles. (Emphasis added.)*

24. C.C.R, title 10, section 260.238, subdivision (a) provides that the following activities do not promote fair, equitable and ethical principles:

*Recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client’s investment objectives, financial situation and needs, and any other information known or acquired by the adviser after reasonable examination of such of the client’s records as may be provided to the adviser. (Emphasis added.)*

**Investor #1 – A.T.**

25. On or about October 22, 2015, A.T. signed an investment management agreement with Mirae. On or around November 24, 2015, A.T. signed the Aequitas Subscription Agreement and a courtesy copy of the agreement was sent to Park. On or around December 22, 2015, based on Lee’s recommendation through Mirae, A.T. invested \$300,000.00 with Aequitas. A.T. purchased three Aequitas private notes – each note requiring an investment of \$100,000.00 with a 11 percent interest rate and maturity in 48 months. By March 2016, the Aequitas private notes were declared an “unrealized loss” with a market value of zero. A.T. lost \$300,000.00 – 100 percent of his investment.

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1           31.     On or around September 26, 2016, Park submitted Mirae’s due-diligence  
2 documentation in the form of an audit conducted on Aequitas, which included the consolidated  
3 financial statements for Aequitas’s 2014 and 2015 fiscal years. The Commissioner was told by Park  
4 that Mirae failed to complete a thorough due-diligence process or make a reasonable inquiry into  
5 Aequitas prior to recommending the ACF private notes to its clients.

6           32.     The Deloitte audit disclosed that Aequitas had business contracts with a company  
7 filing for bankruptcy, and ultimately Aequitas and its affiliates were negatively affected by the  
8 outstanding receivables owed to them by the company filing for bankruptcy.

9           33.     Mirae and Lee did not have a reasonable basis for recommending Aequitas private  
10 notes to its clients, especially when the Deloitte audit gave a clear indication that investing in  
11 Aequitas was a risky investment due to ongoing financial issues with their business contracts.

12           34.     Corporations Code section 25252 authorizes the Commissioner to issue an order  
13 levying administrative penalties against any investment adviser for willful violations of any  
14 provision of the CSL and any rules and regulations promulgated thereunder. Corporations Code  
15 section 25252 provides:

16                   The commissioner may, after appropriate notice and opportunity for  
17 hearing, by orders, levy administrative penalties as follows:

18                   ...

19                   (B) Any broker-dealer or investment adviser that willfully violates any  
20 provision of this division to which it is subject, or that willfully  
21 violates any rule or order adopted or issued pursuant to this division  
22 and to which it is subject, is liable for administrative penalties of not  
23 more than five thousand dollars (\$5,000) for the first violation, not  
24 more than ten thousand dollars (\$10,000) for the second violation, and  
25 not more than fifteen thousand dollars (\$15,000) for each subsequent  
26 violation.

27           35.     Given the severe investor losses, the high degree of risk, and potential volatility of  
28 these investments as disclosed in the Deloitte audit, Mirae did not have a reasonable basis to  
recommend to A.T. and N.G. to purchase Aequitas private notes. Therefore, pursuant to  
Corporations Code section 25252, subdivision (b), the Commissioner seeks administrative penalties  
for Mirae’s willful violations of the CSL and the rules and regulations adopted pursuant to it.

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36. On or around November 29, 2016, the Commissioner notified Mirae of these violations. On December 14 and December 22, 2016, Mirae provided deficient responses to the Commissioner.

37. By reason of the foregoing, Mirae has willfully violated Corporations Code section 25238 and C.C.R, title 10, section 260.238, subdivision (a). Mirae as a licensee, was obligated to have knowledge of, and to comply with, the provisions of the CSL and the rules and regulations thereunder to maintain its investment adviser certificate.

**IV.**  
**Prayer**

WHEREFORE, good cause showing and pursuant to Corporations Code section 25252, subdivision (b), the Commissioner prays for an order imposing administrative penalties in the total amount of \$60,000 for willful violations of Corporations Code section 25241; C.C.R, title 10, section 260.241.3 subdivisions (a)(7) and (e)(2); Corporations Code section 25238; and C.C.R, title 10, section 260.238, subdivision (a). Pursuant to Corporations Code section 25252, subdivision (b), the penalties are calculated as follows: for the 5 violations noted during the July 13, 2016 examination, \$5,000.00 for the first violation, \$10,000.00 for the second violation, and \$15,000.00 for each subsequent violation.

Dated: March 8, 2018  
Los Angeles, CA

JAN LYNN OWEN  
Commissioner of Business Oversight

By \_\_\_\_\_  
Vanessa T. Lu  
Counsel  
Enforcement Division