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8
9 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
10 OF THE STATE OF CALIFORNIA

11 In the Matter of:) CRD NO. 284406
12 THE COMMISSIONER OF BUSINESS)
13 OVERSIGHT,) STATEMENT IN SUPPORT OF ORDER TO
14 Complainant,) DISCONTINUE VIOLATIONS AND
15 v.) ASSESS PENALTIES PURSUANT TO
16 JEFFREY C. BORNEMAN, an individual; And) CORPORATIONS CODE SECTIONS 25249
17 RAMPART PORTFOLIO PARTNERS, LLC,) AND 25252
18 an entity,)
19 Respondents.)

20 Manuel P. Alvarez, the Commissioner of Business Oversight (Commissioner), alleges and
21 charges:

22 I.

23 **Introduction**

24 1. Rampart Portfolio Partners, LLC (RPP) is an investment adviser licensed by the
25 Commissioner (Central Registration Depository No. 284406)¹ pursuant to the Corporate Securities
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28 ¹ The Central Registration Depository (CRD) is a database maintained by the Financial Industry Regulatory Authority (FINRA) since 2007 for all firms and individuals involved in the U.S. securities industry. It is used to store and maintain information on registered securities and broker firms, as well as individuals who dispense investing and financial advice.

1 Law of 1968 (CSL) as set forth in Corporations Code section 25000 et seq.,² and accompanying
2 regulations in California Code of Regulations, title 10, section 260.000 et seq.

3 2. RPP is a Wyoming limited liability company incorporated on February 7, 2014, with
4 its principal place of business located at 5669 Saturn Street, Los Angeles, California 90019.

5 3. Jeffrey C. Borneman (Borneman) is, and was, at all times herein, the owner and chief
6 executive officer of RPP. Borneman has been licensed by the Commissioner since August 18, 2016,
7 as an investment adviser representative (CRD No. 284406).

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

10 5. The Commissioner brings this action seeking to order RPP and Borneman pursuant to
11 section 25249, to discontinue violations of the CSL, including: (i) failing to properly maintain books
12 and records or submit to a reasonable examination by the Commissioner in violation of section
13 25241 subdivisions (a) and (c), and California Code of Regulations, title 10, section 260.241.3,
14 subdivision (a); and (ii) failing to file an annual updating amendment to information contained in
15 RPP's application for a certificate, in violation of California Code of Regulations, title 10, section
16 260.241.4, subdivisions (a), (d), and (e). The Commissioner further brings this action seeking to
17 assess penalties against RPP and Borneman pursuant to section 25252 subdivision (b) for the
18 violations described herein.

19 II.

20 Statement of Facts

21 6. On or about June 7, 2019, the Commissioner's examiner (Examiner) commenced a
22 routine regulatory desk examination of the books and records of RPP, CRD No. 284406, maintained
23 by the Commissioner, including a "Form ADV — Uniform Application Investment Adviser
24 Registration and Report by Exempt Reporting Advisers," which RPP filed with the Financial
25 Industry Regulatory Authority, Inc. (FINRA) on or about March 3, 2017 (ADV). RPP's ADV
26 indicated RPP had no clients or assets under its management.

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28 ² All further statutory references are to the Corporations Code unless otherwise indicated.

1 7. Further review of records maintained by the Commissioner shows RPP's investment
2 adviser certificate was revoked by the Commissioner on January 31, 2017 because RPP failed to pay
3 its license renewal fees. On March 6, 2017, RPP's investment adviser certificate was reinstated after
4 the fees were paid. In addition, records maintained by FINRA revealed several disciplinary actions
5 filed against Borneman including:

- 6
- 7 (a) On April 3, 1997, a criminal event occurred wherein Borneman was charged with issuing
8 a bad check. Borneman claimed he was "moving from FL to CT. Check issued for work
9 done drawn on closed account in error." The charge was dismissed on January 16, 1998.
- 10 (b) On March 8, 2002, a customer filed a complaint reporting that Borneman conducted a
11 trade without authorization. The client claimed damages totaling \$46,286.52 and the
12 matter settled in the amount of \$37,500.00.
- 13 (c) On July 29, 2002, a customer filed a complaint reporting that Borneman conducted a
14 trade without authorization and gave advise that was unsuitable for the client. The client
15 claimed damages exceeding \$5,000.00. The claim settled for \$7,469.87.
- 16 (d) On January 6, 2015, Cambridge Investment Research, Inc., (CIR) filed a report alleging
17 that Borneman engaged in a private securities transaction with a client without receiving
18 approval from the firm. CIR permitted Borneman to voluntarily resign from the firm
19 following the allegations.
- 20 (e) On April 22, 2016, FINRA initiated a regulatory action against Borneman for engaging in
21 unauthorized private securities sale/trade with a client while working with CIR.
22 Borneman entered into a consent order with FINRA in which Borneman's investment
23 adviser license was suspended for 30 days from 5/2/2016 to 5/31/2016, along with an
24 order to pay a fine of \$5,000.00.

25 8. On June 13, 2019, the Examiner contacted Borneman by telephone at his telephone
26 number on record with the Commissioner, to schedule an appointment for a regulatory field
27 examination of RPP and Borneman's books and records at RPP's principal place of business located
28 at 5669 Saturn Street, Los Angeles, California 90019.

 9. During the Examiner's telephone conversation with Borneman on June 13, 2019,
Borneman represented that he and RPP engaged in investment advisory activities, including the
following:

1 (a) RPP and Borneman retained two clients with a current estimate of \$500,000.00
2 discretionary asset under their management;

3 (b) Clients are billed monthly in arrears for advisory services;

4 (c) RPP and Borneman do not participate or manage any private or hedge fund; and

5 (d) RPP and Borneman use an interactive broker as their custodian.

6 10. The Examiner noted that Borneman's representations during their telephone
7 conversation of June 13, 2019 regarding the scope of their investment advisory activities were
8 inconsistent with the information reported in RPP's ADV, which indicated RPP had no clients or
9 assets under its management. The Examiner's review of the records maintained by FINRA and the
10 Commissioner showed that RPP and Borneman did not file an annual updating Form ADV within 90
11 days of the end of RPP's fiscal year since 2017 as required under California Code of Regulations,
12 title 10, section 260.241.4, subdivisions (a), (d), and (e).

13 11. On June 14, 2019, the Examiner contacted Borneman by telephone to schedule an
14 appointment for a field regulatory examination of RPP's books and records. Borneman confirmed
15 his availability for the regulatory examination on July 15, 2019, and the regulatory examination was
16 scheduled to take place on July 15, 2019, at 11:00 a.m., at RPP's principal place of business located
17 at 5669 Saturn Street, Los Angeles, California 90019.

18 12. On July 1, 2019, the Examiner sent a letter dated June 28, 2019 to Borneman by
19 email, confirming the July 15, 2019 appointment for the regulatory field examination. The
20 Examiner's July 1, 2019 letter demanded that Borneman produce books and records pertaining to
21 RPP in advance of the July 15, 2019 regulatory field examination, including the following:

22 **Financial Books and Records:**

- 23 • Balance Sheet as of May 31, 2019;
- 24 • Income Statement (Profit & Loss) for the period January 1, 2019 to May 31,
25 2019;
- 26 • General Ledger for the period January 1, 2019 to May 31, 2019;
- 27 • Monthly bank statements and reconciliations of all business accounts for the
28 month of May 31, 2019;

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- Monthly brokerage statements and reconciliations of all business accounts for the month of May 31, 2019; and
- Minimum Financial Requirement computations for the month of May 31, 2019.

Advisory Agreements:

- A copy of the most current client agreement for asset management services;
- A copy of the most current client agreement for financial planning services; and
- Copies of all other contract types used for any services not addressed in the first two bullet points, including sub-advisory, third party, solicitor agreements).

Client and Agent Lists:

- Managed account clients, including client name, account number, custodian, account type, date of inception, client address including state, phone number and current account balance as of May 31, 2019; and
- Financial planning clients: name of all clients that have received financial planning services over the last twelve-month period, date of engagement, date plan was completed, and client address information.

Other Advisory Services:

- A list of advisory clients for all additional advisory services not reflected in the previous two bullet points; and
- Firm and personal brokerage accounts: List of all brokerage accounts held in the name of the firm, the firm's personnel, and immediate family members (spouse, children), including account number, custodian, account type and account balance as of: May 31, 2019.

Administration:

- Articles of Incorporation/ Articles of Organization / Certificate of Limited Partnership.

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LLC Operating Agreement I LP Partnership Agreement.

- Most current minutes of the last board meeting;
- Advertising file, including all forms of current advertising used by the firm;
- Correspondence file;
- Complaint file; and
- Business Continuity Plan.

Personnel:

- A form listing all of the firm's personnel along with job descriptions including all advisory duties;
- All officers, directors, owners, members and partners and their ownership percentage;
- All associated persons (any person involved in providing investment advice);
- All solicitors used by the firm;
- All other personnel; and
- All personnel terminated in last 12 months and the reason for termination.

13. On July 9, 2019, the Examiner sent an email to Borneman reminding him of the field regulatory examination scheduled to commence on July 15, 2019, at 11:00 a.m., at RPP’s principal place of business.

14. On July 15, 2019, the Examiner arrived at RPP’s principal place of business to conduct the field examination. Borneman failed to produce all the books and records requested in the Examiner’s July 1, 2019 letter. As a result, the Examiner could not conduct the regulatory field examination. Borneman requested that the July 15, 2019 examination be rescheduled to a later date to enable him to produce all the books and records requested by the Commissioner.

15. On July 16, 2019, the Examiner rescheduled the regulatory examination to July 24, 2019 as Borneman requested and notified Borneman by email of the rescheduled date for the examination. On July 16, 2019, Borneman emailed the Examiner confirming his availability for the field examination on July 24, 2019.

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1 16. On July 23, 2019, the Examiner received an email from Borneman requesting, for the
2 second time, that the field examination scheduled for July 24, 2019, be postponed to July 29, 2019.
3 On July 23, 2019, the Examiner telephoned Borneman at his telephone number to inform him that
4 the examination will be rescheduled to July 29, 2019 as Borneman requested. Borneman did not
5 answer his phone and the Examiner left a message on Borneman’s voicemail notifying him that the
6 examination had been rescheduled to July 29, 2019 pursuant to Borneman’s request.

7 17. On July 24, 2019, the Examiner and his supervisor, Thomas Chan, attempted to
8 contact Borneman by telephone to inform him that the regulatory examination will be performed on
9 July 29, 2019. No one answered the telephone and the Examiner left a voicemail on Borneman’s
10 telephone reiterating that the field regulatory examination will proceed on July 29, 2019 as
11 scheduled. The Examiner emphasized in his telephone voice message and email that he will arrive
12 RPP’s place of business located at 5669 Saturn Street, Los Angeles, California 90019, on July 29,
13 2019 at 8:00 a.m. for the field examination. The Examiner further requested in his voice message
14 that Borneman return the Examiner’s phone call or send an email confirming he will submit to the
15 field examination on July 29, 2019. The Examiner did not receive a response to his phone call or
16 email from Borneman or anyone at RPP.

17 18. On July 29, 2019, the Examiner arrived at RPP’s business location at 5669 Saturn
18 Street, Los Angeles, California 90019, to conduct the field examination but no one answered the
19 door. The Examiner called Borneman at this telephone number and Borneman responded stating
20 that RPP was in the process of shutting down its investment advisory business as such, the field
21 examination was no longer necessary.

22 19. On August 7, 2019, the Examiner sent a final demand letter to Borneman by email
23 demanding that RPP and Borneman produce books and records of RPP by August 16, 2019 for the
24 regulatory field examination at RPP’s principal place of business. The Examiner also sent a copy of
25 his August 7, 2019 letter by certified mail to RPP’s principal place of business and emailed a copy to
26 RPP’s chief compliance officer’s email address listed on IARD.

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1 20. Borneman did not respond to the Examiner's August 7, 2019 letter or produce the
 2 documents demanded by the Commissioner. Because of Borneman's failure to respond to the
 3 Examiner's requests, the Examiner could not proceed with the field examination of RPP.

4 21. To date, RPP and Borneman have failed to submit to a regulatory examination by the
 5 Commissioner or produce documents demanded by the Commissioner in violation of section 25241,
 6 subdivisions (a) and (c), and California Code of Regulations, title 10, section 260.241.3, subdivision
 7 (a).

8 III.

9 Failure to Maintain Books and Records and Submit to an Examination by the Commissioner

10 22. Section 25241, subdivisions (a) and (c) provide in pertinent part:

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

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

22 23. Further, California Code of Regulations, title 10, section 260.241.3, subdivision (a)
 23 requires every licensed investment adviser to keep true, accurate and current books and records.

24 24. As alleged in paragraphs 11 and 21 above, the Commissioner sent demand letters
 25 dated July 1, 2019 and August 7, 2019, to RPP and Borneman requesting that they produce pertinent
 26 books and records of RPP for examination. Despite the Commissioner's demand letters, RPP and
 27 Borneman have failed to provide the documents demanded by the Commissioner. Additionally, on
 28 at least two occasions, the Commissioner granted RPP and Borneman's requests for extensions to
 reply to the Commissioner's demand for books and records. Despite the extensions of time given to

1 RPP and Borneman, they failed to provide the books and records requested by the Commissioner
2 and only submitted partial information.

3 25. To date, RPP and Borneman failed to respond to the Commissioner’s last regulatory
4 letter dated August 7, 2019. Based on the foregoing, the Commissioner alleges that RPP and
5 Borneman failed to properly keep and maintain books and records including, accounts,
6 correspondence, memorandums, papers, books, and other records, in violation of section 25241,
7 subdivision (a), and (c), and California Code of Regulations, title 10, section 260.241.3, subdivision
8 (a).

9 26. Further, as alleged in paragraphs 7-20, during July 14, 2019 to August 7, 2019, the
10 Commissioner has made several attempts through verbal and written communications with
11 Borneman, to schedule a field regulatory examination of the books and records of RPP all to no
12 avail. Moreover, on at least two occasions, the Commissioner granted RPP and Borneman’s
13 requests for extension of time to reply to the Commissioner’s demand to conduct a regulatory field
14 examination of RPP. Despite the extensions given to RPP and Borneman to submit to a regulatory
15 field examination, they failed to comply with the Commissioner’s demand.

16 27. To date, RPP and Borneman have failed to respond to the Department’s last
17 regulatory letter dated August 7, 2019. Based on the foregoing, they failed to submit to a reasonable
18 examination of records in violation of section 25241, subdivision (c).

19 **IV.**

20 **Failure to File a Notice of Change of Information**

21 28. California Code of Regulations, title 10, section 260.241.4 provides in pertinent part:

22 (a) Each licensed broker-dealer and each licensed investment adviser shall, upon any
23 change in the information contained in its application for a certificate (other than financial
24 information contained therein) promptly file an amendment to such application setting forth
the changed information.

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

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

4 29. As described in paragraphs 6, 8, and 9 above, RPP's 2017 ADV revealed it had no
5 clients or assets under its management as of March 3, 2017. However, during the Examiner's
6 telephone conversation with Borneman on June 13, 2019, Borneman stated that he had two clients
7 with \$500,000.00 discretionary asset under its management. A review of FINRA's records relating
8 to RPP shows RPP and Borneman failed to file an annual updating amendment to its ADV with
9 IARD in accordance with its procedures for transmission to the Commissioner within ninety days of
10 the end of RPP's fiscal year since 2017, in violation of California Code of Regulations, title 10,
11 section 260.241.4, subdivisions (a), (d), and (e).

12 **V.**

13 **Authority to Issue Order to Discontinue Violation**

14 30. Corporations Code Section 25249 provides in pertinent part:

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

19 31. The Commissioner finds that, by reason of the foregoing, RPP and Borneman have
20 violated section 25241, subdivisions (a) and (c), and California Code of Regulations, title 10, section
21 260.241.3, subdivision (a), by failing to properly maintain books and records, and submit to a
22 reasonable periodic, special, or other examinations by the Commissioner. Further, RPP and
23 Borneman violated California Code of Regulations, title 10, section 260.241.4 subdivisions (a), (d),
24 and (e) by failing to file an amended ADV with IARD within ninety days of the end of its fiscal
25 year.

26 32. Pursuant to sections 25249, the Commissioner hereby finds it is in the public interest
27 to order Jeffrey C. Borneman and Rampart Portfolio Partners, LLC, to discontinue violating
28 Corporations Code section 25241, subdivision subdivisions (a) and (c); California Code of

1 Regulations, title 14, section 260.241.3, subdivision (a); and California Code of Regulations, title 10,
2 section 260.241.4 subdivisions (a), (d), and (e).

3 WHEREFORE, good cause showing, and pursuant to Corporations Code section 25242
4 subdivision (c), the Commissioner is issuing an Order to Jeffrey C. Borneman and Rampart Portfolio
5 Partners, LLC, to discontinue violating the CSL, including Corporations Code section 25241,
6 subdivision subdivisions (a) and (c); California Code of Regulations, title 10, section 260.241.3,
7 subdivision (a); and California Code of Regulations, title 10, section 260.241.4 subdivisions (a), (d),
8 and (e), and notifying Jeffrey C. Borneman and Rampart Portfolio Partners, LLC of his intention to
9 make the Order final.

10 VI.

11 **Authority to Issue Order Assessing Administrative Penalty**

12 33. Corporations Code Section 25252 provides in pertinent part:

13 The commissioner may, after appropriate notice and opportunity for hearing, by
14 orders, levy administrative penalties as follows:

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

22 WHEREFORE, IT IS PRAYED that:

23 Pursuant to the Corporations Code Section 25252, a penalty be levied against Jeffrey C.
24 Borneman and Rampart Portfolio Partners, LLC, for failing to properly maintain books and records,
25 and submit to a reasonable periodic, special, or other examinations by the Commissioner, in
26 violation of section 25241, subdivisions (a) and (c), and California Code of Regulations, title 10,
27 section 260.241.3, subdivision (a), in an amount of \$5,000.00; and

28 Pursuant to the Corporations Code Section 25252, a penalty be levied against Jeffrey C.
Borneman and Rampart Portfolio Partners, LLC for failing to file an amended ADV with IARD

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within ninety days of the end of its fiscal year, in violation of California Code of Regulations, title 10, section 260.241.4, subdivisions (a), (d), and (e), in an amount of \$10,000.00.

Dated: May 7, 2020
Los Angeles, California

MANUEL P. ALVAREZ
Commissioner of Business Oversight

By _____
UCHE L. ENENWALI
Senior Counsel
Enforcement Division