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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 Nos. 166408, 5306819
13	THE COMMISSIONER OF FINANCIAL	)	STATEMENT IN SUPPORT OF ORDER:
14	PROTECTION AND INNOVATION,	)	
15	Complainant,	)	1. TO DISCONTINUE VIOLATIONS AND
16	v.	)	COMMISSIONER'S INTENTION TO
17	CURVE CAPITAL LLC, an entity; and	)	MAKE ORDER FINAL PURSUANT TO
18	KEVIN JOSEPH MARTIN, an individual,	)	CORPORATIONS CODE SECTION
19	Respondents.	)	25249
20		)	2. LEVYING PENALTIES PURSUANT TO
		)	CORPORATIONS CODE SECTION
		)	25252

21 Clothilde V. Hewlett, Commissioner of the Department of Financial Protection and Innovation  
22 (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 25249 and 25252  
27 and accompanying regulations in California Code of Regulations, title 10, section 260.000 et seq.

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



1 of Regulations, title 10, section 260.237.2.

2 c. Failing to file interim reports or annual reports, in violation of California  
3 Code of Regulations, title 10, section 260.241.2(a)(b)(d).

4 d. Failing to provide written confirmation or evidence showing that  
5 Respondents maintained adequate suitability documentation and proper contracts for clients, in  
6 violation of California Code of Regulations, title 10, section 260.238(a)(j)(n).

7 e. Failing to provide written confirmation that Respondents executed  
8 advisory contracts with all clients, in violation of California Code of Regulations, title 10, section  
9 25234.

10 f. Failing to comply with reporting requirements, in violation of California  
11 Code of Regulations, title 10, section 260.236.1.

12 g. Failing to file Form ADV Annual Updating Amendments or promptly  
13 report any change to the information in Form ADV, in violation of California Code of Regulations,  
14 title 10, section 260.241.4.

15 h. Offering and selling unqualified nonexempt securities in the form of  
16 hedge funds, in violation of California Code of Regulations, title 10, section 25110.

17 8. On or about November 6, 2020, Respondents submitted a written confirmation to the  
18 Commissioner confirming the corrective actions they planned to implement to resolve the violations  
19 noted in the 2019 Examination.

20 The 2021 Regulatory Examination.

21 9. During May - December 2020, the Commissioner received complaints from three  
22 California investors, D.H., W. O and B. M., concerning their investments in Curve LP and the losses  
23 they sustained from those investments.

24 10. On December 28, 2020, the Commissioner commenced a non-routine examination of  
25 the books and records of Respondents (2020 Examination). The 2020 Examination revealed several  
26 violations of the CSL by Respondents, some of which were repeat violations from the 2019  
27 Examination including, but not limited to, the following:

28 a. Willfully failing to implement safeguarding procedures in managing

1 Curve LP, in violation of California Code of Regulations, title 10, sections 260.237(a)(1)(5)(6)(b)(4).

2 b. Willfully failing to maintain a minimum net worth requirement of  
3 \$35,000, in violation of California Code of Regulations, title 10, sections 260.237.2(a)(c)(d)(e).

4 c. Willfully failing to file interim reports and annual reports, in violation of  
5 California Code of Regulations, title 10, section 260.241.2(a)(b)(d) – a repeat violation noted in the  
6 2019 Examination.

7 d. Willfully failing to maintain books and records, including providing  
8 bank reconciliations, in violation of California Code of Regulations, title 10, section  
9 260.241.3(a)(4)(10) — a repeat violation noted in the 2019 Examination.

10 e. Willfully engaging in activities that do not promote fair, equitable and  
11 ethical principles, in violation of California Code of Regulations, title 10, section 260.238(a)(h)(n) —  
12 a repeat violation noted in the 2019 Examination.

13 f. Offering and selling unqualified nonexempt securities in the form of  
14 hedge funds, in violation of section 25110 — a repeat violation noted in the 2019 Examination.

15 11. On December 22, 2021, the Commissioner sent a Regulatory Examination Report by  
16 US mail and email to Respondents notifying Respondents of the violations noted during the 2020  
17 Examination and of the Commissioner’s right to proceed with all appropriate remedies to enforce the  
18 violations pursuant to section 25255.

19 **III.**

20 **Respondents Engaged in Investment Advisory Business in Violation of the CSL**

21 **Willfully Failing to Comply with Safeguard Requirements**

22 12. Section 25235 provides, in pertinent part:

23 It is unlawful for any investment adviser, directly or indirectly, in  
24 this state:  
25 ....

26 (d) To engage in any act, practice, or course of business which is  
27 fraudulent, deceptive, or manipulative. The commissioner shall, for  
28 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.

(Corp. Code, § 25235, subd. (d).)

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13. California Code of Regulations, title 10, section 260.237 provides in pertinent part:

(a) Safekeeping required. It is unlawful and deemed to be a fraudulent, deceptive, or manipulative act, practice, or course of business within the meaning of Section 25235 of the Code for any investment adviser licensed or required to be licensed, to have custody of client funds or securities unless:

(1) Notice to the Commissioner. The investment adviser notifies the Commissioner that the investment adviser has or may have custody. Such notification is required to be given on Form ADV.

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

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

1. the total amount of all additions to and withdrawals from the fund as a whole as well as the opening and closing value of the fund at the end of the quarter based on the custodian's records;

2. a listing of securities positions on the closing date of the statement required to be disclosed under Generally Accepted Accounting Principles (GAAP) for investment companies that are non-registered investment partnerships, pursuant to Financial Accounting Standards Board (FASB) Accounting Standards Codification 946-210-50-4 through 6.

3. a listing of all additions to and withdrawals from the fund by the investor, the total value of the investor's interest in the fund at the end of the quarter.

(B) The investment adviser:

1. Enters into a written agreement with an independent party who is obliged to act in the best interest of the limited partners, members, or other beneficial owners to review all fees, expenses, and capital withdrawals from the pooled accounts.

2. Sends all invoices or receipts to the independent party, detailing the amount of the fee, expenses or capital withdrawal and the method of calculation such that the independent party can:

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- a. determine that the payment is in accordance with the pooled investment vehicle standards (generally the partnership or membership agreement), and
- b. forward to the qualified custodian approval for payment of the invoice, with a copy to the investment adviser.

(6) Independent Verification. The client funds and securities of which the investment adviser has custody are verified by actual examination at least once during each calendar year, by an independent certified public accountant, pursuant to a written agreement between the investment adviser and the independent certified public accountant, at a time that is chosen by the independent certified public accountant without prior notice or announcement to the investment adviser and that is irregular from year to year. The written agreement must provide for the first examination to occur within six months of becoming subject to this paragraph, except that, if the investment adviser maintains client funds or securities pursuant to this section as a qualified custodian, the agreement must provide for the first examination to occur no later than six months after obtaining the internal control report required by paragraph (a) (7) (B)....

(Cal. Code Regs., tit. 10, § 260.241.3, subs. (a)(1)(5)(A)(B) and (6).)

14. The 2020 Examination showed that Curve Capital has custody of client funds and securities because it served as the general partner and investment adviser to Curve LP. Under California Code of Regulations, title 10, sections 260.237, subdivision (a)(2)(C), when an investment adviser serves as a general partner of a limited partnership or 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. Notwithstanding, an investment adviser acting in this capacity will be eligible for a waiver of the heightened custody requirements of California Code of Regulations, title 10, sections 260.241.2 and 260.237.2 if the adviser adheres to pertinent safeguarding procedures enumerated under the CSL, including Track 1 and Track 2 safeguarding procedures.

15. Respondents failed to follow the safeguarding procedures of either Track 1 or 2 in managing Curve LP; as such, Respondents be held to the higher audit standards set forth in California Code of Regulations, title 10, sections 260.237, 260.237.2, 260.241.2 and 260.241.3.

1           16. Respondents are also required to have client funds and securities verified by an  
2 independent certified public accountant on a surprise basis at least once every calendar year.

3 Respondents failed to meet the higher audit standards by:

4                   (i) failing to provide documentation showing that Respondents' heavy options  
5 strategy was suitable for each client;

6                   (ii) failing to update suitability documentation or maintain records including,  
7 trading or liquidation instructions from clients. Rather, Respondents rely on investors' brokerage  
8 applications to document suitability factors without maintaining any other internal suitability  
9 documentation or the original copies of clients' original brokerage applications.

10                   (iii) Respondents did not properly document if the options strategy  
11 recommended to investor D. H. aged 61, and unemployed at the time of investing, was in fact suitable for  
12 D. H.

13                   (iv) Respondents did not maintain documentation of liquidation instructions for  
14 D. H. despite D. H.'s requests to Respondents concerning the liquidation and transfer of D. H.'s account.

15                   (v) Respondents did not maintain updated suitability documentation or  
16 correspondence relating to the trading made on investor O. M.'s account.

17 Respondents Willfully Failed to Meet the Minimum Net Worth Requirements

18           17. California Code of Regulations, title 10, section 260.237.2 provides in pertinent part:

19                   (a) Every investment adviser who has custody of client funds or  
20 securities shall maintain at all times a minimum net worth of  
21 \$35,000, and every investment adviser who has discretionary  
22 authority over client funds or securities but does not have custody  
23 of client funds or securities, shall maintain at all times a minimum  
24 net worth of \$10,000.

25                   (c) Unless otherwise exempted, as a condition of the right to  
26 continue to transact business in this state, every investment adviser  
27 shall, by the close of business on the next business day following  
28 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, including the following:

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- (1) A trial balance of all ledger accounts;
- (2) A statement of all client funds or securities which are not segregated;
- (3) A computation of the aggregate amount of client ledger debit balances; and
- (4) A statement as to the number of client accounts.

(d) For purposes of this rule, the term "net worth" shall mean an excess of assets over liabilities, as determined by generally accepted accounting principles, but shall not include as assets: prepaid expenses (except as to items properly classified as current assets under generally accepted accounting principles), deferred charges, goodwill, franchise rights, organizational expenses, patents, copyrights, marketing rights, unamortized debt discount and expense, and all other assets of intangible nature; home, home furnishings, automobile(s), and any other personal items not readily marketable in the case of an individual; advances or loans to stockholders and officers in the case of a corporation; and advances or loans to partners in the case of a partnership.

(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.

(Cal. Code Regs., tit. 10, § 260.237.2 (a)-(e).)

18. Respondents have custody of client funds and securities and must adhere to the higher audit standards and financial requirements. Respondents must also maintain a minimum financial requirement of \$35,000.00 at all times. Respondents' November 2020 monthly computation revealed that they failed to meet the minimum financial requirement and to notify the Commissioner that their net worth was less than the minimum financial requirement, in violation of California Code of Regulations, title 10, section 260.237.2.

Respondents Willfully Failed to File Annual Report

19. California Code of Regulations, title 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 Section 260.237.2 of these rules, shall file an annual financial report, as follows:

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(2) The annual report for an investment adviser shall contain a balance sheet, income statement, and computations of the minimum financial requirements required under Section 260.237.2 of these rules.

(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 this 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....

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

(b) Verification of Reports. Attached to each financial report filed with the Commissioner shall be a verification that, to the best knowledge and belief of the person making the verification,

(1) the financial statements and supporting schedules are true and correct, and,

(2) neither the broker-dealer nor any partner, officer, or director thereof has any proprietary interest in any account classified solely as that of a customer. If the broker-dealer or investment adviser is a sole proprietorship, the verification shall be made by the proprietor; if a partnership, by a general partner; or if a corporation, by a duly authorized officer....

(d) Interim Reports.

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(2) Every investment adviser subject to the provisions of Section 260.237.2 of these rules shall file a report within 15 days after its net worth is reduced to less than 120% of its required minimum net worth.

(3) The report required by subsections (d) (1) and (d) (2) of this section shall be as of a date within the 15- day period. Additional reports shall be filed within 15 days after each subsequent monthly accounting period until three successive months have elapsed during which none of the conditions specified in subsection (d)(1) or (d)(2) of this section have occurred.

(4) For an investment adviser, the interim report shall consist of a balance sheet, income statement, and computation of the minimum financial requirement under Section 260.237.2 of these rules, including the verification in subdivision (b) of this section.

(Cal. Code Regs., tit. 10, § 260.241.3, subs. (d)(2)(3)(4).)

20. Respondents are required to file an annual financial report that is prepared in accordance with GAAP and audited by an independent certified public accountant or independent public accountant no more than 90 days after their fiscal year end. The Commissioner has not received any annual reports from Respondents since Curve Capital’s inception in 2012. Respondents’ failure to file Respondents’ annual report is a repeat violation of the 2019 Examination. Further, Respondents failed to meet the minimum financial requirement and are therefore required to file interim reports with the Commissioner. To date, the Commissioner has not received an interim report from Respondents.

Willfully Failing to Maintain Books and Records

21. Section 25241 provides, in pertinent part:

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

(Corp. Code, § 25241, subd. (a).)

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22. California Code of Regulations, title 10, section 260.241.3 provides in pertinent part:

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

....

(3) A memorandum of each order given by the investment adviser for the purchase or sale of any security, of any instruction received by the investment adviser from a client concerning the purchase, sale, receipt or delivery of a particular security, and of any modification or cancellation of any such order or instruction. Such memoranda shall show the terms and conditions of the order, instruction, modification or cancellation; shall identify the person connected with the investment adviser who recommended the transaction to the client and the person who placed such order; and shall show the account for which entered, the date of entry, and the bank or broker-dealer by or through whom executed where appropriate. Orders entered pursuant to the exercise of a power of attorney shall be so designated.

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

....

(7) Originals of all written communications received and copies of all written communications sent by such investment adviser relating to (i) any recommendation made or proposed to be made and any advice given or proposed to be given, (ii) any receipt, disbursement or delivery of funds or securities, or (iii) the placing or execution of any order to purchase or sell any security; provided, however, that 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 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.

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(9) All powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment adviser, or copies thereof.

(10) All written agreements (or copies thereof) entered into by the investment adviser with any client or otherwise relating to the business of such investment adviser as such.

(e) (1) All books and records required to be made under the provisions of subsections (a) to (c)(1), inclusive, of this section shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in an appropriate office of the investment adviser.

(Cal. Code Regs., tit. 10, § 260.241.3, subds. 260.241.3 (a)(3)(7)(9)(10)(e)(1).)

23. The 2020 Examination revealed that Respondents failed to maintain or provide the books and records requested by the Commissioner, including:

(i) Copies of written communication regarding the recommendations or cancellations for investment advisory services Respondents provided to investors as required under California Code of Regulations, title 10, section 260.241.3(a)(7).

(ii) Respondents failed to maintain bank reconciliations for their Chase Bank Checking #xx50 and First Republic Bank Checking #xxx27.

(iii) Respondents failed to maintain properly completed and dated subscription application for the D. Z. Trust.

(iv) Respondents failed to provide copies of the original brokerage applications for at least thirteen clients sampled during the 2020 Examination.

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

24. 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.

(Corp. Code, § 25238).

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25. California Code of Regulations, title 10, section 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.

(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, subds. (a)(h)(n).)

26. Investment advisers owe a fiduciary duty to their clients, including the duty to employ reasonable care to gather sufficient and updated information about their clients' financial status and needs before recommending investment plans that are suitable or meet their clients' financial goals.

The 2020 Examination revealed the following:

(i) On or about February 26, 2020, investor B. M. emailed Respondents asking how B. M. could reduce B. M.'s risks following the significant drop in the value of B. M.'s options due to the heavy options strategy used by Respondents. While Respondents confirmed that they subsequently closed out the options in B. M.'s account, they were unable to provide any updated

1 suitability documentation resulting from Respondents' meeting with B. M. on February 26, 2020.  
2 Incidentally, B. M changed B. M.'s investment objectives which resulted in a change of B. M.'s  
3 suitability factors. Yet, the only documentation reflecting B. M.'s investment objectives and suitability  
4 appear on B. M.'s brokerage application dated July 31, 2019.

5 (ii) A review of the brokerage application for investor D. H. revealed that  
6 Respondents did not maintain sufficient documentation showing that the heavy options investment  
7 strategy they recommended to D. H. was suitable based on several factors, including D. H.'s lack of  
8 prior investment experience.

9 (iii) Further, Respondents failed to properly document any suitability  
10 communications with several clients, including the following clients sampled: A. P. #4288; P. I.  
11 Capital #9770; The D. Family Trust #0908; D. O. #8057; D. F. #1653; D. O. #4597; R. M. #4081;  
12 N.F. #0271; S. M. #9342; A. S. #1305; B. M. #3712; D. H. #8510; B. M. #2157.

13 (iv) Respondents charged D. H a performance fee as a qualified client  
14 without proper documentation demonstrating that D. H. was in fact a qualified client.

15 (v) The 2020 Examination showed that the brokerage applications  
16 Respondents relied on to document suitability factors were not updated for the following clients: D. O.  
17 #8057; R. M. #4081; and N. F. #0271.

18 27. Next, Respondents advertised misleading credentials for Martin on their website,  
19 LinkedIn page and Martin's LinkedIn page on September 8, 2021 as follows:

20 (i) Martin claimed he had close to two decades of professional investing  
21 and trading experience as a fixed income hedge fund portfolio manager and that he spent his career  
22 managing multi-billion-dollar portfolios of bonds and interest rate derivatives at large institutional  
23 firms and multi-strategy hedge funds, including BlackRock. Martin further claimed that he graduated  
24 from "Cass Business School" located in London, with MSc in Mathematical Trading and Finance but  
25 failed to produce sufficient evidence supporting his length of experience at BlackRock and academic  
26 credentials.

27 (ii) Respondents' website and LinkedIn pages advertised that Martin held  
28 the "FINRA series 65 license....," when in fact, CRD records indicates to the contrary.

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28. Respondents were unable to provide evidence showing that they entered into advisory agreements at the time advisory services commenced for at least seven clients as follows:

- D. O (dated December 2, 2020)
- A. P. (dated December 3, 2020)
- The D. F Trust (dated December 3, 2020)
- R. M. (dated December 3, 2020)
- D. F. (dated December 4, 2020)
- N. F. (dated December 11, 2020)
- D. H (former client)

Unlawful Offers and Sales of Unqualified, Nonexempt Securities in Violation of Section 25110

29. 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 transaction is exempted or not subject to qualification under Chapter 1 (commencing with ) 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.

(Corp. Code, § 25110).

30. Section 25102 (f) provides in pertinent part:

The following transactions are exempted from the provisions of Section 25110:

(f) Any offer or sale of any security in a transaction (other than an offer or sale to a pension or profit-sharing trust of the issuer) that meets each of the following criteria:

....

1 (4) The offer and sale of the security is not accomplished by the  
2 publication of any advertisement. The number of purchasers  
3 referred to above is exclusive of any described in subdivision (i),  
4 any officer, director, or affiliate of the issuer, or manager (as  
5 appointed or elected by the members) if the issuer is a limited  
6 liability company, and any other purchaser who the commissioner  
7 designates by rule. For purposes of this section, spouses (together  
8 with any custodian or trustee acting for the account of their minor  
9 children) are counted as one person and a partnership, corporation,  
10 or other organization that was not specifically formed for the  
11 purpose of purchasing the security offered in reliance upon this  
12 exemption, is counted as one person. The commissioner shall by  
13 rule require the issuer to file a notice of transactions under this  
14 subdivision.

The failure to file the notice or the failure to file the notice within  
the time specified by the rule of the commissioner shall not affect  
the availability of the exemption. Any issuer that fails to file the  
notice as provided by rule of the commissioner shall, within 15  
business days after discovery of the failure to file the notice or after  
demand by the commissioner, whichever occurs first, file the notice  
and pay to the commissioner a fee equal to the fee payable had the  
transaction been qualified under Section 25110.

(Corp. Code, § 25102, subd. (f).)

15 31. The 2020 Examination disclosed that Respondents sold securities in the form of hedge  
16 funds in Curve LP to investors. Pursuant to section 25110, the offer and sale of securities must be  
17 qualified or exempt from qualification. On or about February 19, 2019, Respondents filed a Notice of  
18 Exemption Form D with the Securities and Exchange Commission (SEC) stating they were offering and  
19 selling securities as private offerings exempt under the SEC's Rule 506 (b) section 3(c)(1). On March 12,  
20 2019, Respondents filed a Limited Offering Exemption Notice (LOEN) with the Commissioner. To  
21 satisfy the exemption requirements under SEC's Rule 506 (b) section 3(c)(1) and sections 25110 and  
22 25102 (f), the issuer must not make, or propose to make, a public offering of its securities.

23 32. During November 6, 2020 – May 17, 2021, Respondents advertised their securities  
24 offerings on their websites at <https://www.curvecapitalgroup.com>; Curve Capital LLC | LinkedIn; and  
25 Ryan Martin - Chief Investment Officer / Co-Founder – Curve Capital LLC | LinkedIn. Respondents  
26 published their securities by advertising the securities on Respondents' websites at  
27 <http://www.curvecapitalgroup.com/>, or LinkedIn at <https://www.linkedin.com/company/curve-capital->  
28

1 llc; and <https://www.linkedin.com/rymartin>. As a result, Respondents may not rely on the exemption  
2 provisions set forth under SEC’s Rule 506(b) section 3(c)(1) and section 25102(f). Therefore,  
3 Respondents offered or sold unqualified nonexempt securities in violation of section 25110. Respondents  
4 were previously cited in the 2019 Examination for advertising their hedge fund on their website, in  
5 violation of Rule 506(b) section 3(c)(1) and sections 25110 and 25102(f).

6 **IV.**

7 **Authority to Order Respondents to Discontinue Violations**

8 33. Section 25249 provides in pertinent part:

9 If, after examination or investigation, the commissioner has  
10 reasonable grounds to believe that any broker-dealer or  
11 investment adviser is violating or has violated any law or rule  
12 binding upon it, the commissioner shall, by written order  
13 addressed to the broker-dealer or investment adviser, direct the  
14 discontinuance of the violation. The order shall be effective  
15 immediately, but shall not become final except in accordance  
16 with the provisions of Section 25251.

17 (Corp. Code, § 25249).

18 34. Section 25251 provides in pertinent part:

19 a) No order issued pursuant to Section 25249 or 25250 may  
20 become final except after notice to the affected broker-dealer or  
21 investment adviser of the commissioner’s intention to make the  
22 order final and of the reasons for the finding. The commissioner  
23 shall also notify the broker-dealer or investment adviser that  
24 upon receiving a request the matter shall be set for hearing to  
25 commence within 15 business days after receipt of the request.

26 The broker-dealer or investment adviser may consent to have the  
27 hearing commence at a later date. If no hearing is requested  
28 within 30 days after the mailing or service of the required notice,  
and none is ordered by the commissioner, the order may  
become final without a hearing and the broker-dealer or  
investment adviser shall immediately discontinue the practices  
named in the order. If a hearing is requested or ordered, it shall  
be held in accordance with the provisions of the Administrative  
Procedure Act (Chapter 5 (commencing with Section 11500) of  
Part 1 of Division 3 of Title 2 of the Government Code), and the  
commissioner shall have all of the powers granted under that act.

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If, upon the conclusion of the hearing, it appears to the commissioner that the broker-dealer or investment adviser is conducting or has conducted business in an unsafe and injurious manner or is violating or has violated any law of this state, or any rule binding upon it, the commissioner shall make the order of discontinuance final and the broker-dealer or investment adviser shall immediately discontinue the practices named in the order.

(b) The broker-dealer or investment adviser may within 10 days after an order is made final commence an action to restrain enforcement of the order. If the enforcement of the order is not enjoined within 10 days by the court in which the action is brought, the broker-dealer or investment adviser shall comply with the order.

(Corp. Code, § 25251).

35. The Commissioner finds that, by reason of the foregoing, Respondents have violated provisions of the CSL by:

- (i) Willfully failing to Comply with Safeguard Requirements, in violation of section 25235 and § California Code of Regulations, title 10, section 260.237, subdivisions (a)(1)(5)(A)(B)(6).
- (ii) Willfully failing to meet the minimum net worth requirements, in violation of section 25241 and California Code of Regulations, title 10 § 260.237.2, subdivisions (a)(c)(d)(e).
- (iii) Willfully failing to file an Annual Report in violation of California Code of Regulations, title 10, section 260.241.2, subdivisions (d)(2)(3)(4).
- (iv) Willfully failing to maintain books and records, violation of section 25241, subd. (a). and California Code of Regulations, title 10, section 260.241.3, subdivisions (a)(3)(7).
- (v) Engaging in activities that do not promote fair, equitable and ethical principles in violation of section 25238 and California Code of Regulations, title 10, section 260.238 subdivisions (a) (h) and (n).
- (vi) Unlawfully offering and selling Unqualified, Nonexempt Securities in violation of section 25110.

WHEREFORE, good cause showing, and pursuant to Corporations Code section 25249, the Commissioner has issued an Order to Curve Capital LLC and Kevin Joseph Martin, to immediately

1 discontinue the violations set forth above, and hereby notifies Curve Capital LLC and Kevin Joseph  
2 Martin of her intention to make the Order final.

3 **V.**

4 **Authority to Levy Penalties**

5 36. Section 25252 provides in pertinent part:

6 The commissioner may, after appropriate notice and opportunity for hearing,  
7 by orders, levy administrative penalties as follows:

8 ....

9 (b) Any broker-dealer or investment adviser that willfully violates any provision  
10 of this division to which it is subject, or that willfully violates any rule or  
11 order adopted or issued pursuant to this division and to which it is subject, is  
12 liable for administrative penalties of not more than five thousand dollars  
13 (\$5,000) for the first violation, not more than ten thousand dollars (\$10,000)  
14 for the second violation, and not more than fifteen thousand dollars  
15 (\$15,000) for each subsequent violation....

14 ....

15 (d) The administrative penalties available to the commissioner pursuant to this  
16 section are not exclusive, and may be sought and employed in any  
17 combination with civil, criminal, and other administrative remedies deemed  
18 advisable by the commissioner to enforce the provisions of this division.

18 (Corp. Code, § 25252).

19 37. The Commissioner finds that, based on the foregoing, Respondents have violated  
20 provisions of the CSL by:

21 (i) Willfully failing to comply with safeguard requirements, in violation of  
22 section 25235 and § California Code of Regulations, title 10, section 260.237, subdivisions  
23 (a)(1)(5)(A)(B)(6).

24 (ii) Willfully failing to meet the minimum net worth requirements, in  
25 violation of California Code of Regulations, title 10, section 260.237.2, subdivisions (a)(c)(d)(e).

26 (iii) Willfully failing to file annual reports in violation of California Code of  
27 Regulations, title 10, section 260.241.2, subdivisions (d)(2)(3)(4).

28

1 (iv) Willfully failing to maintain books and records, violation of section  
2 25241, subdivision (a). and California Code of Regulations, title 10, section 260.241.3, subdivisions  
3 (a)(3)(7).

4 (v) Willfully engaging in activities that do not promote fair, equitable and  
5 ethical principles in violation of section 25238 and California Code of Regulations, title 10, section  
6 260.238 subdivisions (h) (h) and (n).

7 (vi) Unlawfully offering and selling unqualified, nonexempt securities in  
8 violation of section 25110.

9 WHEREFORE, IT IS PRAYED that:

10 (a) Pursuant to section 25252, a penalty be levied against Respondents for  
11 one violation of failing to comply with safeguard requirements, in violation of section 25235 and  
12 California Code of Regulations, title 10, section 260.237, subdivisions (a)(1)(5)(A)(B)(6); in an  
13 amount of at least \$5,000.00 per violation (calculated at \$5,000.00 x 1) or according to proof.

14 (b) Pursuant to section 25252, a penalty be levied against Respondents for  
15 one violation of willfully failing to meet the minimum net worth requirements, in violation of section  
16 25241 and California Code of Regulations, title 10, section 260.237.2, subdivisions (a)(c)(d)(e), in an  
17 amount of at least \$10,000.00 (calculated at \$10,000.00 x 1) or according to proof.

18 (c) Pursuant to section 25252, a penalty be levied against Respondents for at  
19 least seven violations of willfully failing to file interim reports, including annual reports, in violation  
20 of California Code of Regulations, title 10, section 260.241.2, subdivisions (d)(2)(3)(4), in an amount  
21 of at least \$15,000.00 per violation, for a total amount of at least \$105,000.00 (calculated at  
22 \$15,000.00 x 7) or according to proof.

23 (d) Pursuant to section 25252, a penalty be levied against Respondents for at  
24 least five violations of willfully failing to maintain books and records, in violation of section 25241,  
25 subdivision (a) and California Code of Regulations, title 10, section 260.241.3, subdivisions (a)(3)(7)  
26 in an amount of at least \$15,000.00 per violation, for a total amount of at least \$75,000.00 (calculated  
27 at \$15,000.00 x 5), or according to proof.

28 (e) Pursuant to section 25252, a penalty be levied against Respondents for at

1 least 13 violations of engaging in activities that do not promote fair, equitable and ethical principles in  
2 violation of section 25238 and California Code of Regulations, title 10, section 260.238 subdivisions  
3 (h) (h) and (n) in an amount of at least \$15,000.00 per violation, for a total amount of at least  
4 \$195,000.00 (calculated at \$15,000.00 x 13), or according to the proof.

5 (f) Pursuant to section 25252, a penalty be levied against Respondents for at  
6 least two violations of unlawfully offering and selling unqualified, nonexempt securities in violation of  
7 section 25110, in an amount of at least \$15,000.00 per violation, for a total amount of at least  
8 \$30,000.00 (calculated at \$15,000.00 x 2) or according to proof.

9 **VI.**

10 **Relief Requested**

11 WHEREFORE, IT IS PRAYED that Curve Capital LLC, and Kevin Joseph Martin be ordered  
12 to pay administrative penalties, in the amount of at least \$420,000.00, plus interest thereon, or  
13 according to proof.

14 Dated: March 22, 2023

CLOTHILDE V. HEWLETT  
Commissioner of Financial Protection and Innovation

17 By \_\_\_\_\_  
18 UCHE L. ENENWALI  
19 Senior Counsel  
20 Enforcement Division