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

|                                     |   |                          |
|-------------------------------------|---|--------------------------|
| 10 In the Matter of:                | ) | CRD NO.: 140811          |
| 11 THE COMMISSIONER OF FINANCIAL    | ) |                          |
| 12 PROTECTION AND INNOVATION,       | ) | DESIST AND REFRAIN ORDER |
| 13 Complainant,                     | ) | (Corp. Code, § 25532)    |
| 14 v.                               | ) |                          |
| 15 R.J. FUCHS ADVISORY SERVICES, an | ) |                          |
| 16 entity,                          | ) |                          |
| 17 Respondent.                      | ) |                          |
| 18                                  | ) |                          |

19 The Commissioner of Financial Protection and Innovation (Commissioner) finds that:

20 1. R.J. Fuchs Advisory Services holds a valid investment adviser certificate issued by  
21 the Commissioner on August 22, 2006, pursuant to Corporations Code section 25230 (CRD No.  
22 140811). R.J. Fuchs Advisory Services is an investment adviser business located at 519 Hyde Park  
23 Drive, San Jose, California 95136.

24 2. Robert Joseph Fuchs (Fuchs) is an Investment Adviser Representative (CRD No.  
25 1374643), and the sole owner of R.J. Fuchs Advisory Services.

26 3. The Department of Financial Protection and Innovation (Department) commenced a  
27 routine examination of R.J. Fuchs Advisory Services on August 24, 2018 (Examination), which  
28 revealed the following:

1                   **Failure to Submit to a Reasonable Examination**

2           4.       Corporations Code section 25241, subdivision (c) provides that all records referred to  
3 in this section are subject at any time and from time to time to reasonable periodic, special, or other  
4 examinations by the commissioner, within or without this state, as the Commissioner deems  
5 necessary or appropriate in the public interest or for the protection of investors.

6           5.       From August 2018 to the present, R.J. Fuchs Advisory Services failed to submit to a  
7 reasonable examination, including, but not limited to, ignoring and evading the Department’s  
8 numerous attempts to conduct and complete the Examination, failing to submit the required  
9 documents and annual reports to the Department, and failing to respond properly and fully to the  
10 Department’s regulatory examination, in violation of Corporations Code section 25241, subdivision  
11 (c). R.J. Fuchs Advisory Services’ failure to submit to a reasonable examination is detailed below.

12           6.       From August 24, 2018 through September 18, 2018, an examiner with the  
13 Department made multiple attempts to contact Fuchs to schedule a routine examination. Fuchs  
14 ignored the Department’s attempt to contact him, and failed to respond to the Department’s requests.

15           7.       On September 18 and 21, 2018, the examiner went to R.J. Fuchs Advisory Services’  
16 place of business, and started the fieldwork of the examination. The Department reviewed R.J. Fuchs  
17 Advisory Services’ books and records, and information submitted by Fuchs.

18                   **Failure to Maintain Books and Records**

19           8.       Corporations Code section 25241, subdivision (a) provides that every licensed  
20 investment adviser shall make and keep accounts, correspondence, memorandums, papers, books,  
21 and other records and shall file financial and other reports as the Commissioner by rule requires.

22           9.       The Examination revealed that R.J. Fuchs Advisory Services failed to prepare or  
23 maintain accurate or current books and records, in violation of Corporations Code section 25241,  
24 subdivision (a) and California Code of Regulations, title 10, (CCR) section 260.241.3.

25           10.      Fuchs failed to provide the examiner R.J. Fuchs Advisory Services’ books and  
26 records, including the firm’s standard investment advisory agreement. On November 3, 2018, the  
27 examiner sent an email to Fuchs following up on the R.J. Fuchs Advisory Services’ investment  
28 advisory agreements. Fuchs replied that “No I was never able to find the Investment Advisory

1 Agreement.”

2 11. The Examination also revealed that R.J. Fuchs Advisory Services directly deducted  
3 advisory fees from client accounts without sending billing invoices to clients. Therefore, R.J. Fuchs  
4 Advisory Services had custody over the clients’ funds and securities and was held to the higher  
5 standards and financial requirements, as set forth in CCR sections 260.237, 260.237.2, 260.241.2  
6 and 260.241.3.

7 12. CCR section 260.241.3, subdivision (a) requires every licensed investment adviser to  
8 make and keep true, accurate and current the following books and records relating to such person's  
9 investment advisory business.

10 13. R.J. Fuchs Advisory Services failed to prepare or maintain accurate or current  
11 accounting records, failed to maintain monthly financial books and records relating to the investment  
12 advisory business, failed to maintain monthly reconciliations of its bank and brokerage accounts, in  
13 violation of Corporations Code section 25241, subdivision (a), and CCR section 260.241.3,  
14 subdivision (a).

15 14. CCR section 260.237.2 requires every investment adviser who has custody of client  
16 funds or securities to maintain at all times the minimum financial requirements (MFR).

17 15. R.J. Fuchs Advisory Services failed to prepare monthly financials and maintain  
18 records of the computations of the MFR required by CCR section 260.237.2, in violation of  
19 Corporations Code section 25241, subdivision (a), and CCR section 260.241.3, subdivision (a). This  
20 failure prevented the Department from determining whether the R.J. Fuchs Advisory Services’ net  
21 worth met or exceeded the MFR.

22 16. R.J. Fuchs Advisory Services failed to maintain monthly computations of its  
23 minimum net worth, in violation of CCR section 260.241.3. R.J. Fuchs Advisory Services failed to  
24 show that it maintained a minimum net worth as required by CCR section 260.237.2, subdivision (a),  
25 and failed to file interim reports as required by CCR section 260.241.2, subdivision (d).

26 **Failure to File Annual Financial Reports**

27 17. The Examination further revealed that R.J. Fuchs Advisory Services failed to file  
28 annual financial reports prepared in accordance with generally accepted accounting principles and

1 audited by either an independent certified public accountant or independent public accountant, in  
2 violation of Corporations Code section 25241, subdivision (a). R.J. Fuchs Advisory Services has  
3 failed to file its annual financial report since 2006.

4 **Investment Advisory Activities Not Promoting Fair, Equitable, and Ethical Principles**

5 18. Corporations Code section 25238 provides that no investment adviser and no  
6 natural person associated with the investment adviser shall engage in investment advisory  
7 activities, or attempt to engage in investment advisory activities, in this state in contradiction of  
8 such rules as the Commissioner may prescribe designed to promote fair, equitable and ethical  
9 principles.

10 19. The following activities do not promote “fair, equitable or ethical principles,” as  
11 that phrase is used in Corporations Code section 25238:

12 20. CCR section 260.238, subdivision (n), requires that all investment advisory contracts  
13 must be in writing and disclose, in substance, the services to be provided, the terms of the contract  
14 and the advisory fee or the formula for calculating the fee.

15 21. R.J. Fuchs Advisory Services claimed to have executed investment advisory  
16 agreements with its four clients. Fuchs could not locate the executed investment advisory agreements  
17 or a blank investment advisory agreement, in violation of Corporations Code section 25238 and  
18 CCR section 260.238, subdivision (n).

19 22. CCR section 260.238, subdivision (a) requires all investment advisers to recommend  
20 to a client to whom investment supervisory, management or consulting services are provided the  
21 purchase, sale or exchange of any security without reasonable grounds to believe that the  
22 recommendation is suitable for the client on the basis of information furnished by the client after  
23 reasonable inquiry concerning the client's investment objectives, financial situation and needs, and  
24 any other information known or acquired by the adviser after reasonable examination of such of the  
25 client's records as may be provided to the adviser.

26 23. R.J. Fuchs Advisory Services failed to maintain suitability documentation regarding  
27 client’s risk tolerance and investment objectives for its four clients, in violation of Corporations  
28 Code section 25238 and CCR section 260.238, subdivision (a).

1           24.     CCR section 260.238, subdivision (o) prohibits making any untrue statement of a  
2 material fact or omitting a statement of material fact necessary in order to make the statements made,  
3 in light of the circumstances under which they are made, not misleading in the solicitation of  
4 advisory clients.

5           25.     Fuchs told the Department that R.J. Fuchs Advisory Services distributed performance  
6 reports to its clients. No supporting documentation to substantiate the accuracy of its 2017 and 2018  
7 performance reports for its four clients were provided to the Department, in violation of  
8 Corporations Code section 25238 and CCR section 260.238, subdivision (o).

9           **Fraudulent, Deceptive or Manipulative Act, Practice or Course of Business**

10          26.     It is unlawful and deemed to be a fraudulent, deceptive, or manipulative act, practice  
11 or course of business within the meaning of Corporations Code section 25235, for an investment  
12 adviser that has custody or possession of client funds or securities, to fail to comply with the  
13 safekeeping requirements of CCR section 260.237.

14          27.     CCR section 260.237, subdivision (a)(6), requires all funds and securities of clients to  
15 be verified by actual examination at least once during each calendar year by an independent certified  
16 public accountant or public accountant at a time which shall be chosen by the accountant without  
17 prior notice to the investment adviser. A certificate of the accountant stating that such person has  
18 made an examination of the funds and securities, and describing the nature and extent of the  
19 examination, shall be filed with the Commissioner promptly after each examination.

20          28.     R.J. Fuchs Advisory Services failed to engage an independent certified public  
21 accountant or public accountant to conduct a surprise and independent verification of client funds  
22 and securities, in violation of CCR section 260.237, subdivision (a)(6).

23          29.     CCR section 260.235, subdivision (a)(5) makes a fraudulent, deceptive, or  
24 manipulative act, practice or course of business, within the meaning of Section 25235, for an  
25 investment adviser, directly or indirectly, to publish, circulate or distribute any advertisement which  
26 contains any untrue statement of a material fact, or which is otherwise false or misleading.

27          30.     Fuchs' business card shows "Ca. Insurance License #0507481." The California  
28 Department of Insurance's website reflects this is an inactive license, in violation of Corporations

1 Code section 25235, and CCR section 260.235, subdivision (a)(5). Fuchs represented that he does  
2 not plan to engage in insurance activities.

### 3 **Reporting Requirements FINRA**

4 31. Pursuant to CCR section 260.236.1, investment advisers are required to properly file  
5 a Form U4, through the Financial Industry Regulatory Authority's (FINRA) Central Registration  
6 Depository system, for each investment adviser representative or associated person of the investment  
7 adviser.

8 32. Fuchs' registration status with FINRA was listed as "FTR," failure to renew. R.J.  
9 Fuchs Advisory Services failed to properly file a Form U4 for Fuchs, in violation of Corporations  
10 Code section 25230, and CCR section 260.236.1, subdivisions (a) and (b).

11 33. In addition, Fuchs' January 2011 Form U4 (CRD No. 1374643) filed with FINRA  
12 was inaccurate or incomplete, CCR section 260.236.1, subdivisions (a) and (b).

13 34. Pursuant to CCR section 260.241.4, subdivision (e), each licensed investment adviser  
14 is required to file an annual updating amendment, in accordance with the instruction in Form ADV,  
15 within 90 days of the end of the investment adviser's fiscal year.

16 35. R.J. Fuchs Advisory Services failed to file its Form ADV since May 14, 2013, in  
17 violation of CCR section 260.241.4, subdivision (e). R.J. Fuchs Advisory Services' Form ADV form  
18 dated May 14, 2013 was untimely filed.

19 36. Pursuant to CCR section 260.241.4, subdivision (a), each licensed investment adviser  
20 is required to promptly file an amendment to its application setting forth any changed information.  
21 R.J. Fuchs Advisory Services' May 14, 2013 Form ADV was inaccurate or incomplete.

22 37. R.J. Fuchs Advisory Services failed to file the required amendments to its Form  
23 ADV, in violation of CCR section 260.241.4, subdivision (a).

### 24 **Continued Failure to Submit to a Reasonable Examination**

25 38. On April 30, 2019, the Department sent R.J. Fuchs Advisory Services a regulatory  
26 examination report (Examination Report) explaining and citing all the violations discovered during  
27 the Examination. R.J. Fuchs Advisory Services was required to respond to the Examination Report  
28 by May 15, 2019, and provide the required reports, documents and financials, and file an audited

1 financial report. R.J. Fuchs Advisory Services failed to respond to the Examination Report by the  
2 May 15, 2019 deadline.

3 39. From August 9, 2019 to August 20, 2019, the Department made several attempts to  
4 contact R.J. Fuchs Advisory Services and Fuchs regarding the violations and the Examination  
5 Report, but R.J. Fuchs Advisory Services failed to respond.

6 40. On September 9, 2019 and October 10, 2019, the Department sent delinquent notices  
7 (letters sent via certified mail-return receipt requested) to R.J. Fuchs Advisory Services notifying its  
8 failure to respond to the Examination Report, and demanding that R.J. Fuchs Advisory Services  
9 respond within 20 days of the letters. The notices were unclaimed and returned to the Department.

10 41. On November 7, 2019, the examiner spoke to Fuchs regarding the failure to respond  
11 to the Examination Report and the unclaimed and returned letters. Fuchs stated that he did not take  
12 receipt of the letters because he thought they were from a tax agency. Fuchs stated that he would  
13 respond to the Examination Report. Yet, the Department's requests continued to be ignored.

14 42. On April 10 and May 7, 2020, the Department made more attempts to contact Fuchs.

15 43. On May 18, 2020, a year after the deadline to respond to the Examination Report, the  
16 Department received R.J. Fuchs Advisory Services' long-delayed response to the Examination  
17 Report. The response included unintelligible handwritten notes by Fuchs, and failed to address all  
18 the violations cited in the Examination Report. The Department considers the response to be  
19 deficient and incomplete.

20 44. On May 29, 2020 and June 1, 2020, the Department made multiple attempts to  
21 contact Fuchs and R.J. Fuchs Advisory Services regarding their deficient and incomplete response.

22 45. On June 1, 2020, the examiner spoke to Fuchs and explained that the response was  
23 deficient and incomplete, and also explained the required responses to address the violations cited in  
24 the Examination Report.

25 46. Later that day, Fuchs sent an email to the Department, stating in part, "This response  
26 is to confirm that you have reviewed the information that I had sent [to] you but you indicated that it  
27 still wasn't satisfactory[.] You were patient in explaining to me the necessary material you now need  
28 and I said that I believe I will be able to find it." R.J. Fuchs Advisory Services never provided a

1 sufficient, satisfactory, or complete response to the Examination Report.

2 47. On June 15, 2020, the Department sent R.J. Fuchs Advisory Services a follow-up  
3 letter and requested that R.J. Fuchs Advisory Services provide a sufficient, satisfactory, and  
4 complete response to the Examination Report, and address all the violations cited during the  
5 Examination.

6 48. To this day, R.J. Fuchs Advisory Services has failed to respond to the Examination  
7 Report and follow-up letter fully and sufficiently, in violation of Corporations Code section 25241,  
8 subdivision (c).

9 49. Based on the above, R.J. Fuchs Advisory Services conducted business in an unsafe or  
10 injurious manner, pursuant to Corporations Code section 25250.

11 50. Corporations Code section 25532, subdivision (d), provides in relevant part:

12 If the commissioner determines that a person has engaged, is engaging,  
13 or is about to engage in an act, practice, or course of business  
14 constituting a violation of this division or a rule adopted or order  
15 issued under this division, the commissioner may issue an order  
16 directing the person to desist and refrain from engaging in the act,  
17 practice, or course of business, or take other action necessary or  
18 appropriate to comply with this division.

19 51. For the foregoing reasons, the Commissioner finds that R.J. Fuchs Advisory Services  
20 failed to submit to a reasonable examination, in violation of Corporations Code section 25241,  
21 subdivision (c); failed to keep or maintain books and records, and failed to maintain computation of  
22 minimum financial requirements, in violation of Corporations Code section 25241, subdivision (a);  
23 failed to file the required annual reports with the Commissioner, in violation of Corporations Code  
24 section 25241, subdivision (a); engaged in investment advisory activities not promoting fair,  
25 equitable, and ethical principle, in violation of Corporations Code section 25238; conducted business  
26 in an unsafe and injurious manner, pursuant to Corporations Code section 25250; and engaged in  
27 fraudulent, deceptive, or manipulative acts, practices or course of business, in violation of  
28 Corporations Code section 25235. R.J. Fuchs Advisory Services also violated CCR sections  
260.241.3, 260.237.2, 260.238, 260.237, 260.235, 260.236.1, 260.241.4, and 260.241.2.

///



1 IT IS HEREBY ORDERED EFFECTIVE IMMEDIATELY that, under Corporations Code  
2 section 25532, subdivision (d), R.J. Fuchs Advisory Services desist and refrain from violating  
3 Corporations Code sections 25241, 25238, 25250, and 25235, and CCR sections 260.241.3,  
4 260.237.2, 260.238, 260.237, 260.235, 260.236.1, 260.241.4, and 260.241.2.

5 Under Corporations Code section 25532, subdivision (d), R.J. Fuchs Advisory Services is  
6 further ordered to respond fully to the Examination Report dated April 30, 2019, and the follow-up  
7 letter dated June 15, 2020; provide the required reports, documents and financials detailed in the  
8 Examination Report dated April 30, 2019, and follow-up letter dated June 15, 2020; and file its 2020  
9 audited financial report, no later than 30 days from the date of this order.

10 This Order is necessary, in the public interest, for the protection of investors and consistent  
11 with the purposes and provisions of the CSL.

12 Dated: May 5, 2021  
13 Sacramento, California

MANUEL P. ALVAREZ  
Commissioner of Financial Protection and Innovation



14  
15 By: \_\_\_\_\_  
16 MARY ANN SMITH  
17 Deputy Commissioner  
18 Enforcement Division  
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