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

12 In the Matter of:

CRD NO. 292347

13 THE COMMISSIONER OF BUSINESS  
14 OVERSIGHT,

ORDER DENYING INVESTMENT ADVISOR  
CERTIFICATE APPLICATION OF DANIEL  
IRVIN MCCOURT DBA FINANCIAL  
PLANNING ASSOCIATES

15 Complainant,

16 v.

17  
18 DANIEL IRVIN MCCOURT DBA  
19 FINANCIAL PLANNING ASSOCIATES  
(CRD # 292347),

20 Respondent.  
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22  
23 The Commissioner of Business Oversight (Commissioner) finds that:

- 24 1. On February 16, 2018, Daniel Irvin McCourt DBA Financial Planning Associates  
25 (Respondent) filed form ADV, an application to register as an investment advisor, through the  
26 Investment Advisor Registration Depository (IARD) system, under CRD no. 292347. Respondent's  
27 application was filed by and through Daniel Irvin McCourt (McCourt), the sole proprietor, owner and  
28 Investment Advisor Representative of Respondent.

1           2.       An individual review of McCourt revealed numerous prior disclosures, including a  
2 prior regulatory action by the Financial Industry Regulatory Authority (FINRA)<sup>1</sup>, in which McCourt  
3 entered into an Order Accepting Offer of Settlement with FINRA on January 20, 2015. The Order  
4 Accepting Offer of Settlement found that McCourt, while registered with a FINRA member firm,  
5 violated FINRA rules by participating in private securities transactions without providing prior  
6 written notice to his member firm and by providing false and falsified documents to a mortgage  
7 company on behalf of one of his clients.

8           3.       Specifically, the Order Accepting Offer of Settlement states that between the years  
9 2005 and 2009, while employed by a FINRA-registered firm, McCourt accepted investments from  
10 investors, including his registered firm’s customers, in his personal coffee business. The investments  
11 were in the form of long-term promissory notes in the amount of at least \$1,294,610.10, of which  
12 approximately \$1,102,032.18 consisted of funds from his firm’s customers. Prior to conducting these  
13 private securities transactions, McCourt did not provide written notice to his firm of the investments,  
14 nor did he provide written notice of his proposed role in, or the compensation that he would receive  
15 from, the private securities transactions, as he was required to under FINRA Rules. As a result,  
16 McCourt violated NASD Conduct Rules 3040 and 2110 and FINRA Rule 2010.

17           4.       In addition, the Order Accepting Offer of Settlement states that one of McCourt’s  
18 customers at McCourt’s registered firm, who had also invested in McCourt’s private coffee business,  
19 was retired and interested in buying a house, but was not employed and did not earn any income  
20 through employment. In or around November 2010, the customer asked McCourt to provide  
21 information to a mortgage loan company falsely stating that the customer was employed by McCourt  
22 when, in fact, the customer never worked for McCourt. On or about November 14, 2010, McCourt  
23 filled out and signed a “Request for Verification of Employment” form, which McCourt then sent by  
24 facsimile, to the mortgage loan company, falsely stating that the customer was a full-time employee  
25 working 40 hours a week for McCourt as an analyst assistant; that the customer earned \$35,000.00 in  
26 2008, \$41,000.00 in 2009, and \$36,166.67 as of October 31, 2010; and that the customer’s

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28 <sup>1</sup> FINRA is a self-regulatory organization that succeeded the National Association of Securities Dealers, Inc. (NASD) in 2007, overseeing brokerage firms and registered securities representatives.

1 probability of continued employment with McCourt was “good.” By falsely representing these facts,  
2 McCourt violated FINRA Rule 2010.

3 5. As a disciplinary sanction by FINRA for the violations set forth in the Order  
4 Accepting Offer of Settlement, McCourt agreed to: (1) a two-year suspension from association with  
5 all FINRA member firms in all capacities; and (2) pay a fine of \$50,000.00.

6 6. On August 27, 2018, the Commissioner initiated an administrative action to deny  
7 Respondent’s application for an investment advisor certificate by issuing the following against  
8 Respondent: Notice of Intention to Issue Order to Deny Investment Advisor Certificate Application  
9 of Daniel Irvin McCourt DBA Financial Planning Associates; Accusation in Support of Notice of  
10 Intention to Issue Order to Deny Investment Advisor Certificate Application of Daniel Irvin McCourt  
11 DBA Financial Planning Associates; Statement to Respondent; and a blank form Notice of Defense.

12 7. On September 7, 2018, the Commissioner’s agent personally served the above  
13 pleadings on Daniel Irvin McCourt. The Commissioner did not receive a request for a hearing from  
14 Respondent on this matter, and the time period in which to request a hearing has elapsed.

15 8. Corporations Code section 25232 provides in relevant part that the Commissioner  
16 may, after appropriate notice and opportunity for hearing, deny a certificate to an investment advisor  
17 if the Commissioner finds that the denial is in the public interest and that the investment adviser is or  
18 has been subject to “...any order of any national securities association...suspending or expelling him  
19 or her from membership in that association...” (Corp. Code, § 25232(d)); or alternatively, is or has  
20 been subject to “any other order of the commission or any administrator, association, or exchange  
21 referred to in this subdivision which is or has been necessary for the protection of any investor.”  
22 (Corp. Code, § 25232(e).)

23 9. Based on the FINRA Order Accepting Offer of Settlement and Corporations Code  
24 section 25232, subdivisions (d) and (e), the Commissioner finds that it is in the public interest to deny  
25 Respondent’s application for an investment advisor certificate because Daniel Irvin McCourt, the sole  
26 owner and control person of Respondent, violated the NASD and FINRA Rules as referenced in the  
27 Order Accepting Offer of Settlement and was sanctioned with a two-year suspension and \$50,000.00  
28 fine.

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GOOD CAUSE APPEARING THEREFORE, IT IS ORDERED that the investment advisor application of Respondent be denied pursuant to Corporations Code section 25232, subdivisions (d) and (e). This order is effective as of the date hereof.

Dated: November 1, 2018

JAN LYNN OWEN  
Commissioner of Business Oversight

By \_\_\_\_\_  
MARY ANN SMITH  
Deputy Commissioner  
Enforcement Division