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

12 In the Matter of:) CRD NO.: 140811
)
13 THE COMMISSIONER OF FINANCIAL) SETTLEMENT AGREEMENT
PROTECTION AND INNOVATION,)
14)
15 Complainant,)
)
16 v.)
)
17 R.J. FUCHS ADVISORY SERVICES, an)
18 entity,)
)
19 Respondent.)
20)
21)

22 This Settlement Agreement (Settlement Agreement) is entered between the Commissioner of
23 Financial Protection and Innovation (Commissioner) and Respondent R.J. Fuchs Advisory Services
24 (collectively, the Parties) and is made with respect to the following facts.

25 I.

26 Recitals

27 A. The Commissioner is authorized to administer and enforce the provisions of the
28 Corporate Securities Law of 1968 (CSL) (Corp. Code, § 25000 et seq.) and the rules and regulations

1 issued in title 10 of the California Code of Regulations (CCR) that regulate the business and activities
2 of broker-dealer agents and investment advisers in the state of California.

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

7 C. Robert Joseph Fuchs (Fuchs) is an Investment Adviser Representative (CRD No.
8 1374643), and the sole owner of R.J. Fuchs Advisory Services. As such, Fuchs is authorized to enter
9 into the Settlement Agreement on behalf of R.J. Fuchs Advisory Services.

10 D. The Department of Financial Protection and Innovation (Department) commenced a
11 routine examination of R.J. Fuchs Advisory Services on August 24, 2018, which revealed that R.J.
12 Fuchs Advisory Services willfully: (1) failed to submit to a reasonable examination; (2) failed to keep
13 or maintain books and records, and financial records; (3) failed to file the required reports with the
14 Commissioner; (4) engaged in investment advisory activities not promoting fair, equitable, and
15 ethical principles; (5) engaged in fraudulent, deceptive, or manipulative acts, practices or course of
16 business; and (6) conducted business in an unsafe and injurious manner.

17 E. On May 5, 2021, the Commissioner issued a Desist and Refrain Order, Statement in
18 Support of Order Levying Administrative Penalties and Notice of Intention to Issue Order Levying
19 Administrative Penalties in the amount of \$75,000.00, and accompanying documents (Administrative
20 Actions) against R.J. Fuchs Advisory Services. The Administrative Actions were served on R.J.
21 Fuchs Advisory Services on May 12, 2021.

22 F. R.J. Fuchs Advisory Services never requested a hearing. The time to request a hearing
23 has expired.

24 G. The Desist and Refrain Order is now final.

25 H. The Commissioner finds that entering into this Settlement Agreement is in the public
26 interest and consistent with the purposes fairly intended by the policy and provisions of the CSL.

27 NOW, THEREFORE, in consideration of the foregoing and the terms and conditions set forth
28 herein, the parties agree as follows.

II.

Terms and Conditions

1. Purpose. The Parties have entered into this Settlement Agreement to resolve the matter described in the Recitals for the purpose of judicial economy and expedience, and to avoid the expense of a hearing, and further court proceedings.

2. Acknowledgment. R.J. Fuchs Advisory Services acknowledges that the Commissioner issued and served it with the Administrative Actions, in which the Commissioner issued a Desist and Refrain Order against R.J. Fuchs Advisory Services and sought to enter an Order Levying Administrative Penalties, pursuant to Corporations Code section 25252, as discussed in the Recitals, above.

3. Final Desist and Refrain Order. R.J. Fuchs Advisory Services hereby acknowledges that the desist and refrain order issued on May 5, 2021, is final and effective.

4. Revocation Order. R.J. Fuchs Advisory Services hereby agrees to the revocation of its investment adviser certificate. It is hereby ordered that the investment adviser certificate issued to R.J. Fuchs Advisory Services is revoked from the effective date of this Settlement Agreement, as defined in paragraph 22 (Effective Date). R.J. Fuchs Advisory Services is further precluded from soliciting or facilitating new business, including for existing clients. R.J. Fuchs Advisory Services waives any requirement for the filing of an accusation or statement of issues under Government Code section 11415.60, subdivision (b), in connection with the revocation of its license, and waives any rights to a hearing and to any reconsideration, appeal, or other rights that may be afforded to him under the CSL, the Administrative Procedure Act (APA) (Gov. Code, § 11340 et seq.), the Code of Civil Procedure (CCP) (Code Civ. Proc., § 1 et seq.), or any provision of law in connection with this revocation order.

5. Dismissal of Statement in Support of Order Levying Administrative Penalties. Except as otherwise provided herein, the Parties acknowledge that this Settlement Agreement shall have the effect of dismissing the Statement in Support of Order Levying Administrative Penalties and Notice of Intention to Issue Order Levying Administrative Penalties cited above. The dismissal shall become effective on the Effective Date of this Settlement Agreement.

1 6. Remedy for Breach. R.J. Fuchs Advisory Services acknowledges that failure to
2 comply with the terms of this Settlement Agreement, including, but not limited to failure to comply
3 with the desist and refrain order, and revocation order, shall be deemed a breach and cause for the
4 Commissioner to immediately revoke any license held by or deny any pending application(s) of R.J.
5 Fuchs Advisory Services. R.J. Fuchs Advisory Services hereby waives any notice and hearing rights
6 to contest any such revocation or denial which may be afforded under the CSL, APA, CCP, or any
7 other provision of law. R.J. Fuchs Advisory Services further waives any requirement for the filing of
8 an accusation or statement of issues under Government Code section 11415.60, subdivision (b), in
9 connection with any revocation or denial under this paragraph.

10 7. Information Willfully Withheld or Misrepresented. This Settlement Agreement may
11 be revoked, and the Commissioner may pursue any and all remedies available under law against R.J.
12 Fuchs Advisory Services if the Commissioner discovers that R.J. Fuchs Advisory Services knowingly
13 or willfully withheld or misrepresented information used for and relied upon in this Settlement
14 Agreement.

15 8. Future Actions by Commissioner. If R.J. Fuchs Advisory Services fails to comply
16 with any terms of the Settlement Agreement, the Commissioner may institute proceedings for any and
17 all violations otherwise resolved under this Settlement Agreement. The Commissioner reserves the
18 right to bring any future actions against R.J. Fuchs Advisory Services for any and all unknown
19 violations of the CSL.

20 9. Full and Final Settlement. The Parties hereby acknowledge and agree that this
21 Settlement Agreement is intended to constitute a full, final, and complete resolution of R.J. Fuchs
22 Advisory Services' violations of the CSL as identified herein. No further proceedings or actions will
23 be brought by the Commissioner in connection with these matters under the CSL or any other
24 provision of law, excepting any proceeding to enforce compliance with the terms of this Settlement
25 Agreement or action if such proceeding is based upon discovery of new and further violations of the
26 CSL which do not form the basis for this Settlement Agreement or which R.J. Fuchs Advisory
27 Services knowingly concealed from the Commissioner.

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1 10. Assisting Other Agencies. The Parties further acknowledge and agree that nothing in
2 this Settlement Agreement shall limit the Commissioner’s ability to assist any other agency (city,
3 county, state, or federal) with any prosecution, administrative, civil, or criminal, brought by any such
4 agency against R.J. Fuchs Advisory Services or any other person based upon any of the activities
5 alleged in these matters or otherwise.

6 11. Binding. This Settlement Agreement is binding on all heirs, assigns, or successors in
7 interest.

8 12. Independent Legal Advice. Each of the Parties represents, warrants, and agrees that he,
9 she, or it has received independent advice from its attorney(s) or representative(s) with respect to the
10 advisability of executing this Settlement Agreement.

11 13. Waiver, Modification, and Qualified Integration. The waiver of any provision of this
12 Settlement Agreement shall not operate to waive any other provision set forth herein. No waiver,
13 amendment, or modification of this Settlement Agreement shall be valid or binding to any extent
14 unless it is in writing and signed by all the parties affected by it.

15 14. Headings and Governing Law. The headings to the paragraphs of this Settlement
16 Agreement are inserted for convenience only and will not be deemed a part hereof or affect the
17 construction or interpretation of the provisions hereof. This Settlement Agreement shall be construed
18 and enforced in accordance with and governed by California law.

19 15. Full Integration. Each of the Parties represents, warrants, and agrees that in executing
20 this Settlement Agreement he, she, or it has relied solely on the statements set forth herein and the
21 advice of its own counsel. Each of the Parties further represents, warrants, and agrees that in
22 executing this Settlement Agreement he, she, or it has placed no reliance on any statement,
23 representation, or promise of any other party, or any other person or entity not expressly set forth
24 herein, or upon the failure of any party or any other person or entity to make any statement,
25 representation, or disclosure of anything whatsoever. The Parties have included this clause (1) to
26 preclude any claim that any party was in any way fraudulently induced to execute this Settlement
27 Agreement and (2) to preclude the introduction of parol evidence to vary, interpret, supplement, or
28 contradict the terms of this Settlement Agreement.

1 16. Presumption from Drafting. In that the Parties have had the opportunity to draft,
2 review, and edit the language of this Settlement Agreement, no presumption for or against any party
3 arising out of drafting all or any part of this Settlement Agreement will be applied in any action
4 relating to, connected to, or involving this Settlement Agreement. Accordingly, the Parties waive the
5 benefit of Civil Code section 1654 and any successor or amended statute, providing that in cases of
6 uncertainty, language of a contract should be interpreted most strongly against the party that caused
7 the uncertainty to exist.

8 17. Counterparts. The Parties agree that this Settlement Agreement may be executed in
9 one or more separate counterparts, each of which shall be deemed an original when so executed. Such
10 counterparts shall together constitute and be one and the same instrument.

11 18. Voluntary Agreement. R.J. Fuchs Advisory Services enters into this Settlement
12 Agreement voluntarily and without coercion and acknowledges that no promises, threats, or
13 assurances have been made by the Commissioner, or any officer or agent thereof, about this
14 Settlement Agreement.

15 19. Notice. Any notices required under this Settlement Agreement shall be provided to
16 each party at the following addresses:

17 To Respondent: R.J. Fuchs Advisory Services
18 Robert Joseph Fuchs
19 519 Hyde Park Drive
20 San Jose, California 95136
21 bjfuchs01@aol.com

22 To the Commissioner: Afsaneh Eghbaldari, Senior Counsel
23 Department of Financial Protection and Innovation
24 1455 Frazee Road, Suite 315
25 San Diego, California 92108
26 Affi.eghbaldari@dfpi.ca.gov

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

29 21. Public Record. R.J. Fuchs Advisory Services hereby acknowledges that this
30 Settlement Agreement is and will be a matter of public record.

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22. Effective Date. This Settlement Agreement shall become final and effective when signed by all Parties and delivered by the Commissioner’s counsel via email to Robert Joseph Fuchs at bjfuchs01@aol.com.

23. Authority to Execute. Each signatory hereto covenants that he/she possesses all necessary capacity and authority to sign and enter into this Settlement Agreement.

IN WITNESS WHEREOF, the Parties hereto have approved and executed this Settlement Agreement on the dates set forth opposite their respective signatures.

Dated: September 8, 2021

CHRISTOPHER S. SHULTZ
Acting Commissioner of Financial Protection and Innovation

By: _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

Dated: September 2, 2021

R.J. FUCHS ADVISORY SERVICES

By _____
ROBERT JOSEPH FUCHS,
Owner of R.J. Fuchs Advisory Services