

1 CLOTHILDE V. HEWLETT
Commissioner
2 MARY ANN SMITH
Deputy Commissioner
3 DANIEL P. O'DONNELL
Assistant Chief Counsel
4 RYAN CASSIDY (State Bar No. 340274)
5 Counsel
6 Department of Financial Protection and Innovation
2101 Arena Boulevard
7 Sacramento, CA 95834
8 Telephone: (916) 764-8358

9 Attorneys for Complainant

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

12 In the Matter of:

13 THE COMMISSIONER OF FINANCIAL
14 PROTECTION AND INNOVATION,

15 Complainant,

16 v.

17 FRANK MERCURI III

18 Respondent.

CRD No.: 7493981

CONSENT ORDER

19 The Commissioner of Financial Protection and Innovation (Commissioner) and respondent
20 Frank Mercuri III (Mercuri) enter into this Consent Order (Order) with respect to the following facts:

21 **I.**

22 **RECITALS**

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

27 B. Frank Mercuri III (Mercuri) (CRD NO. 7493981) is a California resident.

28 ///

1 C. American Alternative Investments, LLC (AAI) was an Indiana limited liability company, with
2 its principal place of business in Indianapolis, Indiana. AAI described itself as an “alternative
3 financial services firm.”

4 D. From at least July 2018 through December 2020, AAI presented various investment
5 opportunities to Mercuri, which in turn, Mercuri effected the securities, in the form of promissory
6 notes and investment agreements with Choice Energy Holdings II LLC, Choice Energy Holdings III
7 LLC, PRMH Lenders Fund IV, LLC, and Legacy Energy, LLC, in California, for the account of
8 others. During this time, Frank Mercuri effected securities for at least 25 clients, totaling \$138,164.41
9 in compensation.

10 E. Mercuri effected the securities by identifying the offering to the investors, providing them
11 with offering documents, discussing the offering with them, assisting them with completing their
12 investment, facilitating the submission of the paperwork, and communicating with the issuers or other
13 entities in the investment process about the status of the investment to provide updates to the
14 investors. Mercuri was the primary point of contact for the investors.

15 F. At all relevant times, Mercuri has not held a valid broker-dealer license, pursuant to
16 Corporations Code section 25210.

17 G. Mercuri admits to the jurisdiction of the Department of Financial Protection and Innovation
18 (Department) and it is the intention of the Parties to resolve this matter without the necessity of a
19 hearing and/or other litigation.

20 H. The Commissioner finds this action is appropriate, in the public interest, is necessary for the
21 protection of investors, and is consistent with the purposes fairly intended by the policies and
22 procedures of the CSL.

23 I. NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set
24 forth herein, the Parties agree as follows:

25 ///
26 ///
27 ///
28 ///

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

II.

TERMS AND CONDITIONS

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

2. Desist and Refrain Order for Violations of Section 25210. Pursuant to Corporations Code section 25532, Mercuri is hereby ordered to desist and refrain from any unlicensed broker-dealer activities in violation of Corporations Code section 25210.

3. Waiver of Hearing Rights. Mercuri acknowledges that the Commissioner is ready, willing, and able to proceed with the filing of an administrative enforcement action on the charges contained in this Consent Order. Mercuri hereby waives the right to any hearings, and to any reconsideration, appeal, or other right to review which may be afforded pursuant to the CSL, the California Administrative Procedure Act, the California Code of Civil Procedure, or any other provision of law. Mercuri further expressly waives any requirement for the filing of an action pursuant to Government Code section 11415.60 (b). By waiving such rights, Mercuri effectively consents to this Consent Order and all the terms becoming final.

4. Failure to Comply with Consent Order. Mercuri agrees that if he fails to meet any requirement of this Consent Order, the Commissioner may, in addition to all other available remedies she may invoke under the CSL, immediately bar Mercuri. Mercuri hereby waives any notice and hearing rights to contest the immediate bar which may be afforded under the CSL, the California Administrative Procedure Act, the California Code of Civil Procedure, or any other provision of law in connection therewith.

5. Information Willfully Withheld or Misrepresented. This Consent Order may be revoked, and the Commissioner may pursue any and all remedies available under law against Mercuri if the Commissioner discovers that Mercuri knowingly or willfully withheld or misrepresented information used for and relied upon in this Consent Order.

///

///

1 6. Future Actions by Commissioner. If Mercuri fails to comply with any terms of the
2 Consent Order, the Commissioner may institute proceedings for any and all violations otherwise
3 resolved under this Consent Order. The Commissioner reserves the right to bring any future actions
4 against Mercuri, for any and all unknown violations of the CSL or any other law under the
5 Commissioner’s jurisdiction.

6 7. Assisting Other Agencies. Nothing in this Consent Order limits the Commissioner’s
7 ability to assist any other government agency (whether city, county, state, or federal) with any
8 administrative, civil or criminal action brought by that agency against Mercuri or any other person
9 based upon any of the activities alleged in this matter or otherwise.

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

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

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

24 11. Waiver, Amendments, and Modifications. No waiver, amendment, or modification of
25 this Consent Order will be valid or binding unless it is in writing and signed by each of the Parties.
26 The waiver of any provision of this Consent Order will not be deemed a waiver of any other
27 provision. No waiver by either party of any breach of, or of compliance with, any condition or

28 ///

1 provision of this Consent Order by the other party will be considered a waiver of any other condition
2 or provision or of the same condition or provision at another time.

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

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

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

16 15. Effect Upon Future Proceedings. If Mercuri applies for any license, certificate,
17 registration, permit, or qualification under the Commissioner's current or future jurisdiction, or is the
18 subject of any future action by the Commissioner to enforce this Consent Order, then the subject
19 matter hereof shall be admitted for the purpose of such application(s) or enforcement proceeding(s).

20 16. Voluntary Agreement. Mercuri enters into this Consent Order voluntarily and without
21 coercion and acknowledges that no promises, threats or assurances have been made by the
22 Commissioner or any officer, or agent thereof, about this Consent Order. The Parties each represent
23 and acknowledge that he, she or it is executing this Consent Order completely voluntarily and
24 without any duress or undue influence of any kind from any source.

25 17. Notice. Any notice required under this Consent Order shall be provided to each party
26 at the following addresses:

27 To Respondent: Frank Mercuri III
28 4740 Green River Road, Suite 104
Corona, California 92878
frank@mercuriassetmanagement.net

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

To the Commissioner:

Ryan M. Cassidy, Counsel
Department of Financial Protection and Innovation
2101 Arena Boulevard
Sacramento, California 95834
Ryan.Cassidy@dfpi.ca.gov

18. Signatures. A fax or electronic mail signature shall be deemed the same as an original signature.

19. Public Record. Mercuri hereby acknowledges that this Consent Order is and will be a matter of public record.

20. Effective Date. This Consent Order shall become final and effective when signed by all Parties and delivered by the Commissioner’s agent via e-mail to Frank Mercuri III, at frank@mercuriassetmanagement.net.

21. Authority to Sign. Each signatory hereto covenants that he/she possesses all necessary capacity and authority to sign and enter into this Consent Order and undertake the obligations set forth herein.

Dated: January 16, 2024
Sacramento, California

CLOTHILDE V. HEWLETT
Commissioner
Department of Financial Protection and Innovation



By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

Dated: January 4, 2024

By _____
FRANK MERCURI III, as an Individual