

1 6. On September 9, 2019, after not receiving a response or any other form of communication
2 from M2 by the August 20, 2019 deadline, DFPI examiners sent a follow-up email to remind M2 of
3 the required responses due. On September 10, 2019, M2, through its IAR Mr. Wong, responded
4 requesting an extension. The BDIA program granted an extension and provided for a new due date of
5 October 3, 2019 to submit a complete response. This communication also made clear that there would
6 be no further extensions granted for M2, to which M2 acknowledged and understood. On October 3,
7 2019, M2 contacted the BDIA program and indicated that instead of providing all outstanding
8 responses, it would surrender its California IA license.

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

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

16 b. Written confirmation that M2 is aware of all the violations addressed in the July 30,
17 2019 regulatory report and a requirement that all violations noted in the regulatory report must be
18 corrected before M2 decides to reapply with the State of California as an IA in the future.

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

21 d. Written confirmation that M2 is no longer using its advertising materials.

22 e. Documentation that all clients have been notified that M2 is no longer conducting
23 business as an IA.

24 f. Documentation that M2 stopped charging investment advisory fees to all its clients.

25 g. Documentation that all client accounts have been closed or self-monitored or moved to
26 another IA.

27 h. Documentation that M2 has removed its IA or trading authority from client custodian
28 accounts.

1 8. On November 7, 2019, the BDIA program contacted M2 to follow-up on its progress. On
2 November 14, 2019, M2 emailed back indicating it would be unwinding M2 but did not confirm
3 whether it would be complying with either option provided by the BDIA program. Contained in that
4 email was a list of only four categories of client statuses which failed to address all outstanding
5 corrective action that needed to be completed. All initial violations documented in the July 30, 2019
6 regulatory report were still pending on November 14, 2019.

7 9. On January 2, 2020, M2 emailed the BDIA program stating that M2 had ceased operation
8 effective January 1, 2020 and that this was their official notice of surrender. Contained in that email
9 were numerous attachments relating to the winding up of M2's business, but none of the attachments
10 contained documentation reflecting compliance with the outstanding responses due from the
11 regulatory examination. On January 6, 2020, BDIA program emailed M2 to inform it that its
12 responses were not complete pursuant to the Department's November 4, 2019 final demand letter.
13 M2 responded on January 7, 2020 confirming it had completed one of the eight outstanding
14 requirements, when it filed its form ADV-W. On January 9, 2020 BDIA program emailed M2 to
15 inform it that it was still out of compliance and provided that the items were due on January 13, 2020.
16 On January 13, 2020 M2 emailed its responses to the remaining seven outstanding items per option B
17 of the final demand letter. In its responses, it acknowledged the outstanding violations and provided
18 written responses to three of the remaining seven responses due. M2 was also supposed to submit
19 documentation of the four remaining responses due, but instead only provided written responses.

20 10. After the regulatory examination and subsequent August 20, 2019 and November 14, 2019
21 deadlines, M2 failed to comply with the requirements set forth by the BDIA program after ample
22 extensions and opportunities to demonstrate compliance. As part of its mandate to protect investors
23 and the public interest, the Commissioner requires all licensed investment advisers to maintain
24 adequate records of their investment advisory records and to make them available to the
25 Commissioner upon request. M2's failure to meet its reporting requirements prevented the
26 Commissioner from determining, as part of its regulatory examinations, if M2 was operating
27 according to the law, or if M2 was mismanaging its investment advisory business, and hindered the
28 Commissioner from protecting investors and the public. Further, based on the records of M2 that the

1 Commissioner was able to review, there are serious concerns about M2’s soundness and its ability to
2 maintain the safeguards required to adequately manage customer accounts, as detailed below.

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

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

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

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

11 (a)(1) A journal or journals, including cash receipts, disbursement records, and any other
12 records of original entry forming the basis of entries in any ledger.

13 (a)(2) General and auxiliary ledgers reflecting asset, liability, reserve, capital, income, and
14 expense accounts.

15 (a)(6) all trial balances, financial statements, worksheets that contain computations of
16 minimum financial requirements, and internal audit working papers relating to the business of such
17 investment adviser.

18 (a)(9) All powers of attorney and other evidences of the granting of any discretionary
19 authority by any client to the investment adviser, or copies thereof.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 c. Pursuant to subdivision (j) of section 260.237.2 above, M2's failure to discover that its
14 net worth was less than the minimum required as result of its failure to keep true,
15 accurate, and current the books and records required under section 260.241.3, deems
16 M2 to have discovered its net worth is less than the minimum required by this section.

17 d. Pursuant to California Code of Regulations, Title 10, section 260.241.2(d)(2), M2
18 failed to file an interim report with the Commissioner within 15 days after its net
19 worth was reduced to less than 120% of the required minimum net worth.

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

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

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

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

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

1 2. Item 13 “Other Business” must be updated to remove reference to Mr.
2 Wong’s employment as an investment advisor representative with SunAmerica
3 Securities Inc.

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

- 8 1. Part 1A, Item 5B(3) should be updated to indicate “1”.
- 9 2. Part 1A, Item 5K(4) should be updated to indicate “yes”
- 10 3. 5K(3) of Schedule D should be updated as a result of “yes” to 5K(4)

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

- 14 1. M2’s fiscal year ends at the end of December each year. M2 did not file
15 its annual updating amendment within 90 days of the end of its fiscal year.

16 Based upon the foregoing findings, the Commissioner finds that M2 Investment Advisors,
17 Inc. and Michael Hugh Wong violated Corporations Code section 25241, subdivisions (a) and (c),
18 section 25238, and California Code of Regulations, title 10, section 260.236.1, subdivision (a)(3),
19 section 260.237.2, subdivisions (a) and (c), section 260.238, subdivision (a), section 260.241.2,
20 subdivisions (a) and (d)(2), section 260.241.3, subdivisions (a)(1)(2)(6)(9)(10), (e)(1)(2), and (j), and
21 section 260.241.4, subdivisions (a), (d) and (e) justifying the issuance of a Desist and Refrain Order,
22 as a licensee, was obligated to have knowledge of, and to comply with, the provisions of the
23 Corporate Securities Law and the regulations thereunder to maintain its investment adviser
24 certificate.

25 Pursuant to Corporations Code section 25532, M2 Investment Advisors, Inc. and Michael
26 Hugh Wong are hereby ordered to desist and refrain from violating Corporations Code section 25241,
27 subdivisions (a) and (c), section 25238, and California Code of Regulations, title 10, section
28 260.236.1, subdivision (a)(3), section 260.237.2, subdivisions (a) and (c), section 260.238,

1 subdivision (a), section 260.241.2, subdivisions (a) and (d)(2), section 260.241.3, subdivisions
2 (a)(1)(2)(6)(9)(10), (e)(1)(2), and (j), and section 260.241.4, subdivisions (a), (d) and (e).

3 This order is necessary, in the public interest, for the protection of investors and consistent
4 with the purposes, policies, and provisions of the Corporate Securities Law of 1968.

5 Dated: November 4, 2020
6 Sacramento, California

MANUEL P. ALVAREZ
Commissioner of Financial Protection and Innovation

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8 By: _____
9 MARY ANN SMITH
10 Deputy Commissioner
11 Enforcement Division
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