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

13 In the Matter of:
14 THE COMMISSIONER OF BUSINESS
15 OVERSIGHT,
16 Complainant,
17 v.
18 PHUONG, DAI, LAM doing business as
19 FORTPOINT INVESTMENT
20 MANAGEMENT, an entity,
21 Respondent.

CRD NO.: 146572

STATEMENT IN OF ISSUES IN SUPPORT
OF ORDER LEVYING ADMINISTRATIVE
PENALTIES

(CORP. CODE SECTION 25252)

22 Jan Lynn Owen, Commissioner of Business Oversight (Commissioner) of the Department of
23 Business Oversight (DBO) finds that:

- 24 1. Phuong, Dai, Lam doing business as Fortpoint Investment Management (Fortpoint
25 Investment) holds a valid and unrevoked investment adviser certificate issued by the Commissioner
26 on April 10, 2008, pursuant to Corporations Code section 25230. Fortpoint Investment is an
27 investment adviser business located at 227 Bellevue Way NE, Suite #215, Bellevue, Washington
28 98004.

1 2. On or about March 14, 2018 and March 22, 2018, the Commissioner notified Fortpoint
2 Investment that Fortpoint Investment must designate an email address to receive an online
3 examination form. In response to the Commissioner’s notification, Fortpoint Investment designated
4 an email address to receive the online examination form.

5 3. On or about October 2, 2018, the Commissioner sent the online examination to
6 Fortpoint Investment to the email address designated by Fortpoint Investment. The Commissioner
7 informed Fortpoint Investment that the online examination must be completed and submitted by
8 November 16, 2018.

9 4. The Commissioner sent Fortpoint Investment five emails, dated October 14, 2018,
10 October 29, 2018, November 4, 2018, November 12, 2018, and December 5, 2018, to Fortpoint
11 Investment’s designated email address, reminding Fortpoint Investment of the November 16, 2018
12 deadline to complete and submit the online examination.

13 5. Despite the Commissioner’s efforts, Fortpoint Investment failed to timely complete and
14 submit the online examination by the November 16, 2018 deadline.

15 6. Corporations Code section 25241 requires every investment adviser licensed by the
16 Commissioner to maintain books and records, file reports with the Commissioner, and submit to
17 examination by the Commissioner, as the Commissioner deems necessary or appropriate in the
18 public interest or for the protection of investors. In relevant part, section 25241, states:

19 (a) Every broker-dealer and every investment adviser licensed under Section 25230
20 shall make and keep accounts, correspondence, memorandums, papers, books, and
21 other records and shall file financial and other reports as the commissioner by rule
22 requires, subject to the limitations of Section 15(h) of the Securities Exchange Act
23 of 1934 with respect to broker-dealers and Section 222 of the Investment Advisers
24 Act of 1940 with respect to investment advisers.

25 (b) All records so required shall be preserved for the time specified in the rule.

26 (c) All records referred to in this section are subject at any time and from time to
27 time to reasonable periodic, special, or other examinations by the commissioner,
28 within or without this state, as the commissioner deems necessary or appropriate in
the public interest or for the protection of investors.

(Corp. Code, § 25241, subd. (a) – (c).)

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1 7. Corporations Code section 25252 authorizes the Commissioner to issue an order
2 levying administrative penalties against any investment adviser for willful violations of any
3 provision of the Corporate Securities Law of 1968 (Corporations Code section 25000 et seq.),
4 including section 25241. In relevant part, section 25252, states:

5 The Commissioner may, after appropriate notice and opportunity for hearing, by
6 orders, levy administrative penalties as follows:

7 ...
8 (b) Any broker-dealer or investment adviser that willfully violates any provision of
9 this division to which it is subject, or that willfully violates any rule or order
10 adopted or issued pursuant to this division and to which it is subject, is liable for
administrative penalties of not more than five thousand dollars (\$5,000) for the first
violation, not more than ten thousand dollars (\$10,000) for the second violation, and
not more than fifteen thousand dollars (\$15,000) for each subsequent violation.

11 (Corp. Code, § 25252, subd. (b).)

12 8. By reason of the foregoing, Fortpoint Investment has willfully violated Corporations
13 Code section 25241, justifying the imposition of administrative penalties. Fortpoint Investment, as a
14 licensed investment adviser, was obligated to have knowledge of, and to comply with, the provisions
15 of the Corporate Securities Law of 1968, including section 25241. Fortpoint Investment willfully
16 failed to maintain books and records, file a report with the Commissioner, and submit to examination
17 by the Commissioner, as the Commissioner deems necessary or appropriate in the public interest or
18 for the protection of investors.

19 9. Therefore, pursuant to Corporations Code section 25252, the Commissioner seeks
20 administrative penalties for Phuong, Dai, Lam doing business as Fortpoint Investment
21 Management’s failure to comply with section 25241.

22 Therefore, and with good cause appearing, and pursuant to Corporations Code section 25252,
23 the Commissioner of Business Oversight prays for an order levying administrative penalties in the

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total amount of \$5,000.00, for violation of section 25241.

Dated: April 18, 2019

JAN LYNN OWEN
Commissioner of Business Oversight

By: _____
Marlou de Luna
Senior Counsel
Enforcement Division