

MARY ANN SMITH
Deputy Commissioner
SEAN M. ROONEY
Assistant Chief Counsel
AFSANEH EGHBALDARI (State Bar No. 250107)
Counsel
Department of Business Oversight
1350 Front Street, Room 2034
San Diego, California 92101
Telephone: (619) 645-3166
Facsimile: (619) 525-4045

Attorneys for Complainant

BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
OF THE STATE OF CALIFORNIA

In the Matter of:)
THE COMMISSIONER OF BUSINESS)
OVERSIGHT,)
Complainant,)
v.)
DELPHI CAPITAL ADVISORS, LLC,)
DELPHI CAPITAL, LLC, AND)
TIMOTHY MICHAEL BOYD,)
Respondents.)

CONSENT ORDER

This Consent Order is entered into between the Commissioner of Business Oversight (Commissioner) and Delphi Capital Advisors, LLC, Delphi Capital, LLC, and Timothy Michael Boyd (the Respondents) (collectively, the Parties) and is made with respect to the following facts:

I.

Recitals

A. The Commissioner is the head of the Department of Business Oversight (Department) and is responsible for the licensing and regulation of any person engaged in the business of investment advising under the Corporate Securities Law of 1968 (CSL) (Corporations Code section 25000 et seq.).

1 B. Delphi Capital Advisors, LLC was a California limited liability company and had its
2 place of business at 1941 Missouri Street, San Diego, California 92109.

3 C. Delphi Capital, LLC is an entity of unknown origin.

4 D. Timothy Michael Boyd (CRD #3253362) is the managing member and Chief
5 Executive Officer of Delphi Capital Advisors, LLC and Delphi Capital, LLC, and as such, is
6 authorized to enter into this Consent Order on behalf of the Respondents.

7 E. Timothy Michael Boyd was an investment adviser representative (CRD #3253362) in
8 California. Timothy Michael Boyd terminated as an investment adviser representative on February 1,
9 2016.

10 F. The Department discovered that the Respondents engaged in unregistered investment
11 adviser business in California from 2018 through March 2020.

12 G. The Respondents constructed retirement portfolios for at least three clients based on
13 macroeconomic and quantitative models formulated by Timothy Michael Boyd.

14 H. The Respondents received approximately 1% of the clients' assets each quarter. The
15 Respondents received over \$11,441.00 in advisory fees from two of the clients, from December
16 2018 through March 2020.

17 I. Based upon the foregoing, the Commissioner finds that the Respondents conducted
18 business as an investment adviser in this state without first securing from the Commissioner a
19 certificate, authorizing them to do so, in violation of section 25230 of the CSL.

20 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set
21 forth herein, the Parties agree as follows:

22 **II.**

23 **Terms and Conditions**

24 1. Purpose. This Consent Order resolves the issues before the Commissioner set forth
25 in paragraphs A through I, above, in a manner that avoids the expense of a hearing and other
26 possible court proceedings, protects consumers, is in the public interest, and is consistent with the
27 purposes, and provisions of the CSL.

28 2. Final Desist and Refrain Order. Pursuant to Corporations Code section 25532,

1 Delphi Capital Advisors, LLC, Delphi Capital, LLC, and Timothy Michael Boyd are hereby
2 ordered to desist and refrain from acting as an investment adviser in the State of California unless
3 and until they have first applied for and secured from the Commissioner a certificate authorizing
4 them to act as an investment adviser, or unless exempt, in violation of Corporations Code section
5 25230. This desist and refrain order is final and effective from the Effective Date of this Consent
6 Order, as defined in paragraph 24 (Effective Date).

7 3. Penalties. Within 60 days from the Effective Date of this Consent Order, and
8 pursuant to Corporations Code section 25252, Delphi Capital Advisors, LLC, Delphi Capital, LLC,
9 and Timothy Michael Boyd are hereby ordered to pay an administrative penalty in the total amount
10 of \$5,000.00. The penalty payment shall be made in the form of a cashier's check or Automated
11 Clearing House deposit to the "Department of Business Oversight," and transmitted to the attention
12 of: Accounting - Litigation, at the Department of Business Oversight, located at 1515 K Street, Suite
13 200, Sacramento, California 95814. Notice of payment shall be sent concurrently to Afsaneh
14 Eghbaldari, Counsel, Enforcement Division, by email at: affi.eghbaldari@dbo.ca.gov. In the event
15 the payment due date falls on a weekend or holiday, the payment shall be due the next business day.

16 4. Disgorgement. Within 60 days from the Effective Date of this Consent Order, and
17 pursuant to Corporations Code section 25254, Delphi Capital Advisors, LLC, Delphi Capital, LLC,
18 and Timothy Michael Boyd are hereby ordered to disgorge all fees charged to or collected from all
19 clients for unlicensed investment adviser activities, in the amount of at least \$11,441.00. Within 65
20 days from the Effective Date of this Consent Order, Delphi Capital Advisors, LLC, Delphi Capital,
21 LLC, and Timothy Michael Boyd shall submit proof of disgorgement by sending the proof of
22 disgorgement to Afsaneh Eghbaldari, Counsel, Enforcement Division, by email at:
23 affi.eghbaldari@dbo.ca.gov. Proof of disgorgement must include the following for each client: (i)
24 the client's name, (ii) client's address, (iii) amounts and dates of fees charged, (iv) a copy of the fee
25 invoices, (v) amount and date of restitution/d disgorgement payment, and (vi) a copy of the
26 restitution/d disgorgement check paid to the client.

27 5. Waiver of Hearing Rights. The Respondents acknowledge the Commissioner is
28 ready, willing, and able to proceed with the filing of an administrative enforcement action on the

1 charges contained in this Consent Order. The Respondents hereby waive the right to any hearings,
2 and to any reconsideration, appeal, or other right to review which may be afforded pursuant to the
3 CSL, the California Administrative Procedure Act, the California Code of Civil Procedure, or any
4 other provision of law. The Respondents further expressly waive any requirement for the filing of
5 any enforcement action or pleading pursuant to Government Code section 11415.60, subdivision (b).
6 By waiving such rights, the Respondents effectively consent to this Consent Order and the Desist
7 and Refrain Order becoming final.

8 6. Full and Final Settlement. The Parties hereby acknowledge and agree that this
9 Consent Order is intended to constitute a full, final, and complete resolution of the violations and
10 Desist and Refrain Order as identified herein. No further proceedings or actions will be brought by
11 the Commissioner in connection with these matters under the CSL, or any other provision of law,
12 excepting therefrom any proceeding to enforce compliance with the terms of this Consent Order.

13 7. Failure to Comply with Consent Order. The Respondents agree that if they fail to
14 comply with any terms of this Consent Order or the Desist and Refrain Order, the Commissioner
15 may, summarily suspend/revoke any of the Respondents' CSL licenses or certificates and/or deny
16 any pending license or certificate applications of the Respondents and/or their respective affiliates,
17 successors, and assigns, by whatever names they might be known, in addition to all other available
18 remedies it may invoke under the CSL. The Respondents waive any notice and hearing rights to
19 contest such summary suspensions, revocation or denial which may be afforded under the CSL, the
20 California Administrative Procedure Act, the California Code of Civil Procedure, or any other
21 provision of law in connection therewith.

22 8. Information Willfully Withheld. The Consent Order may be revoked and the
23 Commissioner may pursue any and all remedies available under law against the Respondents if the
24 Commissioner discovers that the Respondents knowingly or willfully withheld or misrepresented
25 information used for and relied upon in this Consent Order.

26 9. Future Actions by Commissioner. If the Respondents fail to comply with any terms of
27 the Consent Order or violate the Desist and Refrain Order, they agree that the facts in this Consent
28 Order and Desist and Refrain Order are admitted for the purpose of proving a violation of this

1 Consent Order and Desist and Refrain Order. The Respondents further agree that the Commissioner
2 may institute proceedings for any and all violations otherwise unresolved under this Consent Order.
3 The Commissioner reserves the right to bring any future actions against the Respondents, or any of
4 their partners, owners, officers, shareholders, directors, employees, or successors for any and all
5 unknown violations of the CSL.

6 10. Assisting Other Agencies. Nothing in this Consent Order limits the Commissioner’s
7 ability to assist a government agency (whether city, county, state, or federal) with any
8 administrative, civil or criminal action brought by that agency against the Respondents or any other
9 person based upon any of the activities alleged in this matter or otherwise.

10 11. Independent Legal Advice. Each of the Parties represents, warrants, and agrees that
11 he, she, or it has received independent advice from its attorney(s) or representative(s) with respect to
12 the advisability of executing the Consent Order.

13 12. Headings. The headings to the paragraphs of this Consent Order are inserted for
14 convenience only and will not be deemed a part hereof or affect the construction or interpretation of
15 the provisions hereof.

16 13. Binding. This Consent Order is binding on all heirs, assigns, and/or successors in
17 interest.

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

27 15. Waiver, Amendments, and Modifications. No waiver, amendment, or modification of
28 this Consent Order will be valid or binding unless it is in writing and signed by each of the Parties.

1 The waiver of any provision of this Consent Order will not be deemed a waiver of any other
2 provision. No waiver by either party of any breach of, or of compliance with, any condition or
3 provision of this Consent Order by the other party will be considered a waiver of any other condition
4 or provision or of the same condition or provision at another time.

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

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

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

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

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

27 ///

28 ///

