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

12 In the Matter of:

CRD NO.: 166106

13 THE COMMISSIONER OF BUSINESS
14 OVERSIGHT,

15 CONSENT ORDER

16 Complainant,

17 v.

18 OPES CAPITAL GROUP, LLC, 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 Opes Capital Group, LLC (Opes) and
23 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. Opes holds a valid and unrevoked investment adviser certificate issued by the
2 Commissioner on April 5, 2013, pursuant to Corporations Code section 25230. Opes is an
3 investment adviser business located at 9454 Wilshire Boulevard, Suite 803, Beverly Hills, CA
4 90212. Opes is a limited liability company.

5 C. On or about March 9, 2016, the Commissioner’s staff conducting a routine regulatory
6 examination of Opes. During the regulatory examination, the Commissioner’s staff identified the
7 following deficiencies:

8 1. Opes failed to file annual reports, for the years 2016 and 2017, in compliance
9 with generally accepted accounting principles (GAAP);

10 2. Opes failed to maintain the required level of reserves (Minimum Financial
11 Requirement) since November 2015; and

12 3. Opes failed to file the necessary interim reporting with the Commissioner
13 once Opes fell below the Minimum Financial Requirement in November 2015.

14 D. Following the regulatory examination, the Commissioner’s staff requested that Opes
15 address all deficiencies by June 15, 2016. Opes failed to timely respond by the June 15, 2016
16 deadline, which triggered multiple rounds of the Commissioner’s staff sending follow up letters to
17 Opes and Opes producing partial responses to the requests made by the Commissioner’s staff.

18 E. As of February 12, 2019, Opes addressed all deficiencies by: (i) filing annual reports
19 for the years 2016 and 2017, in accordance with GAAP; (ii) meeting the Minimum Financial
20 Requirement; and (iii) filing interim reporting with the Commissioner.

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

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

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II.**TERMS AND CONDITIONS**

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3 1. Purpose. This Consent Order resolves the issues before the Commissioner, findings of
4 the regulatory examination of Opes Capital Group, LL set forth in paragraphs C and D, above, in a
5 manner that avoids the expense of a hearing and other possible court proceedings, protects
6 consumers, is in the public interest, and is consistent with the purposes, policies, and provisions of
7 the Corporate Securities Law of 1968.

8 2. Order to Discontinue Violations. Opes Capital Group, LLC hereby agrees that in
9 accordance with Corporations Code section 25249, it will immediately discontinue the violations set
10 forth below:

11 a. Corporations Code section 25241 and California Code of Regulations, Title
12 10, section 260.241.1, subdivision (a), by failing to file annual reports with the Commissioner in
13 compliance with GAAP;

14 b. Corporations Code section 25237 and California Code of Regulations, Title
15 10, section.237.2, subdivision (a), by failing to maintain the Minimum Financial Requirement; and

16 c. Corporations Code section 25237 and California Code of Regulations, Title
17 10, sections 260.237.2, subdivision (c), and 260.241.2, subdivision (d), by failing to file interim
18 reporting with the Commissioner after failing below the Minimum Financial Requirement.

19 3. Administrative Penalty. Opes Capital Group, LLC shall pay an administrative penalty
20 of \$15,000.00 no later than 90 days after the effective date of this Consent Order as defined in
21 paragraph 21. The penalty must be made payable in the form of a cashier's check or Automated
22 Clearing House deposit to the Department of Business Oversight and transmitted to the attention of
23 Accounting – Litigation, at the Department of Business Oversight, 1515 K Street, Suite 200,
24 Sacramento, California 95814. Notice of the payment must be concurrently sent to Alex M. Calero,
25 Senior Counsel, Department of Business Oversight, 1350 Front Street, Room 2034, San Diego, CA
26 92101.

27 4. Interim Reporting. Opes Capital Group, LLC shall file interim reporting with the
28 Commissioner for 12 consecutive months beginning April 2019 and ending April 2020. The interim

1 reporting shall contain the information specified in California Code of Regulations, Title 10, sections
2 260.237.2, subdivision (c), and 260.241.2, subdivision (d).

3 a. Filing Deadline for Interim Reporting. Opes Capital Group, LLC shall file
4 interim reporting within 15 days after each monthly accounting period.

5 b. Contents of Interim Reporting. Opes Capital Group, LLC shall file interim
6 reporting consisting of a balance sheet, income statement (also known as a profit and loss statement),
7 and computation of the Minimum Financial Requirement under California Code of Regulations,
8 Title 10, section 260.237.2. Opes Capital Group, LLC may use the Minimum Financial
9 Requirements Worksheet (DBO-260.237.2 (Rev. 10-17)) to compute the Minimum Financial
10 Requirement. The interim reporting shall be prepared in accrual basis in accordance with GAAP.

11 c. Verification of Interim Reporting. Each interim report filed by Opes Capital
12 Group, LLC shall have a verification that, to the best knowledge and belief of the person making the
13 verification, the financial statements and supporting schedules are true and correct, and neither the
14 investment adviser nor any partners, officer, or director thereof has any proprietary interest in any
15 account classified solely as that of a customer. The verification shall be made by the duly authorized
16 officer of Opes Capital Group, LLC.

17 5. Waiver of Hearing Rights. Opes Capital Group, LLC acknowledges the
18 Commissioner is ready, willing, and able to proceed with the filing of an administrative enforcement
19 action on the charges contained in this Consent Order. Opes Capital Group, LLC hereby waives the
20 right to any hearings, and to any reconsideration, appeal, or other right to review which may be
21 afforded pursuant to the Corporate Securities Law of 1968, the California Administrative Procedure
22 Act, the California Code of Civil Procedure, or any other provision of law. Opes Capital Group, LLC
23 further expressly waives any requirement for the filing of an Accusation pursuant to Government
24 Code section 11415.60, subdivision (b). By waiving such rights, Opes Capital Group, LLC
25 effectively consents to this Consent Order and Order to Discontinue becoming final.

26 6. Full and Final Resolution. The Parties hereby acknowledge and agree that this
27 Consent Order is intended to constitute a full, final, and complete resolution of the violations
28 described herein, and that no further proceedings or actions will be brought by the Commissioner in

1 connection with these matters except under the Corporate Securities Law of 1968 or any other
2 provision of law, excepting therefrom any proceeding to enforce compliance with the terms of this
3 Consent Order.

4 7. Failure to Comply with Consent Order. Opes Capital Group, LLC agrees that if it
5 fails to comply with the terms of this Consent Order, the Commissioner may, in addition to all other
6 available remedies it may invoke under the Corporate Securities Law of 1968, summarily suspend
7 the investment adviser certificate of Opes Capital Group, LLC until Opes Capital Group, LLC is in
8 compliance. Opes Capital Group, LLC waives any notice and hearing rights to contest such
9 summary suspensions which may be afforded under the Corporate Securities Law of 1968, the
10 California Administrative Procedure Act, the California Code of Civil Procedure, or any other
11 provision of law in connection therewith.

12 8. Information Willfully Withheld. This Consent Order may be revoked and the
13 Commissioner may pursue any and all remedies available under law against Opes Capital Group,
14 LLC if the Commissioner discovers that Opes Capital Group, LLC knowingly or willfully withheld
15 information used for and relied upon in this Consent Order.

16 9. Future Actions by Commissioner. If Opes Capital Group, LLC fails to comply with
17 any terms of the Consent Order, the Commissioner may institute proceedings for any and all
18 violations otherwise resolved under this Consent Order. The Commissioner reserves the right to
19 bring any future actions against Opes Capital Group, LLC, or any of its partners, owners, officers,
20 shareholders, directors, employees or successors for any and all unknown violations of the Corporate
21 Securities Law of 1968.

22 10. Assisting Other Agencies. Nothing in this Consent Order limits the Commissioner's
23 ability to assist any other government agency (city, county, state, or federal) with any prosecution,
24 administrative, civil or criminal brought by that agency against Opes Capital Group, LLC or any
25 other person based upon any of the activities alleged in this matter or otherwise.

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

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

11 13. Full Integration. This Consent Order is the final written expression and the complete
12 and exclusive statement of all the agreements, conditions, promises, representations, and covenants
13 between the parties with respect to the subject matter hereof, and supersedes all prior or
14 contemporaneous agreements, negotiations, representations, understandings, and discussions
15 between and among the parties, their respective representatives, and any other person or entity, with
16 respect to the subject matter covered hereby. The parties have included this clause to preclude the
17 introduction of parol evidence to vary, interpret, supplement, or contradict the terms of this Consent
18 Order.

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

26 15. Voluntary Agreement. Opes Capital Group, LLC hereby enters in this Consent Order
27 voluntarily and without coercion and acknowledges that no promises, threats, or assurances have
28 been made by the Commissioner or any officer, or agent thereof, about this Consent Order.

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

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

9 18. Public Record. Opes Capital Group, LLC acknowledges that the Consent Order is
10 public record.

11 19. Headings. The headings to the paragraphs of this Consent Order are inserted for
12 convenience only and will not be deemed a part hereof or affect the construction or interpretation of
13 the provisions hereof.

14 20. Governing Law. This Consent Order shall be construed and enforced in accordance
15 with and governed by California law.

16 21. Effective Date. This Consent Order will become effective on the date it is
17 signed by all parties and delivered by the Commissioner to Opes Capital Group, LLC by electronic
18 mail at michael@opescapitalgroup.com.

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

21 Dated: May 21, 2019

MANUEL P. ALVAREZ
Commissioner of Business Oversight

22 By _____
23 MARY ANN SMITH
24 Enforcement Division
25 Department of Business Oversight

26 Dated: May 21, 2019

Opes Capital Group, LLC

27 By _____
28 Michael Farhat
Managing Member