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9  
10 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION  
OF THE STATE OF CALIFORNIA

11 In the Matter of:

12 THE COMMISSIONER OF FINANCIAL  
13 PROTECTION AND INNOVATION,

14 Complainant,

15 v.

16 THIRD COMMA, LLC, and RICHARD W.  
SIMPSON

17 Respondents.

CRD NO.: 321950

NOTICE OF INTENT TO ISSUE ORDER  
DENYING APPLICATION FOR  
INVESTMENT ADVISER CERTIFICATE  
AND STATEMENT IN SUPPORT

(Cal. Corp. Code section 25232)

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19 The Commissioner of Financial Protection and Innovation (Commissioner) is informed and  
20 believes, and based upon such information and believe, alleges and charges as follows:

21 **I.**

22 **JURISDICTION AND VENUE**

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

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2. The Commissioner brings this action to deny the investment adviser application<sup>1</sup> of Third Comma, LLC (Third Comma) (Central Registration Depository No. 321950)<sup>2</sup>, pursuant to Corporations Code section 25232 (d)(2) and (3).

3. Investment advisers are fiduciaries to their clients and must adhere to a strict fiduciary standard encompassing a duty of “utmost” good faith, full and fair disclosure of all material facts, and an obligation to use reasonable care to avoid misleading clients.

**II.**

**STATEMENT OF FACTS**

4. Third Comma is and was a Delaware limited liability company, with its principal place of business at 322 8th Street, Suite #105, Del Mar, California 92014.

5. Third Comma is and was wholly owned by Richard W. Simpson (Simpson) (CRD No. 2129917). Simpson is Chief Executive Officer, President, Chief Compliance Officer, and sole owner of Third Comma.

6. On May 27, 2022, Third Comma filed an application with the Commissioner for an investment adviser certificate.

7. A review of the application filed by Simpson disclosed that Simpson was subject to multiple orders brought against him by the National Association of Securities Dealers, Inc. (NASD)<sup>3</sup> and the California Department of Financial Protection and Innovation (formerly Department of Corporations).

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<sup>1</sup> The investment adviser application in issue is a “Form ADV Uniform Application for Investment Adviser Registration” promulgated by the Securities Exchange Commission (SEC) pursuant to 17 Code of Federal Regulations 279.1 as amended by the SEC Release No. IA-1916, 34-43758. (See Cal. Corp. Code, § 260.231.2) All registered investment advisers with less than \$100 million in client assets must register with the securities regulator in the state of the adviser’s principal place of business, here, in this instance, the State of California.

<sup>2</sup> The Central Registration Depository (CRD) is a database maintained by the Financial Industry Regulatory Authority (FINRA) since 2007 for all firms and individuals involved in the U.S. securities industry. It is used to store and maintain information on registered securities and broker firms, as well as individuals who dispense investing and financial advice.

<sup>3</sup> The National Association of Securities Dealers (NASD) was a national securities association and a self-regulatory organization of the securities industry and a predecessor of the Financial Industry Regulatory Authority (FINRA).

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III.

**THE COMMISSIONER HAS GROUNDS TO DENY THIRD COMMA LLC'S APPLICATION FOR AN INVESTMENT ADVISER CERTIFICATE**

8. Pursuant to Corporations Code section 25232, the Commissioner may deny an application for an investment adviser certificate, if she finds the bar is in the public interest and that the person done any of the following acts, enumerated in Corporations Code Section 25232.

9. Corporations Code section 25232 provides, in relevant part:

The commissioner may, after appropriate notice and opportunity for hearing...*deny a certificate to...an investment adviser, if the commissioner finds that the...denial... is in the public interest and that the investment adviser, whether prior or subsequent to becoming such, or any partner, officer or director thereof...has done any of the following [Emphasis added]:*

(d) Is or has been subject to...(2) *any order of any national securities association... suspending or expelling that person from membership in the association or exchange or from association with any member thereof, or (3) any other order of the commission...necessary for the protection of any investor...[Emphasis added.]*

(e) *Has willfully violated . . . Title 4 (commencing with Section 25000)...[Emphasis added.]*

(Cal. Corp. Code, § 25232 (d) and (e))

10. There are several grounds for denying Third Comma's application for an investment adviser certificate, including: (1) NASD expulsion of Intra Network Securities, Inc. (INS), controlled by Simpson, in December 2004; (2) NASD suspension of Simpson on December 19, 2005, for a period of 14 months; (3) NASD suspension of Simpson on November 5, 2007, for a period of 20 business days; (4) Financial Industry Regulatory Authority (formerly NASD) (FINRA) suspension of Simpson on April 15, 2013, for a period of 18 months; (6) California Commissioner revocation of INS' broker-dealer certificate, controlled by Simpson, in June 2006; (7) California Commissioner denied XO Financial Group Inc.'s application for an investment adviser certificate, controlled by Simpson, on August 14, 2006; and (8) Simpson's willful failure to disclose these suspensions, expulsion, revocation, and outstanding judgments in his offer and sale of securities, in violation of Corporations Code Section 25401.

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1 **A. FIRST CAUSE: NASD’S EXPULSION ORDER ISSUED AGAINST A COMPANY**  
2 **CONTROLLED BY SIMPSON PURSUANT TO CORPORATIONS CODE SECTION**  
3 **25232 (d)(2)**

4 11. On December 13, 2004, NASD issued an action expelling Simpson’s company, Intra  
5 Network Securities, Inc. (INS), of which Simpson was the President, Chief Operations Officer, and  
6 50% owner.

7 12. NASD’s expulsion order was based on INS’s failure to pay fines and costs. Cause,  
8 therefore, exists to deny Third Comma’s application for an investment adviser certificate, pursuant to  
9 Corporations Code section 25232 (d)(2).

10 **B. SECOND CAUSE: NASD’S SUSPENSION ORDER ISSUED AGAINST SIMPSON**  
11 **PURSUANT TO CORPORATIONS CODE SECTION 25232 (d)(2)**

12 13. On December 19, 2005, NASD issued an order suspending Simpson from association  
13 with any NASD member in any capacity, for a period of 14 months.

14 14. NASD’s suspension order was based on Simpson’s refusal to comply with an  
15 arbitration award or settlement agreement or to satisfactorily response to a NASD request to provide  
16 information concerning the status of compliance. Cause, therefore, exists to deny Third Comma’s  
17 application for an investment adviser certificate, pursuant to Corporations Code section 25232 (d)(2).

18 **C. THIRD CAUSE: NASD’S SUSPENSION ORDER ISSUED AGAINST SIMPSON**  
19 **PURSUANT TO CORPORATIONS CODE SECTION 25232 (d)(2)**

20 15. On November 5, 2007, NASD issued an order suspending Simpson a second time,  
21 from association with any NASD member in any capacity, for a period of 20 business days. In  
22 addition, NASD imposed a \$5,000.00 penalty.

23 16. NASD’s suspension action and penalty order were based on Simpson’s failure to  
24 provide documents in a timely manner and failure to appear at a NASD “on the record” interview.  
25 Cause, therefore, exists to deny Third Comma’s application for an investment adviser certificate,  
26 pursuant to Corporations Code section 25232 (d)(2).

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1       **D. FOURTH CAUSE: FINRA'S SUSPENSION ORDER ISSUED AGAINST SIMPSON**  
2       **PURSUANT TO CORPORATIONS CODE SECTION 25232 (d)(2)**

3           17.     On April 15, 2013, FINRA (formerly NASD) issued an order suspending Simpson a  
4 third time, from association with any FINRA member in any capacity, for a period of 18 months.

5           18.     FINRA's suspension order was based on Simpson's willful failure to disclose several  
6 unsatisfied judgements, as well as a pending litigation and a settlement. In connection with FINRA's  
7 investigation into his failure to disclose the reportable events, Simpson provided false and misleading  
8 information to FINRA. In addition, Simpson failed to produce information and documents in  
9 response to FINRA's requests for information and documents. Cause, therefore, exists to deny Third  
10 Comma's application for an investment adviser certificate, pursuant to Corporations Code section  
11 25232 (d)(2).

12       **E. FIFTH CAUSE: CALIFORNIA COMMISSIONER'S REVOCATION ORDER**  
13       **ISSUED AGAINST A COMPANY CONTROLLED BY SIMPSON PURSUANT TO**  
14       **CORPORATIONS CODE SECTION 25232 (d)(3)**

15           19.     On June 5, 2006, the California Department of Financial Protection and Innovation  
16 (formerly Department of Corporations) issued an order revoking Simpson's company, INS, of which  
17 Simpson was the President, Chief Operations Officer, and 50% owner.

18           20.     The Commissioner's revocation order was based upon Simpson's active suspension by  
19 NASD and other sanctions issued by NASD, an outstanding judgement in a civil action, which  
20 included allegations of securities fraud, and unregistered sales of securities through general  
21 solicitations in California committed by one or more principals of INS. Cause, therefore, exists to  
22 deny Third Comma's application for an investment adviser certificate, pursuant to Corporations Code  
23 section 25232 (d)(3).

24       **F. SIXTH CAUSE: CALIFORNIA COMMISSIONER'S ORDER DENYING AN**  
25       **APPLICATION FOR AN INVESTMENT ADVISER CERTIFICATE ISSUED**  
26       **AGAINST A COMPANY CONTROLLED BY SIMPSON PURSUANT TO**  
27       **CORPORATIONS CODE SECTION 25232 (d)(3)**

28           21.     On August 14, 2006, the California Department of Financial Protection and Innovation  
(formerly Department of Corporations) issued an order denying the application for an investment

1 adviser certificate of Simpson's company, XO Financial Group, Inc., of which Simpson was the  
2 President and 50% owner.

3 22. The Commissioner's denial, pursuant to Corporations Code section 25232 (d), was  
4 based upon the following: (1) prior orders issued by NASD on December 13, 2004, and December  
5 19, 2005; (2) prior orders issued by the Commissioner on June 5, 2006; (3) Simpson, as an individual  
6 or as a control person, has been held liable in a civil action by final judgement of a court based upon  
7 conduct showing moral turpitude; and (4) Simpson, as an individual or as a control person, has  
8 willfully violated provisions of the CSL, including a violation of Corporations Code section 25401.  
9 Cause, therefore, exists to deny Third Comma's application for an investment adviser certificate,  
10 pursuant to Corporations Code section 25232 (d)(3).

11 **G. SEVENTH CAUSE: WILLFUL VIOLATION OF THE CSL PURSUANT TO**  
12 **CORPORATIONS CODE SECTION 25232 (e)**

13 23. On March 17, 2008, Precision Dental Design, Inc. (PDD), 16236 San Dieguito Road,  
14 Suite 3-28, Rancho Santa Fe, California 92067 was formed as a California corporation. Simpson was  
15 a Director and Officer of PDD.

16 24. Between August 2008 and February 2010, Simpson and PDD offered and sold  
17 securities in the form of promissory notes. However, Simpson failed to disclose material facts,  
18 including, but not limited to: (1) NASD expulsion; (2) NASD suspensions; (3) California  
19 Commissioner's revocation of a broker-dealer certificate; and (4) the several unsatisfied judgments  
20 from civil actions brought by prior investors, in violation of Corporations Code 25401.

21 25. Corporations Code section 25401 prohibits the offer or sale of securities in this state  
22 by means of written or oral communications that include untrue statements of material fact or omit  
23 materials facts necessary in order to make the statements made, in light of the circumstances under  
24 which they were made, not misleading. The omissions and misrepresentations of Simpson and PDD  
25 are material facts necessary in order to make the statements made, in the light of the circumstances  
26 under which they were made, not misleading.

27 26. Cause, therefore, exists to deny Third Comma's application for an investment adviser  
28 certificate, pursuant to Corporations Code section 25232 (e).

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IV.

**NOTICE OF INTENT TO ISSUE ORDER DENYING APPLICATION FOR INVESTMENT ADVISER CERTIFICATE**

27. The Commissioner re-alleges and incorporates by reference paragraphs 1-26 of this Statement in Support, as though fully set forth herein.

28. Corporations Code section 25232 authorizes the Commissioner to issue an order denying an application for an investment adviser certificate.

29. Based on the foregoing findings, the Commissioner finds that it is in the public interest to deny Third Comma’s application for an investment adviser certificate, pursuant to Corporations Code section 25232 (d)(2)(3) and (e).

30. Pursuant to Corporations Code section 25232, the Commissioner hereby provides her notice of intent to issue order denying Third Comma’s application for an investment adviser certificate.

DATED: April 17, 2024  
Sacramento, California

CLOTHILDE V. HEWLETT  
Commissioner of Financial Protection and Innovation

By: \_\_\_\_\_  
Ryan M. Cassidy  
Counsel  
Enforcement Division