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10 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT

11 OF THE STATE OF CALIFORNIA

12 In the Matter of:

CRD NO.: 143878

13 THE COMMISSIONER OF BUSINESS
14 OVERSIGHT,

STATEMENT IN SUPPORT OF ORDER TO
DISCONTINUE VIOLATIONS PURSUANT
TO CORPORATIONS CODE SECTOIN 25249
AND COMMISSIONER’S INTENTION TO
MAKE ORDER FINAL

15 Complainant,

16 v.

17 BELA CAPITAL, LLC, an entity,

18 Respondent.

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21 The Commissioner of Business Oversight (Commissioner) of the Department of Business
22 Oversight (Department) alleges and charges as follows:

- 23 1. Bela Capital, LLC held a valid investment adviser certificate issued by the
24 Commissioner on March 13, 2009, pursuant to Corporations Code section 25230 (CRD No.
25 143878). Bela Capital, LLC is an investment adviser business located at 4807 Kingman Boulevard,
26 Des Moines, Iowa 50311.

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2. Financial Code section 331.5 provides, in relevant part, that:

(a)(1) A licensee subject to the commissioner's jurisdiction shall establish and maintain an electronic service address designated for receiving communications and documents that are sent by the commissioner to licensees. This electronic service address shall be provided to the commissioner upon licensure. The electronic service address provided to the commissioner shall not be the electronic service address of any individual employee. A licensee shall have the capacity to receive an attachment that accompanies a message sent to its electronic service address, provided the size of the attachment is reasonable in relation to the technology available at the time the attachment is sent.

(2) Prior to changing the electronic service address most recently provided to the commissioner, the licensee shall notify the commissioner of the change and provide to the commissioner his or her new electronic service address. The commissioner may impose a fine of up to fifty dollars (\$50) per day, not to exceed one thousand dollars (\$1,000) in the aggregate, on a licensee who fails to notify the commissioner before changing his or her electronic service address or fails to provide the commissioner a new electronic service address.

(Fin. Code, § 331.5, subd. (a)(1) and (2).)

3. Corporations Code section 25241 provides, in relevant part, that:

(a) Every . . . investment adviser licensed under Section 25230 shall make and keep accounts, correspondence, memorandums, papers, books, and other records and shall file financial and other reports as the commissioner by rule requires

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

(c) All records referred to in this section are subject at any time and from time to time to reasonable periodic, special, or other examinations by the commissioner, 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, subds. (a), (b), and (c).)

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1 4. California Code of Regulations, title 10, section 260.241.4 provides, in relevant part,
2 that:

3 (a) Each . . . licensed investment adviser shall, upon any change in the
4 information contained in its application for a certificate (other than
5 financial information contained therein) promptly file an amendment
6 to such application setting forth the changed information.

7 . . .
8 (d) A licensed investment adviser shall file changed information
9 contained in its Form ADV with the Investment Adviser Registration
10 Depository (“IARD”) in accordance with its procedures for
11 transmission to the Commissioner.

12 (Cal. Code Reg., tit. 10, § 260.241.4, subds. (a) and (d).)

13 5. IARD guidance requires that investment advisers maintain updated information with
14 IARD, including contact information for receipt of communications from the Commissioner. Any
15 change to the information in Form ADV must be updated “promptly” by filing an amendment to
16 Form ADV. (General Instructions of Form ADV, pages 2 through 4.)

17 6. Bela Capital, LLC violated the Financial Code by failing to maintain an updated
18 electronic service address for receiving communications and documents that are sent by the
19 Commissioner. Further, Bela Capital, LLC failed to notify the Commissioner of a change to its
20 electronic service address and failed to provide the Commissioner with its new electronic service
21 address.

22 7. Also, Bela Capital, LLC failed to maintain updated information in its Form ADV
23 with IARD as required by the Corporations Code and Commissioner’s regulations.

24 8. California Code of Regulations, title 10, section 260.241.4 provides, in relevant part,
25 that:

26 (e) A licensed investment adviser shall file an annual updating
27 amendment, in accordance with the instruction in Form ADV, with
28 IARD in accordance with its procedures for transmission to the
Commissioner within ninety (90) days of the end of the investment
adviser's fiscal year.

(Cal. Code Reg., tit. 10, § 260.241.4, subd. (e).)

9. Bela Capital, LLC’s fiscal year ends in December of each calendar year.

1 10. On or about April 17, 2019, the Commissioner sent a notice to Bela Capital, LLC, at
2 the email address and mailing address designated by Bela Capital, LLC on IARD, advising Bela
3 Capital, LLC to file its annual updating amendment to Form ADV with IARD by April 27, 2019.
4 The Commissioner informed Bela Capital, LLC that failure to file the annual updating amendment to
5 Form ADV will result disciplinary action against Bela Capital, LLC’s investment adviser certificate.

6 11. Despite the Commissioner’s efforts, Bela Capital, LLC failed to file the annual
7 updating amendment to Form ADV by the April 27, 2019 deadline.

8 12. Bela Capital, LLC failed to file an annual updating amendment to Form ADV with
9 IARD from January 2015 to February 2020.

10 13. Corporations Code section 25249 authorizes the Commissioner to issue an order
11 directing any investment adviser to discontinue any violation of the Financial Code, Corporations
12 Code, or any rules promulgated thereunder. Specifically, Corporations Code section 25249 provides,
13 in pertinent part, that:

14 If, after examination or investigation, the commissioner has reasonable
15 grounds to believe that any . . . investment adviser has violated any law
16 or rule binding upon it, the commissioner shall, by written order
17 addressed to the . . . investment adviser, direct the discontinuance of the
18 violation. The order shall be effective immediately, but shall not
19 become final except in accordance with the provisions of Section
20 25251.

21 (Corp. Code, § 25249.)

22 14. Corporations Code section 25251 provides, in relevant part, that:

23 (a) No order issued pursuant to Section 25249 or 25250 may become
24 final except after notice to the affected . . . investment adviser of the
25 commissioner’s intention to make the order final and of the reasons for
26 the finding. The commissioner shall also notify the . . . investment
27 adviser that upon receiving a request the matter shall be set for hearing
28 to commence within 15 business days after receipt of the request. The .
 . . . investment adviser may consent to have the hearing commence at a
 later date. If no hearing is requested within 30 days after the mailing or
 service of the required notice, and none is ordered by the commissioner,
 the order may become final without a hearing and the . . . investment
 adviser shall immediately discontinue the practices named in the order.
 If a hearing is requested or ordered, it shall be held in accordance with
 the provisions of the Administrative Procedure Act (Chapter 5

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(commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), and the commissioner shall have all of the powers granted under that act. If, upon the conclusion of the hearing, it appears to the commissioner that the . . . investment adviser is conducting business in an unsafe and injurious manner or is violating any law of this state, or any rule binding upon it, the commissioner shall make the order of discontinuance final and the . . . investment adviser shall immediately discontinue the practices named in the order.

(b) The . . . investment adviser may within 10 days after an order is made final commence an action to restrain enforcement of that order. If the enforcement of that order is not enjoined within 10 days by the court in which the action is brought, the . . . investment adviser shall comply with the order.

(Corp. Code, § 25251, subs. (a) and (b).)

15. By reason of the foregoing, Bela Capital, LLC violated Financial Code section 331.5, Corporations Code section 25241, and California Code of Regulations, title 10, section 260.241.4, subdivisions (a), (d) and (e), justifying the issuance of an Order to Discontinue Violations. Bela Capital, LLC, as a licensed investment adviser, was obligated to have knowledge of, and to comply with, the provisions of the Financial Code, Corporations Code, and regulations promulgated thereunder.

16. Therefore, pursuant to Corporations Code section 25249, the Commissioner has issued an order directing Bela Capital, LLC to discontinue violating Financial Code section 331.5, Corporations Code section 25241, and California Code of Regulations, title 10, section 260.241.4, subdivisions (a), (d) and (e).

WHEREFORE, good cause showing, and pursuant to Corporations Code section 25251, the Commissioner hereby notifies Bela Capital, LLC of his intention to make final the Order to Discontinue Violations.

Dated: March 2, 2020

MANUEL P. ALVAREZ
Commissioner of Business Oversight

By _____
ALEXANDER M. CALERO
Senior Counsel