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8 Attorneys for Complainant

9
10 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
11 OF THE STATE OF CALIFORNIA

12 In the Matter of) FILE NO. 139923
)
13 THE COMMISSIONER OF BUSINESS) SETTLEMENT AGREEMENT BETWEEN
14 OVERSIGHT,) SHAUN STIRLING NOLL AND THE
) CALIFORNIA DEPARTMENT OF BUSINESS
15 Complainant,) OVERSIGHT RESOLVING:
)
16 v.) 1. DESIST AND REFRAIN ORDER; and
)
17 Shaun Stirling Noll) 2. ORDER LEVYING ADMINISTRATIVE
18 (DBA Stirling Capital Management)) PENALTIES
)
19 Respondent.)

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21 SETTLEMENT AGREEMENT

22 This SETTLEMENT AGREEMENT ("Agreement") is entered into by and between the
23 Complainant, California Department of Business Oversight ("Department"), by and through the
24 California Commissioner of Business Oversight ("Commissioner") and the Respondent, Shaun
25 Stirling Noll (DBA Stirling Capital Management), (hereinafter collectively the "Parties").

26 RECITALS

27 This Agreement is made with reference to the following facts:

28 A. This action is brought to order Respondent, Shaun Stirling Noll (DBA Stirling Capital

1 Management) (“Stirling”) to:

2 i. Desist and refrain from unlicensed investment adviser activities pursuant to the
3 Corporate Securities Law of 1968 (“CSL”) section 25532(b), and

4 ii. Pay penalties to the Department for conducting unlicensed investment adviser
5 activities pursuant to section 25532(b) of six thousand five hundred dollars (\$6,500) for all
6 violations of section 25230(a), combined.

7 B. Stirling is a sole proprietor operating in California, with its principal place of business at 102
8 Greenwood Avenue, San Francisco, California 94112.

9 C. From June 16, 2010 to August 22, 2011, Stirling conducted business as a licensed investment
10 adviser in the state of California. However, the Department of Business Oversight revoked Stirling’s
11 license on August 22, 2011 because it failed to update its amendment or brochure.

12 D. On October 9, 2013 Stirling filed an application for an investment adviser certificate (license)
13 with the Department. The application revealed that Stirling continued to engage in investment
14 adviser activities and charge fees for its services.

15 E. When the Department inquired about Stirling’s investment adviser activities, Stirling fully
16 cooperated. Stirling provided information showing that it had six clients, four of which are located
17 in California.

18 F. The Department finds, based upon the information provided by Stirling, that Stirling was
19 engaged in unlicensed investment adviser activity through the date of this Agreement, in violation of
20 CSL section 25230(a).

21 G. Stirling has not held a valid investment adviser certificate since August 22, 2011.

22 NOW, THEREFORE, for good and valuable consideration, and the terms and conditions set
23 forth herein, the Parties agree as follows:

24 TERMS AND CONDITIONS

25 1. **Purpose:** The purpose of this Agreement is to settle and resolve the issues between the
26 Parties hereto, for judicial economy and expediency, and to avoid the expense of a hearing, and
27 possible further court proceedings.

28 2. **Waiver of Hearing Rights:** Stirling acknowledges the right to a hearing under the

1 Corporate Securities Law of 1968 in connection with the application for an investment adviser
2 certificate and hereby waives that right to a hearing, and to any reconsideration, appeal, or other
3 right to review which may be afforded pursuant to the Corporate Securities Law of 1968, the
4 California Administrative Procedure Act, the California Code of Civil Procedure, or any other
5 provision of law, and by waiving such rights, consent to the Desist and Refrain Order and Order
6 Levying Administrative Penalties becoming final.

7 3. **Acknowledgement:** Without admitting the foregoing recitals of fact, Stirling stipulates to
8 the issuance of the orders and acknowledges that this action can be used in future proceedings that
9 may be initiated by or brought before the Department. The Parties agree that this Agreement and
10 any acknowledgements hereunder shall not be admissible or binding against Stirling in any action(s)
11 brought against Stirling by third parties that are not signatories to this Agreement or in any other
12 proceedings except as expressly permitted by this paragraph 3 before the Department.

13 4. **Certification:** Stirling stipulates to undertake all appropriate steps designed to assure full
14 compliance with the laws of California in connection with the licensing of Stirlings' business as an
15 investment adviser. Stirling acknowledges that failure to comply under this Agreement shall be a
16 breach of this Agreement and shall be cause for the Commissioner to immediately revoke any
17 licenses held by, and/or deny any pending application(s) of Stirling, its successors and assigns, by
18 whatever names they might be known. Stirling hereby waives any notice and hearing rights to
19 contest such revocations and/or denial(s) which may be afforded under the Corporate Securities Law
20 of 1968, the California Administrative Procedure Act, the California Code of Civil Procedure, or any
21 other provision of law in connection with this action.

22 5. **Administrative Penalties:** Stirling agrees to pay to the Commissioner penalties totaling, in
23 the aggregate, six thousand five hundred dollars (\$6,500) ("Penalties"). Such Penalties shall be paid
24 by Stirling within 30 days of the date of the Order. The check shall be made payable to "The
25 Department of Business Oversight," and shall be sent by Stirling to the following address:

26 Timothy L. Le Bas, Senior Corporations Counsel
27 Department of Business Oversight
28 1515 K St., Suite 200
Sacramento, CA 95814

1 In the event the payment due date falls on a weekend or holiday, the payment shall be due the
2 next business day. Stirling acknowledges that failure to timely pay the Penalties in this Agreement
3 shall be a breach of this Agreement and shall be cause for the Commissioner to immediately revoke
4 any licenses held by, and/or deny any pending application(s) of Stirling, its successors and assigns,
5 by whatever names they might be known. Stirling hereby waives any notice and hearing rights to
6 contest such revocations and/or denial(s) which may be afforded under the Corporate Securities Law
7 of 1968, the California Administrative Procedure Act, the California Code of Civil Procedure, or any
8 other provision of law in connection therewith.

9 **6. Future Actions by the Commissioner:** Other than as to the matters resolved herein, the
10 Commissioner reserves the right to bring any future action(s) against Stirling and/or any of the
11 officers, directors, shareholders, or employees of Stirling for any and all unknown or future
12 violations of the Corporate Securities Act of 1968. Other than as to the matters resolved herein, this
13 Agreement shall not serve to exculpate Stirling or any of the officers, directors, shareholders, or
14 employees of Stirling from liability for any and all unknown or future violations of the Corporate
15 Securities Act of 1968.

16 **7. Effective Date:** This Agreement shall not become effective until signed and dated by each
17 of the parties hereto.

18 **8. Settlement Agreement Coverage:** The Parties hereby acknowledge and agree that this
19 Agreement is intended to constitute a full, final, and complete resolution of this matter (including,
20 but not limited to, any and all assertions by the Department that Stirling has allegedly engaged in
21 unlicensed investment adviser activity through the effective date of this Agreement). The Parties
22 further acknowledge and agree, except as provided in paragraph 3, above, that nothing contained in
23 this Agreement shall operate to limit the Commissioner's ability to cooperate with any other agency,
24 county, state or federal, with any prosecution, administrative, civil or criminal, brought by any such
25 agency against Stirling based upon any of the activities alleged in this matter or otherwise.

26 **9. Independent Legal Advice:** Each of the Parties represents, warrants, and agrees that it has
27 received or been advised to seek independent legal advice from its attorneys with respect to the
28 advisability of executing this Agreement.

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

10 11. **Modifications and Qualified Integration:** No amendment, change or modification of this
11 Agreement shall be valid or binding to any extent unless it is in writing and signed by all of the
12 parties affected by it.

13 12. **Full Integration:** This Agreement is the final written expression and the complete and
14 exclusive statement of all the agreements, conditions, promises, representations, and covenants
15 between the parties with respect to the subject matter hereof, and supersedes all discussions between
16 and among the parties, their respective representatives, and any other person or entity, with respect
17 to the subject matter covered hereby.

18 13. **No Presumption From Drafting:** In that the parties have had the opportunity to draft,
19 review and edit the language of this Agreement, no presumption for or against any party arising out
20 of drafting all or any part of this Agreement will be applied in any action relating to, connected to, or
21 involving this Agreement. Accordingly, the parties waive the benefit of Civil Code section 1654 and
22 any successor or amended statute, providing that in cases of uncertainty, language of a contract
23 should be interpreted most strongly against the party who caused the uncertainty to exist.

24 14. **Counterparts:** This Agreement may be executed in any number of counter-parts by the
25 Parties, and when each party has signed and delivered at least one such counterpart to the other
26 party, each counterpart shall be deemed an original and taken together shall constitute one and the
27 same Agreement. This Agreement may be executed via original signatures exchanged by facsimile
28 or electronic means.

1 15. **Headings and Governing Law:** The headings to the paragraphs of this Agreement are
2 inserted for convenience only and will not be deemed a part hereof or affect the construction or
3 interpretation of the provisions hereof. This Agreement shall be construed and enforced in
4 accordance with, and governed by, the laws of the State of California.

5 16. **Authority For Settlement:** Each party warrants and represents that such party is fully
6 entitled and duly authorized to enter into and deliver this Agreement. In particular, and without
7 limiting the generality of the foregoing, each party warrants and represents that it is fully entitled to
8 enter into the covenants, and undertake the obligations set forth herein.

9 17. **Public Record:** Stirling hereby acknowledges that this enforcement action and Agreement
10 will be a matter of public record.

11 18. **Voluntary Agreement:** The Parties each represent and acknowledge that he, she, or it is
12 executing this Agreement completely voluntarily and without any duress or undue influence of any
13 kind from any source.

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IN WITNESS WHEREOF, the Parties hereto have approved and executed this Agreement on the dates set forth opposite their respective signatures.

California Commissioner of Business Oversight

Dated: 4/1/2014

By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

Dated: 3/23/2014

Stirling Capital Management

By _____
SHAUN STIRLING NOLL, Sole Proprietor
Stirling Capital Management

Approved as to Form and Content

Dated 3/21/2014

By _____
CHARLES FIELD
Attorney of Behalf of
Shaun Stirling Noll and
Stirling Capital Management