

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

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

11 In the Matter of:

CRD NO.: 2767010

12 THE COMMISSIONER OF FINANCIAL
13 PROTECTION AND INNOVATION,

ACCUSATION IN SUPPORT OF ORDER
TO BAR DENNIS CHEN FROM ANY
POSITION OF EMPLOYMENT,
MANAGEMENT, OR CONTROL OF AN
INVESTMENT ADVISER, BROKER-
DEALER, OR COMMODITY ADVISER

14 Complainant,

15 v.

16 GPS CAPITAL MANAGEMENT LLC,
17 DANIEL WU, and DENNIS CHEN,

(Cal. Corp. Code § 25232.1)

18 Respondents.

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 Corporate Securities Law of 1968 (Cal. Corp. Code §§ 25000-25707) (CSL) and the regulations
25 promulgated thereunder at title 10 of the California Code of Regulations, which includes the
26 licensure, examination, and regulation of investment advisers.

27 2. The Commissioner brings this action pursuant to the provisions of Corporations Code
28 sections 25232 and 25232.1, and the rules and regulations promulgated thereunder.

1 3. The Commissioner brings this action seeking to bar Dennis Chen (Chen) from any
 2 position of employment, management, or control of an investment adviser, broker-dealer, or
 3 commodity adviser, pursuant to Corporations Code sections 25232.1 and 25232(e) on the grounds
 4 that the bar is in the public interest and Chen willfully violated provisions of the CSL.

5 II.

6 INTRODUCTION

7 4. At all relevant times herein, GPS Capital Management LLC (GPS), is and was an
 8 investment adviser licensed by the Commissioner since January 30, 2018 (Central Registration
 9 Depository No. 136330)¹ pursuant to the CSL. GPS was at all relevant times, a California limited
 10 liability company, located at 840 Hinckley Road, Suite 246, Burlingame, CA 94010. According to the
 11 California Secretary of State's website (available at <https://bizfileonline.sos.ca.gov/search/business>),
 12 GPS' registration is terminated as of June 16, 2023.

13 5. At all relevant times, Daniel Wu (Wu) (CRD No. 2651056) is and was an officer,
 14 control person, managing member, and an owner of GPS. Beginning on or about May 14, 2020, Wu
 15 was the sole employee, officer, and owner of GPS.

16 6. During the period of November 21, 2005, through May 14, 2020, Dennis Chen (Chen)
 17 (CRD No. 2767010) was the chief executive officer, control person, managing member, and majority
 18 owner of GPS. On May 14, 2020, Chen left GPS, and was no longer an owner, control person, or
 19 officer. On that same day, Chen voluntarily terminated his registration as an investment adviser
 20 representative.

21 7. GPS, Wu, and Chen are collectively referred to as Respondents.

22 8. A violation is willful if Respondents' failure was done with a purpose or willingness
 23 to commit the act, or make the omission referred to. An omission is willful if made with the
 24 knowledge of the obligation to act.

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 28 ¹ The Central Registration Depository (CRD) and Investment Adviser Registration Depository (IARD) are databases maintained by FINRA since 2007. They are used to store and maintain information on registered securities and broker firms, as well as individuals who dispense investing and financial advice.

1 9. In this case, Chen willfully violated Corporations Code sections 25210 and 25216,
2 and California Code of Regulations, title 10, section 260.216(a).

3 **III.**

4 **VIOLATIONS OF THE CSL**

5 **A. Cal. Corp. Code § 25210**

6 10. Corporations Code section 25210 provides, in part, that it is unlawful to conduct
7 business as a broker-dealer in this state without first securing from the Commissioner a certificate,
8 authorizing them to do so.

9 11. Beginning in or about May 14, 2020, GPS and Wu allowed Chen to retain access to
10 GPS' advisory platform at TD Ameritrade, Inc., despite Chen no longer being employed by GPS or
11 registered as an investment adviser representative. This allowed Chen to use GPS' omnibus trading
12 account to effect securities transactions for the account of others.

13 12. From May 27, 2020, through October 15, 2021, Chen performed block trading²
14 transactions, via GPS' omnibus trading account, for Chen's personal and family accounts, and an
15 account for one California resident.

16 13. At all relevant times, neither the Department nor the United States Securities and
17 Exchange Commission have issued a broker-dealer certificate to any of the respondents.

18 14. Therefore, Chen willfully conducted business as a broker-dealer in this state without
19 first securing from the Commissioner a certificate, authorizing him to do so, in violation of
20 Corporations Code section 25210.

21 **B. Cal. Corp. Code § 25216 and Cal. Code Regs. tit. 10, § 260.216**

22 15. Corporations Code section 25216 (b) and California Code of Regulations, title 10,
23 section 260.216 (a) provides, in part, that it is unlawful for a broker-dealer to engage in any act,
24 practice, or course of business which is fraudulent, deceptive, or manipulative.

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28 ² Block Trades are orders for the sale or purchase of a large number of securities that is subsequently allocated to multiple accounts. Block trading allows portfolio managers to purchase or sell a large quantity of securities executed as a single trade and then allocate those securities to multiple clients. This tool can create cost savings and operational efficiencies.

1 16. From May 27, 2020, through October 15, 2021, Chen engaged in a scheme whereby
2 he would buy securities in GPS' omnibus trading account in the morning. Then we would wait until
3 later in the day, generally just before the market closed. If the price of the securities had gone up
4 before the market close, Chen would generally allocate that trade to himself or his ex-wife. If,
5 however, the price went down, Chen generally allocated that trade to one California resident. In many
6 instances, Chen would actually sell the security near the close of trading, thereby capturing the profit
7 in his own or his ex-wife's account.

8 17. Chen's "cherry-picking" of profitable trades financially benefited Chen and his ex-
9 wife and disadvantaged the California resident. From May 27, 2020, to October 15, 2021, on those
10 trades that were profitable, Chen allocated 93% of them to his own or his ex-wife's account. This
11 resulted in a net gain to Chen and his ex-wife of approximately \$592,478.22. On those trades that
12 were not profitable, Chen allocated only 19% of those to his own, or his ex-wife's account, totaling a
13 net loss of approximately \$29,092.70.

14 18. Conversely, during the same time period, Chen allocated only 7% of the profitable
15 trades to the California resident's accounts, which netted them approximately \$46,315.10. And Chen
16 allocated 81% of the losing trades to the California resident's accounts, resulting in a net loss of
17 approximately \$124,276.77.

18 19. Therefore, Chen willfully engaged in a fraudulent scheme, in violation of Corporations
19 Code section 25216 (a) and California Code of Regulations, title 10, section 260.216 (a).

20 IV.

21 THE COMMISSIONER HAS GROUNDS TO BAR DENNIS CHEN

22 20. Corporations Code section 25232.1 provides, in pertinent part:

23 *The commissioner may, after appropriate notice and opportunity for hearing*
24 *barring...from any position of employment, management or control of any*
25 *investment adviser, broker-dealer or commodity adviser, any officer, director,*
26 *partner, employee of, or person performing similar functions for, an investment*
27 *adviser, or any other person, if he or she finds that the...bar is in the public*
interest and that the person has committed any act or omission enumerated in
subdivision...(e)...of Section 25232.... [Emphasis added.]

28 (Cal. Corp. Code, § 25232.1)

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

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

(Cal. Corp. Code, § 25232 (e))

22. In accordance with Corporations Code section 25232.1, the Commissioner may bar any officer or employee of an investment adviser, based on willful violations of sections of the CSL or rules adopted thereunder. In this case, Chen has willfully violated multiple CSL codes and regulations including: (1) Corporations Code section 25210, by conducting business as a broker-dealer in this state without first securing from the Commissioner a certificate, authorizing him to do so; and (2) Corporations Code section 25216(b) and California Code of Regulations, title 10, section 260.216(a), by engaging in a fraudulent, deceptive, or manipulative act, practice or course of business, including engaging in a “Cherry-picking” scheme.

23. As alleged in paragraphs 14 and 19 herein, Chen willfully violated provisions of the CSL, thus warranting the bar of Chen from any position of employment, management or control of any investment pursuant to Corporations Code sections 25232.1 and 2523(e).

V.

CONCLUSION

24. Based on the foregoing, the Commissioner finds that grounds exist, and that it is in the public interest to enter an order to bar Dennis Chen, from any position of employment, management, or control of any investment adviser, broker-dealer, or commodity adviser pursuant to Corporations Code section 25232.1. The Commissioner hereby notifies Dennis Chen of her intention to make such orders final.

DATED: July 24, 2024
Sacramento, California

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and Innovation

By: _____
Ryan M. Cassidy
Counsel
Enforcement Division