

**STATE OF CALIFORNIA
BUSINESS, TRANSPORTATION AND HOUSING AGENCY
DEPARTMENT OF CORPORATIONS**

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<p>TO: Positive Return, Inc. Austin Greiner, Sr., President and Director Sunil Wadhwa, Consultant 3033 Gold Canal Drive Rancho Cordova, CA 95670 and 6545 Sunrise Blvd., Suite 202 Citrus Heights, CA 95610</p>	<p>Olive Tree Financial, Inc. Second Start, Inc. Austin Greiner, Sr., a.k.a. Austin Greiner 3033 Gold Canal Drive Rancho Cordova, CA 95670</p>
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DESIST AND REFRAIN ORDER

(For violations of sections 25110, 25230 and 25401 of the Corporations Code)

The California Corporations Commissioner (“Commissioner”) finds that:

1. Positive Return, Inc., Olive Tree Financial, Inc., and Second Start, Inc., are for-profit corporations that filed their articles of incorporation in California, each showing its address as 3033 Gold Canal Drive, Rancho Cordova, California 95670. Positive Return, Inc., also uses business offices located at 6545 Sunrise Blvd., Suite 202, Citrus Heights, California 95610.

2. Positive Return, Inc., and its successors including, but not limited to, Olive Tree Financial, Inc., and Second Start, Inc., (hereinafter “Positive Return”) represent to the public that they are a professional financial management organization. As such, it “markets and sells a variety of financial products and services.” Positive Return states that its mission is to help its clients “become financially strong ” through its Financial Wellness Program, which “includes . . . investment advising.” Positive Return offers its clients financial analysis, planning and “recommendations made by the financial planner.”

3. Austin Greiner, Sr., also known as Austin Greiner (“Greiner”), formed Positive Return, Olive Tree Financial, Inc., and Second Start, Inc., and acted as an officer, director and agent for these corporations. Sunil Wadhwa (“Wadhwa”), hired as a “consultant” to Greiner, assisted in the formation and management of the corporations. They represented that these entities assisted people in building wealth and advised individuals about real estate and other investments.

1 4. Although Greiner was licensed with the California Department of Insurance as an
2 agent (number OB58485), his license expired on May 31, 2003. Greiner's insurance agent
3 license only permitted him to sell life insurance and variable annuity contracts under the auspices
4 of licensed insurance brokers or companies.

5 5. From December 1998 until December 1999, and again from April 2000 until
6 December 2002, Greiner was also a registered representative of United Securities Alliance, a
7 licensed broker-dealer with the National Association of Securities Dealers ("NASD"). NASD
8 assigned to broker-dealer United Securities Alliance an identification number, 36487, in its
9 Central Registration Depository ("CRD"). Greiner, whose CRD number is 2616450, was
10 required and did pass NASD's Series 7 Examination (General Securities Representative
11 Examination) on November 11, 2002. On November 11, 2002, Greiner also took and passed
12 NASD's Series 66 Examination (Uniform Combined State Law Examination). Previously, in
13 November 1995 Greiner took and passed the NASD Series 6 (Investment Products/Variable
14 Contracts Representative Examination) and NASD Series 63 (Uniform Securities Agent State
15 Law Examination). These examinations only authorized Greiner to conduct business in the
16 securities industry when employed by and under the supervision of a licensed broker-dealer or
17 investment adviser. During relevant times herein, Greiner was not so employed and was aware
18 of the licensure requirement.

19 6. Greiner represented to the Commissioner's representative on February 6, 2004,
20 that Positive Return was in the process of applying to the Department of Corporations for a
21 license as a Registered Investment Adviser. No such application was ever filed by Greiner or
22 Positive Return.

23 7. Greiner, Wadhwa and Positive Return arranged a variety of modes for its
24 employees and agents to solicit clients, which include, but are not limited to, multi-level
25 marketing, radio advertisements, seminars, electronic mail, toll-free telephone numbers and the
26 Internet via a Web site, which has the domain name www.positivereturn.net.

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1 8. To date, Positive Return in the aggregate has acquired at least 4,000 clients, of
2 which about 1,400 reside in California. A significant number of these clients do not speak or
3 read English as their native language, nevertheless all of Positive Return's documents are only
4 written in English. One of the documents clients are required to sign is a limited power of
5 attorney, which enables Positive Return to perform services, including a "complete financial
6 analysis" for a client. A part of this financial analysis includes investment and financial
7 planning, such as advice to clients about borrowing or liquidating investments in their 401K
8 fund, which will enable them to obtain additional financial benefits from Positive Return's
9 Financial Wellness Program. In exchange for Positive Return's services, clients are required to
10 pay an initial administrative fee or "set up retainer" of not less than \$500.00.

11 9. Corporations Code section 25009 defines an "investment adviser" as a person
12 who, for compensation, engages in the business of advising others, either directly or through
13 publications or writings, as to the value of securities or as to the advisability of investing in
14 purchasing or selling securities. "Investment adviser" also includes any person who uses the title
15 "financial planner" and who, for compensation, engages in the business, whether principally or
16 as part of another business, of advising others, either directly or through publications or writings,
17 as to the value of securities or as to the advisability of investing in purchasing or selling
18 securities.

19 10. Greiner, Wadhwa and Positive Return provided investment advice to clients about
20 their finances including, but not limited to, their saving, investment and retirement accounts. For
21 these services to investors, they received compensation. Corporations Code section 25230 states
22 that engaging in such activities requires a certificate from the Commissioner authorizing the
23 person to conduct business as an investment adviser. The Commissioner has not issued a
24 certificate authorizing Greiner, Wadhwa, Positive Return, Olive Tree Financial Inc., or Second
25 Start, Inc., to conduct business as an investment adviser in this State.

27 11. Greiner, Wadhwa and Positive Return offered to negotiate settlements of credit card
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1 accounts with a client's creditors representing that "*Interest free settlements are negotiated, which*
2 *usually cuts the principal in half ... [sic] including fees!*" (Italics and ellipsis in the original.)
3 Pursuant to the Positive Return agreement a client is required to give funds to Positive Return, or its
4 affiliates who will use their expertise and client's funds to generate a monetary benefit to the client,
5 which includes debt reduction, and elimination of interest payments, annual and late fees.

6 12. Positive Return explains how their settlement program works by stating that:

7 Positive Return negotiates with your creditors to accept less than the
8 full amount of the debt as payment in full, [sic] interest payments,
9 annual fees and late fees are eliminated. Positive Return is a "for
10 profit" program that charges fees rather than soliciting donations. In
11 most cases, the settlement amount plus the Positive Return fees
12 amount to less than \$0.50 on the dollar. (Underlining in the original.)

13 13. Greiner, Wadwha or Positive Return engaged in securities transactions, wherein
14 they directly and indirectly received monies from clients by means of Electronic Fund Transfers
15 ("EFT") from the bank accounts of clients. Greiner directed, managed and controlled the EFT
16 monies from clients by pooling them and placing them in an investment account at American
17 Skandia Advisor Funds. The name of the account holder is "Positive Return" and the address for
18 the account holder is 6545 Sunrise Blvd., Ste. 202, Citrus Heights, CA 95610-5320. Greiner is
19 the custodian and signatory of the investment account at American Skandia Advisor Funds.
20 Clients' monies, totaling approximately \$2,000,000, were pooled and held in this account. Some
21 of the client funds have been placed into a certificate of deposit account under the control of
22 Greiner.

23 14. The American Skandia Advisor Funds account and the certificate of deposit
24 account are both investment accounts that earned interest. Initially, Greiner and Positive Return
25 prepared statements for clients to reflect the amount invested by a client of Positive Return, and
26 the respective interest payments held in these trust accounts. Positive Return and an affiliate,
27 Acuity Financial, or variants of that name, controlled the funds clients invested in the accounts.

28 15. In 2004 Randall Kilgore, CPA, Inc., acting ostensibly as Acuity Financial, or
variations of that name, discovered that there was a shortage of funds that should have been in the

1 clients' trust accounts. Because of the trust account shortages Greiner and Positive Return stopped
2 providing clients with detailed information about the balance in their respective accounts.
3 Presently, clients are not receiving statements that show them the account balance in their
4 investment account and the interest earned. In addition, numerous instances occurred when more
5 than one monthly EFT payment was taken from the bank account of a client of Positive Return
6 without a client's authorization, consent or knowledge. As a result of the "double draws" by EFT,
7 Positive Return's clients suffered economic hardships. The double draws caused clients' personal
8 bank accounts to become overdrawn and checks written by them were returned unpaid due to
9 insufficient funds in their bank accounts.

10 16. Positive Return had employees on the payroll, as well as additional agents or
11 independent contractors it compensated by commission. Greiner, Wadhwa and others received
12 compensation, consulting fees, commissions and "reimbursements" from Positive Return. In the
13 year 2003 alone \$800,000 was paid directly to Greiner and Wadhwa from the clients' trust
14 account funds. The clients' trust account funds were to be used to pay the creditors of clients.
15 As a result of the payments to Greiner and Wadhwa and other disbursements, as of November 1,
16 2004, there was a shortage in the clients' trust account of at least \$800,000. In an attempt to
17 cover some of the deficit in the trust account, Greiner and Positive Return are currently soliciting
18 money from new investors by offering them securities in the form of investment contracts, but
19 without disclosing the existence of the existing trust account shortages.

20 17. Investment contracts, certificates of interest or participation in any profit-
21 sharing agreement and interests in certificates of deposit are securities pursuant to Corporations
22 Code section 25019. Greiner, Wadhwa, Positive Return, Olive Tree Financial, Inc., or Second
23 Start, Inc., offered or sold investment contracts, certificates of interest or participation in a profit-
24 sharing agreement in American Skandia Funds and interests in certificates of deposit in this State
25 in issuer transactions. The Commissioner has not issued a permit or other form of qualification
26 authorizing the offer or sale of these securities.

27 18. Greiner, Wadhwa or Positive Return misrepresented that the investment account
28 would be properly arranged, safe and benefit clients. Grenier, Wadhwa and Positive Return have

1 not informed clients that Positive Return made double EFT withdrawals from their clients’
2 respective bank accounts. Greiner, Wadhwa and Positive Return have not informed clients that
3 Greiner and Wadhwa would receive over \$800,000 from the funds that clients forwarded to them.
4 Greiner, Wadhwa and Positive Return have not informed clients about the trust account shortage,
5 which exceeds \$800,000.

6 19. In connection with the offers or sales of securities, Greiner, Wadhwa or Positive
7 Return made, or caused to be made, untrue statements of material facts in connection with the
8 offers or sales of the securities to the public in violation of Corporations Code section 25401.

9 a. The untrue statements of material facts include:

- 10 (1) Greiner, Positive Return, Olive Tree Financial, Inc., or
11 Second Start, Inc., would generate a monetary benefit to
12 most of its clients, including a 50% reduction in the
principle amount of their credit card debts;
- 13 (2) Greiner, Positive Return, Olive Tree Financial, Inc., or
14 Second Start, Inc., would generate a monetary benefit
15 to its clients in the form of an elimination of interest
charges on their credit card debts; and,
- 16 (3) Clients’ funds invested by EFT would be properly
17 arranged and safe.

18 b. The omissions of material facts include:

- 19 (1) Greiner, Wadhwa, Positive Return, Olive Tree
20 Financial, Inc., and Second Start, Inc., were not
licensed in any capacity to offer investment advice in
California;
- 21 (2) Greiner, Wadhwa, Positive Return, Olive Tree Financial,
22 Inc., and Second Start, Inc., were not qualified to offer
or sell securities in California;
- 23 (3) Greiner, Wadhwa, Positive Return, Olive Tree
24 Financial, Inc., and Second Start, Inc., did not disclose
25 to clients that unauthorized amounts of clients’ monies
26 would be taken from their bank accounts and invested
in Positive Return’s pooled account at American
27 Skandia Advisor Funds; and,

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3 (4) Greiner, Wadhwa, Positive Return, Olive Tree
4 Financial, Inc., and Second Start, Inc., did not disclose
5 that in 2003 Greiner and Wadhwa together received in
6 excess of \$800,000 from trust account funds of clients;
7 and that there was a shortage of funds of at least
8 \$800,000 in the trust account for the clients of Positive
9 Return.

10 Based upon the foregoing, the Commissioner is of the opinion that Positive Return, Olive
11 Tree Financial, Inc., Second Start, Inc., Austin Greiner, Sr., and Sunil Wadhwa are subject to the
12 laws regulating investment advisers in the Corporations Code and that Positive Return, Olive
13 Tree Financial, Inc., Second Start, Inc., Austin Greiner, Sr., and Wadhwa have engaged in the
14 business of advising others as to the value of securities without having first applied for and
15 secured a certificate, then in effect, authorizing that person to act in that capacity and thereby
16 violated Corporations Code section 25230.

17 Pursuant to section 25532 of the Corporations Code, Positive Return, Inc., Positive
18 Return, Olive Tree Financial, Inc., Second Start, Inc., Austin Greiner, Sr., also known as Austin
19 Greiner, and Sunil Wadhwa are hereby ordered to desist and refrain from conducting business as
20 an investment adviser in the State of California, unless and until certification has been made
21 under said law or unless exempt.

22 Additionally, the Commissioner is of the opinion that the investment contracts, and
23 certificates of interest or participation in profit-sharing agreements in the investment account at
24 American Skandia Advisor Funds, and the interests in certificates of deposit accounts offered or
25 sold by Positive Return, Olive Tree Financial, Inc., Second Start, Inc., Austin Greiner Sr., and
26 Sunil Wadhwa are securities subject to qualification and are being or have been offered or sold
27 without being so qualified in violation of Corporations Code section 25110.

28 Pursuant to section 25532 of the Corporations Code, Positive Return, Inc., Positive
Return, Olive Tree Financial, Inc., Second Start, Inc., Austin Greiner, Sr., also known as Austin
Greiner, and Sunil Wadhwa are hereby ordered to desist and refrain from the further offer or sale

1 in the State of California of securities, in the form of investment contracts, certificates of interest
2 or participation in a profit-sharing agreement in the investment account at American Skandia
3 Advisor Funds and interests in certificates of deposit, unless and until qualification has been
4 made under said law or unless exempt.

5 The Commissioner is also of the opinion that Positive Return, Olive Tree Financial, Inc.,
6 Second Start, Inc., Austin Greiner and Sunil Wadhwa offered or sold securities in this State by
7 means of written or oral communications, which included an untrue statement of a material fact
8 or omitted to state a material fact necessary in order to make the statements made, in the light of
9 the circumstances under which they were made, not misleading, and thereby violated
10 Corporations Code section 25401.

11 Pursuant to section 25532 of the Corporations Code, Positive Return, Inc., Positive
12 Return, Olive Tree Financial, Inc., Second Start, Inc., Austin Greiner, Sr., also known as Austin
13 Greiner, and Sunil Wadhwa are hereby ordered to desist and refrain from offering or selling or
14 buying or offering to buy any security in the State of California by means of any written or oral
15 communication, which includes an untrue statement of material facts or omits to state material
16 facts necessary in order to make the statements made, in the light of the circumstances under
17 which they were made, not misleading.

18 This Order is necessary, in the public interest, for the protection of investors and
19 consistent with the purposes, policies and provisions of the Corporate Securities Law of 1968 set
20 forth in Corporations Code section 25000 et seq.

21 Dated: December 1, 2004
22 Los Angeles, California

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24 WILLIAM P. WOOD
California Corporations Commissioner

25
26
27 By _____
28 ALAN S. WEINGER

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Supervising Counsel
Enforcement and Legal Services Division