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

12 In the Matter of:) CRD NOS.: 139923 and 2592183
)
13 THE COMMISSIONER OF BUSINESS) FINAL ORDER LEVYING ADMINISTRATIVE
OVERSIGHT,) PENALTIES PURSUANT TO
14) CORPORATIONS CODE SECTION 25252
15 Complainant,)
)
16 v.)
)
17 HIGHLAND CAPITAL GROUP, INC. AND)
18 JOHN MCPHAIL,)
)
19 Respondents.)
)
20)
21)

22 I.

23 Statement of Facts

24 1. At all relevant times, Highland Capital Group, Inc. (Highland) was an investment adviser
25 licensed by the Commissioner (CRD No. 139923), pursuant to the Corporate Securities Law of 1968
26 (CSL) as set forth in Corporations Code section 25000 et seq., and accompanying regulations in
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1 California Code of Regulations, title 10, section 260.000 et seq.¹

2 2. At all relevant times, Highland had its principal place of business located at 1875 Century Park
3 East, Suite 700, Los Angeles, California 90067.

4 3. At all relevant times, John McPhail (McPhail) was the owner and chief executive officer of
5 Highland, registered as an investment adviser representative (CRD No. 2592183).

6 4. On February 22, 2016, the Department of Business Oversight (Department) examined the
7 books and records of Highland. During this examination, the Department detected the following
8 violations of the CSL:

- 9 a. Failing to submit to a reasonable examination (section 25241, subd. (c)).
- 10 b. Failing to comply with books and records requirements (rules 260.241.3(a)(2), (4), (6) and
11 (10) and 260.241.3(j)).
- 12 c. Failing to comply with custody requirements (rules 260.237(a)(1) and (6)).
- 13 d. Failing to comply with minimum financial requirements (rule 260.237.2(a), (c), (d), and
14 (j)).
- 15 e. Failing to comply with reporting requirements (rule 260.241.2(a)(2), (3), (4) and (d)(2), (3),
16 and (4)).
- 17 f. Failing to follow fair, equitable and ethical principles (section 25238 and rule 260.238(a),
18 (h) and (n)).
- 19 g. Failing to advertise accurately and completely (section 25235 and rule 260.235(a)(5)).
- 20 h. Failing to comply with investment adviser representative report requirements (rule
21 260.236.1(a)(3)).
- 22 i. Failing to provide notice of changes (rule 260.241.4(a)).

23 5. Despite receiving four separate regulatory letters from the Department demonstrating these
24 violations of law, Highland and McPhail failed to respond to at least seventeen requests in these
25 regulatory letters. Despite giving Highland and McPhail at least four extensions to reply to the
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27 ¹ All further section and rule references are to the California Corporations Code and title
28 10 of the California Code of Regulations.

1 regulatory letters, they failed to respond by submitting only partial information. To date, Highland
2 and McPhail failed to respond to the Department’s last regulatory letter dated August 25, 2016.

3 **II.**

4 **Final Order Levying Administrative Penalties**
5 **(For violations of Corporations Code section 25241 and Rules 260.235, 260.236.1, 260.237,**
6 **260.237.2, 260.238, 260.241.2, 260.241.3, and 260.241.4)**

7 6. On December 6, 2018, the Commissioner personally served Highland and McPhail with the
8 Notice of Intention to Issue Order Levying Administrative Penalties Pursuant to Corporations Code
9 Section 25252, Statement in Support and accompanying documents.

10 7. The Commissioner has not received a request for hearing and the statutory time period to
11 request a hearing expired on January 5, 2019.

12 NOW GOOD CAUSE APPEARING, IT IS HEREBY ORDERED THAT: Administrative
13 penalties totaling \$270,000.00 are levied against Highland Capital Group, Inc. and John McPhail,
14 individually, jointly and severally, as follows:

- 15 A. \$5000.00 for the first violation of law involving Corporations Code section 25241(c);
- 16 B. \$10,000.00 for the second violation of law involving Rule 260.241.3(a)(2), and;
- 17 C. \$255,000.00 for the third and subsequent violations of law involving the following rules:
 - 18 260.241.3(a)(4) - \$15,000.00
 - 19 260.241.3(a)(6) - \$15,000.00
 - 20 260.241.3(a)(10) - \$15,000.00
 - 21 260.241.3(j) - \$15,000.00
 - 22 260.237(a)(1) - \$15,000.00
 - 23 260.237(a)(6) - \$15,000.00
 - 24 260.237.2(a)(d) - \$15,000.00
 - 25 260.237.2(c)(j) - \$15,000.00
 - 26 260.241.2(a)(2)(4) - \$15,000.00
 - 27 260.241.2(a)(3) - \$15,000.00
 - 28 260.241.2(d)(2)(3)(4) - \$15,000.00

- 1 260.238(a) - \$15,000.00
- 2 260.238(h) - \$15,000.00
- 3 260.238(n) - \$15,000.00
- 4 260.235(a)(5) - \$15,000.00
- 5 260.236.1(a)(3) - \$15,000.00
- 6 260.241.4(a) - \$15,000.00

7 The administrative penalties levied in the amount of \$270,000.00 shall be due and payable to
8 the Department of Business Oversight within 30 days of service of this Final Order and sent to the
9 attention of: Accounting, at the Department of Business Oversight located at 1515 K Street, Suite 200,
10 Sacramento, CA 95814. Notice of the payment shall concurrently be sent to the attention of: Timothy
11 L. Le Bas, Senior Counsel, Enforcement Division, 1515 K Street, Suite 200, Sacramento, CA 95814.

12 This Final Order Levying Administrative Penalties is the final decision of the Commissioner
13 pursuant to Corporations Code section 25252.

14
15 Dated: February 19, 2019
16 Sacramento, CA

JAN LYNN OWEN
Commissioner of Business Oversight

17
18 By _____
19 MARY ANN SMITH
20 Deputy Commissioner
21 Enforcement Division

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