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9
10 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT

11 OF THE STATE OF CALIFORNIA

12 In the Matter of:

CRD NO.: 128757

13 THE COMMISSIONER OF BUSINESS
14 OVERSIGHT,

CONSENT ORDER

15 Complainant,

16 v.

17 CLASSIC FINANCIAL & INVESTMENT
18 SERVICES, INC., an entity,

19 Respondent.
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21 This Consent Order is entered into between the Commissioner of Business Oversight
22 (Commissioner) of the Department of Business Oversight and Classic Financial & Investment
23 Services, Inc. (Classic Financial) and is made with respect to the following facts:

24 **I.**

25 **RECITALS**

26 A. The Commissioner has jurisdiction over the licensing and regulation of persons
27 engaged in the business of investment advising under the Corporate Securities Law of 1968
28 (Corporations Code section 25000 et seq.).

1 B. Classic Financial holds a valid and unrevoked investment adviser certificate issued by
2 the Commissioner on April 24, 2002, pursuant to Corporations Code section 25230. Classic
3 Financial is an investment adviser business located at 6825 Paiute Avenue, Niwot, Colorado 80503.
4 Classic Financial is a Delaware corporation organized on December 14, 2004.

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

9 D. On or about March 14, 2018, the Commissioner notified Classic Financial that
10 Classic Financial must designate an email address to receive an online examination form. In
11 response to the Commissioner's notification, Classic Financial designated an email address to
12 receive the online examination form.

13 E. On or about October 1, 2018, the Commissioner sent the online examination to
14 Classic Financial to the email address designated by Classic Financial. The Commissioner informed
15 Classic Financial that the online examination must be completed and submitted by November 16,
16 2018.

17 F. The Commissioner sent five notices, October 14, 2018, October 26, 2018, November
18 4, 2018, November 12, 2018, and December 5, 2018 reminding Classic Financial of the November
19 16, 2018 deadline to complete and submit the online examination.

20 G. Despite the Commissioner's efforts, Classic Financial failed to timely complete and
21 submit the online examination by the November 16, 2018 deadline.

22 H. On December 14, 2018, Classic Financial submitted its online examination.

23 I. The Commissioner finds that entering into this Consent Order is necessary, in the
24 public interest, for the protection of investors and consistent with the purposes, policies, and
25 provisions of the Corporate Securities Law of 1968.

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

3 **II.**

4 **TERMS AND CONDITIONS**

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

7 2. Waiver of Hearing Rights. Classic Financial acknowledges its right under the
8 Corporate Securities Law of 1968 to an administrative hearing on this Consent Order and hereby
9 waives such right to a hearing and to any reconsideration, appeal, injunction or other review that
10 may be afforded under the Corporations Code; Administrative Procedure Act, including Government
11 Code section 11415.60, subdivision (b); Code of Civil Procedure; or any other provision of law. By
12 waiving such rights, Classic Financial effectively consents to the finality of this Consent Order.

13 3. Administrative Penalty. Classic Financial shall pay an administrative penalty of
14 \$2,500.00 no later than 30 days after the effective date of this Consent Order as defined in paragraph
15 17. The penalty must be made payable in the form of a cashier's check or Automated Clearing
16 House deposit to the Department of Business Oversight and transmitted to the attention of
17 Accounting – Litigation, at the Department of Business Oversight, 1515 K Street, Suite 200,
18 Sacramento, California 95814. Notice of the payment must be concurrently sent to: Marlou de Luna,
19 Senior Counsel, Department of Business Oversight, 320 West 4th Street, Suite 750, Los Angeles,
20 California 90013.

21 4. Failure to Pay Administrative Penalty. If Classic Financial fails to comply with
22 paragraph 3, the Commissioner may summarily suspend it from engaging in business under its
23 investment adviser certificate until it provides evidence of compliance to the Commissioner's
24 satisfaction. Further, if Classic Financial fails to comply with paragraph 3, Classic Financial shall
25 pay to the Commissioner an administrative penalty of \$5,000.00. Classic Financial hereby waives
26 any notice or hearing rights afforded under the Administrative Procedure Act, including Government
27 Code section 11415.60, subdivision (b); Code of Civil Procedure; or any other provision of law to
28 contest the summary suspension and administrative penalty of \$5,000.00 contemplated by this

1 paragraph.

2 5. Full and Final Resolution. Except as stated in paragraph 4, this Consent Order is
3 intended to constitute a full and final resolution of the matter described in it. The Commissioner
4 will not bring any further action or proceeding concerning the matter unless she discovers
5 violations by Classic Financial that do not form the basis for this Consent Order, including violations
6 knowingly concealed from the Commissioner.

7 6. Commissioner's Duties. Nothing in this Consent Order limits the Commissioner's
8 ability to assist any other government agency with any action brought by that agency against
9 Classic Financial, including an action based on any of the acts, omissions, or events described in this
10 Consent Order.

11 7. Independent Legal Advice. Each of the parties represents, warrants, and agrees that it
12 has had an opportunity to seek independent advice from its attorney(s) and/or representatives with
13 respect to the advisability of executing this Consent Order.

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

24 9. Full Integration. This Consent Order is the final written expression and the complete
25 and exclusive statement of all the agreements, conditions, promises, representations, and covenants
26 between the parties with respect to the subject matter hereof, and supersedes all prior or
27 contemporaneous agreements, negotiations, representations, understandings, and discussions
28 between and among the parties, their respective representatives, and any other person or entity, with

1 respect to the subject matter covered hereby. The parties have included this clause to preclude the
2 introduction of parol evidence to vary, interpret, supplement, or contradict the terms of this Consent
3 Order.

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

11 11. Voluntary Agreement. Classic Financial hereby enters in this Consent Order
12 voluntarily and without coercion and acknowledges that no promises, threats, or assurances have
13 been made by the Commissioner or any officer, or agent thereof, about this Consent Order.

14 12. Waiver, Amendments, and Modifications. No waiver, amendment, or modification of
15 this Consent Order will be valid or binding unless it is in writing and signed by all parties
16 affected by it. Waiver of a provision of this Consent Order Agreement will not be deemed a waiver
17 of any other provision.

18 13. Counterparts. The parties agree that this Consent Order may be executed in one or
19 more separate counterparts, each of which when so executed, shall be deemed an original. A fax or
20 electronic mail signature shall be deemed the same as an original signature. Such counterparts shall
21 together constitute and be one and the same instrument.

22 14. Public Record. Classic Financial acknowledges that the Consent Order is public
23 record.

24 15. Headings. The headings to the paragraphs of this Consent Order are inserted for
25 convenience only and will not be deemed a part hereof or affect the construction or interpretation of
26 the provisions hereof.

27 16. Governing Law. This Consent Order shall be construed and enforced in accordance
28 with and governed by California law.

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17. Effective Date. This Consent Order will become effective on the date it is signed by all parties and delivered by the Commissioner to Classic Financial by electronic mail at dbogovcompliance@gmail.com.

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

Dated: April 16, 2019

JAN LYNN OWEN
Commissioner of Business Oversight

By _____
MARY ANN SMITH
Enforcement Division
Department of Business Oversight

Dated: April 15, 2019

CLASSIC FINANCIAL & INVESTMENT SERVICES, INC.

By _____
JOHN C. HERMAN
President/Chief Compliance Officer