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

12 In the Matter of: ) CRD Nos.: 2650202 and 166122  
13 THE COMMISSIONER OF BUSINESS )  
14 OVERSIGHT, ) CONSENT ORDER  
15 Complainant, )  
16 v. )  
17 HALLAWELL FINANCIAL GROUP LLC, and )  
18 MARILYN LOUISE YAMANAKA, )  
19 Respondents. )  
20 )

21 The Commissioner of Business Oversight (Commissioner) and Hallawell Financial Group  
22 LLC (Hallawell) and Marilyn Louise Yamanaka (Yamanaka), (collectively, the Parties), enter into  
23 this Consent Order with respect to the following facts:

24 RECITALS

25 A. The Commissioner is authorized to administer and enforce the provisions of the Corporate  
26 Securities Law of 1968 (Corp. Code, § 25000 et seq.) (CSL) and the regulations promulgated  
27 thereunder at title 10 of the California Code of Regulations, which include the licensure,  
28 examination, and regulation of investment advisers.

1 B. Hallawell is a California limited liability company, with its principal office located at 4221  
2 North Fresno Street, Fresno, California 93726. Hallawell currently holds a valid investment adviser  
3 certificate issued by the Commissioner pursuant to Corporations Code section 25230 (CRD No.  
4 166122).

5 D. At all relevant times, Yamanaka (CRD No. 2650202) was the sole owner and control person  
6 of Hallawell and is registered with the Department of Business Oversight (Department) as an  
7 Investment Adviser Representative of Hallawell.

8 E. On August 16, 2017, the Department commenced a routine regulatory examination of  
9 Hallawell (Examination). The Examination revealed that Hallawell and Yamanaka violated the CSL  
10 and the rules and regulations promulgated thereunder.

11 F. First, the Examination revealed that Hallawell and Yamanaka violated Corporations Code  
12 section 25230 by providing investment advisory services to clients prior to Hallawell's registration  
13 with the Department on January 16, 2013.

14 G. The Examination also revealed that Hallawell had custody of client funds. As a result, pursuant  
15 to Corporation Code section 25237 and California Code of Regulations, title 10, section 260.237.2,  
16 subdivision (a), Hallawell was subject to a minimum net worth requirement of \$35,000.00. The  
17 Commissioner's Examiner calculated Hallawell's net worth monthly from May 2016 through July  
18 2017. During this period, Hallawell never met its minimum net worth requirements.

19 H. Hallawell not only failed to meet its minimum net worth requirements consistently, but also  
20 failed to notify the Commissioner of such failure, in violation of Corporation Code sections 25237 and  
21 25241, and California Code of Regulations, title 10, section 260.237.2, subdivision (c), and 260.241.2,  
22 subdivision (d).

23 I. In addition, it is unlawful and deemed to be a fraudulent, deceptive, or manipulative act,  
24 practice or course of business within the meaning of Section 25235 of the Code for an investment  
25 adviser to have custody of client funds or securities unless the investment adviser complies with  
26 certain safekeeping requirements provided in California Code of Regulations, title 10, section  
27 260.237, subdivision (a).  
28

1 J. The Examination revealed that Hallawell failed to comply with the safekeeping requirements  
2 enumerated in Corporation Code section 25237 and California Code of Regulations, title 10, section  
3 260.237, subdivision (a), as follows:

- 4 a. Hallawell did not disclose to the Department that it had custody of client funds.  
5 Instead, Yamanaka filed Form ADV, and answered “no” to the question referring to  
6 whether she had possession of any advisory clients’ cash, bank accounts, or  
7 securities. Consequently, Yamanaka and Hallawell violated section 260.237,  
8 subdivision (a)(1).
- 9 b. Yamanaka and Hallawell also opened accounts on behalf of their advisory clients  
10 without providing the proper written notice to clients, as required by section 260.237,  
11 subdivision (a)(3).
- 12 c. The accounts opened by Yamanaka and Hallawell on behalf of their clients listed the  
13 Hallawell address, so Yamanaka regularly received the account statements for her  
14 clients’ accounts. During the Examination, Yamanaka and Hallawell were unable to  
15 show that they had provided account statements, at least quarterly, to each client for  
16 which they maintained funds, identifying the amount of funds and of each security in  
17 the account at the end of the period and setting forth all transactions in the account  
18 during that period including investment advisory fees. Therefore, Yamanaka and  
19 Hallawell did not have a reasonable basis, after due inquiry, for believing that the  
20 qualified custodian sent an account statement, at least quarterly, to each client for  
21 which they maintained funds or securities, identifying the amount of funds and of  
22 each security in the account at the end of the period and setting forth all transactions  
23 in the account during that period including investment advisory fees, in violation of  
24 section 260.237, subdivision (a)(4).
- 25 d. The Examination further revealed that the funds of which Yamanaka and Hallawell  
26 had custody were not verified by actual examination at least once during each  
27 calendar year, by an independent certified public accountant, pursuant to a written  
28 agreement between the investment adviser and the independent certified public

1 accountant, at a time that was chosen by the independent certified public accountant  
2 without prior notice or announcement to the investment adviser and that was irregular  
3 from year to year. As such, Yamanaka and Hallawell violated section 260.237,  
4 subdivision (a)(6).

5 K. Hallawell and Yamanaka admit to the jurisdiction of the Department of Business Oversight  
6 (Department) and it is the intention of the Parties to resolve this matter without the necessity of a  
7 hearing and/or other litigation.

8 NOW, THEREFORE, for good and valuable consideration, and the terms and conditions set  
9 forth herein, the Parties agree as follows:

10 TERMS

11 1. Purpose: This Consent Order resolves the issues before the Commissioner described  
12 above in a manner that avoids the expense of a hearing and other possible court proceedings,  
13 protects consumers, is in the public interest, and is consistent with the purposes and provisions of the  
14 CSL.

15 2. Desist and Refrain Order: Pursuant to Corporations Code section 25532, subdivision (d),  
16 Hallawell and Yamanaka are hereby ordered to desist and refrain (Desist and Refrain Order) from  
17 further violations of the CSL including the following: 1) acting as an investment adviser in the State  
18 of California unless and until they have secured from the Commissioner a certificate authorizing  
19 them to act as an investment adviser, unless exempt; 2) failing to maintain minimum net worth  
20 requirements, in violation of Corporations Code section 25237 and California Code of Regulations,  
21 title 10, section 260.237.2, subdivisions (a), (c), and (d); 3) failing to report minimum net worth  
22 deficiencies to the Commissioner, in violation of Corporations Code section 25241 and California  
23 Code of Regulations, title 10, section 260.241.2, subdivision (d)(2), (3) and (4); and 4) failing to  
24 comply with the safekeeping requirements enumerated in Corporations Code section 25237 and  
25 California Code of Regulations, title 10, section 260.237, subdivision (a)(1), (3), (4), and (6).  
26 Hallawell and Yamanaka agree to desist and refrain from such violations and stipulate to the finality  
27 of the Commissioner's Desist and Refrain Order.  
28

1           3. License Revocation: The Commissioner hereby orders the investment adviser certificate  
2 of Hallawell be revoked pursuant to Corporations Code section 25232 (Revocation Order). The  
3 Commissioner finds that Hallawell has willfully violated the CSL and that such revocation is in the  
4 public interest. Hallawell agrees to this revocation order and stipulates to the finality of this  
5 Revocation Order.

6           4. Bar of Yamanaka: The Commissioner hereby orders that Yamanaka be barred from any  
7 position of employment, management or control of any investment adviser, broker-dealer or  
8 commodity adviser, and officer, director, partner, employee of, or person performing similar  
9 function for, an investment adviser, or any other person, pursuant to Corporations Code section  
10 25232.1 (Bar Order). The Commissioner finds that such bar is in the public interest and that  
11 Yamanaka has committed acts or omissions enumerated in subdivision (e) of section 25232 of the  
12 CSL. Yamanaka agrees to this Bar Order and stipulates to the finality of this Bar Order.

13           5. Waiver of Hearing Rights: Hallawell and Yamanaka acknowledge that the Commissioner  
14 is ready, willing, and able to proceed with the filing of an administrative enforcement action on the  
15 charges contained in this Consent Order. Hallawell and Yamanaka hereby waive the right to any  
16 hearings, and to any reconsideration, appeal, or other right to review which may be afforded  
17 pursuant to the CSL, the California Administrative Procedure Act, the California Code of Civil  
18 Procedure, or any other provision of law. Hallawell and Yamanaka further expressly waive any  
19 requirement for the filing of an Accusation pursuant to Government Code section 11415.60,  
20 subdivision (b). By waiving such rights, Hallawell and Yamanaka effectively consent to this Consent  
21 Order, Desist and Refrain Order, Revocation Order, and Bar Order becoming final.

22           6. Full and Final Settlement: The Parties hereby acknowledge and agree that this Consent  
23 Order is intended to constitute a full, final, and complete resolution of the violations described  
24 herein, and that no further proceedings or actions will be brought by the Commissioner in  
25 connection with these matters except under the CSL or any other provision of law, excepting  
26 therefrom any proceeding to enforce compliance with the terms of this Consent Order.

27           7. Information Willfully Withheld or Misrepresented: This Consent Order may be revoked,  
28 and the Commissioner may pursue any and all remedies available under law against Hallawell and

1 Yamanaka if the Commissioner discovers that Hallawell and Yamanaka knowingly or willfully  
2 withheld or misrepresented information used for and relied upon in this Consent Order.

3 8. Future Actions by the Commissioner: If Hallawell and/or Yamanaka fail to comply with  
4 any terms of the Consent Order, the Commissioner may institute proceedings for any and all  
5 violations otherwise resolved under this Consent Order. The Commissioner reserves the right to  
6 bring any future actions against Hallawell and Yamanaka, or any of its partners, owners, officers,  
7 shareholders, directors, affiliates, employees or successors for any and all unknown violations of the  
8 CSL.

9 9. Assisting Other Agencies: Nothing in this Consent Order limits the Commissioner's  
10 ability to assist any other government agency (whether city, county, state, or federal) with any  
11 administrative, civil or criminal action brought by that agency against Hallawell and Yamanaka or  
12 any other person based upon any of the activities alleged in this matter or otherwise.

13 10. Independent Legal Advice: Each of the Parties represents, warrants, and agrees that it has  
14 received or been advised to seek independent legal advice from its attorneys with respect to the  
15 advisability of executing this Consent Order.

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

19 12. Binding: This Consent Order is binding on all heirs, assigns, and/or successors in interest.

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

1           14. Waiver, Amendments, and Modification: No waiver, amendment, or modification of this  
2 Consent Order will be valid or binding unless it is in writing and signed by each of the Parties. The  
3 waiver of any provision of this Consent Order will not be deemed a waiver of any other provision.  
4 No waiver by either Party of any breach of, or of compliance with, any condition or provision of this  
5 Consent Order by the other Party will be considered a waiver of any other condition or provision or  
6 of the same condition or provision at another time.

7           15. Full Integration: This Consent Order is the final written expression and the complete and  
8 exclusive statement of all the agreements, conditions, promises, representations, and covenant  
9 between the Parties with respect to the subject matter hereof, and supersedes all prior or  
10 contemporaneous agreements, negotiations, representations, understandings, and discussions  
11 between and among the Parties, their respective representatives, and any other person or entity, with  
12 respect to the subject matter covered hereby.

13           16. Governing Law: This Consent Order will be governed by and construed in accordance  
14 with California law. Each of the Parties hereto consents to the jurisdiction of such court, and hereby  
15 irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to  
16 the maintenance of such action or proceeding in such court.

17           17. Counterparts: This Consent Order may be executed in one or more separate counterparts,  
18 each of which when so executed, shall be deemed an original. Such counterparts shall together  
19 constitute a single document.

20           18. Effect Upon Future Proceedings: If Hallawell or Yamanaka apply for any license, permit  
21 or qualification under the Commissioner's current or future jurisdiction, or are the subject of any  
22 future action by the Commissioner to enforce this Consent Order, then the subject matter hereof  
23 shall be admitted for the purpose of such application(s) or enforcement proceedings(s).

24           19. Voluntary Agreement: Hallawell and Yamanaka enter into this Consent Order voluntarily  
25 and without coercion and acknowledge that no promises, threats or assurances have been made by  
26 the Commissioner or any officer, or agent thereof, about this Consent Order. The Parties each  
27 represent and acknowledge that he, she or it is executing this Consent Order completely voluntarily  
28 and without any duress or undue influence of any kind from any source.

1           20. No Presumption Against Drafting Party: Each Party acknowledges that it has had the  
2 opportunity to draft, review, and edit the language of this Consent Order. Accordingly, the Parties  
3 intend that no presumption for or against the drafting Party will apply in construing any part of this  
4 Consent Order. The Parties waive the benefit of Civil Code section 1654 as amended or  
5 corresponding provisions of any successor statute, which provide that in cases of uncertainty,  
6 language of a contract should be interpreted most strongly against the Party that caused the  
7 uncertainty to exist.

8           21. Notice: Any notice required under this Consent Order shall be provided to each Party at  
9 the following addresses:

10 To Hallawell or Yamanaka:

11           Marilyn Louise Yamanaka  
12           Hallawell Financial Group LLC  
13           pomimi1@juno.com

14 To the Commissioner:

15           Trevor J. Carroll, Counsel  
16           Department of Business Oversight  
17           Enforcement Division  
18           1515 K Street, Suite 200  
19           Sacramento, California 95814  
20           trevor.carroll@dbo.ca.gov

21           22. Signatures: A fax or electronic mail signature shall be deemed the same as an original  
22 signature.

23           23. Public Record: Hallawell and Yamanaka hereby acknowledge that this Consent Order  
24 will be a matter of public record.

25           24. Effective Date: This Consent Order shall become final and effective when signed by all  
26 Parties and delivered by the Commissioner’s counsel by email to Hallawell and Yamanaka at  
27 pomimi1@juno.com.

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25. Authority to Sign: Each signatory hereto covenants that he/she possesses all necessary capacity and authority to sign and enter into this Consent Order and undertake the obligations set forth herein.

Dated: October 29, 2019

MANUEL P. ALVAREZ  
Commissioner of Business Oversight

By \_\_\_\_\_  
MARY ANN SMITH  
Deputy Commissioner  
Enforcement Division

Dated: October 18, 2019

By \_\_\_\_\_  
HALLAWELL FINANCIAL GROUP LLC  
and MARILYN LOUISE YAMANAKA, In Her  
Personal Capacity