

1 MARY ANN SMITH
Deputy Commissioner
2 SEAN ROONEY
Assistant Chief Counsel
3 ALEXANDER M. CALERO (State Bar No. 238389)
Senior Counsel
4 STEVEN VONG (State Bar No. 311926)
Counsel
5 Department of Financial Protection and Innovation
6 1455 Frazee Road, Suite 315
7 San Diego, CA 92108
8 Telephone: (619) 525-4044
9 Attorneys for Complainant

10 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION
11 OF THE STATE OF CALIFORNIA

12 In the Matter of:

CRD NO.: 169793

13 THE COMMISSIONER OF THE
14 DEPARTMENT OF FINANCIAL
15 PROTECTION AND INNOVATION,

AMENDED ACCUSATION AND CLAIM FOR
ANCILLARY RELIEF

16 Complainant,

17 v.

18 MACCIO FINANCIAL, LLC, an entity, and
19 MICHELLE MACCIO, an individual

20 Respondents.

21 Manuel P. Alvarez, Commissioner of the Department of Financial Protection and Innovation
22 (Department), acting to protect the public, alleges and charges as follows:

23 **I.**

24 **Jurisdiction**

25 1. The Commissioner brings this action pursuant to the provisions of the Corporate
26 Securities Law of 1968 (CSL) (Corporations Code section 25000 et seq.), sections 25232, 25232.1,
27 and 25254 and the rules and regulations promulgated thereunder (CCR) (Code of Regulations, title
28 10, section 250.9 et seq.).

1 to do business revoked; (c) in the past ten years, entered an order against the investment adviser or
2 any advisory affiliate in connection with an investment-related activity; or (d) ever revoked the
3 investment adviser's or any advisory affiliate's registration or license, or otherwise prevented the
4 investment adviser or any advisory affiliate, by order, from associating with an investment-related
5 business or restricted the investment adviser's or any advisory affiliate's activities.

6 9. During the process for registration as an investment adviser in California,
7 Respondents did not disclose the US Virgin Islands Order to the Department in Form ADV, Part 1.

8 10. Based on the information submitted to the Department in Form ADV, Part 1, the
9 Department approved Maccio Financial for registration as an investment adviser in California on
10 December 27, 2018.

11 **C. Respondents' Management of Maccio Investments, LP**

12 11. Respondents recommend that clients invest their money in various pooled investment
13 vehicles (or funds), including Maccio Investments, LP, which are managed by Respondents.

14 12. At all relevant times, Respondents managed and controlled Maccio Investments, LP.
15 Also, Maccio Financial was the investment manager of Maccio Investments, LP and had
16 discretionary authority over how the fund invested client money.

17 13. Respondents failed to ensure that their clients, whose money is invested in Maccio
18 Investments, LP, received periodic account statements as required by the CSL and CCR. Clients last
19 received periodic account statements in the Summer of 2019.

20 14. Further, Maccio Financial failed to ensure that financial statements for Maccio
21 Investments, LP were independently verified and/or audited by a certified public accountant, at least
22 annually, and provided to clients as required by the CSL and CCR.

23 15. Beginning in at least 2019, clients who invested money in Maccio Financial, LP
24 requested that their positions in the fund be liquidated and their money be returned. Respondents and
25 Maccio Investments, LP have not honored requests from clients to liquidate and return money which
26 was invested in the fund.

27 16. In or about February 2017, Maccio Investments, LP entered into a promissory note
28 with Michelle Maccio. As of December 31, 2018, the principal and interest due on the promissory

1 note was almost \$1,000,000.00.

2 17. The clients, from whom money was borrowed by Michelle Maccio pursuant to the
3 promissory note, were not broker-dealers, affiliates of Respondents, or financial institutions.

4 18. To date, Michelle Maccio has not repaid the money borrowed from clients.

5 **D. The Department's Examination of Respondents' Investment Adviser Business**

6 19. On September 2, 2020, the Department began an examination of the investment
7 adviser business operated by Respondents.

8 20. As part of the examination, on September 2, 2020, the Department sent Respondents
9 a list of document requests.

10 21. During an examination entrance interview with Department staff, Michelle Maccio
11 admitted that Maccio Financial does not maintain several books and records called for on the list of
12 document requests, including:

- 13 a. Balance sheets as of July 2020;
- 14 b. Income statements for period of July 2020 (year to date);
- 15 c. General ledger for period of July 2020 (year to date);
- 16 d. Monthly bank statements and reconciliations of all business accounts for July
17 2020;
- 18 e. Monthly brokerage statements and reconciliations of all business accounts for
19 July 2020;
- 20 f. Minimum Financial Requirement computations for July 2020;
- 21 g. Audited financial statements for 2019 for each private fund; and
- 22 h. Copies of account statements sent to investors of Maccio Investments, LP as
23 of July 31, 2020.

24 22. The above listed books and records, that Michelle Maccio admitted were not
25 maintained by Maccio Financial, are required under the CSL and CCR to be maintained by
26 investment advisers registered in California.

27 23. Other books and records called for on the list of documents requests, were not
28 produced to the Department by Respondents as part of the examination.

1 24. From September 2020 to November 2020, Department staff made multiple attempts
2 to obtain these books and records from Respondents.

3 25. On November 6, 2020, the Department sent a final demand letter via email to
4 Michelle Maccio requesting that the outstanding books and records be produced on November 20,
5 2020.

6 26. Respondents replied via email on November 11, 2020, stating that Respondents
7 would produce documents on or before November 20. On November 20, 2020, Respondents
8 requested an extension of time, to November 22, 2020, to produce the outstanding books and records
9 identified in the final demand letter. The Department granted Respondents' request.

10 27. On November 20 and 22, 2020, Respondents produced some books and records in
11 response to the final demand letter. However, to date, Respondents have failed to produce all books
12 and records requested by the Department as part of the examination of Maccio Financial.

13 28. During the examination, it was discovered that since 2018 Maccio Financial has had
14 discretionary authority and custody over client money and securities.

15 29. Investment advisers with discretionary authority or custody over client money and
16 securities are required by the CSL and CCR to file annual financial reports with the Department.
17 However, Maccio Financial failed to file annual financial reports with the Department since 2018.

18 **E. The Department's Order Against Maccio Financial**

19 30. On September 14, 2020, the Commissioner issued an Order to Discontinue Violations
20 to Maccio Financial (California Order). Maccio Financial was served with the California Order on
21 September 14, 2020.

22 31. Maccio Financial timely requested a hearing on the California Order, and later
23 withdrew its request for a hearing. The California Order is now final.

24 **III.**

25 **Maccio Financial's Investment Adviser Certificate Should be Revoked**

26 32. Maccio Financial's investment adviser certificate should be revoked because Maccio
27 Financial: (a) willfully omitted to disclose the US Virgin Islands Order in Maccio Financial's Form
28 ADV, Part 1, filed with the Department; (b) is subject to the US Virgin Island Order and California

1 Order; (c) committed “willful” violations of numerous sections of the CSL and CCR; and (d)
2 committed non-willful violations of numerous sections of the CSL and CCR.

3 33. CSL section 25232 provides, in part, that:

4 The commissioner may, after appropriate notice and opportunity for hearing, by order
5 . . . suspend for a period not exceeding 12 months or revoke the certificate of, an
6 investment adviser, if the commissioner finds that the . . . suspension, or revocation is
7 in the public interest and that the investment adviser, whether prior or subsequent to
8 becoming such, or any partner, officer or director thereof or any person performing
9 similar functions or any person directly or indirectly controlling the investment
10 adviser, whether prior or subsequent to becoming such, or any employee of the
11 investment adviser while so employed has done any of the following:

12 (a) Has willfully made or caused to be made in any application for a certificate or any
13 report filed with the commissioner under this division . . . any statement which was at
14 the time and in the light of the circumstances under which it was made false or
15 misleading with respect to any material fact, or has willfully omitted to state in the
16 application or report any material fact which is required to be stated therein.

17 . . .
18 (d) Is or has been subject to (1) any order of . . . the securities administrator of any
19 other state . . . revoking his or her registration as an investment adviser, or investment
20 adviser representative . . . (3) any other order of . . . any administrator . . . which is or
21 has been necessary for the protection of any investor.

22 (e) Has willfully violated any provision of . . . Title 4 (commencing with Section 25000)
23 [CSL] . . . or of any rule or regulation [CCR] under any of those statutes.

24 . . .
25 (h) Has violated any provision of this division [commencing with CSL section 25000 et seq.]
26 or the rules thereunder or, in the case of an applicant only, any similar regulatory scheme of
27 the State of California or foreign jurisdiction.

28 (Corp. Code, § 25232.)

34. Maccio Financial committed acts and omissions as specified in CSL section 25232,
subdivisions (a), (d), (e), and (h). Based on these acts and omissions, the investment adviser
certificate of Maccio Financial should be revoked.

A. Respondents Willfully Filed A False Application or Report

35. On or about September 21, 2018, the US Virgin Islands Order was issued to
Respondents for violations of various statutes regarding the regulation of investment advisers.

36. Respondents were served with the US Virgin Islands Order on October 10, 2018.
Also, on October 10, 2018, Maccio Financial filed a Form ADV, which was executed by Michelle
Maccio, with the Department for registration as an investment adviser in California.

1 37. During the process for registration as an investment adviser in California,
2 Respondents did not disclose the US Virgin Islands Order to the Department in Maccio Financial’s
3 Form ADV, Part 1, Item 11.

4 38. Based on the information submitted to the Department in Form ADV, Part 1, the
5 Department approved Maccio Financial for registration as an investment adviser in California on
6 December 27, 2018.

7 39. Respondents’ failure to disclose the US Virgin Islands Order was done with a purpose
8 or willingness to commit the act, or make the omission referred to.

9 40. Therefore, Respondents committed acts or omissions enumerated in CSL section
10 25232, subdivision (a), by willfully making in an application or report to the Department a statement
11 which was at the time and in the light of the circumstances under which it was made false or
12 misleading with respect to the US Virgin Islands Order, and by willfully omitting to state in the
13 application or report the existence of the US Virgin Islands Order which was required to be disclosed
14 therein. Based on these acts or omissions, Maccio Financial’s investment adviser certificate should
15 be revoked.

16 **B. Respondents are Subject to Orders of a Securities Administrator**

17 41. As stated above, on or about September 21, 2018, the US Virgin Islands Order was
18 issued to Respondents. Respondents were served with the US Virgin Islands Order on October 10,
19 2018.

20 42. On September 14, 2020, the California Order was issued to Maccio Financial. Maccio
21 Financial was served with the California Order on September 14, 2020.

22 43. Therefore, Respondents committed acts or omissions enumerated in CSL section
23 25232, subdivision (d)(1) and (d)(3), because Respondents are subject to the US Virgin Island Order,
24 revoking Respondents’ registration, and the California Order, which is necessary for the protection
25 of investors. Based on these acts or omissions, Maccio Financial’s investment adviser certificate
26 should be revoked.

27 **C. Respondents Committed Willful Violations of the CSL and CCR**

28 44. Respondents willfully violated various provisions of the CSL and CCR by: (a) failing

1 to disclose the US Virgin Islands Order in Maccio Financial’s Form ADV, Part 1; (b) borrowing
2 money from clients; (c) failing to ensure clients received periodic account statements; (d) failing to
3 ensure clients received verified and/or audited financial statements; (e) engaging in a fraud on
4 clients; (f) failing to submit to an examination; (g) failing to keep books and records which are
5 required to be maintained; and (h) failing to file annual financial reports with the Department.

6 **1. Respondents Willfully Failed to Keep Information in Form ADV, Part 1,**
7 **Updated in Violation of Provisions of the CSL and CCR**

8 45. CSL section 25241 provides, in part, that:

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

12 (Corp. Code, § 25241, subd. (a).)

13 46. CCR section 260.241.4 provides, in part, that:

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

17 . . .
18 (d) A licensed investment adviser shall file changed information
19 contained in its Form ADV with the Investment Adviser Registration
Depository (“IARD”) in accordance with its procedures for
transmission to the Commissioner.

20 (Cal. Code Regs., tit. 10, § 260.241.4, subds. (a) and (d).)

21 47. IARD guidance requires that investment advisers maintain updated information with
22 IARD, including accurate answers to disclosure questions in Part 1, Item 11, of Form ADV. Any
23 change to the information in Form ADV must be updated “promptly” by filing an amendment to
24 Form ADV. (General Instructions of Form ADV, pages 2 through 4.)

25 48. As stated above, on or about September 21, 2018, the US Virgin Islands Order was
26 issued and Respondents were served with the US Virgin Islands Order on October 10, 2018.

27 49. Also, on October 10, 2018, Maccio Financial filed a Form ADV, which was executed
28 by Michelle Maccio, with the Department for registration as an investment adviser in California.

1 50. During the process for registration as an investment adviser in California, Maccio
2 Financial did not disclose the US Virgin Islands Order to the Department in Maccio Financial’s
3 Form ADV, Part 1.

4 51. Respondents’ failure to disclose the US Virgin Islands Order was done with a purpose
5 or willingness to commit the act, or make the omission referred to.

6 52. Therefore, Respondents willfully violated CSL section 25241 and CCR section
7 260.241.4, by failing to keep information in Form ADV, Part 1, updated.

8 **2. Michelle Maccio Willfully Borrowed Money from Clients**

9 53. CSL section 25238 provides, in part, that:

10 No investment adviser licensed under this chapter and no natural
11 person associated with the investment adviser shall engage in
12 investment advisory activities, or attempt to engage in investment
13 advisory activities, in this state in contradiction of such rules as the
 commissioner may prescribe designed to promote fair, equitable and
 ethical principles.

14 (Corp. Code, § 25238.)

15 54. CCR section 260.238 provides, in part, that:

16 The following activities do not promote “fair, equitable or ethical
17 principles,” as that phrase is used in Section 25238 of the Code:

18 ...

19 (f) Borrowing money or securities from a client unless the client is a
 broker-dealer, an affiliate of the adviser, or a financial institution
 engaged in the business of loaning funds or securities.

20 (Cal. Code Regs., tit. 10, § 260.238, subd. (f).)

21 55. As stated above, Respondents manage various pooled investment vehicles (or funds),
22 including Maccio Investments, LP, and recommends that clients invest money in those funds. At all
23 relevant times, Maccio Financial was the investment manager for Maccio Investments, LP and had
24 control over how the fund invested money.

25 56. In or about February 2017, Maccio Investments, LP entered into a promissory note
26 with Michelle Maccio, the control person, chief compliance officer, and manager of Maccio
27 Financial. The clients from whom money was borrowed pursuant to the promissory note were not a
28 broker-dealer, an affiliate of Maccio Financial or Michelle Maccio, or a financial institution.

1 57. To date, Michelle Maccio has not repaid the money borrowed from clients.

2 58. Michelle Maccio entered into the promissory note with a purpose or willingness to
3 commit the act, or make the omission referred to.

4 59. Therefore, Respondents willfully violated CSL section 25238 and CCR section
5 260.238, by borrowing money from clients who are not a broker-dealer, an affiliate of Maccio
6 Financial or Michelle Maccio, or a financial institution.

7 **3. Respondents Willfully Failed to Ensure Clients Received Account Statements**

8 60. CSL section 25235 provides, in relevant part, that:

9 It is unlawful for any investment adviser, directly or indirectly, in this
10 state:

11 . . .

12 (d) To engage in any act, practice, or course of business which is
13 fraudulent, deceptive, or manipulative. The commissioner shall, for the
14 purpose of this subdivision, by rule define and prescribe means
15 reasonably designed to prevent such acts, practices, and courses of
16 business as are fraudulent, deceptive, or manipulative.

17 (Corp. Code, § 25235, subd. (d).) The Commissioner promulgated regulations, including CCR
18 section 260.237, to prevent acts, practices, and courses of business which are fraudulent, deceptive,
19 or manipulative.

20 61. CCR section 260.237 provides, in part, that:

21 (a) Safekeeping required. It is unlawful and deemed to be a
22 fraudulent, deceptive, or manipulative act, practice or course of
23 business within the meaning of Section 25235 of the Code for an
24 investment adviser . . . to have custody of client funds or securities
25 unless:

26 . . .

27 (5) Special rule for limited partnerships and limited liability
28 companies. If the investment adviser or a related person is a general
29 partner of a limited partnership (or managing member of a limited
30 liability company, or holds a comparable position for another type of
31 pooled investment vehicle):

32 (A) The adviser sends to all limited partners (or members or other
33 beneficial owners) at least quarterly, a statement

34 . . .

35 (b) Exceptions.

36 . . .

37 (4) Limited partnerships subject to annual audit. An investment
38 adviser is not required to comply with paragraphs (a)(3), and

1 (a)(5)(B) of this section and shall be deemed to have complied with
2 paragraph (a)(6) of this section with respect to the account of a
3 limited partnership (or limited liability company, or another type of
4 pooled investment vehicle) if each of the following conditions are
5 met:
(A) Account statements required by paragraph (a)(5)(A).
(Cal. Code Regs., tit. 10, § 260.237, subs. (a)(5)(A), and (b)(4)(A).)

6 62. As stated above, Respondents manage various pooled investment vehicles (or funds),
7 including Maccio Investments, LP, and recommend that clients invest money in those funds.

8 63. At all relevant times, Respondents managed and controlled Maccio Investments, LP.
9 Also, Maccio Financial was the investment manager of Maccio Investments, LP and had
10 discretionary authority over how the fund invested client money.

11 64. Respondents failed to ensure that clients, whose money is invested in the funds,
12 received periodic account statements.

13 65. Respondents' failure to ensure that clients received periodic account statements was
14 done with a purpose or willingness to commit the act, or make the omission referred to.

15 66. Therefore, Respondents willfully violated CSL section 25235 and CCR section
16 260.237, by failing to ensure that clients, whose money is invested in the funds, received periodic
17 account statements.

18 **4. Respondents Willfully Failed to Ensure Clients Received Verified and Audited**
19 **Financial Statements**

20 67. As stated above, CSL section 25235, subdivision (d), provides that it is unlawful for
21 an investment adviser, directly or indirectly, to engage in any act, practice, or course of business
22 which is fraudulent, deceptive, or manipulative. CCR section 260.237 was promulgated to prevent
23 acts, practices, and courses of business which are fraudulent, deceptive, or manipulative.

24 68. CCR section 260.237 provides, in part, that:
25 (a) Safekeeping required. It is unlawful and deemed to be a
26 fraudulent, deceptive, or manipulative act, practice or course of
27 business within the meaning of Section 25235 of the Code for an
28 investment adviser . . . to have custody of client funds or securities
unless:
. . .

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(6) Independent Verification. The client funds and securities of which the investment adviser has custody are verified by actual examination at least once during each calendar year, by an independent certified public accountant, pursuant to a written agreement between the investment adviser and the independent certified public accountant, at a time that is chosen by the independent certified public accountant without prior notice or announcement to the investment adviser and that is irregular from year to year

. . .
(b) Exceptions.

. . .
(4) Limited partnerships subject to annual audit. An investment adviser is not required to comply with paragraphs (a)(3), and (a)(5)(B) of this section and shall be deemed to have complied with paragraph (a)(6) of this section with respect to the account of a limited partnership (or limited liability company, or another type of pooled investment vehicle) if each of the following conditions are met:

(B) At least annually the fund is subject to an audit and distributes its audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners (or members or other beneficial owners) and the Commissioner within 120 days of the end of its fiscal year.

(C) The audit is performed by an independent certified public accountant

(Cal. Code Regs., tit. 10, § 260.237, subds. (a)(6), and (b)(4)(B), and (C).)

69. As stated above, Respondents manages various pooled investment vehicles (or funds), including Maccio Investments, LP and recommend that clients invest money in those funds.

70. At all relevant times, Respondents managed and controlled Maccio Investments, LP. Also, Maccio Financial was the investment manager of Maccio Investments, LP and had discretionary authority over how the fund invested client money.

71. Respondents failed to ensure that financial statements were independently verified and/or audited by a certified public accountant, at least annually, and provided to clients.

72. Respondents' failure to ensure that clients received verified and/or audited annual financial statements was done with a purpose or willingness to commit the act, or make the omission referred to.

73. Therefore, Respondents willfully violated CSL section 25235 and CCR section

1 260.237, by failing to ensure that financial statements were independently verified and/or audited by
2 a certified public accountant, at least annually, and provided to clients.

3 **5. Respondents Willfully Engaged in a Fraud on Clients**

4 74. CSL section 25235 provides, in part, that:

5 It is unlawful for any investment adviser, directly or indirectly, in this
6 state:

7 (a) To employ any device, scheme, or artifice to defraud any client or
8 prospective client.

9 (b) To engage in any transaction, practice, or course of business
10 which operates or would operate as a fraud or deceit upon any client
11 or prospective client.

12 (Corp. Code, § 25235, subs. (a) and (b).)

13 75. As stated above, Respondents manage various pooled investment vehicles (or funds),
14 including Maccio Investments, LP and recommend that clients invest money in those funds.

15 76. At all relevant times, Respondents managed and controlled Maccio Investments, LP.
16 Also, Maccio Financial was the investment manager of Maccio Investments, LP and had
17 discretionary authority over how the fund invested client money.

18 77. As stated above, in or about February 2017, Maccio Investments, LP entered into a
19 promissory note with Michelle Maccio, the control person, chief compliance officer, and manager of
20 Maccio Financial. The clients from whom money was borrowed pursuant to the promissory note
21 were not a broker-dealer, an affiliate of Maccio Financial or Michelle Maccio, or a financial
22 institution.

23 78. Respondents failed to provide clients, who invested in Maccio Financial, LP, with
24 important disclosures about the status and value of their investment. Respondents failed to ensure
25 that clients, whose money is invested in the funds, received periodic account statements. Further,
26 Respondents failed to ensure that financial statements were independently verified and/or audited by
27 a certified public accountant, at least annually, and provided to clients.

28 79. Maccio Financial and Maccio Investments, LP have not honored requests from clients
to liquidate and return money which was invested in the fund. Clients began requesting the return of
their money in 2019.

1 80. The above conduct was done with a purpose or willingness to commit the act, or
2 make the omission referred to.

3 81. Therefore, Respondents willfully violated CSL section 25235, by engaging in a fraud
4 on clients.

5 **6. Respondents Failed to Submit to an Examination**

6 82. As stated above, CSL section 25241 requires that every investment adviser licensed
7 with the Department make and keep books and records related to their business and that:

8 All records referred to in this section are subject at any time and from
9 time to time to reasonable periodic, special, or other examinations by
10 the commissioner, within or without this state, as the commissioner
11 deems necessary or appropriate in the public interest or for the
12 protection of investors.

13 (Corp. Code, § 25241, subd. (c).)

14 83. On September 2, 2020, the Department began an examination of Maccio Financial
15 and requested that Respondents produce books and records called for in a list of document requests.

16 84. From September 2020 to November 2020, Department staff made multiple attempts
17 to obtain these books and records from Respondents.

18 85. On November 6, 2020, the Department sent a final demand letter via email to
19 Michelle Maccio requesting that the outstanding books and records be produced on November 20,
20 2020.

21 86. To date, Respondents have failed to produce all books and records requested by the
22 Department as part of the examination.

23 87. The above conduct was done with a purpose or willingness to commit the act, or
24 make the omission referred to.

25 88. Therefore, Respondents willfully violated CSL section 25241 by failing to submit to
26 an examination by the Department.

27 **7. Respondents Willfully Failed to Keep Books and Records Which Are Required
28 to be Maintained**

 89. As stated above, CSL section 25241 requires every investment adviser licensed with

1 the Department to make and keep books and records related to their business.

2 90. CCR section 260.237.2 provides, in part, that every investment adviser who has
3 custody of client money or securities, or who has discretionary authority over client money or
4 securities shall maintain a minimum net worth, also called a “minimum financial requirement,” in an
5 amount as specified in that regulation. (Cal. Code of Reg., tit. 10, § 260.237.2, subd. (a).)

6 91. At all relevant times, Maccio Financial has been subject to the provisions of CCR
7 section 260.237.2 because Maccio Financial had discretionary authority and custody over client
8 money and securities.

9 92. CCR section 260.241.3 provides, in part, that:

10 (a) Every licensed investment adviser shall make and keep true,
11 accurate and current the following books and records relating to such
12 person's investment advisory business:

13 (1) A journal or journals, including cash receipts and disbursements
14 records, and any other records of original entry forming the basis of
15 entries in any ledger.

16 (2) General and auxiliary ledgers (or other comparable records)
17 reflecting asset, liability, reserve, capital, income and expense
18 accounts.

19 . . .

20 (4) All check books, bank statements, cancelled checks and cash
21 reconciliations of the investment adviser.

22 (5) All bills or statements (or copies thereof), paid, or unpaid, relating
23 to the business of the investment adviser as such.

24 (6) All trial balances, financial statements, worksheets that contain
25 computations of minimum financial requirements required under
26 Section 260.237.2, of these rules, and internal audit working papers
27 relating to the business of such investment adviser.

28 (Cal. Code Regs., tit. 10, § 260.241.3, subs. (a)(1), (a)(2), (a)(4) – (a)(6).)

93. As stated above, if an investment adviser, or a related person, is a general partner of a
fund, the investment adviser must provide periodic account statements and verified and/or audited
financial statements, at least annually, to clients of the fund. (Cal. Code Regs., tit. 10, §260.237,
subs. (a)(5)(A), (a)(6), (b)(4)(A) – (b)(4)(C).)

94. Based on the above sections of the CSL and CCR, Maccio Financial is required to

1 make and keep the following books and records:

- 2 a. Balance sheets as of July 2020;
- 3 b. Income statements for period of July 2020 (year to date);
- 4 c. General ledger for period of July 2020 (year to date);
- 5 d. Monthly bank statements and reconciliations of all business accounts for July
- 6 2020;
- 7 e. Monthly brokerage statements and reconciliations of all business accounts for
- 8 July 2020;
- 9 f. Minimum Financial Requirement computations for July 2020;
- 10 g. Audited financial statements for 2019 for each private fund; and
- 11 h. Copies of account statements sent to investors of Maccio Investments, LP as
- 12 of July 31, 2020.

13 95. During an examination entrance interview with Department staff, Michelle Maccio
14 admitted that Maccio Financial does not maintain those books and records.

15 96. Respondents' failure to keep these books and records was done with a purpose or
16 willingness to commit the act, or make the omission referred to.

17 97. Therefore, Respondents willfully violated CSL section 25241 and CCR sections
18 260.237 and 260.241.3 by failing to keep books and records that are required to be maintained.

19 **8. Respondents Willfully Failed to File Annual Financial Reports**

20 98. As stated above, CSL section 25241 requires that every investment adviser licensed
21 with the Department shall file financial reports with the Department as required by regulation.

22 99. CCR section 260.241.2 provides, in part, that:

23 (a) General Rule. Subject to the provisions of subsection (c) of this
24 section, . . . every licensed investment adviser subject to the
25 provisions of Section 260.237.2 of these rules, shall file an annual
26 financial report, as follows:

27 . . .

28 (2) The annual report for an investment adviser shall contain a
balance sheet, income statement, and computations of the minimum
financial requirements required under Section 260.237.2 of these
rules.

. . .

1 (4) The report shall be filed not more than 90 days after the
2 investment adviser or broker-dealer's fiscal year end.

3 (Cal. Code Regs., tit. 10, § 260.241.2, subs. (a)(2) and (a)(4).)

4 100. As stated above, at all relevant times, Maccio Financial has been subject to the
5 provisions of CCR section 260.237.2 because Maccio Financial has discretionary authority and
6 custody over client money and securities.

7 101. Since 2018, when Maccio Financial was first registered as an investment adviser with
8 the Department, Respondents have failed to file annual financial reports with the Department.

9 102. Respondents' failure to file annual financial reports with the Department was done
10 with a purpose or willingness to commit the act, or make the omission referred to.

11 103. Therefore, Respondents willfully violated CSL section 25241 and CCR section
12 260.241.2 by failing to file annual financial reports with the Department.

13 104. Based on the foregoing, Respondents committed acts or omissions enumerated in
14 CSL section 25232, subdivisions (e), because Respondents "willfully" violated provisions of the
15 CSL and CCR. As a result of these acts or omissions, Maccio Financial's investment adviser
16 certificate should be revoked.

17 **D. Respondents Committed Non-Willful Violations of the CSL and CCR**

18 105. Unlike subdivision (e) of CSL section 25232, which requires that violations are
19 "willful" in order to revoke an investment adviser registration, subdivision (h) does not require that
20 conduct be willful in order to revoke an investment adviser's registration for violations of the CSL
21 and CCR.

22 106. As stated above, Respondents violated various provisions of the CSL and CCR by:
23 (a) failing to disclose the US Virgin Islands Order in Maccio Financial's Form ADV, Part 1; (b)
24 borrowing money from clients; (c) failing to ensure clients received periodic account statements; (d)
25 failing to ensure clients received verified and audited financial statements; (e) engaging in a fraud on
26 clients; (f) failing to submit to an examination; (g) failing to keep books and records which are
27 required to be maintained; and (h) failing to file annual financial reports with the Department.

28 107. Therefore, Respondents committed acts or omissions enumerated in CSL section

1 25232, subdivisions (h), because Respondents violated provisions of the CSL and CCR. Based on
2 these acts or omissions, Maccio Financial's investment adviser certificate should be revoked.

3 **IV.**

4 **Michelle Maccio Should be Barred From the Investment Industry**

5 108. Michelle Maccio should be barred from the investment industry because she: (a)
6 willfully omitted to disclose the US Virgin Islands Order in Maccio Financial's Form ADV, Part 1,
7 filed with the Department; (b) is subject to the US Virgin Island Order; and (c) willfully violated
8 numerous sections of the CSL and CCR.

9 109. CSL section 25232.1 provides, in part, that:

10 The commissioner may, after appropriate notice and opportunity for hearing. . . bar
11 from any position of employment, management or control of any investment adviser,
12 broker-dealer or commodity adviser, any officer, director, partner, employee of, or
13 person performing similar functions for, an investment adviser, or any other person, if
14 he or she finds that the censure, suspension or bar is in the public interest and that the
15 person has committed any act or omission enumerated in subdivision (a) [and] (e) . . .
16 of Section 25232 . . . or is subject to any order specified in subdivision (d) of Section
17 25232.

18 (Corp. Code, § 25232.1)

19 110. As discussed above in Section III., Michelle Maccio, the control person, chief
20 compliance officer, and manager of Maccio Financial, committed acts and omissions enumerated in
21 CSL section 25232:

- 22 a. Subdivision (a), by willfully omitting to disclose the US Virgin Islands Order
- 23 in Maccio Financial's Form ADV, Part 1, filed with the Department;
- 24 b. Subdivision (d), by being a subject of the US Virgin Islands Order; and
- 25 c. Subdivision (e), by willfully violating sections of the CSL and CCR.

26 111. Based on these acts and omissions, Michelle Maccio should be barred from the
27 investment industry.

28 **V.**

Restitution to Clients

112. Respondents should pay restitution to clients: (a) who invested money in Maccio
Investments, LP based on the above listed acts, omissions, and violations; and (b) whose money

1 Michelle Maccio borrowed.

2 113. CSL section 25254 provides, in part, that:

3 (a) If the commissioner determines it is in the public interest, the
4 commissioner may include in any administrative action brought under
5 this part [Part 3 (commencing with CSL section 25200)] a claim for
6 ancillary relief, including, but not limited to, a claim for restitution or
7 disgorgement or damages on behalf of the persons injured by the act
8 or practice constituting the subject matter of the action, and the
9 administrative law judge shall have jurisdiction to award additional
10 relief.

11 (Corp. Code, § 25254.)

12 114. The Commissioner brings the instant action pursuant to CSL, Part 3, sections 25232
13 and 25232.1, based on Respondents' acts, omissions, and violations.

14 115. Clients who invested in Maccio Investments, LP are entitled to restitution of the
15 money they invested, in the amount of at least \$5,243,324.27, plus interest thereon, according to
16 proof, based on these acts, omissions, and violations.

17 116. Clients whose money Michelle Maccio borrowed are entitled to restitution of the
18 money loaned, in the amount of at least \$1,000,000.00, plus interest thereon, according to proof,
19 based on these acts, omissions, and violations.

20 **V.**

21 **Public Interest**

22 117. Based on the foregoing, the Commissioner has deemed it in the public interest to
23 revoke the investment adviser certificate of Maccio Financial, to bar Michelle Maccio from the
24 investment industry, and to include a claim for restitution to clients.

25 118. An investment adviser owes a fiduciary duty to clients. An investment adviser should
26 continuously occupy an impartial and disinterested position and should scrupulously avoid any act
27 that subjects her position to challenge in this respect. Respondents violated this fiduciary duty to
28 clients by committing acts, omissions, and violations of the CSL and CRR. Furthermore,
Respondents profited from these acts, omissions, and violations of the CSL and CCR. For these
reasons, it is therefore in the public interest to revoke the investment adviser certificate of Maccio
Financial, to bar Michelle Maccio from the investment industry, and require that Respondents pay

1 restitution to clients.

2 **VI.**

3 **Relief Requested**

4 WHEREFORE, based upon the foregoing, the Commissioner finds it is in the public interest
5 to revoke the investment adviser certificate of Maccio Financial, LLC pursuant to CSL section
6 25232, to bar Michelle Maccio from the investment industry pursuant to CSL section 25232.1, and
7 to award restitution to clients.

8 WHEREFORE, IT IS PRAYED that the investment adviser certificate of Maccio Financial,
9 LLC be revoked pursuant to CSL section 23232.

10 WHEREFORE, IT IS FURTHER PRAYED that Michelle Maccio be barred from any
11 position of employment, management or control of any investment adviser, broker-dealer or
12 commodity adviser pursuant to section 25232.1.

13 WHEREFORE, IT IS FURTHER PRAYED that Maccio Financial, LLC and Michelle
14 Maccio be ordered to pay restitution to: (a) clients who invested in Maccio Investments, LP, in the
15 amount of at least \$5,243,324.27, plus interest thereon, according to proof; and (b) client whose
16 money Michelle Maccio borrowed, in the amount of at least \$999,497.00, plus interest thereon,
17 according to proof.

18 Dated: March 9, 2021

MANUEL P. ALVAREZ
Commissioner
Department of Financial Protection and Innovation

21 By: _____
22 ALEXANDER M. CALERO
23 Senior Counsel
24 Enforcement Division