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10

11 Attorneys for Complainant

12 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION  
13 OF THE STATE OF CALIFORNIA

14 In the Matter of: ) CRD NOS.: 281819  
15 THE COMMISSIONER OF FINANCIAL )  
PROTECTION AND INNOVATION, ) Consent Order  
16 )  
17 Complainant, )  
18 v. )  
19 MAGISTER CAPITAL MANAGEMENT, LLC, )  
20 Respondent. )  
21 )

22 The Commissioner of Financial Protection and Innovation (Commissioner) and Magister  
23 Capital Management, LLC (MCM) (collectively, the Parties), enter into this Consent Order with  
24 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 (Corp. Code, § 25000 et seq.) (CSL) and the regulations

1 promulgated thereunder at title 10 of the California Code of Regulations, which include the licensure,  
2 examination, and regulation of investment advisers and broker-dealers.

3 B. MCM is a California limited liability company with its principal place of business at  
4 111 Deerwood Road, Suite 200, San Ramon, California 94583.

5 C. On January 30, 2018, the Commissioner issued an investment adviser certificate to  
6 MCM pursuant to Corporations Code section 25230, Central Registration Depository (CRD) Number  
7 281819.

8 D. Carlos Zapata (CRD NO. 3052245) is the 100% owner and investment adviser  
9 representative of MCM.

10 E. On June 30, 2022, the Commissioner instructed MCM to file an annual amendment to  
11 its Form ADV in Investment Adviser Registration Depository (IARD) no later than 30 days after June  
12 30, 2022, the date of the letter.

13 F. According to IARD, the investment adviser failed to timely file an annual updating  
14 amendment to its Form ADV for Fiscal Year 2021. Pursuant to California Code of Regulations, title  
15 10, section 260.241.4, subdivision (e), a licensed investment adviser shall file an annual updating  
16 amendment, in accordance with the instructions in Form ADV, with IARD in accordance with its  
17 procedures for transmission to the Commissioner within ninety (90) days of the end of the investment  
18 adviser's fiscal year.

19 G. As a result of the foregoing, on or about September 8, 2022, the Commissioner issued  
20 an Order to Discontinue Violation against MCM pursuant to Corporations Code section 25249 for  
21 violations of Corporations Code section 25241 and California Code of Regulations, title 10, section  
22 260.241.4, subdivision (e).

23 H. On or about September 19, 2022, MCM submitted its 2021 annual updating  
24 amendment to Form ADV, with IARD.

25 I. MCM admits to the jurisdiction of the Department of Financial Protection and  
26 Innovation (Department) and it is the intention of the Parties to resolve this matter without the  
27 necessity of a hearing and/or other litigation.

28 J. The Commissioner finds this action is appropriate, in the public interest, is necessary

1 for the protection of investors, and is consistent with the purposes fairly intended by the policies and  
2 procedures of the CSL.

3 NOW, THEREFORE, for good and valuable consideration, and the terms and conditions set  
4 forth herein, the Parties agree as follows:

5 **II.**  
6 **Terms**

7 1. Purpose: This Consent Order resolves the issues before the Commissioner described  
8 paragraphs A-J above in a manner that avoids the expense of a hearing and other possible court  
9 proceedings, protects consumers, is in the public interest, and is consistent with the purposes and  
10 provisions of the CSL.

11 2. Rescission Order: The Order to Discontinue Violation issued against MCM on September  
12 8, 2022, pursuant to Corporations Code section 25249 is hereby rescinded. The Parties agree that the  
13 Rescission Order shall resolve the outstanding Order to Discontinue Violation.

14 3. Penalties: Pursuant to Corporations Code section 25252, MCM agrees to pay \$500.00 in  
15 penalties to the Commissioner within 30 days of the Effective Date of this Consent Order. The  
16 penalty must be made payable in the form of a cashier's check or Automated Clearing House deposit  
17 to the Department of Financial Protection and Innovation and transmitted to the attention of  
18 Accounting – Litigation, at the Department of Financial Protection and Innovation, 2101 Arena  
19 Boulevard, Sacramento, California 95834. Notice of the payment must be concurrently sent to Ryan  
20 Cassidy at Ryan.Cassidy@dfpi.ca.gov.

21 4. Filings: MCM understands and agrees that the Commissioner will file a Form U6 on  
22 IARD that describes the terms of this Consent Order and identify this as a regulatory action.

23 5. Waiver of Hearing Rights: MCM acknowledges that the Commissioner is ready, willing,  
24 and able to proceed with an administrative enforcement action on the charges contained in this  
25 Consent Order. MCM hereby waives the right to any hearings, and to any reconsideration, appeal, or  
26 other right to review which may be afforded pursuant to the CSL, the California Administrative  
27 Procedure Act, the California Code of Civil Procedure, or any other provision of law. MCM further  
28 expressly waive any requirement for the filing of an Accusation pursuant to Government Code

1 section 11415.60, subdivision (b). By waiving such rights, MCM effectively consents to this Consent  
2 Order and Rescission Order becoming final.

3 6. Failure to Comply with Consent Order: MCM agree that if it fails to meet any  
4 requirement of this Consent Order, the Commissioner may, in addition to all other remedies available  
5 that she may invoke under the CSL, immediately suspend or revoke the license of MCM. MCM  
6 hereby waives any notice and hearing rights to contest the immediate suspension or revocation which  
7 may be afforded under the CSL, the California Administrative Procedure Act, the California Code of  
8 Civil Procedure, or any other provision of law in connection therewith.

9 7. Information Willfully Withheld or Misrepresented: This Consent Order may be revoked  
10 and the Commissioner may pursue any and all remedies available under law against MCM if the  
11 Commissioner discovers that MCM knowingly or willfully withheld or misrepresented information  
12 used for and relied upon in this Consent Order.

13 8. Future Actions by the Commissioner: If MCM fails to comply with any terms of this  
14 Consent Order, the Commissioner may institute proceedings for any and all violations otherwise  
15 resolved under this Consent Order. The Commissioner reserves the right to bring any future actions  
16 against MCM, or any of its partners, owners, officers, shareholders, directors, affiliates, employees,  
17 or successors for any and all violations of the CSL not addressed herein.

18 9. Assisting Other Agencies: Nothing in this Consent Order limits the Commissioner's  
19 ability to assist any other government agency (whether city, county, state, or federal) with any  
20 administrative, civil, or criminal action brought by that agency against MCM or any other person  
21 based upon the activities described herein or otherwise.

22 10. Headings: The headings to the paragraphs of this Consent Order are inserted for  
23 convenience only and will not be deemed a part hereof or affect the construction or interpretation of  
24 the provisions herein.

25 11. Binding: This Consent Order is binding on all heirs, assigns, and/or successors in interest.

26 12. Reliance: Each of the Parties represents, warrants, and agrees that in executing this  
27 Consent Order, it has relied solely on the statements set forth herein and the advice of its own  
28 counsel. Each of the Parties further represents, warrants, and agrees that in executing this Consent

1 Order, it has placed no reliance on any statement, representation, or promise of any other Party, or  
2 any other person or entity not expressly set forth herein, or upon the failure of any Party or any other  
3 person or entity to make any statement, representation, or disclosure of anything whatsoever. The  
4 Parties have included this clause: (1) to preclude any claim that any Party was in any way  
5 fraudulently induced to execute this Consent Order; and (2) to preclude the introduction of parol  
6 evidence to vary, interpret, supplement, or contradict the terms of this Consent Order.

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

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

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

23 16. Counterparts: This Consent Order may be executed in one or more separate counterparts,  
24 each of which when so executed, shall be deemed an original. Such counterparts shall together  
25 constitute a single document.

26 17. Effect Upon Future Proceedings: If MCM applies for any license, permit or qualification  
27 under the Commissioner's current or future jurisdiction, or are the subject of any future action by the

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1 Commissioner to enforce this Consent Order, then the subject matter hereof shall be admitted for the  
2 purpose of such application(s) or enforcement proceedings(s).

3 18. Voluntary Agreement: MCM enters into this Consent Order voluntarily and without  
4 coercion and acknowledges that no promises, threats, or assurances have been made by the  
5 Commissioner or any officer, or agent thereof, about this Consent Order. \The Parties each represent  
6 and acknowledge that he, she, or it is executing this Consent Order completely voluntarily and  
7 without any duress or undue influence of any kind from any source.

8 19. Independent Legal Advice: Each of the Parties represents, warrants, and agrees that it has  
9 had the opportunity to seek independent legal advice from its attorneys with respect to the  
10 advisability of executing this Consent Order.

11 20. No Presumption Against Drafting Party: Each Party acknowledges that it has had the  
12 opportunity to draft, review, and edit the language of this Consent Order. Accordingly, the Parties  
13 intend that no presumption for or against the drafting Party will apply in construing any part of this  
14 Consent Order. The Parties waive the benefit of Civil Code section 1654 as amended or  
15 corresponding provisions of any successor statute, which provide that in cases of uncertainty,  
16 language of a contract should be interpreted most strongly against the Party that caused the  
17 uncertainty to exist.

18 21. Notice: Any notice required under this Consent Order shall be provided to each Party at  
19 the following addresses:

20 To Magister Capital Management, LLC or Carlos Zapata:

21 Carlos Zapata  
22 111 Deerwood Road, Suite 200  
23 San Ramon, California 94583  
24 carloszapata@icloud.com

25 To the Commissioner:

26 Ryan Cassidy  
27 Department of Financial Protection and Innovation  
28 Enforcement Division  
2101 Arena Boulevard  
Sacramento, California 95834  
Ryan.Cassidy@dfpi.ca.gov

1 22. Signatures: A fax or electronic mail signature shall be deemed the same as an original  
2 signature.

3 23. Public Record: MCM hereby acknowledge that this Consent Order will be a matter of  
4 public record.

5 24. Effective Date: This Consent Order shall become final and effective when signed by all  
6 Parties and delivered by the Commissioner’s agent by email to MCM at carloszapata@icloud.com.

7 25. Authority to Sign: Each signator hereto covenants that he/she possesses all necessary  
8 capacity and authority to sign and enter into this Consent Order and undertake the obligations set  
9 forth herein.

10 Dated: October 7, 2022

CLOTHILDE V. HEWLETT  
Commissioner of Financial Protection and Innovation



11  
12 By \_\_\_\_\_  
13 MARY ANN SMITH  
14 Deputy Commissioner  
15 Enforcement Division

16  
17  
18  
19 Dated: October 6, 2022

By \_\_\_\_\_  
20 CARLOS ZAPATA  
21 Managing Member  
22 Magister Capital Management, LLC

23 APPROVED AS TO FORM AND CONTENT  
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25  
26  
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