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

11 In the Matter of:) CRD No.: 2805664
12 THE COMMISSIONER OF FINANCIAL)
PROTECTION AND INNOVATION,)
13)
14 Complainant,) CONSENT ORDER
15 v.)
16 CRAIG ARSENAULT (an individual))
17 Respondent.)
18)

19
20 This Consent Order is entered into between the Commissioner of Financial Protection and
21 Innovation (Commissioner) and Craig Arsenault (Arsenault) (collectively the Parties) and is made
22 with respect to the following facts:

23 **I.**

24 **Recitals**

25 A. The Commissioner has jurisdiction over the licensing and regulation of persons
26 engaged in the business of investment advising under the Corporate Securities Law of 1968 (CSL)
27 (Corp. Code, § 25000 et seq.). The Commissioner is authorized to administer the CSL and the rules

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1 and regulations promulgated in California Code of Regulations, title 10 (CCR), section 260.000 et
2 seq.

3 B. Atlas Capital Management Inc. is a California Corporation formed on January 17,
4 1997 and is authorized to conduct business in California. Atlas's principal business address is 2625
5 Townsgate Road, Suite 200, Thousand Oaks, California 91361. Atlas formerly conducted business
6 from 30101 Town Center Drive, Suite 203, Laguna Niguel, California.

7 C. Atlas is an investment advisory firm and holds an investment adviser certificate
8 issued by the Commissioner on September 12, 1997 pursuant to Corporations Code section 25230.

9 D. Craig Arsenault (Arsenault) (CRD No. 2805664) is a resident of Orange County,
10 California.

11 E. Arsenault was Atlas's co-owner and president from January 1, 2001 through
12 December 31, 2018.

13 F. On December 13, 2018, the United States Securities and Exchange Commission
14 (SEC) filed a complaint in the United States District Court for the Central District of California
15 against Atlas, Arsenault, and Act Global Investments (ACT) (*SEC v. Craig Arsenault et al* (Case No.
16 8-18-cv-02220) alleging that Arsenault misrepresented the use of investors funds in the ACT fund,
17 provided clients with deceptive account statements that made it appear as if these investments were
18 generating substantial income when they were not, and misappropriated and misused over \$1 million
19 of the client money invested with ACT.

20 G. On March 4, 2019, the court permanently enjoined Atlas and Arsenault, in connection
21 with the purchase or sale of any security, from employing any scheme to defraud, making material
22 misrepresentations or omitting to state material facts, and engaging in any transaction, practice or
23 course of business which operates or would operate as a fraud or deceit upon the purchaser, in
24 violation of section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 and section 17(a)
25 of the Securities Act of 1933, and from violating the antifraud provisions of the Investment Advisors
26 Act of 1940, sections 206(1) and (2) (the Judgment). The court also ordered Atlas and Arsenault to
27 pay disgorgement and a civil penalty, to be determined at a later date.

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1 H. Atlas filed a report with the Commissioner on March 4, 2019, disclosing Tracy
2 Towner as Atlas’s sole owner and chief executive officer.

3 I. On March 15, 2019, under section 203(f) of the Advisers Act, the SEC barred
4 Arsenault from association with any broker, dealer, investment adviser, municipal securities dealer,
5 municipal advisor, transfer agent, or nationally recognized statistical rating organization (SEC
6 Order).

7 J. The Commissioner finds that cause exists, under Corporations Code sections 25232.1
8 and 25232, subdivision (c), based on the Judgment, and subdivision (d), based on the SEC Order,
9 and for the protection of investors and in the public interest, to issue an order barring bar Arsenault
10 from any position of employment, management, or control of any investment adviser, broker-dealer,
11 or commodity adviser, any officer, director, partner, employee of, or person performing similar
12 functions for, an investment adviser, or any other person.

13 K. NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions
14 set forth herein, the Parties agree as follows:

15 **II.**

16 **Terms and Conditions**

17 1. **Purpose.** This Consent Order resolves the issues before the Commissioner, described
18 in Paragraph J above, in a manner that avoids the expense of a hearing and other possible court
19 proceedings, protects consumers, is in the public interest, and is consistent with the purposes and
20 provisions of the CSL.

21 2. **Bar Order.** Pursuant to Corporations Code section 25232.1 and 25232, subdivisions
22 (c) and (d), Arsenault is barred from any position of employment, management, or control of any
23 investment adviser, broker-dealer, or commodity adviser, any officer, director, partner, employee of,
24 or person performing similar functions for, an investment adviser, or any other person.

25 3. **Waiver of Hearing Rights.** Arsenault acknowledges that the Commissioner is ready,
26 willing, and able to proceed with the filing of an administrative enforcement action on the charges
27 contained in this Consent Order. Arsenault hereby waives the right to any hearings, and to any
28 reconsideration, appeal, or other right to review which may be afforded pursuant to the CSL, the

1 California Administrative Procedure Act, the California Code of Civil Procedure, or any other
2 provision of law. Arsenault further expressly waives any requirement for the filing of an action
3 pursuant to Government Code section 11415.60, subdivision (b). By waiving such rights, Arsenault
4 effectively consents to this Consent Order and all the terms becoming final.

5 4. Information Willfully Withheld or Misrepresented. This Consent Order may be
6 revoked, and the Commissioner may pursue any and all remedies available under law against
7 Arsenault if the Commissioner discovers that Arsenault knowingly or willfully withheld or
8 misrepresented information used for and relied upon in this Consent Order.

9 5. Future Actions by Commissioner. If Arsenault fails to comply with any terms of the
10 Consent Order, the Commissioner may institute proceedings for any and all violations otherwise
11 resolved under this Consent Order. The Commissioner reserves the right to bring any future actions
12 against Arsenault, for any and all unknown violations of the CSL or any other law under the
13 Commissioner’s jurisdiction.

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

18 7. Headings. The headings to the paragraphs of this Consent Order are inserted for
19 convenience only and will not be deemed a part hereof or affect the construction or interpretation of
20 the provisions hereof.

21 8. Binding. This Consent Order is binding on all heirs, assigns, and/or successors in
22 interest.

23 9. Reliance. Each of the Parties represents, warrants, and agrees that in executing this
24 Consent Order it has relied solely on the statements set forth herein and the advice of its own
25 counsel. Each of the Parties further represents, warrants, and agrees that in executing this Consent
26 Order it has placed no reliance on any statement, representation, or promise of any other party, or
27 any other person or entity not expressly set forth herein, or upon the failure of any party or any
28 other person or entity to make any statement, representation or disclosure of anything whatsoever.

1 The Parties have included this clause: (1) to preclude any claim that any party was in any way
2 fraudulently induced to execute this Consent Order; and (2) to preclude the introduction of parol
3 evidence to vary, interpret, supplement, or contradict the terms of this Consent Order.

4 10. Waiver, Amendments, and Modifications. No waiver, amendment, or modification
5 of this Consent Order will be valid or binding unless it is in writing and signed by each of the
6 Parties. The waiver of any provision of this Consent Order will not be deemed a waiver of any
7 other provision. No waiver by either party of any breach of, or of compliance with, any condition
8 or provision of this Consent Order by the other party will be considered a waiver of any other
9 condition or provision or of the same condition or provision at another time.

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

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

20 13. Counterparts. This Consent Order may be executed in one or more separate
21 counterparts, each of which when so executed, shall be deemed an original. Such counterparts shall
22 together constitute a single document.

23 14. Effect Upon Future Proceedings. If Arsenault applies for any license, certificate,
24 registration, permit, or qualification under the Commissioner’s current or future jurisdiction, or is
25 the subject of any future action by the Commissioner to enforce this Consent Order, then the subject
26 matter hereof shall be admitted for the purpose of such application(s) or enforcement proceeding(s).

27 15. Voluntary Agreement. Arsenault enters into this Consent Order voluntarily and
28 without coercion and acknowledges that no promises, threats or assurances have been made by the

1 Commissioner or any officer, or agent thereof, about this Consent Order. The Parties each represent
2 and acknowledge that he, she or it is executing this Consent Order completely voluntarily and
3 without any duress or undue influence of any kind from any source.

4 16. Notice. Any notice required under this Consent Order shall be provided to each
5 party at the following addresses:

6 To Craig Arsenault: Leonard M. Shulman and Frank Contreras, Jr.
7 Schulman Bastian Friedman & Bui LLP
8 100 Spectrum Center Drive, Suite 600
9 Irvine, California 92618

10 and

11 Craig Arsenault
12 17 White Sail
13 Laguna Niguel, California 92677

14 To the Commissioner: Danielle A. Stoumbos, Senior Counsel
15 Department of Financial Protection and
16 Innovation
17 320 West 4th Street, Suite 750
18 Los Angeles, California 90013
19 Danielle.Stoumbos@dfpi.ca.gov

20 17. Signatures. A fax or electronic mail signature shall be deemed the same as an
21 original signature.

22 18. Public Record. Arsenault hereby acknowledges that this Consent Order is and will
23 be a matter of public record.

24 19. Effective Date. This Consent Order shall become final and effective when signed by
25 all Parties and delivered by the Commissioner’s agent via e-mail to Arsenault’s agent, Franklin J.
26 Contreras, Jr., counsel for Arsenault, at fcontreras@shulmanbastian.com.
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20. Authority to Sign. Each signatory hereto covenants that he/she possesses all necessary capacity and authority to sign and enter into this Consent Order and undertake the obligations set forth herein.

Dated: May 24, 2021

MANUEL P. ALVAREZ
Commissioner of Financial Protection and Innovation

By: _____
Mary Ann Smith
Deputy Commissioner of Enforcement

Dated: May 20, 2021

By: _____
Craig Arsenault, an individual

