

1 MARY ANN SMITH
2 Deputy Commissioner
3 Attorney for Complainant

4 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION
5 OF THE STATE OF CALIFORNIA

6	In the Matter of:)	CRD NUMBERS: 324552 and 2395715
7)	
8	THE COMMISSIONER OF FINANCIAL PROTECTION AND INNOVATION,)	CONSENT ORDER
9	Complainant,)	
10	v.)	
11	PHOUNDATIONAL LLC, a limited liability company, and JOHN FRANCIS RUTLEDGE, JR., an individual)	
12)	
13	Respondents.)	
14)	

15 The Commissioner of Financial Protection and Innovation (Commissioner) and Phoundational
16 LLC, and John Francis Rutledge, Jr., (collectively, the Parties), enter into this Consent Order with
17 respect to the following facts:

18 **I.**

19 **RECITALS**

20 A. The Commissioner is authorized to administer and enforce the provisions of the Corporate
21 Securities Law of 1968 (Corp. Code, §§ 25000 - 25707) (CSL) and the regulations promulgated
22 thereunder at title 10 of the California Code of Regulations, which include the licensure, examination,
23 and regulation of investment advisers and broker-dealers.

24 B. Phoundational LLC (Phoundational) (CRD NO. 324552) is a California limited liability
25 company with its principal place of business at 1601 Nicasio Valley Road, Nicasio, California 94946.

26 C. John Francis Rutledge, Jr., (Rutledge) (CRD NO. 2395715) is the 100% owner, Chief
27 Compliance Officer, and investment adviser representative of Phoundational.

28 D. Rutledge, as sole principal of Phoundational, provided investment advisory services, in the form

1 of financial planning services, to at least 23 clients. From at least February 2020 to January 2023, clients
2 paid fees totaling \$123,594.14 for these advisory services. During this time, neither Rutledge nor
3 Phoundational held a valid investment adviser license. Phoundational and Rutledge self-reported this
4 matter. Rutledge's Chartered Financial Analyst designation exempts him from passing a Series 65 or a
5 combination of Series 7 and Series 66 examinations, in accordance with California Code of Regulation,
6 Title 10, Section 260.236.

7 E. On or about January 9, 2023, Phoundational filed an application with the Commissioner for a
8 license to engage in the business of an investment adviser in California.

9 F. Phoundational and Rutledge admit to the jurisdiction of the Department of Financial
10 Protection and Innovation (Department) and it is the intention of the Parties to resolve this matter
11 without the necessity of a hearing and/or other litigation.

12 G. The Commissioner finds this action is appropriate, in the public interest, is necessary for the
13 protection of investors, and is consistent with the purposes fairly intended by the policies and
14 procedures of the CSL.

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

17 **II.**

18 **TERMS**

19 1. Purpose: This Consent Order resolves the issues before the Commissioner described
20 above in a manner that avoids the expense of a hearing and other possible court proceedings, protects
21 consumers, is in the public interest, and is consistent with the purposes and provisions of the CSL.

22 2. Desist and Refrain Order: Pursuant to Corporations Code section 25532, Phoundational
23 LLC and John Francis Rutledge, Jr., are hereby ordered to desist and refrain from further violations of
24 section 25230 of the Corporations Code by engaging in the investment advisory business without
25 being licensed or exempt under the CSL.

26 3. Past Due Licensing Fees: Phoundational and Rutledge agree to pay to the Commissioner
27 past due licensing fees owed for the period of unlicensed investment adviser activity in the amount of
28 \$375, which shall be due within six months of the Effective Date of this Consent Order.

1 4. Penalties: Pursuant to Corporations Code section 25252, Phoundational and Rutledge agree
2 to pay \$14,999 in penalties to the Commissioner within six months of the Effective Date of this
3 Consent Order. The past due licensing fees and monetary penalty must be made payable in the form
4 of a cashier's check or Automated Clearing House deposit to the Department of Financial Protection
5 and Innovation and transmitted to the attention of Accounting – Litigation, at the Department of
6 Financial Protection and Innovation, 2101 Arena Boulevard, Sacramento, California 95834. Notice of
7 the payment must be concurrently sent to Alla Karpuk via email alla.karpuk@dfpi.ca.gov.

8 5. Licensure: Upon the effective date of the Consent Order, so long as all information is
9 updated on IARD, as required for licensure, Phoundational will be approved in the state of California
10 to conduct investment advisory business.

11 6. Filings: Phoundational and Rutledge understand and agree that the Commissioner will file
12 a Form U6 on Investment Adviser Registration Depository (IARD) that will describe the terms of this
13 Consent Order and identify it as a regulatory action.

14 7. Waiver of Hearing Rights: Phoundational and Rutledge acknowledge that the
15 Commissioner is ready, willing, and able to proceed with the filing of an administrative enforcement
16 action on the charges contained in this Consent Order. Phoundational and Rutledge hereby waive the
17 right to any hearings, and to any reconsideration, appeal, or other right to review which may be
18 afforded pursuant to the CSL, the California Administrative Procedure Act, the California Code of
19 Civil Procedure, or any other provision of law Phoundational and Rutledge further expressly waive
20 any requirement for the filing of an Accusation pursuant to Government Code section 11415.60 (b).
21 By waiving such rights, Phoundational and Rutledge effectively consent to this Consent Order, Desist
22 and Refrain Order becoming final.

23 8. Failure to Comply with Consent Order: Phoundational and Rutledge agree that if they fail
24 to meet any requirement of this Consent Order, the Commissioner may, in addition to all other
25 available remedies he may invoke under the CSL, immediately revoke the license of Phoundational.
26 Phoundational and Rutledge hereby waive any notice and hearing rights to contest the immediate
27 revocation which may be afforded under the CSL, the California Administrative Procedure Act, the
28 California Code of Civil Procedure, or any other provision of law in connection therewith.

1 9. Information Willfully Withheld or Misrepresented: This Consent Order may be revoked
2 and the Commissioner may pursue any and all remedies available under law against Phoundational
3 and Rutledge if the Commissioner discovers that Phoundational and Rutledge knowingly or willfully
4 withheld or misrepresented information used for and relied upon in this Consent Order.

5 10. Future Actions by the Commissioner: If Phoundational or Rutledge fail to comply with
6 any terms of the Consent Order, the Commissioner may institute proceedings for any and all
7 violations otherwise resolved under this Consent Order. The Commissioner reserves the right to bring
8 any future actions against Phoundational and Rutledge, or any of its partners, owners, officers,
9 shareholders, directors, affiliates, employees, or successors for any and all unknown violations of the
10 CSL.

11 11. Assisting Other Agencies: Nothing in this Consent Order limits the Commissioner's
12 ability to assist any other government agency (whether city, county, state, or federal) with any
13 administrative, civil, or criminal action brought by that agency against Phoundational and Rutledge or
14 any other person based upon any of the activities alleged in this matter or otherwise.

15 12. Headings: The headings to the paragraphs of this Consent Order are inserted for
16 convenience only and will not be deemed a part hereof or affect the construction or interpretation of
17 the provisions hereof.

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

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

28 15. Waiver, Amendments, and Modification: No waiver, amendment, or modification of this

1 Consent Order will be valid or binding unless it is in writing and signed by each of the Parties. The
2 waiver of any provision of this Consent Order will not be deemed a waiver of any other provision. No
3 waiver by either Party of any breach of, or of compliance with, any condition or provision of this
4 Consent Order by the other Party will be considered a waiver of any other condition or provision or
5 of the same condition or provision at another time.

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

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

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

19 19. Effect Upon Future Proceedings: If Phoundational and Rutledge apply for any license,
20 permit or qualification under the Commissioner's current or future jurisdiction, or are the subject of
21 any future action by the Commissioner to enforce this Consent Order, then the subject matter hereof
22 shall be admitted for the purpose of such application(s) or enforcement proceedings(s).

23 20. Voluntary Agreement: Phoundational and Rutledge enter into this Consent Order
24 voluntarily and without coercion and acknowledge that no promises, threats, or assurances have been
25 made by the Commissioner or any officer, or agent thereof, about this Consent Order. The Parties
26 each represent and acknowledge that he, she, or it is executing this Consent Order completely
27 voluntarily and without any duress or undue influence of any kind from any source.

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1 21. Independent Legal Advice: Each of the Parties represents, warrants, and agrees that it has
2 received or been advised to seek independent legal advice from its attorneys with respect to the
3 advisability of executing this Consent Order.

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

11 23. Notice: Any notice required under this Consent Order shall be provided to each Party at
12 the following addresses:

13 To Phoundational LLC and John Francis Rutledge, Jr.:

14 John Francis Rutledge, Jr.
15 1601 Nicasio Valley Road
16 PO Box 513
17 Nicasio, CA 94946
18 Johnny@phoundational.com

19 To the Commissioner:

20 Alla Karpuk
21 Department of Financial Protection and Innovation
22 Broker-Dealer/Investment Adviser Division
23 2101 Arena Boulevard
24 Sacramento, CA 95834
25 Alla.Karpuk@dfpi.ca.gov

26 24. Signatures: A fax or electronic mail signature shall be deemed the same as an original
27 signature.

28 25. Public Record: Phoundational and Rutledge hereby acknowledge that this Consent Order
will be a matter of public record.

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1 26. Effective Date: This Consent Order shall become final and effective when signed by all
2 Parties and delivered by the Commissioner’s counsel by email to Phoundational and Rutledge at
3 Johnny@phoundational.com.

4 27. Authority to Sign: Each signator hereto covenants that he/she possesses all necessary
5 capacity and authority to sign and enter into this Consent Order and undertake the obligations set
6 forth herein.

7 Dated: _____, 2023

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and Innovation



8
9 By _____
10 BALBIRO KAZLA
11 Deputy Commissioner
12 Broker-Dealer Investment Adviser

13
14 Dated: _____, 2023

15 By _____
16 JOHN FRANCIS RUTLEDGE, JR. as an Individual and
17 for Phoundational LLC
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