



1 Commissioner (CRD No. 139923), pursuant to the Corporate Securities Law of 1968 (CSL) as set  
2 forth in Corporations Code section 25000 et seq., and accompanying regulations in California Code of  
3 Regulations, title 10, section 260.000 et seq.<sup>1</sup>

4 3. Highland has its principal place of business located at 1875 Century Park East, Suite 700, Los  
5 Angeles, California 90067.

6 4. John McPhail (McPhail) is, and was at all times relevant, herein, the owner and chief executive  
7 officer of Highland, licensed as an investment adviser representative (CRD No. 2592183).

8 5. The Commissioner is authorized to administer and enforce the provisions of the CSL and rules  
9 adopted thereunder.

10 **II.**

11 **LEGAL BASIS TO BAR MCPHAIL**

12 6. Corporations Code section 25232.1 provides, in pertinent part:

13 *The commissioner may, after appropriate notice and opportunity for*  
14 *hearing, by order censure, or suspend for a period not exceeding 12 months,*  
15 *or bar from any position of employment, management or control of any*  
16 *investment adviser, broker-dealer or commodity adviser, any officer,*  
17 *director, partner, employee of, or person performing similar functions for,*  
18 *an investment adviser, or any other person, if he or she finds that the*  
*censure, suspension or bar is in the public interest and that the person has*  
*committed any act or omission enumerated in subdivision... (e)... of Section*  
*25232.... [Emphasis added.]*

19 Corporations Code section 25232, subdivision (e) provides the following acts or  
20 omissions as grounds for barring any officer or employee of an investment adviser:

21 *Has willfully violated any provision of Title 4 (commencing with section*  
22 *25000 (CSL)...or ...any rule or regulation under...those statutes, or any*  
23 *order of the Commissioner which is or has been necessary for the*  
*protection of any investor. [Emphasis added.]*

24 7. McPhail, as an officer, employee and owner of Highland, willfully violated several provisions  
25 of the CSL, regulations, and orders necessary for the protection of investors, as set forth below.

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27 <sup>1</sup> All further section and rule references are to the California Corporations Code and title  
28 10 of the California Code of Regulations.

1 **III.**

2 **VIOLATIONS OF CSL**

3 8. On February 22, 2016, the Department of Business Oversight (Department) examined the  
4 books and records of Highland. During this examination, the Department found that Highland  
5 maintains custody of client accounts and detected several violations of the CSL and rules adopted  
6 thereunder. The Department communicated its findings to Highland in four regulatory letters dated  
7 March 25, 2016; June 6, 2016; July 5, 2016; and August 25, 2016.

8 **Failing to Submit to a Reasonable Examination**

9 9. Section 25241, subdivision (c), provides that all records of an investment adviser are subject to  
10 reasonable examination by the Commissioner. Highland and McPhail failed to provide information  
11 from books and records during the examination, thereby not submitting to a reasonable examination by  
12 the Commissioner. Despite receiving four separate regulatory letters from the Department, Highland  
13 and McPhail failed to respond to at least seventeen (17) requests in these regulatory letters.

14 10. Moreover, from the date of the Department's first regulatory letter (March 25, 2016) to the date  
15 of the last regulatory letter (August 25, 2016), the Department gave Highland and McPhail at least four  
16 (4) extensions to reply. While extensions of time were given to Highland and McPhail to provide  
17 requested information, they failed to fully comply by submitting only partial information.

18 11. To date, Highland and McPhail failed to respond to the Department's last regulatory letter  
19 dated August 25, 2016. Based on the foregoing, they failed to submit to a reasonable examination of  
20 records in violation of section 25241, subdivision (c).

21 **Failing to Comply With Books and Records Requirements**

22 12. Rule 260.241.3 requires every licensed investment adviser to keep true, accurate and current  
23 books and records. Despite four regulatory letters requesting information from the books and records  
24 of Highland, Highland and McPhail failed to provide the following to the Department:

25 (a) General ledger as required by Rule 260.241.3(a)(2).

26 (b) Account reconciliations for the Charles Schwab account number xxxx2071 and Fidelity  
27 account number xxxx8970 as required by Rule 260.241.3(a)(4).

28 (c) Financial statements and worksheets as required by Rule 260.241.3(a)(6).

- 1 (d) Copies of third-party manager contracts as required by Rule 260.241.3(a)(10).
- 2 (e) Monthly computations of net worth as required by Rule 260.241.3(j).

3 Accordingly, Highland and McPhail violated Rule 260.241.3.

4 **Failing to Comply With Custody Requirements**

5 13. Rule 260.237 provides that it is unlawful and deemed to be a fraudulent, deceptive and  
6 manipulative practice or course of business for a licensed investment adviser to have custody of client  
7 funds, unless the investment adviser complies with certain requirements. Highland and McPhail  
8 engaged in fraudulent, deceptive and manipulative practices, because they failed to provide the  
9 following to the Department:

- 10 (a) Notification of custody on Form ADV as required by Rule 260.237(a)(1).
- 11 (b) Independent verification of client funds and securities as required by Rule  
12 260.237(a)(6).

13 Consequently, Highland and McPhail violated Rule 260.237.

14 **Failing to Comply With Minimum Financial Requirements**

15 14. Rule 260.237.2(a), (c), (d), and (j) require an investment adviser who has custody or  
16 discretionary authority of client funds or securities to maintain a minimum net worth in accordance  
17 with generally accepted accounting principles (GAAP); and to notify the Commissioner when its net  
18 worth is less than the minimum required by rule. Highland and McPhail failed to provide the  
19 following to the Department:

- 20 (a) Financial statements in accordance with GAAP demonstrating a minimum net worth as  
21 required by Rule 260.237.2(a) and (d).
- 22 (b) Notification that the net worth of Highland was less than the minimum required by Rule  
23 260.237.2(c) and (j).

24 For these reasons, Highland and McPhail violated Rule 260.237.2.

25 **Failing to Comply With Reporting Requirements**

26 15. Rule 260.241.2(a) and (d) require every licensed investment adviser subject to Rule 260.237.2  
27 (custody and discretionary authority) to file an annual financial report; to have the financial statements  
28 in the annual report prepared by an independent accountant; and to file interim reports when its net

1 worth fails to meet the minimum required by law. Highland and McPhail failed to provide the  
2 following to the Department:

- 3 (a) Annual reports for the most recent fiscal years as required by Rule 260.241.2(a)(2) and  
4 (4).
- 5 (b) Financial statements audited by an independent accountant as required by Rule  
6 260.241.2(a)(3).
- 7 (c) Interim reports of net worth as required by Rule 260.241.2(d)(2), (3) and (4).

8 For these reasons, Highland and McPhail violated Rule 260.241.2.

9 **Failing to Follow Fair, Equitable and Ethical Principles**

10 16. For purposes of section 25238, Rule 260.238(a), (h) and (n) prohibit an investment adviser  
11 from making investment recommendations without reasonable inquiry concerning a client's  
12 investment objectives, financial situation, needs, and client records; prohibit misrepresenting the nature  
13 of the fees charged to clients; and prohibit investment adviser contracts that are not in writing. During  
14 the examination, Highland and McPhail failed to provide the following to the Department:

- 15 (a) Current and accurate suitability information to determine suitability for clients CS, DP,  
16 HH, J &GF, KB, L&GB, L&DM, MC, N Family Trust, S&RB, SF, and WG, as required by  
17 Rule 260.238(a).
- 18 (b) Evidence showing client fees were paid quarterly in accordance with contracts of clients  
19 D&RP, HH, JF, CS, KB, GB, D&LM, SF, WG, and S&RB, as required by Rule 260.238(h).
- 20 (c) Copies of written advisory contracts for clients DP, SF, and WG as required by Rule  
21 260.238(n).

22 Accordingly, Highland and McPhail violated Rule 260.238.

23 **Failing to Advertise Accurately and Completely**

24 17. Rule 260.235(a)(5), for purposes of section 25235, makes it unlawful to advertise misleading  
25 statements. During the examination, examiners requested revisions to Highland's website so as not to  
26 mislead the public concerning the years of experience held by Highland or its founder McPhail.  
27 Highland and McPhail failed to update the website to clarify that Highland commenced business as a  
28 registered investment adviser in 2007 (not 2005 as implied). Also, Highland and McPhail failed to

1 update the website to clarify that McPhail (rather than Highland) has more than 20 years of investment  
2 experience. As a result, Highland and McPhail violated Rule 260.235(a)(5).

3 **Failing to Comply With Investment Adviser Representative Report Requirements**

4 18. Rule 260.236.1(a)(3) requires an investment adviser representative to update Form U-4 within  
5 30 days of any changes. The Department's examination revealed that Highland and McPhail reported  
6 outside business activities that no longer exist. McPhail failed to update the Form U-4. Thus,  
7 Highland and McPhail violated Rule 260.236.1(a)(3).

8 **Failing to Provide Notice of Changes**

9 19. Rule 260.241.4(a) requires each licensed investment adviser to promptly make changes to an  
10 application. Highland and McPhail failed to update Form ADV Part 1, Item 9.A(1), of Highland's  
11 application to indicate it has custody of client accounts. Therefore, Highland and McPhail violated  
12 Rule 260.241.4(a).

13 **IV.**

14 **VIOLATIONS OF ORDERS**

15 20. On December 6, 2018, the Department served an Order to Discontinue Violations on Highland  
16 and McPhail pursuant to section 25249. Highland and McPhail failed to request a hearing by January  
17 5, 2019, so that order became final and effective. On February 21, 2019, the Department confirmed  
18 that Highland and McPhail continued to violate that Order by not complying with the above-referenced  
19 laws. This Order was necessary for the protection of investors to ensure that Highland and McPhail  
20 were complying with these laws that are designed to guard against mismanagement, misappropriation,  
21 and misrepresentation.

22 21. On December 6, 2019, the Department served a Notice of Intent to Levy Administrative  
23 Penalties of \$270,000.00 pursuant to section 25252. Highland and McPhail failed to request a hearing  
24 by January 5, 2019. On April 11, 12 and 15, 2019, the Department served a final and effective Order  
25 Levying Administrative Penalties of \$270,000.00 on Highland and McPhail, giving them 30 days and  
26 until May 15, 2019 to pay the penalty to the Department. Highland and McPhail failed to pay that  
27 administrative penalty. This Order was necessary for the protection of investors to further ensure that  
28 Highland and McPhail complied with the above-referenced laws which they both continue to violate.

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**V.**

**CONCLUSION**

Based on the foregoing willful violations of the CSL, rules, and orders necessary to protect investors, the Commissioner finds that grounds exist, and that it is in the public interest, to enter an order barring John McPhail (CRD No. 2592183) from any position of employment, management or control of any investment adviser, broker-dealer or commodity adviser pursuant to section 25232.1. The Commissioner hereby notifies John McPhail of his intention to make such order final.

**PRAYER**

**WHEREFORE**, good cause showing, the Commissioner prays for an order barring John McPhail (CRD No. 2592183) from any position of employment, management or control of any investment adviser, broker-dealer or commodity adviser pursuant to section 25232.1.

Dated: June 3, 2019  
Sacramento, CA

MANUEL P. ALVAREZ  
Commissioner of Business Oversight

By \_\_\_\_\_  
TIMOTHY L. Le BAS  
Senior Counsel  
Enforcement Division