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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. 146706, 5522751
13)
14 THE COMMISSIONER OF FINANCIAL) ACCUSATION AND CLAIM FOR
PROTECTION AND INNOVATION,) ANCILLARY RELIEF
15)
Complainant,) (CORPORATIONS CODE SECTIONS 25232,
16 v.) 25232.1 AND 25252)
17)
GT MANAGEMENT GROUP, INC., an)
18 entity; and GARY CHOW, an individual,)
19 Respondents.)
20)

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)¹ (Corporations Code section 25000 et seq.), sections 25232, 25232.1,
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28 ¹ All further references are to the Corporations Code unless otherwise indicated.

1 and 25252, and accompanying regulations in California Code of Regulations, title 10, section 260.000
2 et seq.

3 2. GT Management Group Inc., (GTM) is a California corporation formed on or about
4 August 16, 1999, with its principal place of business located at 300 S. Lemon Creek Drive, Unit B,
5 Walnut, California 91789.

6 3. On June 30, 2008, the Commissioner issued an investment adviser certificate Central
7 Registration Depository (CRD) No. 146706 to GTM pursuant to section 25230 of the CSL.

8 4. Gary Chow (Chow) is the president and principal of GTM and has been licensed by the
9 Commissioner as an investment adviser representative since August 18, 1999 (CRD No. 5522751).
10 Chow is also a “control” person of GTM as that term is defined by Corporations Code section 160.
11 Chow and GTM are hereafter referred to as Respondents.

12 5. Respondents operate and control several corporate accounts that are identical to
13 unregistered investment pools and hedge funds or pooled investment funds. As part of their investment
14 advisory business, Respondents recommend various pooled investment funds to their clients to invest
15 in, including pooled funds maintained with TD Ameritrade identified as: #2299; GC 1050 Fund; 992
16 Enterprises; VIX; NO-BS#1; NO-BS#2; and Gifts after Six Account (GAS).

17 6. The Commissioner brings this action seeking to revoke Respondents’ investment
18 adviser certificates pursuant to section 25232 on the basis that Respondents unlawfully engaged in
19 business as investment advisers by repeatedly violating several provisions of the CSL.

20 7. The Commissioner further seeks to bar Chow pursuant to section 25232.1 subdivisions
21 (a) and (e) on the grounds that the bar is in the public interest and Chow (i) willfully made false or
22 misleading statements or willfully omitted to state material fact in the report filed with the
23 Commissioner; and (ii) willfully violated provisions of the Securities Act of 1933, the Securities
24 Exchange Act of 1934, or the Investment Advisers Act of 1940.

25 8. The Commissioner also brings this action seeking to levy administrative penalties
26 against Respondents pursuant to section 25252 subdivision (b) for willfully violating several
27 provisions of the CSL.

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1 II.

2 Statement of Facts

3 The 2009 Regulatory Examination

4 9. On October 6, 2009, the Commissioner commenced a regulatory examination of the
5 books and records of GTM pursuant to section 25241 (2009 Examination). Based on the
6 Commissioner’s findings during the 2009 Examination, on June 29, 2012, the Commissioner issued an
7 Accusation (2012 Accusation) against GTM alleging that:

8 (i) GTM and Chow offered and sold unqualified nonexempt securities in
9 the form of limited partnership interests in GC 1050 Fund to investors, in violation of section 25110.

10 (ii) GTM and Chow acted as uncertified investment advisers prior to being
11 issued a certificate in 2008, in violation of section 25230(a).

12 (iii) GTM and Chow engaged in the business of advising clients as to the
13 advisability of investing in, purchasing and selling securities prior to being issued a certificate in 2008,
14 receiving more than \$216,000 in compensation for their unlicensed business.

15 (iv) GTM and Chow made material misstatements and/or omissions in their
16 application for an investment adviser certificate, in violation of section 25245, including (a) stating
17 that they had not provided investment advisory services to any clients during their last fiscal year
18 when, in fact, GTM did provide such services, and had been providing such services since 2002
19 without a license; (b) failing to disclose the amount of assets and accounts under management during
20 its last fiscal year; (c) stating that no related person is a general partner in an investment-related
21 partnership or manager of an investment-related limited liability company when, in fact, Chow was
22 managing partner for the GC 1050 Fund; and (d) failing to disclose information related to the GC 1050
23 Fund.

24 10. GTM failed to file financial reports since it was issued an investment adviser certificate
25 on June 30, 2008, in violation of section 25241 and Cal. Code Regs. tit. 10, §260.241.2.

26 11. On or about March 16, 2013, Respondents executed a settlement agreement and
27 stipulation with the Commissioner stipulating to issuance of an “Order Suspending Investment
28 Adviser Certificate from New Business and Imposing Administrative Penalties Pursuant to

1 Corporations Code Section 25252.” (2013 Order). The 2013 Order further assessed administrative
2 penalties against Respondents totaling \$18,500 for the violations noted in the 2009 Examination.

3 The 2021 Regulatory Examination

4 12. In or about June 2021, the Commissioner commenced a regulatory examination of the
5 books and records of Respondents pursuant to section 25241 (2021 Examination). The 2021
6 Examination revealed several violations of the CSL by Respondents, some of which were repeat
7 violations from the 2009 Examination including, but not limited to, the following:

8 (i) Respondents willfully engaged in fraudulent acts in violation of section
9 25235(a)(b) and Cal. Code Regs. tit. 10, § 260.237.

10 (ii) Respondents failed to maintain books and records, in violation of section
11 25241 and Cal. Code Regs. tit. 10, § 260.214.3, including failing to file annual reports or interim
12 reports, in violation of Cal. Code Regs. tit. 10, § 260.241.2.

13 (iii) Respondents failed to maintain the minimum financial net worth, in
14 violation of Cal. Code Regs. tit. 10, § 260.237.2.

15 (iv) Respondents engaged in fraudulent acts or activities that do not promote
16 fair, equitable and ethical principles, in violation of sections 25235, 25238, and Cal. Code Regs. tit.
17 10, § 260.238, including, making false statements to the Commissioner, in violation of section 25245;
18 willfully charging fees on non-qualified clients, in violation of section 25234 (a)(1) and Cal. Code
19 Regs. tit. 10, § 260.234 (b)(3).

20 (v) Respondents offered and sold unqualified nonexempt securities to
21 investors, in violation of section 25110.

22 (v) Respondents failed to comply with reporting requirements, in violation
23 of Cal. Code Regs. tit. 10, § 260.236.1, including failing to file form ADV Annual Updating
24 Amendments, in violation of section 25241 and Cal. Code Regs. tit. 10, § 260.241.4; and failing to
25 comply with advertisement standards, in violation of Cal. Code Regs. tit. 10, § 260.302.

26 13. As part of the 2021 Examination, the Commissioner requested a written explanation
27 from Respondents explaining pertinent questions from the Commissioner concerning the issues noted
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1 in the 2021 Examination and Respondents provided their written explanation to the Commissioner's
2 questions (Respondents' Explanation).

3 **III.**

4 **Respondents' Financial Investment Adviser Certificate Should be Revoked**

5 14. Respondents' investment adviser certificate should be revoked because Respondents
6 conducted business as investment advisers in repeated violations of several provisions of the CSL as
7 more fully described below.

8 **Respondents Engaged in Fraudulent Acts by Willfully Failing to Maintain Safekeeping Standards.**

9 15. Section 25235 provides in pertinent part:

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

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

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

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

(Corp. Code, § 25235)

20 16. Under California Code of Regulations, title 10, section 260.237, it is unlawful and
21 deemed to be "a fraudulent, deceptive, or manipulative act, practice or course of business within the
22 meaning of section 25235 for an investment adviser to have custody of client funds or securities" unless
23 pertinent safekeeping requirements enumerated under Cal. Code Regs. tit. 10, § 260.237 subdivisions
24 (a)(5)(A), and (b)(4)(A) (D) are met.

25 17. In addition, pursuant to Cal. Code Regs. tit. 10, § 260.237.2, when an investment
26 adviser serves as a general partner of a limited partnership, managing member of a limited liability
27 company or a comparable position for another type of pooled investment vehicle that gives the adviser
28 legal ownership of or access to client funds or securities, the adviser is deemed to have custody of

1 those client funds and securities and must comply with custody safeguarding procedures set forth
2 under the CSL.

3 18. However, an investment adviser will be eligible for a waiver of the heightened custody
4 requirements if the adviser adheres to the safeguarding procedures of either Track I or 2, enumerated
5 under the CSL, including notifying the Commissioner in writing, in Form ADV, that the investment
6 adviser intends to employ the use of the statement delivery and audit safeguards specified in Track 2.

7 19. Here, Respondents failed to elect the safeguarding procedures of either Track 1 or 2 in
8 managing their numerous unregistered pooled funds. Respondents did not maintain accurate financial
9 records for #2299, including (i) failing to include a general ledger or other record of original entry for
10 #2299; (ii) failing to reconcile custodian statements with the balance sheet for the period April 2021
11 for #2299; overstating investors' assets by at least \$2,000.00, claiming it was in error; and (iii) failing
12 to engage a certified public accountant to perform an annual audit of #2299 as required under the CSL.

13 20. The 2021 Examination also showed that Respondents used their personal brokerage
14 account #1128 to trade securities on behalf of former investors in VIX. Respondents also used their
15 personal checking account as a clearing account to distribute monthly checks to #2299 and 992
16 Enterprises investors without engaging an administrator to confirm the validity of the various withdrawals
17 and transfers from the numerous pooled funds controlled and managed by Respondents.

18 21. Respondents failed to send quarterly statements to the investors or to maintain accurate
19 records of the investors' capital balances. Respondents provided records of investments that were
20 purportedly prepared based on Chow's recollection of investors' capital investments. Because
21 Respondents failed to follow the safekeeping requirements prescribed under the CSL, Respondents are
22 held to the higher audit standards set forth under California Code of Regulations title 10, section
23 260.237. Respondents have not met those safekeeping standards. Respondents' failure to follow the
24 requisite safekeeping requirements is a repeat violation cited in the 2012 Accusation and 2013 Order.

25 22. Further review of Respondents' multiple brokerage and bank statements disclosed that
26 Respondents made multiple transfers and withdrawals to and from various unregistered investment
27 pools to Chow's personal checking accounts and a charitable foundation's checking account without
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1 engaging an independent administrator to confirm the withdrawals. For example, in June 2021,
2 Respondents made two transfers totaling \$100,000.00 and \$125,259.48 from #2299 to Chow's
3 personal checking account no. ending in 7713.

4 23. In January 2020, Respondents transferred \$25,000.00 from #992 Enterprises to a
5 checking account for #SGV Charitable Foundation. In January 2021, Respondents transferred \$35,000
6 from #SGV Charitable Foundation to #GASA. Although Respondents claimed that the #992
7 Enterprises and GASA pooled funds were established for charitable purposes, they failed to provide
8 documentation showing that an independent administrator confirmed the validity of the transfers to
9 these allegedly charitable accounts. Respondents admitted during the 2021 Examination that as a
10 matter of practice, they did not engage independent administrators in their investment advisory
11 business.

12 24. Respondents provided inaccurate internal accounting records, including balance sheet
13 and income statements which purportedly reflected capital balances for investors in the various
14 unregistered investment pools. The 2021 Examination disclosed that Respondents do not use
15 subscription applications but merely relied on Chow's memory or incomplete records to calculate
16 contributions and withdrawals made by investors. Respondents failed to provide audited financial
17 reports or otherwise demonstrate that they engaged a CPA to perform an independent audit of
18 Respondents' financial statements.

19 Respondents willfully failed to maintain books and records

20 25. Section 25241 provides, in pertinent part:

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

24 (Corp. Code, § 25241, subd. (a).)

25 26. California Code of Regulations, tit. 10, section 260.214.3 provides in pertinent part:

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

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- (1) A journal or journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of entries in any ledger.
- (2) General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts.
- (4) All check books, bank statements, cancelled checks and cash reconciliations of the investment adviser.
- (5) All bills or statements (or copies thereof), paid or unpaid, relating to the business of the investment adviser as such.
- (6) All trial balances, financial statements, worksheets that contain computations of minimum financial requirements required under Section 260.237.2, of these rules, and internal audit working papers relating to the business of such investment adviser.
- (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.

(Cal. Code Regs. tit. 10, § 260.214.3)

27. Respondents produced internally prepared accounting records that were inaccurate and not in compliance with the Generally Accepted Accounting Principles (GAAP). The 2021 Examination revealed that Respondents failed to maintain other books and records relating to their advisory business and their clients including: (i) failing to provide a brokerage application for at least one client sampled, Investor 1, #3194; (ii) failing to keep trust documents for investors' trust accounts, including at least two accounts sampled concerning Investor 2, #1786 and Investor 1, #3194; failing to provide margin disclosures for at least eight investors (iv) failure to maintain subscription agreements or other adequate records of contributions from investors of #2299 showing dates of investment or amount of investment; and (vi) failing to maintain offering documents such as a Private Placement

1 Memorandum (PPM) or their subscription agreements with investors or advisory agreements between
2 Respondents and the investment pools.

3 Respondents Willfully Failed to Maintain the Minimum Financial Net Worth

4 28. California Code of Regulations, title 10, section 260.237.2 provides in pertinent
5 part:

- 6 (a) Every investment adviser who has custody of client funds or
7 securities shall maintain at all times a minimum net worth of
8 \$35,000, and every investment adviser who has discretionary
9 authority over client funds or securities but does not have custody of
10 client funds or securities, shall maintain at all times a minimum net
11 worth of \$10,000.
- 12 (c) Unless otherwise exempted, as a condition of the right to continue to
13 transact business in this state, every investment adviser shall, by the
14 close of business on the next business day following the discovery
15 that the investment adviser's net worth is less than the minimum
16 required, notify the Commissioner that the investment adviser's net
17 worth is less than the minimum required. After transmitting such
18 notice, by the close of business on the next business day each
19 investment adviser shall file a report with the Commissioner of its
20 financial condition, including the following:
 - 21 (1) A trial balance of all ledger accounts;
 - 22 (2) A statement of all client funds or securities which
23 are not segregated;
 - 24 (3) A computation of the aggregate amount of client
25 ledger debit balances; and
 - 26 (4) A statement as to the number of client accounts.
- 27 (d) For purposes of this rule, the term "net worth" shall mean an excess
28 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

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stockholders and officers in the case of a corporation; and advances or loans to partners in the case of a partnership.

- (j) For purposes of subsection (c) of 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.

(Cal. Code Regs. tit. 10, § 260.237.2)

29. The 2021 Examination disclosed that Respondents have custody of client funds and securities as such, they are required to maintain a minimum net worth of \$35,000. As a result of Respondents' failure to maintain books and records, the Commissioner could not determine if Respondents met the minimum financial requirement during the 2021 Examination. Therefore, pursuant to California Code of Regulations section 260.237(j), Respondents are deemed to be deficient of the minimum net worth requirement and to have discovered that their net worth is less than the minimum net worth requirement. In addition, Respondents failed to notify the Commissioner that their net worth was less than the minimum financial requirement, in violation of California Code of Regulations section 260.237.2(c).

Respondents Willfully Failed to File Annual Reports

30. 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:
 - (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:

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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; or

(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

(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, § 260.241.2)

31. Since Respondents are deemed to have custody of client funds and securities, they are required to file annual financial reports prepared in accordance with GAAP and audited by an independent certified public accountant or independent public accountant. The Department’s records show that Respondents have not filed any annual reports since 2012. Respondents’ failure to file audited annual reports is a repeat violation cited in the 2012 Accusation and 2013 Order. Further, since Respondents failed to maintain a minimum net worth of \$35,000, they are required to file interim reports with the Department. To date, Respondents have not filed interim reports with the Commissioner.

Respondents Willfully Engaged in Fraudulent Acts or Activities that do not Promote Fair, Equitable and Ethical Principles

32. Section 25235 provides in pertinent part:

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

- (a) To employ any devise, scheme, or artifice to defraud any client or prospective client.
- (b) To engage in any transactions, practice, or course of business which operates or would operate as a fraud or deceit upon any client or prospective client.

(Corp. Code, § 25235)

33. 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:

- (f) Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the adviser, or a financial institution engaged in the business of loaning funds or securities

(Cal. Code Regs. tit. 10, § 260.238)

1 34. The 2021 Examination disclosed that Respondents engaged in multiple fraudulent acts.
2 In the fourth quarter of 2018, Chow took a \$50,000 unauthorized personal loan from #2299, which
3 Chow claimed was used to pay his personal taxes. As of the time of the 2021 Examination, the
4 \$50,000 loan was not repaid. Further, Respondents accepted loans for 992 Enterprises totaling
5 \$402,243 and loans for GAS totaling \$257,000. Respondents claim that portions of these loans have
6 been paid back and that approximately \$260,000 remains outstanding and due to 992 Enterprises while
7 \$35,000 remains due to GAS.

8 Respondents Made False Statements to the Commissioner

9 35. Section 25245 provides in pertinent part:

10 It is unlawful for any person willfully to make any untrue statement of a
11 material fact in any application, notice, or report filed with the commissioner
12 under this part, or willfully to omit to state in any such application, notice, or
13 report any material fact which is required to be stated therein.

13 (Corp. Code, § 25245)

14 36. During the 2021 Examination, Respondents submitted a copy of an email dated
15 August 23, 2020, to the Commissioner, which contained a notation that Chow owed \$50,000.00
16 to investors. Respondents altered the August 23, 2020, email by deleting part of the email that
17 referenced Chow's debt of \$50,000.00. Respondents claimed the alteration of the August 23,
18 2020, email was a "judgment error," and have since submitted a complete August 23, 2020,
19 email that shows Chow's \$50,000 loan as "receivable."

20 37. During the 2021 Examination, the Commissioner demanded that Respondents
21 produce a complete list of clients and adviser/family related accounts. Respondents produced a
22 list of accounts for GTM and Chow but omitted to provide at least two additional accounts which
23 the Commissioner later discovered relating to 992 Enterprises #9066 and Soli Enterprises #9977.

24 Respondents Offered and Sold Unqualified Nonexempt Securities to Investors

25 38. Section 25110 provides in pertinent part:

26 It is unlawful for any person to offer or sell in this state any security in an issuer
27 transaction (other than in a transaction subject to Section 25120), whether or not
28 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

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security or 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.

(Corp. Code § 25110)

39. The 2012 Accusation and 2013 Order determined that Respondents were unlawfully operating an unregistered unqualified investment pool fund identified as “GC 1050 Fund,” which allegedly was closed in or about September 2017. Respondents admitted that before allegedly closing GC 1050 Fund, they offered GC 1050 Fund investors the option of transferring their buyout investments into unsecured notes of 992 Enterprise. During the 2021 Examination, Respondents could not produce any agreements showing that GC 1050 Fund note holders agreed to convert their capital balance in GC 1050 Fund into notes in 992 Enterprises. Rather, Respondents produced a generic email generated by Chow purportedly inviting investors to transfer their investments from 992 Enterprise to GC 1050.

40. Based on Respondents’ failure to produce documents showing that GC 1050 Fund investors agreed to transfer their buyout shares into 992 Enterprises, the Commissioner finds that Respondents closed the GC 1050 Fund and transferred GC 1050 Funds into 992 Enterprises without first notifying the investors. A review of account statements for 992 Enterprises indicates that 992 Enterprises invests in options/securities, therefore the Commissioner finds that 992 Enterprises was essentially a continuation of the unregistered GC 1050 Fund.

41. The 2021 Examination revealed that Respondents operate at least two additional unregistered investment pools or hedge funds that include several pools comingled and held in #2299 and GAS. Respondents claimed that the #2299 account is an unregistered investment pool for his friends and family. Yet, Respondents stated that #2299 account includes the following investment pools within the same account: NO-BS#1, NO-BS#2, VIX (closed in August 2020), and several other individuals.

1 42. The 2021 Examination showed that Respondents accepted loans from several
2 individuals to fund the GAS, which according to Respondents, invests in securities. The
3 Commissioner discovered during the 2021 Examination that Chow and another individual,
4 Investor 3, contributed to GAS. The Commissioner finds that the various purported loans and
5 additional contributions from Chow and Investor 3 that Chow paid into GAS are unregistered
6 investment pool since funds from multiple individuals were pooled for investing purposes. The
7 records maintained by the Commissioner do not show that Respondents qualified or filed a
8 notice of exemption for the securities they offered and sold in the following entities: #2299; NO-
9 BS#1, NO-BS#2; 992 Enterprises; and GAS. Respondents further admitted that they did not file
10 a form D exemption notice with either the Securities Exchange Commission or the
11 Commissioner as required under section 25102.1(d).

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

- 16 (a) Failing to disclose the 2012 Accusation and 2013 Order to investors
- 17 (b) Failing to prepare audited financial statements in the manner prescribed by
18 law or to provide quarterly account statements to investors, which is deemed to
19 be a fraudulent, deceptive, or manipulative act, practice, or course of business
20 within the meaning of section 25235 of the Code for an investment adviser to
21 have custody of client funds or securities....

22 Respondents Willfully Charged Fees from Non-qualified Clients.

23 44. Section 25234 provides in pertinent part:
24 (a) No investment adviser licensed under this chapter shall in this state enter
25 into, extend or renew any investment advisory contract, or in any way perform
26 any investment advisory contract entered into, extended or renewed on or after
27 the effective date of this law, if that contract:
28 (1) Provides for compensation to the investment adviser on the basis of a
share of capital gains upon or capital appreciation of the funds or any
portion of the funds of the client, except as may be permitted by rule or
order of the commissioner....

1 (Corp. Code, § 25234(a)(1))

2 45. California Code of Regulations, title 10, section 260.234 provides in pertinent
3 part:

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

5
6 (b) to any investment adviser, provided all of the following are met:

7 (1) the only clients entering into the investment advisory contract are
8 "qualified clients" as defined in paragraph (d) of Rule 205-3 (17 CFR
9 275.205-3(d)) under the Investment Advisers Act of 1940 (Section 80b-1 et
10 seq.),...

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

16 (Cal. Code Regs. tit. 10, § 260.234)

17 46. The 2021 Examination disclosed that Respondents charged at least eight investors
18 performance-based fees totaling \$9,779.35 in 2013 and 2017 without first ascertaining if the investors
19 were qualified investors exempt from performance fee charges. Respondents claimed that they had no
20 documentation indicating if these clients were qualified clients for performance fee charges.

21 Respondents Willfully Engaged in Activities that do not Promote Fair, Equitable and Ethical Principles

22 47. Section 25238 provides in pertinent part:

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

28 (Corp. Code § 25238)

48. 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

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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.

....

- (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)

49. 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 to make investment recommendations that are suitable to their clients' financial goals and needs. During the 2021 Examination, Respondents failed to produce evidence demonstrating that suitability information was obtained or updated for at least 12 clients.

50. The 2021 Examination further showed that Respondents use "an uncovered options strategy" in operating the various funds, including trading uncovered options in gold and silver. In option trading, an "uncovered" option refers to a sold or written option where the seller does not have a position in the underlying security. The uncovered option is regarded in the broker dealer industry as inherently very risky with limited profit potential since the seller may have to quickly acquire a position in the security when the option buyer wants to exercise the option.

51. During the 2021 Examination, Respondents confirmed that the age of investors or "loan holders" in the #2299, 992 Enterprises, and Gifts after Six ranged from 41years to 99 years. However, Respondents did not provide documentation to show if their uncovered options strategy was suitable for older investors. Rather, the advisory agreements Respondents provided contained the same

1 investment objective ranking for the clients that were sampled and did not show that the clients
2 without an advisory agreement consented to the uncovered options strategy adopted by Respondents.

3 52. The 2021 Examination revealed that Respondents' advisory contracts do not clearly
4 describe the scope of services governed by the contract by failing to denote accounts earmarked for
5 trading in uncovered put and call strategy in gold and silver. Also, the contract states that
6 recommendations are based on the client's needs, investment objectives, financial and tax status, when
7 in fact Respondents use the same basic strategy for most clients.

8 53. The Commissioner noted that Respondents' Investment Advisory Agreements (IAA) do
9 not clearly explain the fee formula but merely provides that fees are paid monthly or quarterly in
10 arrears and that Respondents may "elect to bill in less frequent intervals." The Commissioner finds
11 that Respondents failure to assess fees at regular intervals meant that clients were unaware what their
12 fee would be at any given time. The IAA states that if a client is charged a performance fee, they will
13 not be charged an asset management fee. Here, the IAA did not state what the asset management fee
14 would be for clients with portfolio margin in the event a performance fee was not charged.

15 54. Respondents were unable to provide evidence that they entered into an advisory
16 agreement at the time advisory services commenced for at least six clients. Further, Respondents
17 produced IAAs that contained incomplete or inaccurate signatures and other information in connection
18 with at least seven investors.

19 Willfully Failing to Comply with Reporting Requirements

20 55. California Code of Regulations, title 10, section 260.236.1 provides in pertinent
21 part:

- 22 (a) The procedures set forth in this subsection are applicable to investment advisers
23 licensed pursuant to Section 25230 of the Code. References to an investment
24 adviser representative shall mean both an investment adviser representative and
25 an associated person of an investment adviser, as those terms are defined in
26 Section 25009.5(a) of the Code.

27

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

1 (Cal. Code Regs., tit. 10, § 260.236.1.)

2 56. The 2021 Examination showed that Respondents failed to report the 2013 Order
3 in their Form U4 disclosures, and failed to report, in the “Other Business Activities” section that
4 Chow held a trustee position at a community college.

5 Respondents Willfully Failed to File Form ADV Annual Updating Amendments

6 57. Section 25241 provides, in pertinent part:

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

9 (Corp. Code, § 25241(a).)

10 58. California Code of Regulations, title 10, section 260.241.4 provides, in pertinent
11 part:

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

15

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

18 (e) A licensed investment adviser shall file an annual updating amendment, in
19 accordance with the instruction in Form ADV, with IARD in accordance with
20 its procedures for transmission to the Commissioner within ninety (90) days of
the end of the investment adviser’s fiscal year.

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

22 59. According to IARD provisions, investment advisers must maintain updated information
23 with IARD, including accurate answers to disclosure questions in Part 1, Item 11 of Form ADV. Any
24 change to the information in Form ADV must be updated “promptly” by filing an amendment to Form
25 ADV. (See General Instructions of Form ADV, pages 2 through 4.)

26 60. The 2021 Examination revealed that Respondents did not file the 2020 ADV
27 Amendments to ADV part 1 or 2 which were due March 31, 2021. In addition, Respondents filed 2019
28

1 annual amendments 90 days later than the due date and have not filed prior amendments regularly. As
2 such, Respondents' Form ADV reflects numerous inaccurate information and omissions of material
3 information, in violation of section 25241 and Cal. Code Regs., tit. 10, § 260.241.4.

4 Respondents failed to comply with advertisement standards set forth under the CSL

5 61. California Code of Regulations, title 10, section 260.302 provides in pertinent part:

6 Any advertisement of securities (other than a tombstone advertisement) should
7 disclose, fairly and accurately, such relevant facts concerning the nature of the
8 securities, their terms and conditions, and the nature and financial condition of
9 the business enterprise as are necessary to make the advertisement not
misleading. Normally, any advertisement should comply with the following
standards:

10 (c) Any statement in an advertisement (other than a tombstone
11 advertisement) relating to the financial condition of the issuer
12 should comply with the following:

13 (6) No statement of estimated future earnings should be
14 made unless (i) it is based on a past earnings record,
15 (ii) it projects future earnings for a reasonable period
16 only, and (iii) it is substantiated by data which clearly
supports such estimate.

(Cal. Code Regs., tit. 10, § 260.302)

17 62. The 2021 Examination revealed that Respondents sent several emails to investors
18 promising substantial future target payments and future expected gains even though the clients and
19 investors were experiencing significant losses. One of such emails presented a target cash flow of
20 \$7,500 per week or \$30,000 per month, indicating that "the target is to make back most of our
21 \$375,000 loss in about a year." The target payments were not based on past earnings records and were
22 not substantiated by any data that supported the future estimated payments. While the investors have
23 the option to leave the fund, Respondents' claims of rebuilding the fund presented investors with an
24 illusory promise that they could recover the losses in the future.

25 **IV.**

26 **Authority to Revoke Respondents' Investment Adviser Certificates**

27 63. Section 25232 provides in pertinent part:

28 The commissioner may, after appropriate notice and opportunity for hearing, by

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

(a) Has willfully made or caused to be made in any application for

a certificate or any report filed with the commissioner under this division, or in any proceeding before the commissioner, any

statement which was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has willfully omitted to state in the application or report any material fact which is required to be stated therein.

....

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

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

(Corp. Code § 25232)

64. As alleged in paragraphs 57-60, Respondents willfully failed to file Form ADV Annual Updating Amendments in violation of section 25241 and Cal. Code Regs., tit. 10, § 260.241.4.

Further, Respondents failed to report pertinent events and activities in CRD. Therefore, Respondents have willfully made in an application or report to the Commissioner, a statement which was at the time and in the light of the circumstances under which it was made false or misleading, or willfully omitted to state in the application or report any material fact which is required to be stated therein.

65. As alleged in paragraphs 38, 42-43, 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.

66. As alleged in paragraphs 14 through 61 herein, Respondents violated several provisions of the CSL, thus warranting the revocation of Respondent's investment adviser certificates pursuant to

1 section 25232, subdivision (h).

2 **V.**

3 **Authority to Bar Chow**

4 67. Section 25232.1 provides in pertinent part:

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

13 (Corp. Code, § 25232.1)

14 68. Based on the acts and omissions alleged in paragraphs 14 through 66 herein,
15 Respondents violated several provisions of the CSL, thus Chow should be barred from the investment
16 industry.

17 **VI.**

18 **Authority to Levy Penalties**

19 69. Section 25252 provides in pertinent part:

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

22

23 (b) Any broker-dealer or investment adviser that willfully violates any
24 provision of this division to which it is subject, or that willfully violates any
25 rule or order adopted or issued pursuant to this division and to which it is
26 subject, is liable for administrative penalties of not more than five thousand
27 dollars (\$5,000) for the first violation, not more than ten thousand dollars
28 (\$10,000) for the second violation, and not more than fifteen thousand dollars
(\$15,000) for each subsequent violation....

(Corp. Code, § 25252.)

70. Based on the foregoing findings of fact, as set forth fully above in paragraphs 1 through
66, Respondents willfully violated the following provisions:

1 71. As alleged in paragraphs 15-24, Respondents engaged in fraudulent acts, in violation of
2 section 25235 and Cal. Code Regs., tit. 10, § 260.237. Pursuant to section 25252(b), the total penalties
3 that may be assessed against Respondents for violations of section 25235 and Cal. Code Regs., tit. 10,
4 § 260.237 is \$5,000 (calculated at \$5,000 x 1 violation).

5 72. As alleged in paragraphs 25-27, Respondents failed to maintain books and records, on
6 at least six occasions, in violation of section 25241 and Cal. Code Regs., tit. 10, § 260.214.3. Pursuant
7 to section 25252(b), the total penalties that may be assessed against Respondents for violations of
8 section 25241 and Cal. Code Regs., tit. 10, § 260.214.3 is \$60,000 (calculated at \$10,000 x 6
9 violations).

10 73. As alleged in paragraphs 28-29, Respondents failed to maintain the minimum financial
11 net worth, in violation of Cal. Code Regs., tit. 10, § 260.237.2. Pursuant to section 25252(b), the total
12 penalties that may be assessed against Respondents for violations of Cal. Code Regs., tit. 10, §
13 260.237.2. is \$15,000 (calculated at \$15,000 x 1 violation).

14 74. As alleged in paragraphs 30-31, Respondents failed to file Annual Reports since at least
15 2012, for at least 10 years from 2012 to present, in violation of Cal. Code Regs., tit. 10, section
16 260.241.2. Pursuant to section 25252(b), the total penalties that may be assessed against Respondents
17 for violations of Cal. Code Regs., tit. 10, § 260.241.2 is \$150,000 (calculated at \$15,000 x 10
18 violations).

19 75. As alleged in paragraphs 32-34, Respondents engaged in fraudulent acts or activities
20 that do not promote fair, equitable and ethical principles, in violation of section 25235 and Cal. Code
21 Regs., tit. 10, § 260.238. Pursuant to section 25252(b), the total penalties that may be assessed against
22 Respondents for violations of section 25235 and Cal. Code Regs., tit. 10, § 260.238 is \$15,000
23 (calculated at \$15,000 x 1 violation).

24 76. As alleged in paragraphs 35-37, Respondents made false statements to the
25 Commissioner, in violation of section 25245. Pursuant to section 25252(b), the total penalties that may
26 be assessed against Respondents for violations of section 25245 is \$15,000 (calculated at \$15,000 x 1
27 violation).

28

1 77. As alleged in paragraphs 38-43, Respondents offered and sold unqualified nonexempt
2 securities to investors, on at least six occasions, in violation of section 25110. Pursuant to section
3 25252(b), the total penalties that may be assessed against Respondents for violations of section 25110
4 is \$90,000 (calculated at \$15,000 x 6 violations).

5 78. As alleged in paragraphs 44-46, Respondents charged fees on non-qualified clients, on
6 at least eight occasions, in violation of section 25234 (a)(1); and Cal. Code Regs., tit. § 10 260.234
7 (b)(3). Pursuant to section 25252(b), the total penalties that may be assessed against Respondents for
8 violations of section 25234 (a)(1); and Cal. Code Regs., tit. § 10 260.234 (b)(3) is \$120,000
9 (calculated at \$15,000 x 8 violations).

10 79. As alleged in paragraphs 47-54, Respondents engaged in activities that do not promote
11 fair, equitable and ethical principles, on at least two occasions, in violation of section 25238, and Cal.
12 Code Regs., tit. 10, § 260.238. Pursuant to section 25252(b), the total penalties that may be assessed
13 against Respondents for violations of section 25238, and Cal. Code Regs., tit. 10, § 260.238 is \$30,000
14 (calculated at \$15,000 x 2 violations).

15 80. As alleged in paragraphs 55-56, Respondents failed to comply with reporting
16 requirements, on at least three occasions, in violation of Cal. Code Regs., tit. 10, § 260.236.1. Pursuant
17 to section 25252(b), the total penalties that may be assessed against Respondents for violations of Cal.
18 Code Regs., tit. 10, § 260.236.1 is \$45,000 (calculated at \$15,000 x 3 violations).

19 81. Respondents failed to file Form ADV Annual Updating Amendments, in violation of
20 section 25241, and Cal. Code Regs., tit. 10, § 260.241.4. Pursuant to section 25252(b), the total
21 penalties that may be assessed against Respondents for violations of section 25241, and Cal. Code
22 Regs., tit. 10, § 260.241.4 is \$15,000 (calculated at \$15,000 x 1 violation).

23 82. Respondents failed to comply with advertisement standards, in violation of Cal. Code
24 Regs., tit. 10, § 260.302. Pursuant to section 25252(b), the total penalties that may be assessed against
25 Respondents for violations of Cal. Code Regs., tit. 10, § 260.302 is \$15,000 (calculated at \$15,000 x 1
26 violation).

27 WHEREFORE, IT IS PRAYED that:

28 (a) Pursuant to section 25232, that the investment adviser certificate of GT

1 Management Group, Inc. and Gary Chow be revoked.

2 (b) Pursuant to section 25232.1, that Gary Chow be barred from any
3 position of employment, management or control of any investment adviser, broker-dealer, or
4 commodity adviser pursuant to section 25232.1.

5 (c) Pursuant to section 25252(b), a penalty be levied against Respondents
6 for the violations of the CSL enumerated in paragraphs 71-83, for a total of 32 violations of the CSL
7 and California Code of Regulations, in the amount of \$425,000 calculated at \$5,000 for the first
8 violation, \$10,000 for the second violation and \$15,000 for each subsequent violation, or according to
9 proof.

10 **VII.**

11 **CLAIM FOR ANCILLARY RELIEF**

12 (For violations of several provisions of the CSL)

13 83. Complainant re-alleges and reincorporates by reference paragraphs 1 – 82 of this
14 Accusation as though fully set forth herein.

15 84. Section 25254 authorizes the Commissioner to seek the recovery of reasonable
16 attorney’s costs and investigative expenses. Section 25254 states:

17 (b) In an administrative action brought under this part, the
18 commissioner is entitled to recover costs, which in the discretion
19 of the administrative law judge may include an amount
20 representing reasonable attorney’s fees and investigative expenses
21 for the services rendered, for deposit into the State Corporations
22 Fund for the use of the Department of Financial Protection and
23 Innovation.

24 85. Based on the foregoing findings of fact, as set forth fully above in paragraphs 1 – 82,
25 Respondents have violated several provisions of the CSL, and the California Code of Regulations
26 referenced herein in paragraphs 1-82.

27 WHEREFORE, good cause showing and the Commissioner’s determination that this action is
28 in the public interest and necessary to effectuate the Department’s primary, legitimate, regulatory
purpose based upon the Respondent’s violations of the CSL, the Commissioner hereby prays for an
order of ancillary relief pursuant to section 25254 against Respondents as follows:

1 a) Recovery of attorney’s fees, investigative expenses, and costs in an
2 amount of at least \$30,000, or according to proof.

3 **VIII.**

4 **Public Interest**

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

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

16 Respondents violated this fiduciary duty to clients by committing acts, omissions, and
17 violations of the CSL and California Code of Regulations. For these reasons, it is therefore in the
18 public interest to revoke the investment adviser certificates of GTM Group, Inc. and Gary Chow and
19 bar Gary Chow from the investment industry and require that Respondents pay administrative
20 penalties and attorney costs.

21 **IX.**

22 **Relief Requested**

23 WHEREFORE, based upon the foregoing, the Commissioner finds it is in the public interest to
24 revoke the investment adviser certificates of GTM Group, Inc., and Gary Chow pursuant to CSL
25 section 25232, and to bar Gary Chow from the investment industry pursuant to section 25232.1, and to
26 assess penalties against Respondents.

27 WHEREFORE, IT IS PRAYED that the investment adviser certificate of GT Management
28 Group, Inc. and Gary Chow be revoked pursuant to section 23232.

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WHEREFORE, IT IS FURTHER PRAYED that Gary Chow be barred from any position of employment, management or control of any investment adviser, broker-dealer, or commodity adviser pursuant to section 25232.1.

WHEREFORE, IT IS FURTHER PRAYED that GT Management Group, Inc., and Gary Chow be ordered to pay administrative penalties, in the amount of at least \$ 425,000, plus interest thereon, according to proof.

WHEREFORE, IT IS FURTHER PRAYED that GT Management Group, Inc., and Gary Chow be ordered to pay attorney’s fees, investigative expenses, and costs in an amount of at least \$30,000, plus interest thereon, according to proof.

Dated: December 12, 2023

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and Innovation

By _____
UCHE L. ENENWALI
Senior Counsel
Enforcement Division