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

12 In the Matter of:

CRD NO.: 135185

13 THE COMMISSIONER OF BUSINESS
14 OVERSIGHT,

SETTLEMENT AGREEMENT

15 Complainant,

16 v.

17 JONATHAN PITTS CARROLL, doing
18 business as CARROLL & COMPANY
19 CAPITAL MANAGEMENT,

20 Respondent.

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22 This Settlement Agreement is entered into between the Commissioner of Business Oversight
23 (Commissioner) of the Department of Business Oversight and Jonathan Pitts Carroll (Carroll), doing
24 business as Carroll & Company Capital Management (Carroll & Company Capital Management),
25 and is made with respect to the following facts:

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I.
RECITALS

A. The Commissioner has jurisdiction over the licensing and regulation of persons engaged in the business of investment advising under the Corporate Securities Law of 1968 (Corp. Code, § 25000 et seq.).

B. Carroll was issued an investment adviser certificate by the Commissioner on June 1, 1990, pursuant to Corporations Code section 25230. Carroll & Company Capital Management is an investment adviser business located at 801 Travis Street, Suite 2100 B, Houston, Texas 77002. Carroll & Company Capital Management is a sole proprietorship.

C. Corporations Code section 25241 requires every investment adviser licensed by the Commissioner to maintain books and records, file reports with the Commissioner, and submit to examination by the Commissioner, as the Commissioner deems necessary or appropriate in the public interest or for the protection of investors.

D. On or about March 14, 2018, the Commissioner notified Carroll that Carroll must designate an email address to receive an online examination form. In response to the Commissioner’s notification, Carroll designated an email address to receive the online examination form.

E. On or about October 2, 2018, the Commissioner sent the online examination to Carroll to the email address designated by Carroll. The Commissioner informed Carroll that the online examination must be completed and submitted by November 16, 2018.

F. The Commissioner sent four notices, October 15, 2018, October 29, 2018, November 5, 2018, and November 12, 2018, reminding Carroll of the November 16, 2018 deadline to complete and submit the online examination.

G. Despite the Commissioner’s efforts, Carroll failed to timely complete and submit the online examination by the November 16, 2018 deadline.

H. Thus, on March 25, 2019, the Commissioner issued an order summarily revoking Carroll’s investment adviser certificate (Order Summarily Revoking).

I. Carroll timely requested a hearing on the Order Summarily Revoking.

1 J. On April 22, 2019, Carroll submitted the online examination.

2 K. The Commissioner finds that entering into this Settlement Agreement is necessary, in
3 the public interest, for the protection of investors and consistent with the purposes, policies, and
4 provisions of the Corporate Securities Law of 1968.

5 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set
6 forth herein, the parties agree as follows:

7 **II.**

8 **TERMS AND CONDITIONS**

9 1. Purpose. The parties intend to resolve this matter for the purpose of judicial economy
10 and expediency and without the uncertainty and expense of a hearing or other litigation.

11 2. Waiver of Hearing Rights. Carroll hereby withdraws his request for an administrative
12 hearing on the Order Summarily Revoking. Carroll acknowledges his right under the Corporate
13 Securities Law of 1968 to an administrative hearing on the Order Summarily Revoking and hereby
14 waives such right to a hearing and to any reconsideration, appeal, injunction or other review that
15 may be afforded under the Corporations Code; Administrative Procedure Act, including Government
16 Code section 11415.60, subdivision (b); Code of Civil Procedure; or any other provision of law. By
17 waiving such rights, Carroll effectively consents to the finality of the Order Summarily Revoking.

18 3. Rescinding of Order Summarily Revoking. The Commissioner hereby rescinds the
19 Order Summarily Revoking issued on March 25, 2019.

20 4. Administrative Penalty. Carroll shall pay an administrative penalty of \$2,500.00 no
21 later than 30 days after the effective date of this Settlement Agreement as defined in paragraph 18.
22 The penalty must be made payable in the form of a cashier's check or Automated Clearing House
23 deposit to the Department of Business Oversight and transmitted to the attention of Accounting –
24 Litigation, at the Department of Business Oversight, 1515 K Street, Suite 200, Sacramento,
25 California 95814. Notice of the payment must be concurrently sent to: Samuel J. Park, Counsel,
26 Department of Business Oversight, 320 West 4th Street, Suite 750, Los Angeles, California 90013.

27 5. Failure to Pay Administrative Penalty. If Carroll fails to comply with paragraph 4, the
28 Commissioner may summarily suspend Carroll from engaging in business under his investment

1 adviser certificate until it provides evidence of compliance to the Commissioner's satisfaction.
2 Further, if Carroll fails to comply with paragraph 4, Carroll shall pay to the Commissioner an
3 administrative penalty of \$5,000.00. Carroll hereby waives any notice or hearing rights afforded
4 under the Administrative Procedure Act, including Government Code section 11415.60, subdivision
5 (b); Code of Civil Procedure; or any other provision of law to contest the summary suspension and
6 administrative penalty of \$5,000.00 contemplated by this paragraph.

7 6. Full and Final Resolution. Except as stated in paragraph 5, this Settlement Agreement
8 is intended to constitute a full and final resolution of the matter described in it. The Commissioner
9 will not bring any further action or proceeding concerning the matter unless the Commissioner
10 discovers violations by Carroll that do not form the basis for this Settlement Agreement, including
11 violations knowingly concealed from the Commissioner.

12 7. Commissioner's Duties. Nothing in this Settlement Agreement limits the
13 Commissioner's ability to assist any other government agency with any action brought by that
14 agency against Carroll, including an action based on any of the acts, omissions, or events described
15 in this Settlement Agreement.

16 8. Independent Legal Advice. Each of the parties represents, warrants, and agrees that it
17 has had an opportunity to seek independent advice from its attorney(s) and/or representatives with
18 respect to the advisability of executing this Settlement Agreement.

19 9. Reliance. Each of the parties represents, warrants, and agrees that in executing this
20 Settlement Agreement it has relied solely on the statement set forth herein and has had the
21 opportunity to seek the legal advice of its own counsel. Each of the parties further represents,
22 warrants, and agrees that in executing this Settlement Agreement it has placed no reliance on any
23 statement, representation, or promise of any other party, or any other person or entity not expressly
24 set forth herein, or upon the failure of any party or any other person or entity to make any statement,
25 representation, or disclosure of anything whatsoever. The parties have included this clause: (1) to
26 preclude any claim that any party was in any way fraudulently induced to execute this Settlement
27 Agreement; and (2) to preclude the introduction of parol evidence to vary, interpret, supplement, or
28 contradict the terms of this Settlement Agreement.

1 10. Full Integration. This Settlement Agreement is the final written expression and the
2 complete and exclusive statement of all the agreements, conditions, promises, representations, and
3 covenants between the parties with respect to the subject matter hereof, and supersedes all prior or
4 contemporaneous agreements, negotiations, representations, understandings, and discussions
5 between and among the parties, their respective representatives, and any other person or entity, with
6 respect to the subject matter covered hereby. The parties have included this clause to preclude the
7 introduction of parol evidence to vary, interpret, supplement, or contradict the terms of this
8 Settlement Agreement.

9 11. No Presumption Against Drafter. In that the parties have had the opportunity to draft,
10 review, and edit the language of this Settlement Agreement, no presumption for or against any party
11 arising out of drafting all or any part of this Settlement Agreement will be applied in any action
12 relating to, connected to, or involving this Settlement Agreement. Accordingly, the parties waive the
13 benefit of Civil Code section 1654 and any successor or amended statutes, providing that in cases of
14 uncertainty, language of a contract should be interpreted most strongly against the party who caused
15 the uncertainty to exist.

16 12. Voluntary Agreement. Carroll hereby enters in this Settlement Agreement voluntarily
17 and without coercion and acknowledges that no promises, threats, or assurances have been made by
18 the Commissioner or any officer, or agent thereof, about this Settlement Agreement.

19 13. Waiver, Amendments, and Modifications. No waiver, amendment, or modification of
20 this Settlement Agreement will be valid or binding unless it is in writing and signed by all parties
21 affected by it. Waiver of a provision of this Settlement Agreement will not be deemed a waiver of
22 any other provision.

23 14. Counterparts. The parties agree that this Settlement Agreement may be executed in
24 one or more separate counterparts, each of which when so executed, shall be deemed an original. A
25 fax or electronic mail signature shall be deemed the same as an original signature. Such counterparts
26 shall together constitute and be one and the same instrument.

27 15. Public Record. Carroll acknowledges that the Settlement Agreement is public record.
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16. Headings. The headings to the paragraphs of this Settlement Agreement are inserted for convenience only and will not be deemed a part hereof or affect the construction or interpretation of the provisions hereof.

17. Governing Law. This Settlement Agreement shall be construed and enforced in accordance with and governed by California law.

18. Effective Date. This Settlement Agreement will become effective on the date it is signed by all parties and delivered by the Commissioner to Carroll by electronic mail at ginacarroll21@gmail.com.

19. Settlement Authority. Each party represents that the person signing this Settlement Agreement on its behalf has the authority and capacity to do so.

Dated: 4/26/19

JAN LYNN OWEN
Commissioner of Business Oversight

By _____
MARY ANN SMITH
Enforcement Division
Department of Business Oversight

Dated: 4/26/19

By _____
JONATHAN PITTS CARROLL