

1 CLOTHILDE V. HEWLETT  
Commissioner  
2 MARY ANN SMITH  
Deputy Commissioner  
3 MIRANDA LEKANDER  
Assistant Chief Counsel  
4 UCHE L. ENENWALI (State Bar No. 235832)  
Senior Counsel  
5 Department of Financial Protection and Innovation  
320 West 4<sup>th</sup> Street, Suite 750  
6 Los Angeles, California 90013  
Telephone: (213) 503-4203  
7 Facsimile: (213) 576-7181

8 Attorneys for Complainant

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

12 In the Matter of: ) CRD: 159804  
13 )  
14 THE COMMISSIONER OF FINANCIAL ) ACCUSATION AND CLAIM FOR  
PROTECTION AND INNOVATION, ) ANCILLARY RELIEF  
15 )  
16 Complainant, ) (CORPORATIONS CODE SECTIONS 25232,  
17 v. ) 25322.1 AND 25254)  
18 )  
19 INFINITY CAPITAL GROUP, LLC, an )  
entity; and STUART JOEL GREENBERG; an )  
individual, )  
20 Respondents. )

21 Clothilde V. Hewlett, Commissioner of the Department of Financial Protection and  
22 Innovation (Commissioner), acting to protect the public, alleges and charges as follows:

23 **I.**

24 **Introduction**

25 1. The Commissioner brings this action pursuant to the provisions of the Corporate  
26 Securities Law of 1968 (CSL)<sup>1</sup> (Corporations Code section 25000 et seq.), sections 25232, 25232.1,

27  
28 <sup>1</sup> All further references are to the Corporations Code unless otherwise indicated.

1 and 25254, and accompanying regulations in California Code of Regulations, title 10, section 260.000  
2 et seq.

3 2. Infinity Capital Group (ICG) is, or was, at all relevant times, a Delaware limited  
4 liability company registered with the California Secretary of State on August 8, 2011. ICG's principal  
5 place of business is located at 21700 Oxnard Street, Suite 460, Woodland Hills, California 91367.  
6 According to the California Secretary of State's website, ICG's registration is forfeited by the  
7 Franchise Tax Board as of March 1, 2022.

8 3. ICG is, or was, at all relevant times, an investment adviser licensed by the  
9 Commissioner since December 14, 2011 (Central Registration Depository No. 159804)<sup>2</sup> pursuant to  
10 the CSL. ICG's registration status is listed in CRD as "not currently registered-failure to renew"  
11 effective December 31, 2018."

12 4. Stuart Joel Greenberg (Greenberg) is, or was, at all relevant times, the chief financial  
13 officer and manager of ICG. Greenberg has been licensed by the Commissioner since July 25, 2011,  
14 as an investment adviser representative (CRD No. 6004145).

15 5. According to CRD's records, ICG is directly owned by Shlomo Mordechai Bistrizky  
16 (CRD No. 6004136), Greenberg, and the entities listed below:

- 17 a) Greyrock Capital, LLC (EIN No. 45-2576837)
- 18 b) Jacrie Group, LLC (EIN No. 45-2576795)
- 19 c) Hermes Capital Management, LLC (EIN No. 45-2791476)
- 20 d) Annor Ackah (CRD No. 1992747)

21 6. Further ICG is indirectly owned by the following individuals:

- 22 a) Carolyn Greenberg (CRD No. 6009148). Greenberg and Carolyn  
23 Greenberg are Trustees of the Stuart and Carolyn Greenberg Family Trust,  
24 which in turn owns the Jacrie Group, LLC listed herein;

25  
26  
27 <sup>2</sup> The Central Registration Depository (CRD) is a database maintained by the Financial Industry Regulatory  
28 Authority (FINRA) since 2007 for all firms and individuals involved in the U.S. securities industry. It is used to  
store and maintain information on registered securities and broker firms, as well as individuals who dispense  
investing and financial advice.

- b) Bistritzky, who is a member of Greyrock Capital, LLC listed herein; and
- c) Jon Javellana (CRD No. 2538653), who is a member of Hermes Capital Management, LLC.

7. At all relevant times herein, ICG Finance Fund, LP (The Fund) is, or was, a Delaware Limited Partnership incorporated on July 20, 2011, with its principal place of business located at 21700 Oxnard Street, Suite 460, Woodland Hills, California 91367.

8. At all relevant times herein, ICG is, or was, the manager of The Fund.

9. ICG and Greenberg are hereinafter collectively referred to as “Respondents.”

10. The Commissioner is authorized to administer and enforce the provisions of the CSL, and rules adopted thereunder.

11. The Commissioner brings this action seeking to revoke Respondents’ investment adviser certificates pursuant to section 25232 on the basis that Respondents violated several provisions of the CSL.

12. The Commissioner further brings this action seeking to bar Greenberg pursuant to section 25232.1, subdivisions (a) and (e) on the grounds that the bar is in the public interest and Greenberg (i) willfully made false or misleading statements or willfully omitted to state material fact in the report filed with the Commissioner; and (ii) willfully violated provisions of the Securities Act of 1933, the Securities Exchange Act of 1934, or the Investment Advisers Act of 1940.

13. The Commissioner also brings this action seeking restitution from Respondents pursuant to section 25252, subdivision (b), for the violations described herein.

## II.

### Statement of Facts

14. On or about March 8, 2012, Respondents filed a “Form ADV — Uniform Application Investment Adviser Registration and Report by Exempt Reporting Advisers” (ADV) with FINRA, reporting under Part 2A that they had \$340,000.00 assets under their management.

15. On or about March 21, 2012, Respondents filed a Form ADV Part 1 with FINRA, stating that they have no clients or assets under their management.

///

1           16.      In about December 2018, the Commissioner commenced a regulatory examination of  
 2 the books and records of Respondents (2018 Examination) at Respondents' principal place of  
 3 business.

4           17.      In January and June 2019, the Commissioner received complaints from at least two  
 5 California investors, C.S. and W.R., from which it appeared Respondents may be engaged in business  
 6 as investment advisers in violation of the CSL. The complaints disclosed that Respondents directly  
 7 and through third parties offered and sold securities in the form of investment contracts described as  
 8 “Limited Partnership Agreement” (Agreement) in The Fund.

9           18.      On April 10, 2020, the Commissioner's examiner (Examiner) sent a letter to  
 10 Respondents dated April 10, 2020, described as “General Inquiries relating to ICG Finance Fund, LP”  
 11 (April Letter) requesting information about the Fund. The 2018 Examination and the Commissioner's  
 12 investigation of the complaints filed by investors revealed that Respondents engaged in business as  
 13 investment advisers in violation of several provisions of the CSL in the manner more fully described  
 14 below.

### 15   III.

#### 16   The 2018 Examination

#### 17   Respondents Willfully Failed to File Form ADV Annual Updating Amendments

18           19.      CSL section 25241 provides, in pertinent part:

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

22           (Corp. Code, § 25241, subd. (a).)

23           20.      Cal. Code Regs., tit. 10, § 260.241.4 provides, in pertinent part:

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

.....

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

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

5 21. IARD provisions require investment advisers to maintain updated information with  
6 IARD, including accurate answers to disclosure questions in Part 1, Item 11 of Form ADV. Any  
7 change to the information in Form ADV must be updated “promptly” by filing an amendment to  
8 Form ADV. (*See* General Instructions of Form ADV, pages 2 through 4.)

9 22. The 2018 Examination revealed that Respondents have neither filed an Annual  
10 Updating Amendment form since 2011, nor kept information in Form ADV, Part 1, updated, in  
11 violation of section 25241 and Cal. Code Regs., tit. 10, § 260.241.4.

12 Respondents Willfully Failed to Disclose Significant Events

13 23. The 2018 Examination showed that Respondents willfully failed to report the  
14 following significant events:

15 a) The quarterly investor statements investors received from Respondents  
16 identified HC Global Fund Services, LLC (HC Global) as The Fund’s administrator. On or about  
17 November 1, 2018, HC Global notified Respondents in writing that it was terminating ICG’s  
18 administrative services due to a material breach and Respondents’ failure to provide the information  
19 or cooperation necessary for the successful performance of HC Global’ services.

20 b) Respondents acknowledged in their response to the April Letter that  
21 they stopped providing investor statements when “the administrator was terminated,” however, there  
22 is no evidence or documentation indicating that Respondents notified investors of the termination of  
23 HC Global or the reason for the termination.

24 c) Respondents failed to disclose a revocation Order dated April 11, 2018  
25 (April 2018 Order) that was issued by the Commissioner against Respondents’ affiliate entity, 101  
26 Auto Funding, LLC (101 Auto). The April 2018 Order revoked 101 Auto’s Finance Lender and/or  
27 Brokers License pursuant to Financial Code section 22715 for failing to file its annual report.  
28 Respondents’ Confidential Private Offering Memorandum (POM) designates 101 Auto as one of the

1 “affiliates of the General Partner” primarily responsible for “sourcing, underwriting and servicing the  
2 Partnership’s investments.” Greenberg serves as the primary manager of 101 Auto, assisting with the  
3 sourcing, underwriting, purchase, and servicing of investments in the Auto Finance Sector.

4 d) Respondents failed to disclose that ICG underwent foreclosure. During  
5 the 2018 Examination, the Examiner observed a “Notice of Public Sale of Collateral” dated January  
6 3, 2018, notifying the public of the plan of ICG’s secured lender, Moriches Capital Group, LLC, to  
7 sell at a public auction all its rights, title and interest assigned to the secured lender to secure the debts  
8 and obligations of ICG, in an amount not less than \$3,215,000.00.

9 e) In response to the April Letter, ICG’s counsel of record stated that  
10 substantially all ICG’s assets were foreclosed on January 28, 2018, and that investors were notified in  
11 the beginning of 2018. However, investors stated they were not informed of the foreclosure.

12 Respondents Willfully Failed to Ensure Clients Received Account Statements

13 24. Section 25235 provides, in pertinent part:

14 It is unlawful for any investment adviser, directly or indirectly, in  
15 this state:

16 ....

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

20 25. Cal. Code Regs., tit. 10, § 260.237 provides in pertinent part:

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  
investment adviser ... to have custody of client funds or securities  
24 unless:

25 ...

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

pooled investment vehicle):

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

(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:

(A) Account statements required by paragraph (a)(5)(A).

(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 that is registered with, and subject to regular inspection as of the commencement of the professional engagement period, and as of each calendar year-end, by the Public Company Accounting Oversight Board in accordance with its rules.

(D) Upon liquidation, the adviser distributes the fund's final audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners (or members or other beneficial owners) and the Commissioner promptly after the completion of such audit.

...

(2) "Custody" means holding, directly or indirectly, client funds or securities, or having any authority to obtain possession of them, or having the ability to appropriate them. An investment adviser has custody if a related person holds directly or indirectly, client funds or securities, or has any authority to obtain possession of them, in connection with

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

advisory services the investment adviser provides to clients.  
Custody includes:

- (C) Any capacity (such as general partner of a limited partnership, managing member of a limited liability company or a comparable position for another type of pooled investment vehicle, or trustee of a trust) that gives the investment adviser or the investment adviser’s representative legal ownership of or access to client funds or securities.

(Cal. Code Regs., tit. 10, § 260.237, subs. (a)(5)(A), and (b)(4)(A) (D).)

26. The 2018 Examination showed that ICG has custody of client funds and securities because it served as the general partner and investment adviser to The Fund. Pursuant to Cal. Code Regs., tit. 10, § 260.237, subd. (a)(2)(C), when an investment adviser serves as a general partner of a limited partnership; managing member of a limited liability company; or a comparable position for another type of pooled investment vehicle that gives the adviser legal ownership of, or access to client funds or securities, that adviser is considered to have custody of those client funds and securities. However, an investment adviser acting in this capacity will be eligible for a waiver of the heightened custody requirements of Cal. Code Regs., tit. 10, § 260.241.2 and 260.237.2 if the adviser adheres to pertinent safeguarding procedures.

27. Respondents did not adhere to the requisite safeguarding procedures in managing The Fund. Respondents did not distribute account statements to the investors of The Fund since the 2nd Quarter of 2018 and The Fund’s financial statements have not been audited since 2014, in violation of violation of Cal. Code Regs., tit. 10, § 260.237(b)(4)(A).

28. Additionally, Respondents represented that they were in the process of dissolving The Fund but failed to distribute The Fund’s final audited financial statements prepared in accordance with GAAP to all limited partners and the Commissioner after the completion of such audit as required under Cal. Code. Regs., tit. 10, § 260.237(b)(4)(D). As such, Respondents are not eligible to receive a waiver of the heightened custody requirements set forth in Cal. Code Regs., tit. 10, §§ 260.241.2 and 260.237.2.

///



1 Willfully Failing to Maintain Books and Records

2 29. CSL section 25241 provides, in pertinent part:

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

6 (Corp. Code, § 25241, subd. (a).)

7 30. CCR section 260.241.3. provides in pertinent part:

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

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

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

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

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

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

22 (7) Originals of all written communications received and copies of all  
23 written communications sent by such investment adviser relating to  
24 (i) any recommendation made or proposed to be made and any  
25 advice given or proposed to be given, (ii) any receipt, disbursement  
26 or delivery of funds or securities, or (iii) the placing or execution of  
27 any order to purchase or sell any security; provided, however, that  
28 the investment adviser shall not be required to keep any unsolicited  
market letters and other similar communications of general public  
distribution not prepared by or for the investment adviser; and  
provided that if the investment adviser sends any notice, circular or  
other advertisement offering any report, analysis, publication or

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

other investment advisory service to more than 10 persons, the investment adviser shall not be required to keep a record of the names and addresses of the persons to whom it was sent, except that if such notice, circular or advertisement is distributed to persons named on any list, the investment adviser shall retain with the copy of such notice, circular or advertisement a memorandum describing the list and the source thereof.

....

(b) If a licensed investment adviser has custody or possession of securities or funds of any client, the records required to be made and kept under Subsection (a) above shall include:

(4) A record for each security in which any such client has a position, which record shall show the name of each such client having any interest in such security, the amount of interest of each such client, and the location of each such security.

(j) Any investment adviser who is subject to the minimum financial requirements of Section 260.237.2 shall, in addition to the records otherwise required under this section, maintain a record of the proof of money balances of all ledger accounts in the form of trial balances and a record of the computations of minimum net worth pursuant to Section 230.237.2 of these rules (as of the trial balance date). The trial balances and computations shall be prepared currently at least once a month.

(Cal. Code Regs., tit. 10, § 260.241.3, subds. (a) (1), (2), (4)-(7), (b) (4) and (j).)

31. Every investment adviser is required to prepare and maintain cash receipt and disbursement journals, general ledger, balance sheet, and income statement at the end of each month. The 2018 Examination revealed that Respondents failed to maintain or provide the books and records requested by the Examiner, including:

a) failing to prepare or maintain monthly financial statements and accounting records; failing to prepare and maintain monthly minimum financial requirement calculations; and failing to provide subscription documents for the individuals and entities listed below:

- Infinity Capital Group, LLC
- M FG
- M. R.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- P M Charitable Trust
- CB CF
- C G
- CL I
- C. U.
- E. F.
- PCFBD
- EMI
- Y. G.
- D B R
- K. B.
- S. G.

a) Failed to provide copies of Schedule K-1 tax forms to investors and Profit & Loss Allocation Schedules or other documentation which confirm that profits and losses were properly allocated to the investors in The Fund for October, November, and December 2018.

b) Failed to provide ICG’s liquidation plan, liquidation disbursement schedules, investor balances upon liquidation, the calculation of investor balances upon liquidation and documentation which confirms that disbursements were made to all investors.

c) Failed to provide custodial account statements, bank statements or other third-party valuation documents for each of the assets included in The Fund’s December 31, 2018, Balance Sheet. In addition, ICG did not provide documentation which supports the “Bad Debt” of \$635,435 and “Loss on Write-off” \$864,553 reflected in The Fund’s January 1, 2018, through December 31, 2018, Profit & Loss statement.

Respondents Willfully Failed to Meet the Minimum Net Worth Requirements

32. Cal. Code Regs., tit. 10, section 260.237.2 provides in pertinent part:

- (a) Every investment adviser who has custody of client funds or securities shall maintain at all times a minimum net worth of \$35,000, and every investment adviser who has discretionary authority over client funds or securities but does not have custody

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

of client funds or securities, shall maintain at all times a minimum net worth of \$10,000.

(c) Unless otherwise exempted, as a condition of the right to continue to transact business in this state, every investment adviser shall, by the close of business on the next business day following the discovery that the investment adviser’s net worth is less than the minimum required, notify the Commissioner that the investment adviser’s net worth is less than the minimum required. After transmitting such notice, by the close of business on the next business day each investment adviser shall file a report with the Commissioner of its financial condition....

(e) For purposes of this rule, a person will be deemed to have custody if said person directly or indirectly holds client funds or securities, has any authority to obtain possession of them, or has the ability to appropriate them.

(j) For purposes of subsection (c) this rule, if the failure to discover that an investment adviser’s net worth is less than the minimum required is the result of the investment adviser’s failure to keep true, accurate and current the books and records required under Section 260.241.3, the investment adviser will be deemed to have discovered that the investment adviser’s net worth is less than the minimum required by this section.

33. The 2018 Examination disclosed that ICG has custody of client funds and securities as such, it is required to always maintain a minimum net worth of \$35,000. However, due to the ICG’s failure to maintain books and records and accounting records, ICG’s minimum financial requirement could not be determined during the 2018 Examination. Therefore, pursuant to Cal. Code Regs., tit. 10, section 260.237., subd. (j), ICG is deemed to be deficient of the minimum net worth requirement and is deemed to have discovered that its net worth is less than the minimum net worth requirement. In addition, ICG failed to notify the Commissioner that its net worth was less than the minimum financial requirement, in violation of Cal. Code Regs., tit. 10, section 260.237.2, subd. (c).

Respondents Willfully Failed to File Annual Report

34. Cal. Code Regs., tit. 10, section 260.241.2 provides in pertinent part:

(a) General Rule. Subject to the provisions of subsection (c) of this section, every licensed broker-dealer, and every licensed investment adviser subject to the provisions of

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Section 260.237.2 of these rules, shall file an annual financial report, as follows....

(3) The financial statements included in the annual report shall be prepared in accordance with generally accepted accounting principles and shall be audited by either an independent certified public accountant or independent public accountant; provided, however, the financial statements need not be audited if:

The broker-dealer or investment adviser has not held or accepted custody of funds and securities for or owed money or securities to customers or clients during the period covered by the report; and

(B) if the licensee is an investment adviser, the investment adviser only has discretionary authority over client funds or securities, the investment adviser has taken only limited powers of attorney to execute transactions on behalf of its clients, or the investment adviser does not accept prepayment of more than \$500 per client for more than six months in advance; or

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

35. Respondents are required to file an annual financial report no more than 90 days after the investment adviser or broker- dealer's fiscal year end. Further, because ICG has custody of client funds and securities, ICG is required to file annual financial reports that are prepared in accordance with GAAP and audited by an independent certified public accountant or independent public accountant. As noted in the 2018 Examination, since ICG’s inception, Respondents have not filed any reports, let alone audited reports.

Engaging in Activities that do not Promote Fair, Equitable and Ethical Principles

36. CSL section 25238 provides in pertinent part:

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

37. Cal. Code Regs., tit. 10, § 260.238 provides in pertinent part:

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

- (a) Recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives financial situation and needs, and any other information known or acquired by the adviser after reasonable examination of such of the client's records as may be provided to the adviser.
- (h) Misrepresenting to any advisory client, or any prospective advisory client, the qualifications of the adviser, its representatives or any employees, or misrepresenting the nature of the advisory services being offered or fees to be charged for such service or omitting to state a material fact necessary to make the statements made regarding the qualifications, services or fees, in light of the circumstances under which they are made, not misleading.
- (k) failing to disclose to a client in writing before entering into or renewing an advisory agreement with that client any material conflict of interest relating to the adviser, its representatives or any of its employees, which could be reasonably expected to impair the rendering of unbiased and objective advice including:
  - (1) Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; and
  - (2) Charging a client an advisory fee for rendering advice without disclosing that a commission for executing securities transaction pursuant to such advice will be received by the adviser, its representatives or its employees, or that such advisory fee is being reduced by the amount of the commission earned by the adviser, its representatives or employees for the sale of securities to the client.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

(n) Entering into, extending or renewing any investment advisory contract, other than a contract for impersonal advisory services, unless such contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee or the formula for computing the fee the amount or the manner of calculation of the amount of the prepaid fee to be returned in the event of contract termination or non-performance, whether the contract grants discretionary power to the adviser or its representatives.

(Cal. Code Regs., tit. 10, § 260.238)

38. Pursuant to section 25238 and Cal. Code Regs., tit. 10, § 260.238, Respondents have a fiduciary duty to employ reasonable care to gather sufficient, updated information about clients' financial standing and client needs and make investment recommendations that are suitable to clients' financial goals and needs. The 2018 Examination revealed that ICG failed to provide sufficient evidence demonstrating they had reasonable grounds to believe that their recommendations to investors were in fact suitable for several reasons:

- a) the investor's investment objectives and/or financial situation were not adequately established or met;
- b) ICG did not maintain or provide copies of the executed subscription agreements for some of the investors of The Fund;
- c) The Agreement contains pertinent provisions as follows:
  - i. Section 6 of the LP Agreement includes a description of the fee and formula for computing the management fee. In addition, Section 5.1 includes a description of the performance allocation. However, the Agreement failed to disclose whether management fees and performance-based fees were charged in arrears or advance.
  - ii. Section 9.3 (a)(v) of the Agreement states that the general partner or any member of the general partner must register as an investment adviser under the Investment Advisers Act of 1940. However, the Commissioner finds the statement misleading as it may imply that ICG is a federally registered investment adviser.
  - iii. Greenberg engaged in other business activities without addressing them or any conflicts they may create in the Agreement.

1 Willfully Charging Fees Not Disclosed in Agreement

2 39. Section 25234 provides in pertinent part:

3 (a) No investment adviser licensed under this chapter shall in this  
4 state enter into, extend or renew any investment advisory contract,  
5 or in any way perform any investment advisory contract entered  
6 into, extended or renewed on or after the effective date of this law,  
7 if that contract:

8 (1) Provides for compensation to the investment adviser on  
9 the basis of a share of capital gains upon or capital  
10 appreciation of the funds or any portion of the funds of the  
11 client, except as may be permitted by rule or order of the  
12 commissioner....

13 (Corp. Code, § 25234, subdivision (a) (1))

14 40. Cal. Code Regs., tit. 10, § 260.234 provides in pertinent part:

15 The provisions of Section 25234 (a)(1) of the Code shall not apply:

16 ....

17 (b) to any investment adviser, provided all of the following are  
18 met:

19 (1) the only clients entering into the investment advisory  
20 contract are “qualified clients” as defined in paragraph (d) of  
21 Rule 205-3 (17 CFR 275.205-3(d)) under the Investment  
22 Advisers Act of 1940 (Section 80b-1 et seq.),...

23 (c) to an investment advisory contract with an institutional  
24 investor as defined in subdivision (i) of Section 25102 of the  
25 Code or in Section 260.102.10 or Section 260.105.14 of these  
26 Rules, excluding for the purposes of this section any pension or  
27 profit sharing plan with gross assets of less than \$100,000,000  
28 according to its most recent audited financial statement....

41. The 2018 Examination disclosed that Respondents charged performance-based fees to  
investors without disclosing in its Agreements that ICG’s performance fee calculation does not use a  
high watermark, which is not standard industry practice. In addition, Respondents’ Agreement does  
not comply with provisions of Cal. Code Regs., tit. 10, § 260.234 as it omits the following  
information:

- a) State that ICG’s performance fee calculation does not use a “high watermark.”
- b) Explain the concept and definition of a “high watermark.”



1 c) Explain that it is industry practice to use a “high watermark” to calculate  
2 performance fees.

3 d) The potential for additional costs to the client when not using a “high  
4 watermark” to calculate the performance fees, specifically when client account suffers substantial  
5 losses in the prior period.

6 e) That lower fees for comparable services may be available elsewhere.

7 Willfully Failing to Comply with Reporting Requirements

8 42. Cal. Code Regs., tit. 10, § 260.236.1 provides in pertinent part:

9 (a) The procedures set forth in this subsection are applicable to  
10 investment advisers licensed pursuant to Section 25230 of the  
11 Code. References to an investment adviser representative shall  
12 mean both an investment adviser representative and an associated  
13 person of an investment adviser, as those terms are defined in  
14 Section 25009.5(a) of the Code.

14 ....

15 (3) Within thirty (30) days of any changes to the information  
16 contained in Form U4 an amendment to Form U4 shall be filed  
17 with CRD. If Form U4 is being amended due to a disciplinary  
18 occurrence, a copy of the amendment shall be filed with the  
19 Commissioner upon request.

18 ....

19 (b) The procedures set forth in this subsection are applicable to  
20 investment adviser representatives subject to the provisions of  
21 Section 25230.1(c) of the Code.

22 ....

23 (3) Within thirty (30) days after the termination of an individual as an  
24 investment adviser representative, Form U5 shall be filed with  
25 IARD in accordance with the form instructions. Form U5 shall  
26 clearly state the reason(s) for termination. If an investment adviser  
27 representative is terminated for cause, Form U5 shall, upon request,  
28 be filed directly with the Commissioner.

27 43. The 2018 Examination showed that Respondents failed to properly report events and  
28 activities in CRD as follows:

1 a) Greenberg’s U4 form filed in CRD on February 15, 2012, failed to disclose that  
 2 Greenberg is a business broker at Link Business LA; CEO at ADV-USA, Inc. and the General Partner  
 3 of The Fund. Greenberg’s role as a business broker, CEO and General Partner of The Fund should  
 4 have been reported in Greenberg’s U4 form under Item 12, “Employment History” and Item 13,  
 5 “Other Business.”

6 b) As noted in the 2018 Examination, ICG failed to renew its registration as an  
 7 investment adviser as of December 31, 2018.

8 44. Further, Respondents failed to provide notice of changes to their ADV or correct  
 9 several inaccuracies or omissions contained in Respondents’ ADV, including but not limited to,  
 10 omitting IGC’s current address, names of its current officers and employees, hours of operation;  
 11 contact information; the current number of clients and amount of asset-under-management; and all  
 12 other business activities that ICG engaged in.

13 Failure to Disclose Financial and Disciplinary Information

14 45. Section 25235 provides in pertinent part:

15 It is unlawful for any investment adviser, directly or indirectly, in  
 16 this state:

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

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

20 (c) Acting as principal for his own account, knowingly to sell any  
 21 security to or purchase any security from a client for whom he is  
 22 acting as investment adviser, or, acting as broker for a person other  
 23 than such client, knowingly to effect any sale or purchase of any  
 24 security for the account of such client, without disclosing to such  
 client in writing before the completion of the transaction the  
 capacity in which he is acting and obtaining the written consent of  
 the client to such transaction.

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

(e) To represent that he is an investment counsel or to use the name “investment counsel” as descriptive of his business unless his principal business consists of acting as investment adviser and a substantial part of his business consists of rendering investment advisory services on the basis of the individual needs of his clients.

46. Cal. Code Regs., tit. 10, § 260.235.4. provides in pertinent part:

(a) It shall constitute a fraudulent, deceptive, or manipulative act, practice or course of business within the meaning of Section 25235 of the Code for any investment adviser to fail to disclose to any client or prospective client all material facts with respect to:

(1) A financial condition of the adviser that is reasonably likely to impair the ability of the adviser to meet contractual commitments to clients if (A) the adviser has discretionary authority (express or implied) or custody over such client's funds or securities, or (B) requires prepayment of advisory fees from such client 6 months or more in advance; or

(3) A legal or disciplinary event that is material to an evaluation of the adviser's integrity or ability to meet contractual commitments or clients.

47. The 2018 Examination revealed that ICG did not prepare and maintain financial statements monthly as required under the CSL. As such, ICG was deemed to be deficient of its minimum financial requirement. Further, ICG did not disclose that its financial condition is likely to impair its ability to meet its contractual commitments to its clients, specifically the investors of The Fund.

48. Respondents represented to investors that ICG and The Fund were being sold to a secured lender but there is no documentation showing that Respondents timely notified investors or provided details of the purported sale to investors.

Unlawful Offers and Sales of Securities

49. Section 25110 provides in pertinent part:

It is unlawful for any person to offer or sell in this state any security in an issuer transaction (other than in a transaction subject to Section 25120), whether or not by or through underwriters, unless such sale has been qualified under Section 25111, 25112, or 25113 (and no order under Section 25140 or subdivision (a) of Section 25143 is in effect with respect to such qualification) or unless such security or

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

transaction is exempted or not subject to qualification under Chapter 1 (commencing with Section 25100) of this part. The offer or sale of such a security in a manner that varies or differs from, exceeds the scope of, or fails to conform with either a material term or material condition of qualification of the offering as set forth in the permit or qualification order, or a material representation as to the manner of offering which is set forth in the application for qualification, shall be an unqualified offer or sale.

50. CSL section 25110 prohibits the offer and sale of unqualified, non-exempt securities in any issuer transaction in this state.

51. The limited partnership interests in The Fund sold by Respondents are “securities” subject to qualification under the CSL.

52. Respondents “offered and sold” the securities referred to herein in the state of California within the meaning of CSL, sections 25008 and 25017.

53. Commencing at least February 2014, Respondents offered and sold securities in the form of investment contracts described as Limited Liability Partnership Agreement in The Fund in “issuer transactions” in the State of California, within the meaning of CSL sections 25008, 25010, 25011, and 25017 to at least two investors, raising at least \$389,235.39.

54. The offer and sale of securities by the Respondents is not exempt from the requirement of qualification under CSL section 25110.

55. In California, companies offering or selling securities in reliance on Rule 506, Regulation D of the Securities and Exchange Commission (17 C.F.R. 230.501 et seq.), Securities Act of 1933, must file a Form D upon the first sale of securities in this state under section 25102.1(d). The Commissioner has no record of a Limited Offering Exemption Notice on file under section 25102(f) for The Fund.

56. Respondents offered and sold the securities in this state by means of written or oral communications that included untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, in violation of section 25401 of the CSL, including:

- (a) failing to provide investor statements to investors;

///

1 (b) representing to investors that they could liquidate their partnership interests  
2 and withdraw their investment after two years of investing, when in fact investors could not liquidate  
3 their interest or get their money back;

4 (c) neither preparing audited financial statements in the manner prescribed by  
5 law nor providing quarterly account statements to investors, which is deemed “to be a fraudulent,  
6 deceptive, or manipulative act, practice or course of business within the meaning of Section 25235 of  
7 the Code for an investment adviser to have custody of client funds or securities....”

#### 8 IV.

#### 9 Investor Complaints

#### 10 Respondents Willfully Failed to Provide Quarterly Statements to Investors

11 57. Pursuant to section 25235 and Cal. Code Regs., tit. 10, § 260.237, Respondents are  
12 required to provide, at least quarterly, investor statements to investors. In their response to the April  
13 Letter, Respondents admitted that they have not been providing quarterly statements to investors and  
14 that the last time they provided quarterly statement to investors was in the 2nd Quarter of 2018.

15 58. On or about November 17, 2020, the Examiner interviewed investor C. S. who  
16 invested \$100,000.00 in The Fund in about 2014. C.S. received quarterly investor statements from  
17 Respondents from about 2014 until the 2nd Quarter of 2018 when C.S. stopped getting investor  
18 statements. C.S. stated that in about May 2017, C.S. obtained a divestment of \$25,000.00 from C.S.’  
19 account, leaving what C.S. believed to be a balance of \$127,000.00 in C.S.’ account. According to  
20 C.S., the last investor statement that C.S. received for the 2nd Quarter of 2018 reflected a balance of  
21 \$119,563.45 in C.S.’ account.

22 59. C.S. further told the Examiner that on May 5, 2017, C.S.’ investment manager, S.B.  
23 informed C.S. that “ICG had not had proper audits and was being removed from the Fidelity  
24 Platform.” During their conversation on May 5, 2012, C.S. learned from S.B. for the first time that  
25 The Fund was in “liquidation mode and expected to be liquidated by the end of the year.” C.S. stated  
26 that C.S. did not know about Respondents’ decision to liquidate their interests in The Fund and only  
27 heard about the liquidation through S.B.

28 ///

1           60.     In about May 2017, C.S. requested to liquidate C.S.' partnership interests in the Fund  
2 and withdraw C.S.' balance, however C.S. did not receive any response from Respondents. From  
3 about May 2017 to at least October 2020, C.S. sent numerous emails to Respondents repeatedly  
4 requesting to liquidate C.S.' limited partnership position and withdraw C.S.' capital investment.  
5 Despite Respondents' numerous assurances and promises to liquidate C.S.' partnership position and  
6 refund C.S.' capital investment, to date, C.S. has not received any funds back, including the balance  
7 of \$119,647.95 reflected in the investor statement that C.S. received from Respondents.

8           61.     On December 17, 2020, the Examiner interviewed investor W. R. who invested in The  
9 Fund in February 2014 with an initial principal investment of \$180,000. Respondents represented  
10 through their offering circular and Agreement that W.R. could liquidate W. R.'s partnerships position  
11 and be reimbursed W. R.'s entire investment after two years of investing in The Fund.

12           62.     W.R. received quarterly investor statements from Respondents from about 2015 until  
13 February 2018 when W.R. stopped receiving the statements. According to W.R., the last investor  
14 statement that W.R. received from Respondents was for the 2nd Quarter of 2018 and it showed a  
15 balance of \$269,671.94 in W.R.'s account in The Fund. W.R. was not aware of any plans by  
16 Respondents to liquidate The Fund.

17           63.     In September 2018, W.R. requested to liquidate W. R.'s partnership interest and  
18 withdraw W.R.'s balance of \$269,671.94. W.R. further sent emails to Respondents requesting W.R.'s  
19 investor statement. On or about October 14, 2020, W.R. received copies of W. R.'s Schedule K-1 tax  
20 form for the years 2018 and 2019 but never received statements or updates concerning the  
21 performance of W.R.'s investment. The 2019 Schedule K-1 tax form W.R. received from  
22 Respondents show a total loss of W. R.'s investment and to date, W.R. has not received W. R.'s  
23 capital from Respondents.

24 Respondents Willfully failed to Issue Audited Financial Statements for The Fund

25           64.     A review of Respondents' ADV Part 1 filed on March 21, 2012, revealed that The  
26 Fund's financial statements are subject to an annual audit. In their response to the April Letter, on  
27 November 23, 2020, Respondents admitted that they have not filed audited financial statements for  
28 The Fund since 2014.

1 Respondents Willfully Failed to Provide Proper Disclosures to Investors

2 65. A review of Respondents’ records disclosed a Confidential Private Offering  
3 Memorandum (POM) which provides in pertinent part:

4 [T] he right of the Limited Partners to withdraw their investments in  
5 the Partnership is subject to certain requirements, including the lock-  
6 up provision. In general, withdrawals are permitted only monthly  
7 upon ninety (90) days’ prior notice to the General Partner. These  
8 requirements limit the ability of a Limited Partner to liquidate an  
9 investment in the Partnership quickly. As a result, an investment in  
10 the Partnership would not be suitable for an investor requiring  
11 liquidity. Even if the General Partner determines that a withdrawal  
12 request can be honored, there may be a delay in obtaining the funds  
13 necessary to honor the withdrawal request due to the redemption  
14 policies of any securities in which the Partnership invests, or the  
15 inability of the General Partner to liquidate its investments in a  
16 manner or at a price it deems appropriate. Extraordinary  
17 circumstances may cause further delays in receiving withdrawal  
18 payments.”

14 66. Both W.R. and S.C. reported that they did not receive copies of Respondents’ POM.  
15 As such, Respondents failed to provide investors proper disclosures concerning the suitability of their  
16 investments, especially in light of the withdrawal provisions contained in the POM restricting  
17 investors from withdrawing their funds, in violation of section 25238 and Cal. Code Regs., tit. 10, §  
18 260.238.

19 Respondents Willfully Failed to Honor Client Requests for Return of Funds

20 67. Respondents’ Agreement provides in pertinent part:

21 Withdrawals by the Partners.

22 (a) Lock Up Period. Limited Partners may not withdraw their  
23 respective Interests, any amount of their respective Capital Accounts  
24 or otherwise withdraw from the Partnership during the twelve (12)  
25 month period immediately following their admission as a Partner to  
26 the Partnership (the “*Lock-Up Period*”), provided that the Lock-Up  
27 Period is not extended as a result of the automatic reinvestment of  
28 distributions, re-allocations, or by additional Capital Contributions by  
such Limited Partner. The General Partner, in its sole discretion, may  
waive the application of the Lock-Up Period for any Limited Partner.  
If the General Partner, in its sole discretion, permits a Limited Partner

1 to withdraw any portion of its Interest or Capital Account during the  
 2 applicable Lock-Up Period, the Partnership may charge an early  
 3 withdrawal fee on the amount withdrawn, as determined by the  
 4 General Partner in its sole discretion, which shall in no event exceed  
 5 two percent (2%) of the amount withdrawn.

6 (b) Withdrawal Procedure. Following the expiration or waiver of the  
 7 applicable Lock-Up Period and subject to the restrictions on  
 8 withdrawals and the right to suspend withdrawals as set forth herein,  
 9 a Limited Partner may withdraw all or a portion of its Interest on the  
 10 last business day of June and the last business day of December  
 11 (and/or such other day(s) as the General Partner may determine in its  
 12 sole discretion) (each a “Withdrawal Date”). Written notice of any  
 13 withdrawal must be given to the General Partner at least ninety (90)  
 14 days prior to the Withdrawal Date. A Withdrawal Request, once  
 15 given, will be deemed to be irrevocable, except to the extent the  
 16 General Partner permits the revocation thereof....

17 68. The Examiner’s interviews with investors revealed that despite several requests by  
 18 investors to liquidate their partnership positions and withdraw their investments, Respondents  
 19 willfully failed to honor investors’ requests as specified in the Agreement, in violation of section  
 20 25238 and Cal. Code Regs., tit. 10, § 260.238.

21 Respondents Willfully Failed to Pay Investment Adviser Renewal Fee

22 69. The Commissioner’s records show that Respondents failed to file their investment  
 23 adviser renewal fee that was due December 17, 2018. On January 2, 2019, the Commissioner issued a  
 24 10-Day Notice of Intention to Revoke the Investment Adviser Registration of ICG for failure to file  
 25 their renewal fee. The Commissioner did not receive a response from Respondents. In addition,  
 26 IARD’s records show that as of March 2, 2021, ICG has, since December 31, 2018, failed to “renew  
 27 due to insufficient funds in the renewal account.”

28 **V.**

**Authority to Revoke Respondents’ Investment Adviser Certificates**

70. Section 25232 provides in pertinent part:

The commissioner may, after appropriate notice and opportunity for  
 hearing, by order ... revoke the certificate of, an investment adviser, if  
 the commissioner finds that the ... revocation is in the public interest  
 and that the investment adviser, whether prior or subsequent to



1 becoming such, or any partner, officer or director thereof or any  
2 person performing similar functions or any person directly or  
3 indirectly controlling the investment adviser, whether prior or  
4 subsequent to becoming such, or any employee of the investment  
adviser while so employed has done any of the following:

5 (a) Has willfully made or caused to be made in any application for a  
6 certificate or any report filed with the commissioner under this  
7 division, or in any proceeding before the commissioner, any statement  
8 which was at the time and in the light of the circumstances under  
9 which it was made false or misleading with respect to any material  
10 fact, or has willfully omitted to state in the application or report any  
11 material fact which is required to be stated therein.

12 ....

13 e) Has willfully violated any provision of the Securities Act of 1933,  
14 the Securities Exchange Act of 1934, the Investment Advisers Act of  
15 1940... or any order of the commissioner which is or has been  
16 necessary for the protection of any investor.

17 (h) Has violated any provision of this division or the rules  
18 thereunder....

19 71. As alleged in paragraphs 20, 24 and 43, Respondents willfully failed to file Form ADV  
20 Annual Updating Amendments in violation of section 25241 and Cal. Code Regs., tit. 10, §  
21 260.241.4. Further, Respondents failed to report pertinent events and activities in CRD. Respondents  
22 are required to maintain updated information with IARD with accurate answers to disclosure  
23 questions contained in Form ADV. By failing to file updated ADV since 2011 or report their  
24 activities and events concerning their investment advisory services, Respondents have willfully made  
25 in an application or report to the Commissioner, a statement which was at the time and in the light of  
26 the circumstances under which it was made false or misleading, or willfully omitted to state in the  
27 application or report any material fact which is required to be stated therein.

28 72. As alleged in paragraphs 50-58, Respondents unlawfully offered and sold securities by  
means of fraud by failing to provide investors statements and representing to investors that they could  
liquidate their partnership and withdraw their investments after two years of investing, when investors  
could not so liquidate their investments or withdraw their capital investments.

///

1 73. As alleged in paragraphs 26, 31, 34, 38-47, and 59 through 71 herein, Respondents  
2 violated several provisions of the CSL, thus warranting the revocation of Respondent’s investment  
3 adviser certificates pursuant to section 25232, subdivision (h).

4 VI.

5 Authority to Bar Greenberg

6 74. Section 25232.1 provides in pertinent part:

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

17 (Corp. Code, § 25232.1)

18 75. As alleged in paragraphs 20, 24, 43, and 44, Respondents violated section 25232 (a) by  
19 willfully failing to file Form ADV Annual Updating Amendments in violation of section 25241 and  
20 Cal. Code Regs., tit. 10, § 260.241.4, and failing to report pertinent events and activities in CRD,  
21 including failing to maintain updated information with IARD with accurate answers to disclosure  
22 questions contained in Form ADV.

23 76. In addition, Respondents violated section 25232 (e) by willfully violating provisions  
24 the CSL and CCR.

25 77. Based on these acts and omissions, Greenberg should be barred from the investment  
26 industry.

27 VII.

28 Claim for Ancillary Relief

Restitution for Clients

78. Section 25254 provides, in part, that:

///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

(Corp. Code, § 25254.)

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

80. Clients who invested in The Fund are entitled to restitution of the money they invested in the amount of at least \$389,235.39, plus interest thereon, according to proof, based on these acts, omissions, and violations.

81. Respondents should pay restitution to clients who invested money in The Fund based on the above listed acts, omissions, and violations.

**VIII.**

**Public Interest**

82. Based on the foregoing, the Commissioner has deemed it in the public interest to revoke Respondents' investment adviser certificates and bar Greenberg from the investment industry, and to include a claim for restitution to clients. Investment advisers are fiduciaries to their clients and must adhere to a strict fiduciary standard encompassing a duty of "utmost" good faith, full and fair disclosure of all material facts, and an obligation to use reasonable care to avoid misleading clients.

83. Investment advisers must act in the "best interest" of their advisory clients and fully disclose all conflicts of interest. As a fiduciary, an investment adviser must discuss clients' financial goals and educate clients on various ways to accomplish them; help clients assess how aggressive they can be with their investments and the amount of risk they can bear; analyze the client's goals and needs, research and analyze investments, strategies, and market conditions to determine which option is most appropriate and provide an investment strategy that can best help the client meet their goals.

84. Respondents violated this fiduciary duty to clients by committing acts, omissions, and violations of the CSL and CRR. For these reasons, it is therefore in the public interest to revoke the

1 investment adviser certificates of Infinity Capital Group and Stuart Joel Greenberg, and to bar Stuart  
2 Joel Greenberg from the investment industry, and require that Respondents pay restitution to clients.

3 **IX.**

4 **Relief Requested**

5 WHEREFORE, based upon the foregoing, the Commissioner finds it is in the public interest  
6 to revoke the investment adviser certificates of Infinity Capital Group and Stuart Joel Greenberg  
7 pursuant to CSL section 25232, and to bar Stuart Joel Greenberg from the investment industry  
8 pursuant to section 25232.1, and to award restitution to clients.

9 WHEREFORE, IT IS PRAYED that the investment adviser certificate of Infinity Capital  
10 Group and Stuart Joel Greenberg be revoked pursuant to section 23232.

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

14 WHEREFORE, IT IS FURTHER PRAYED that Infinity Capital Group and Stuart Joel  
15 Greenberg be ordered to pay restitution to clients who invested in The Fund, in the amount of at least  
16 \$389,235.39, plus interest thereon, according to proof.

17 Dated: April 15, 2022

CLOTHILDE V. HEWLETT  
Commissioner of Financial Protection and Innovation

19 By \_\_\_\_\_  
20 UCHE L. ENENWALI  
21 Senior Counsel  
22 Enforcement Division  
23  
24  
25  
26  
27  
28