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8
9 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION
10 OF THE STATE OF CALIFORNIA

11 In the Matter of:) CRD NO.: 136538
12) 1892807
13 THE COMMISSIONER OF FINANCIAL)
14 PROTECTION AND INNOVATION,) STATEMENT IN SUPPORT OF ORDER
15) LEVYING ADMINISTRATIVE PENALTIES
16 Complainant,) PURSUANT TO CORPORATIONS CODE
17) SECTION 25252
18 v.)
19)
20 M2 INVESTMENT ADVISORS, INC.,)
21 An entity,)
22)
23 MICHAEL HUGH WONG,)
24 An individual,)
25)
26 Respondents,
27 _____
28

20 Manuel P. Alvarez (Commissioner), of the Department of Financial Protection and
21 Innovation (DFPI) finds that:

- 22 1. At all relevant times, M2 Investment Advisors, Inc. (M2) held and holds a valid and
23 unrevoked investment adviser certificate issued by the Commissioner on November 30, 2005.
- 24 2. At all relevant times, M2 had a principal place of business located at 11770 Warner Avenue,
25 Suite 112, Fountain Valley, California 92708.
- 26 3. At all relevant times, Michael Hugh Wong was and is the President, Chief Compliance
27 Officer, and Investment Advisor Representative (IAR) of M2 with a last known residence of 16125
28 Caribou Street, Fountain Valley, California 92708.

1 4. DFPI's Broker-Dealer and Investment Advisory Program (BDIA) has regulatory examination
2 authority under California Corporations Code Section 25241 to conduct examinations of its
3 investment adviser licensees for the protection of investors and in the public interest. Investment
4 Advisers (IA's) must comply with the Corporate Securities Law of 1968 (Corp. Code § 25000 et
5 seq.) and the regulations enacted thereunder (Cal. Code Regs., tit. 10, § 260.000 et seq.)

6 5. On or about May 10, 2019 BDIA examiners commenced a regulatory examination of M2 and
7 produced a regulatory examination report which they submitted to M2 on July 30, 2019, requiring a
8 response by August 20, 2019.

9 6. On September 9, 2019, after not receiving a response or any other form of communication
10 from M2 by the August 20, 2019 deadline, DFPI examiners sent a follow-up email to remind M2 of
11 the required responses due. On September 10, 2019, M2, through its IAR Mr. Wong, responded
12 requesting an extension. The BDIA program granted an extension and provided for a new due date
13 of October 3, 2019 to submit a complete response. This communication also made clear that there
14 would be no further extensions granted for M2, to which M2 acknowledged and understood. On
15 October 3, 2019, M2 contacted the BDIA program and indicated that instead of providing all
16 outstanding responses, it would surrender its California IA license.

17 7. On November 4, 2019, the BDIA program sent M2 a final demand letter requesting
18 compliance with the regulatory examination with a due date of November 14, 2019. Contained in
19 this letter were two options to gain compliance. Option A instructed M2 to provide a full response
20 along with its supporting documentation which corrects all deficiencies outlined in the regulatory
21 exam report. Option B required the following:

22 a. Written Confirmation that the Form ADV-W has been filed by M2 to surrender its IA
23 certificate.

24 b. Written confirmation that M2 is aware of all the violations addressed in the July 30,
25 2019 regulatory report and a requirement that all violations noted in the regulatory report must be
26 corrected before M2 decides to reapply with the State of California as an IA in the future.

27 c. Written confirmation that M2 does not have any website or social media advertising
28 M2's IA services.

- 1 d. Written confirmation that M2 is no longer using its advertising materials.
 - 2 e. Documentation that all clients have been notified that M2 is no longer conducting
 - 3 business as an IA.
 - 4 f. Documentation that M2 stopped charging investment advisory fees to all its clients.
 - 5 g. Documentation that all client accounts have been closed or self-monitored or moved
 - 6 to another IA.
 - 7 h. Documentation that M2 has removed its IA or trading authority from client custodian
 - 8 accounts.
- 9 8. On November 7, 2019, the BDIA program contacted M2 to follow-up on its progress. On
- 10 November 14, 2019, M2 emailed back indicating it would be unwinding M2 but did not confirm
- 11 whether it would be complying with either option provided by the BDIA program. Contained in that
- 12 email was a list of only four categories of client statuses which failed to address all outstanding
- 13 corrective action that needed to be completed. All initial violations documented in the July 30, 2019
- 14 regulatory report were still pending on November 14, 2019.
- 15 9. On January 2, 2020, M2 emailed the BDIA program stating that M2 had ceased operation
- 16 effective January 1, 2020 and that this was their official notice of surrender. Contained in that email
- 17 were numerous attachments relating to the winding up of M2's business, but none of the attachments
- 18 contained documentation reflecting compliance with the outstanding responses due from the
- 19 regulatory examination. On January 6, 2020, BDIA program emailed M2 to inform it that its
- 20 responses were not complete pursuant to the Department's November 4, 2019 final demand letter.
- 21 M2 responded on January 7, 2020 confirming it had completed one of the eight outstanding
- 22 requirements, when it filed its form ADV-W. On January 9, 2020 BDIA program emailed M2 to
- 23 inform it that it was still out of compliance and provided that the items were due on January 13,
- 24 2020. On January 13, 2020 M2 emailed its responses to the remaining seven outstanding items per
- 25 option B of the final demand letter. In its responses, it acknowledged the outstanding violations and
- 26 provided written responses to three of the remaining seven responses due. M2 was also supposed to
- 27 submit documentation of the four remaining responses due, but instead only provided written
- 28 responses.

1 10. After the regulatory examination and subsequent August 20, 2019 and November 14, 2019
2 deadlines, M2 failed to comply with the requirements set forth by the BDIA program after ample
3 extensions and opportunities to demonstrate compliance. As part of its mandate to protect investors
4 and the public interest, the Commissioner requires all licensed investment advisers to maintain
5 adequate records of their investment advisory records and to make them available to the
6 Commissioner upon request. M2’s failure to meet its reporting requirements prevented the
7 Commissioner from determining, as part of its regulatory examinations, if M2 was operating
8 according to the law, or if M2 was mismanaging its investment advisory business, and hindered the
9 Commissioner from protecting investors and the public. Further, based on the records of M2 that the
10 Commissioner was able to review, there are serious concerns about M2’s soundness and its ability to
11 maintain the safeguards required to adequately manage customer accounts, as detailed below.

12 11. After the examination, the Commissioner finds that M2 Investment Advisors, Inc. and
13 Michael Hugh Wong have violated the following legal requirements:

14 **A. M2 Failed to Comply with Examination Demands and Maintain Records**

15 **1. Corporations Code Section 25241 Subdivision (c): Failure to Produce Records**
16 **Required to be Maintained.**

17 The Commissioner made multiple demands for records pursuant to California Code of
18 Regulations, Title 10, Section 260.241.3 following its examination of M2. M2 failed to timely
19 produce responsive information pertaining to the following subdivisions:

- 20 (a)(1) A journal or journals, including cash receipts, disbursement records, and any other
21 records of original entry forming the basis of entries in any ledger.
- 22 (a)(2) General and auxiliary ledgers reflecting asset, liability, reserve, capital, income, and
23 expense accounts.
- 24 (a)(6) all trial balances, financial statements, worksheets that contain computations of
25 minimum financial requirements, and internal audit working papers relating to the business of such
26 investment adviser.
- 27 (a)(9) All powers of attorney and other evidences of the granting of any discretionary
28 authority by any client to the investment adviser, or copies thereof.

1 (a)(10) All written agreements entered into by the investment adviser with any client or
2 otherwise relating to the business of such investment adviser.

3 (e)(1) All books and records required to be made under the provisions of subsections (a) to
4 (c)(1), inclusive, of this section shall be maintained and preserved in an easily accessible place for a
5 period of not less than five years from the end of the fiscal year during which the last entry was
6 made on such record, the first two years in an appropriate office of the investment adviser.

7 (e)(2) Charter documents, minute books and stock certificate books of the investment
8 adviser and of any predecessor, shall be maintained in the principal office of the investment adviser
9 and preserved until at least three years after termination of the enterprise.

10 (j) Record of the proof of the money balances of all ledger accounts in the form of trial
11 balances and a record of the computations of minimum net worth. The trial balances shall be
12 prepared currently at least once a month.

13 The Commissioner made multiple demands for records pursuant to California Code of
14 Regulations, Title 10, Section 260.238(a) following the examination of M2. M2 failed to timely
15 produce responsive records which would evidence compliance with the requirement that investment
16 recommendations be based on client suitability records.

17 The Commissioner made multiple demands for records pursuant to California Code of
18 Regulations, Title 10, Section 260.237.2(a) following the examination of M2. M2 failed to timely
19 produce responsive records which would evidence compliance with the minimum net worth
20 requirement for investment advisers.

21 The Commissioner made multiple demands for M2 to produce annual financial report records
22 pursuant to California Code of Regulations, Title 10, Section 260.241.2(a) following the
23 examination of M2. M2 failed to timely produce records evidencing that the annual financial reports
24 were filed by the investment adviser.

25 The Commissioner made multiple demands for M2 to produce interim financial reports that
26 are required to be filed within 15 days after its net worth is reduced to 120% of its required
27 minimum net worth pursuant to California Code of Regulations, Title 10, Section 260.241.2(d)(2)
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1 following the examination of M2. M2 failed to timely produce responsive records which would
2 evidence compliance with interim net worth requirement for investment advisers.

3 **2. Corporations Code Section 25241 Subdivision (a): Failure to Maintain Books**
4 **and Records the Commissioner by Rule Requires.**

5 For each Code of Regulation violation referenced above where M2 failed to produce said
6 records, the Commissioner also finds that M2 failed to maintain the books and records for each
7 category.

8 **B. M2 Failed to Comply with Investor Protection Regulations**

9 **1. Corporations Code Section 25238: Engaging in Investment Adviser Activities in**
10 **Contradiction of the Commissioner’s Rules Designed to Promote Fair,**
11 **Equitable, and Ethical Principles.**

12 Pursuant to California Code of Regulations, Title 10, Section 260.238(a), M2 failed to
13 maintain client records that would enable M2 to determine suitable investment recommendations for
14 those clients.

15 **2. Failure to Meet Minimum Net Worth Requirements, Timely Notify the**
16 **Commissioner of a Deficiency, and Timely File Interim Financial Reports.**

17 a. Pursuant to California Code of Regulations, Title 10, section 260.237.2(a), M2 failed
18 to maintain a minimum net worth requirement of \$10,000 at all times.

19 b. Pursuant to California Code of Regulations, Title 10, section 260.237.2(c), M2 failed
20 to timely notify the Commissioner of a net worth deficiency within one business day.
21 The failure to notify the Commissioner is mandated whether M2 determined this
22 through actual discovery or as a failure to keep required records pursuant to
23 California Code of Regulations, Title, section 260.241.3.

24 c. Pursuant to subdivision (j) of section 260.237.2 above, M2’s failure to discover that
25 its net worth was less than the minimum required as result of its failure to keep true,
26 accurate, and current the books and records required under section 260.241.3, deems
27 M2 to have discovered its net worth is less than the minimum required by this section.
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1 d. Pursuant to California Code of Regulations, Title 10, section 260.241.2(d)(2), M2
2 failed to file an interim report with the Commissioner within 15 days after its net
3 worth was reduced to less than 120% of the required minimum net worth.

4 **3. Failure to File Annual Financial Reports.**

5 Pursuant to California Code of Regulations, Title 10, Section 260.241.2(a), M2 failed to file
6 an annual report with the Commissioner within 90 days of the end of its 2019 fiscal year.

7 **4. Failures to Update M2's Central Registration Depository.**

8 a. Pursuant to California Code of Regulations, Title 10, Section 260.236.1
9 subdivision (a)(3), M2 failed to update changes to information contained in its Form U4 within 30
10 days of any change, including:

11 1. Item 13 "Other Business" must be updated to disclose Mr. Wong's tax
12 preparation business and certification as an enrolled agent.

13 2. Item 13 "Other Business" must be updated to remove reference to Mr.
14 Wong's employment as an investment advisor representative with
15 SunAmerica Securities Inc.

16 b. Pursuant to California Code of Regulations, Title 10, Section 260.241.4
17 subdivisions (a), and (d) M2 failed to promptly file an amendment to its Form ADV through the
18 Investment Adviser Registration Depository (IARD) upon change in information due to the
19 following:

20 1. Part 1A, Item 5B(3) should be updated to indicate "1".

21 2. Part 1A, Item 5K(4) should be updated to indicate "yes"

22 3. 5K(3) of Schedule D should be updated as a result of "yes" to 5K(4)

23 c. Pursuant to California Code of Regulations, Title 10, Section 260.241.4
24 subdivision (e), M2 failed to file an annual updating amendment within 90 days of the end of M2's
25 fiscal year.

26 1. M2's fiscal year ends at the end of December each year. M2 did not
27 file its annual updating amendment within 90 days of the end of its fiscal year.
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Order Levying Administrative Penalties

Corporations Code section 25252 authorizes the Commissioner to issue an order levying administrative penalties against any investment adviser for willful violations of any provision of the Corporate Securities Law of 1968 and any rules and regulations promulgated thereunder.

Corporations Code section 25252 provides, in pertinent part:

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

(a) Any person subject to this division, other than a broker-dealer or investment adviser, who willfully violates any provision of this division, or who willfully violates any rule or order adopted or issued pursuant to this division, is liable for administrative penalties of not more than one thousand (\$1,000) for the first violation, and not more than two thousand five hundred (\$2,500) for each subsequent violation.

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

Based upon the foregoing findings, the Commissioner finds that M2 Investment Advisors, Inc. and Michael Hugh Wong willfully violated Corporations Code section 25241, subdivisions (a) and (c), section 25238, and California Code of Regulations, title 10, section 260.236.1, subdivision (a)(3), section 260.237.2, subdivisions (a) and (c), section 260.238, subdivision (a), section 260.241.2, subdivisions (a) and (d)(2), section 260.241.3, subdivisions (a)(1)(2)(6)(9)(10), (e)(1)(2), and (j), and section 260.241.4, subdivisions (a), (d) and (e)

Therefore, pursuant to Corporations Code section 25252, the Commissioner seeks administrative penalties for M2 Investment Advisors, Inc.’s and Michael Hugh Wong’s willful violations of the Corporate Securities Law of 1968 and the rules and regulations promulgated thereunder.

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WHEREFORE, good cause showing, and pursuant to Corporations Code section 25252, the Commissioner prays for an order levying administrative penalties against M2 Investment Advisors, Inc., and Michael Hugh Wong, jointly and severally, as follows:

That pursuant to Corporations Code section 25252, the Commissioner levy administrative penalties of five thousand dollars (\$5,000.00) for the first violation of the Corporations Code or Code of Regulation, ten thousand dollars (\$10,00.00) for the second violation, and fifteen thousand (\$15,000) for each subsequent violation according to proof, but not less than \$25,000.00.

Dated: November 4, 2020
Sacramento, California

MANUEL P. ALVAREZ
Commissioner of Financial Protection and Innovation

By _____
TAYLOR HERRLINGER
Counsel
Enforcement Division