

1 WILLIAM P. WOOD
California Corporations Commissioner
2 VIRGINIA J. DUNLAP (CA BAR NO. 142221)
Deputy Commissioner
3 ALAN S. WEINGER (CA BAR NO. 86717)
Supervising Counsel
4 JOAN E. KERST (CA BAR NO. 123351)
Senior Corporations Counsel
5 DEPARTMENT OF CORPORATIONS
71 Stevenson Street, Suite 2100
6 San Francisco, California 94105
Telephone: (415) 972-8547
7 Facsimile: (415) 972-8550

8 Attorneys for Complainant

9 BEFORE THE DEPARTMENT OF CORPORATIONS
10 OF THE STATE OF CALIFORNIA

12 In the Matter of)
)
13 THE CALIFORNIA CORPORATIONS)
)
14 COMMISSIONER,)
)
15 Complainant,)
)
16 v.)
)
17 THE SOCIAL EQUITY GROUP, INC.)
)
18 Respondent.)
)
19)
20)

FILE NO. 925-1926

STATEMENT IN SUPPORT OF:
(1) ORDER TO DISCONTINUE VIOLATIONS PURSUANT TO CORPORATIONS CODE SECTION 25249 AND COMMISSIONER'S INTENTION TO MAKE ORDER FINAL; AND,
(2) ORDER LEVYING ADMINISTRATIVE PENALTIES PURSUANT TO CORPORATIONS CODE SECTION 25252

21 William P. Wood, the California Corporations Commissioner ("Commissioner") of the
22 Department of Corporations ("Department"), alleges and charges as follows:

23 1. The Corporate Securities Law of 1968 (Corp. Code, § 25000 et seq.), and the
24 California Code of Regulations, title 10, (§ 260.000 et seq.), contain provisions that govern
25 persons licensed to operate in the securities industry. To ensure the protection of the public, the
26 Commissioner requires compliance by licensees with the Corporate Securities Law and
27 regulations. Licensees are required to keep accurate books and records, to file annual reports, to
28

1 correct deficiencies and to provide accurate information to the Commissioner in a timely manner.

2
3 2. On August 28, 1992, Respondent, The Social Equity Group, Inc., (“Respondent”)
4 a California corporation, first sought an investment adviser certificate from the Commissioner by
5 filing its application on a Form ADV (Department File No. 925-1926). On January 1, 1993, the
6 Commissioner issued an investment adviser certificate to The Social Equity Group, Inc., based
7 upon representations made to the Commissioner in its application on the Form ADV.

8 3. During relevant times The Social Equity Group, Inc.'s office was located at 2550
9 9th Street, Suite 204A, Berkeley, California 94710, and Duncan Meaney was its major
10 shareholder, president, chief executive officer, chief financial officer and director. Duncan
11 Meaney and The Social Equity Group, Inc., managed their investment advisory clients'
12 investment portfolios for a fee, had discretionary authority to purchase and sell securities directly
13 for clients and possessed a power of attorney from them.

14 4. On July 23, 1997, Duncan Meaney filed with the Department a Securities and
15 Exchange Commission (“SEC”) Form ADV T in which he stated that he had assets of
16 \$25,000,000 under management and was exempt from California regulation. Under federal law,
17 an investment adviser that is regulated or required to be regulated as an investment adviser in the
18 state in which it maintains its principal office and place of business is prohibited from registering
19 with the SEC unless the adviser (i) has assets under management of not less than \$25 million, or
20 (ii) is an adviser to an investment company registered under the Investment Company Act of
21 1940. (15 U.S.C. § 80 (b)-(3)(A)(a)). The Social Equity Group, Inc.'s investment adviser
22 certificate (Department File No. 925-1926) was surrendered with an effective date of September
23 26, 1997, as a result of Respondent’s claim of its eligibility for federal registration.

24 5. The Social Equity Group, Inc., (SEC File Number 801-41893), did not meet the
25 criteria for SEC registration; it was ineligible to be registered by the SEC, lacked sufficient assets
26 under management and was so notified by the SEC. On January 28, 1998, Duncan Meaney filed
27 the SEC Form ADV W to withdraw The Social Equity Group, Inc.’s SEC registration and at the
28 same time requested the Department reinstate The Social Equity Group Inc.’s investment adviser

1 certificate, which it had previously surrendered. On February 11, 1998, the Commissioner
2 reissued the certificate to Respondent (Department File No. 925-1926).

3 6. The Department conducted regulatory examinations of The Social Equity Group,
4 Inc.'s investment adviser business, which revealed, among other violations, that Respondent
5 failed to follow record keeping and reporting requirements. Respondent repeatedly failed to (1)
6 file annual reports, (2) maintain a general ledger, and (3) compute net capital and aggregate
7 indebtedness on a monthly basis. These failures prevented the Department from determining as
8 part of its regulatory examination whether The Social Equity Group, Inc., fulfilled the legal
9 requirements of the Corporate Securities Law and its regulations.

10 7. Corporations Code section 25241, provides that investment advisers are required
11 to maintain books and records for examination by the Commissioner and, in part, states:

12 Every investment adviser licensed under Section 25230 shall make and
13 keep such accounts, correspondence, memoranda, papers, books, and
14 other records and shall file such financial and other reports as
15 the commissioner by rule requires subject to the limitations . . . of
16 Section 222 of the Investment Advisers Act of 1940 with respect to
17 investment advisers. All records so required shall be preserved for the
18 time specified in the rule. All records referred to in this section are
19 subject at any time and from time to time to such reasonable periodic,
20 special, or other examinations by the commissioner, within or without
21 this state, as the commissioner deems necessary or appropriate in the
22 public interest or for the protection of investors.

23 8. Corporations Code section 25241, augmented by California Code of Regulations,
24 title 10, section 260.241.3, identifies the particular books and records that investment advisers
25 are required to make and to keep current and accurate. Subdivisions (a)(1), (a)(2), and (a)(4) of
26 California Code of Regulations, title 10, section 260.241.3, state:

27 (a) Every licensed investment adviser shall make and keep true,
28 accurate and current the following books and records relating to
such person's investment advisory business:

(1) A journal or journals, including cash receipts and
disbursements records, and any other records of original entry
forming the basis of entries in any ledger.

(2) General and auxiliary ledgers (or other comparable records)
reflecting asset, liability, reserve, capital, income and expense
accounts . . .

(4) All check books, bank statements, cancelled checks and cash reconciliations of the investment adviser . . .

9. Corporations Code section 25237, authorizes the Commissioner to prescribe rules for investment advisers who have custody of the clients' securities or funds or who have any power of attorney from their clients to execute transactions. The Commissioner has done so by specifying, among other requirements, the minimum capital requirements such investment adviser must maintain. During relevant times herein, subdivision (a)(2) of California Code of Regulations, title 10, section 260.237.1, specified the monetary amount of net capital an investment adviser must maintain and states, in part, that:

(a) No investment adviser who has any power of attorney from any investment advisory client to execute transactions . . .

(2) If the investment adviser has any power of attorney from any investment advisory client to execute transactions and does not have regular or periodic custody or possession of any of its investment advisory clients' securities or funds, except the receipt of prepaid subscriptions for periodic publications, or other investment advisory services, it shall at all times have and maintain tangible net capital of not less than \$5,000.00.

10. To verify compliance with the above-described capital requirements the Commissioner has imposed a specific bookkeeping obligation on investment advisers to maintain records to prove they possess the minimum capital. During relevant times subdivision (j) of California Code of Regulations, title 10, section 260.241.3, stated:

(j) Any investment adviser who is subject to the minimum capital requirements of Section 260.237.1 shall, in addition to the records otherwise required under this section, maintain a record of the proof of money balances of all ledger accounts in the form of trial balances and a record of the computations of net capitals and aggregate indebtedness pursuant to Section 260.237.1 of these rules (as of the trial balance date). The trial balances and computations shall be prepared currently at least once a month.

11. The Social Equity Group, Inc., subject to the capital requirements under California Code of Regulations, title 10, section 260.237.1, was also required to file annual financial reports. During relevant times California Code of Regulations, title 10, section 260.241.2, set forth the specific annual financial report required by investment advisers.

1 ///

2 12. Section 260.241.2, subdivision (a) provides, in relevant part, as follows:

3 (a) General Rule. Subject to the provisions of subsection (c) of this
4 section, every . . . licensed investment adviser subject to the
5 provisions of section 260.237.1 or 260.237.2, as applicable, of these
6 rules, shall file an annual financial report containing the information
7 required by a form or forms to be supplied or approved by the
8 Commissioner. . .

9 13. The regulatory examinations of Respondent's business revealed violations of
10 Corporations Code section 25241, and corresponding regulations as follows:

11 (A) Examiners found The Social Equity Group, Inc., violated California Code of
12 Regulations, title 10, section 260.241.2(a), by failing to timely file annual
13 reports for the fiscal years of 1995, 1996, 1997, 1998, 1999, 2000, 2001 and
14 2002.

15 (B) Examiners found The Social Equity Group, Inc., violated subdivisions (1), (2)
16 and (4) of California Code of Regulations, title 10, section 260.241.3(a),
17 respectively, by not maintaining a journal, ledger and cash reconciliations.
18 Although The Social Equity Group, Inc., did provide a spreadsheet of income
19 and expenses by month, this was inadequate to suffice as a journal and ledger,
20 lacking the generally accepted accounting principles of a double entry system
21 for recording financial transactions. Respondent did not reconcile the
22 brokerage statements to the cash balance maintained in the cash ledger.

23 (C) Examiners determined that The Social Equity Group, Inc., violated California
24 Code of Regulations, title 10, section 260.241.3(j), by failing to prepare trial
25 balances and compute net capital and aggregate indebtedness on a monthly
26 basis to meet and prove compliance with the capital requirements of
27 California Code of Regulations, title 10, section 260.237.1, as required, since
28 Respondent had power of attorney and discretion to trade securities within
customers' accounts. As a result of The Social Equity Group, Inc.'s violations
of California Code of Regulations, title 10, section 260.241.3(j), the

1 Department was unable to determine if The Social Equity Group, Inc., was in
2 compliance with the net capital requirements under California Code of
3 Regulations, title 10, section 260.237.1.

4 14. On September 9, 1996, the Department sent Respondent a regulatory letter
5 providing written notice and instructing them to correct various violations discovered during the
6 regulatory examination, which included, inter alia, violations of California Code of Regulations,
7 title 10, section 260.241.2(a), (reports by investment advisers); subdivision (1) of California
8 Code of Regulations, title 10, section 260.241.3(a), (books and records to be maintained by
9 investment advisers); and, California Code of Regulations, title 10, section 260.241.3(j),
10 (computation of net capital and aggregate indebtedness). The Department's letter specifically
11 notified The Social Equity Group, Inc., of California Code of Regulations, title 10, section
12 260.241.3, requirement to maintain books and records relating to the investment advisory
13 business including the following:

- 14 1. General and auxiliary ledgers; and
- 15 2. Computations of net capital and aggregate indebtedness.

16 15. On September 23, 1996, Duncan Meaney filed a written response to the
17 Commissioner's September 9, 1996, letter stating, "All changes outlined in your letter have been
18 made . . . [m]y accountant is working with me to set up a monthly general ledger conforming
19 [sic] the codes capital and reporting requirements."

20 16. In March 2003 the Department conducted a regulatory examination of
21 Respondent, which revealed violations of Corporations Code section 25241, and California Code
22 of Regulations, title 10, section 260.241.2(a); violations of California Code of Regulations, title
23 10, section 260.241.3, subdivisions (a)(1), (a)(2), (a)(4), and (j). The examiner determined that
24 notwithstanding the fact that in 1996 the Department informed Duncan Meaney and The Social
25 Equity Group, Inc., about some of these violations, they failed to correct them. Respondent
26 continued to violate California Code of Regulations, title 10, section 260.241.2(a), by not filing
27 the annual reports as required for the years ending 1996, 1997, 1998, 1999, 2000, 2001 and 2002.
28 Respondent continued to violate California Code of Regulations, title 10, section 260.241.3,

1 subdivisions (a)(1), (a)(2), (a)(4), and (j), by not maintaining journal, general ledger, cash
2 reconciliations and by not computing net capital and aggregate indebtedness as required.

3 17. In August 2003 after a regulatory examination, the Department wrote to
4 Respondent informing it that it had not complied with various legal requirements. On September
5 2, 2003, The Social Equity Group, Inc., filed a response to the Commissioner and enclosed what
6 purports to be an SEC examiner checklist allegedly used by the SEC to examine The Social
7 Equity Group, Inc. The SEC examiner checklist is not what The Social Equity Group, Inc.,
8 claimed it to be and was not used as Respondent described. Duncan Meaney on behalf of The
9 Social Equity Group, Inc., wrote that:

10
11 Then the SEC examiner reviewed my office in 1997. I enclose the
12 financial checklist of items she reviewed. She seemed to be
satisfied and no comments were made about it.

13 In fact, the SEC examiner informed Duncan Meaney that The Social Equity Group, Inc., had a
14 number of violations and also informed Duncan Meaney that these violations and other
15 violations would be a violation of the same and similar rules that apply in other states and that
16 The Social Equity Group, Inc., was ineligible to be registered with the SEC. To the contrary,
17 Duncan Meaney falsely stated to the Commissioner that the SEC examiner used a “checklist”
18 that is not and never has been an SEC document. Duncan Meaney also falsely stated to the
19 Commissioner that the SEC examiner seemed satisfied and no comments were made when she
20 reviewed the office of The Social Equity Group, Inc.

21 18. Corporations Code section 25249, authorizes the Commissioner to issue an order
22 directing any investment adviser to discontinue any violation of the Corporations Code and any
23 corresponding rules stating, in relevant part:

24 If, after examination or investigation, the commissioner has reasonable
25 grounds to believe that any . . . investment adviser has violated any law
26 or rule binding upon it, the commissioner shall, by written order
27 addressed to the . . . investment adviser, direct the discontinuance of the
violation. The order shall be effective immediately, but shall not
become final except in accordance with the provisions of Section 25251.

1 19. The procedure for issuance of orders pursuant to Corporations Code section
2 25249, is set forth in Corporations Code section 25251, which provides:

3 (a) No order issued pursuant to Section 25249 or 25250 may become
4 final except after notice to the affected broker-dealer or investment
5 adviser of the commissioner's intention to make the order final and of
6 the reasons for the finding.

7 The commissioner shall also notify the broker-dealer or investment
8 adviser that upon receiving a request the matter shall be set for
9 hearing to commence within 15 business days after receipt of the
10 request. The broker-dealer or investment adviser may consent to
11 have the hearing commence at a later date. If no hearing is requested
12 within 30 days after the mailing or service of the required notice, and
13 none is ordered by the commissioner, the order may become final
14 without a hearing and the broker-dealer or investment adviser shall
15 immediately discontinue the practices named in the order. If a
16 hearing is requested or ordered, it shall be held in accordance with the
17 provisions of the Administrative Procedure Act (Chapter 5
18 (commencing with Section 11500) of Part 1 of Division 3 of 2 of the
19 Government Code), and the commissioner shall have all of the
20 powers granted under that act. If, upon the conclusion of the hearing,
21 it appears to the commissioner that the broker-dealer or investment
22 adviser is conducting business in an unsafe or injurious manner or is
23 violating any law of this state or any rule binding upon it, the
24 commissioner shall make the order of discontinuance final and the
25 broker-dealer or investment adviser shall immediately discontinue the
26 practices named in the order.

27 (b) The broker-dealer or investment adviser may within 10 days after
28 an order is made final commence an action to restrain enforcement of
the order. If the enforcement of the order is not enjoined within 10
days by the court in which the action is brought, the broker-dealer or
investment adviser shall comply with the order.

 20. The Social Equity Group, Inc., during relevant times violated the Corporate
Securities Law and regulations thereunder, which justifies the issuance of an Order to
Discontinue Violations. The Social Equity Group, Inc., having applied for and secured an
investment adviser certificate, is obligated to have knowledge of and comply with the provisions
of the Corporations Code and the regulations thereunder to maintain its investment adviser
certificate.

- 1 21. By reason of the foregoing, Respondent violated the following provisions:
- 2 a. Corporations Code section 25241, by failing to maintain books and records;
- 3 b. California Code of Regulations, title 10, section 260.241.2(a),
- 4 by failing to file annual reports;
- 5 c. California Code of Regulations, title 10, section 260.241.3, subdivision (a)(1),
- 6 by failing to maintain journals;
- 7 d. California Code of Regulations, title 10, section 260.241.3, subdivision (a)(2),
- 8 by failing to maintain ledgers;
- 9 e. California Code of Regulations, title 10, section 260.241.3, subdivision (a)(4),
- 10 by failing to maintain cash reconciliations; and,
- 11 f. California Code of Regulations, title 10, section 260.241.3, subdivision (j),
- 12 by failing to prepare monthly trial balances and monthly computations of
- 13 net capital and aggregate indebtedness;

14 22. Therefore, pursuant to Corporations Code section 25249, the Commissioner has

15 issued an Order directing Respondent to discontinue violating Corporations Code section 25241;

16 California Code of Regulations, title 10, section 260.241.2(a); subdivisions (1), (2), and (4) of

17 California Code of Regulations, title 10, section 260.241.3(a); and, California Code of

18 Regulations, title 10, section 260.241.3(j).

19 23. Further, the above-described violations of the Corporate Securities Law and

20 regulations thereunder by The Social Equity Group, Inc., justify the issuance of an Order

21 Levying Administrative Penalties. The Social Equity Group, Inc., having applied for and

22 secured an investment adviser certificate is obligated to have knowledge of and comply with the

23 provisions of the Corporate Securities Law and regulations. Duncan Meaney, The Social Equity

24 Group, Inc.'s President is a licensed securities professional who has been operating in the

25 securities industry for many years, and is also obligated to have knowledge of and comply with

26 provisions of the Corporate Securities Law and regulations.

27 24. Corporations Code section 25252 authorizes the Commissioner to issue an Order

28 Levying Administrative Penalties against any investment adviser for willful violations of any

provisions of the Corporate Securities Law and any rules promulgated thereunder.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Corporations Code section 25252, provides, in relevant part:

The commissioner may, after appropriate notice and opportunity for hearing, by order levy administrative penalties as follows: . . .

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

(d) The administrative penalties available to the commissioner pursuant to this section are not exclusive, and may be sought and employed in any combination with civil, criminal, and other administrative remedies deemed advisable by the commissioner to enforce the provisions of this division.

25. In summary by reason of the foregoing, The Social Equity Group, Inc., willfully violated the following provisions:

- a. California Code section 25241, by failing to maintain books and records;
- b. California Code of Regulations, title 10, section 260.241.2(a), by failing to file annual reports;
- c. California Code of Regulations, title 10, section 260.241.3, subdivision (a)(1), by failing to maintain journals;
- d. California Code of Regulations, title 10, section 260.241.3, subdivision (a)(2), by failing to maintain ledgers;
- e. California Code of Regulations, title 10, section 260.241.3, subdivision (a)(4), by failing to prepare and maintain cash reconciliations; and,
- f. California Code of Regulations, title 10, section 260.241.3, subdivision (j), by failing to prepare monthly trial balances and monthly computations of net capital and aggregate indebtedness.

///
///
///
///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PRAYER

WHEREFORE, good cause showing, and pursuant to Corporations Code section 25251, the California Corporations Commissioner hereby notifies The Social Equity Group, Inc., of his intention to make final the "Order to Discontinue Violations Pursuant to Corporations Code Section 25249" issued October 19, 2004.

WHEREFORE, good cause showing, and pursuant to Corporations Code section 25252, the California Corporations Commissioner prays for an Order Levying Administrative Penalties against Respondent, The Social Equity Group, Inc., as follows:

That pursuant to Corporations Code section 25252, the Commissioner levies administrative penalties in the amount of \$1500 for each of The Social Equity Group, Inc.'s following violations:

- Corporations Code section 25241;
- California Code of Regulations, title 10, section 260.241.2(a),
- California Code of Regulations, title 10, section 260.241.3(a), subdivision (1);
- California Code of Regulations, title 10, section 260.241.3(a), subdivision (2);
- California Code of Regulations, title 10, section 260.241.3(a), subdivision (4); and,
- California Code of Regulations, title 10, section 260.241.3(j).

Dated: October 19, 2004
San Francisco, California

WILLIAM P. WOOD
California Corporations Commissioner

By: _____
JOAN E. KERST
Senior Corporations Counsel
Enforcement and Legal Services Division