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

11 In the Matter of:

CRD NO.: 136330

12 THE COMMISSIONER OF FINANCIAL
13 PROTECTION AND INNOVATION,

ACCUSATION IN SUPPORT OF ORDER
TO REVOKE GPS CAPITAL
MANAGEMENT LLC'S INVESTMENT
ADVISER CERTIFICATE

14 Complainant,

15 v.

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

(Cal. Corp. Code § 25232)

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 licensure,
26 examination, and regulation of investment advisers.

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

1 3. The Commissioner brings this action to revoke GPS’ investment adviser certificate
2 pursuant to Corporations Code section 25232 (e) and (h), on the grounds that the revocation is in the
3 public interest and that GPS (1) willfully violated provisions of the CSL; and (ii) violated provisions
4 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. Since approximately May 14, 2020, Wu was
15 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 to
23 commit the act, or make the omission referred to. An omission is willful if made with the knowledge
24 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, GPS and Wu willfully violated Corporations Code sections 25210 and
2 25216, and California Code of Regulations, title 10, section 260.216 (a), by knowingly providing
3 substantial assistance to Chen to violate Corporations Code sections 25210 and 25216, and California
4 Code of Regulations, title 10, section 260.216 (a), within the meaning of Corporations Code section
5 25403 (b).

6 10. Additionally, GPS and Wu willfully violated Corporations Code section 25238 and
7 California Code of Regulations, title 10, section 260.238 (h)(m).

8 **III.**
9 **VIOLATIONS OF THE CSL**

10 **A. Cal. Corp. Code § 25210**

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

14 12. Beginning in or about May 14, 2020, GPS and Wu allowed Chen to retain access to
15 GPS’ advisory platform at FMR LLC (Fidelity), despite Chen no longer being employed by GPS or
16 registered as an investment adviser representative. This allowed Chen to use GPS’ omnibus trading
17 account to effect securities transactions for the account of others.

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

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

23 15. Therefore, GPS and Wu willfully violated Corporations Code section 25210 by
24 knowingly providing substantial assistance to Chen to violate Corporations Code section 25210,
25 within the meaning of Corporations Code section 25403 (b).

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

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

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

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

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

22 13. The cherry-picking scheme would not have been possible, but for GPS and Wu
23 providing access to GPS' advisory platform at Fidelity. The ill-gotten gains Chen and his ex-wife
24 received from this scheme totaled \$563,385.22.

25 20. Therefore, GPS and Wu willfully violated Corporations Code section 25216 (a) and
26 California Code of Regulations, title 10, section 260.216 (a) by knowingly providing substantial
27 assistance to Chen to violate Corporations Code section 25216 (a) and California Code of Regulations,
28 title 10, section 260.216 (a), within the meaning of Corporations Code section 25403 (b).

1 **C. Cal Corp. Code § 25238 and Cal. Code Regs. tit. 10, § 260.238**

2 21. Corporations Code section 25238 provides, in part, that a licensed investment adviser is
3 prohibited from engaging in investment advisory activities, in this state in contradiction of such rules,
4 designed to promote fair, equitable and ethical principles.

5 22. California Code of Regulations, title 10, section 260.238 (h) provides, in part, that
6 omitting a statement of material fact regarding the investment adviser's services does not promote fair,
7 equitable or ethical principles, as that phrase is used in Section 25238 of the Code.

8 23. California Code of Regulations, title 10, section 260.238 (m) provides, in part, that
9 disclosing the identity, affairs, or investments of any client to a third party unless required by law to do
10 so, or unless consented to by the client, does not promote fair, equitable or ethical principles, as that
11 phrase is used in Section 25238 of the Code.

12 24. Beginning in or about May 14, 2020, GPS and Wu allowed Chen to retain access to
13 GPS' advisory platform at Fidelity, despite Chen no longer being employed by GPS. The access
14 included the ability to use GPS' omnibus trading account, so Chen could effect securities transactions
15 for the account of others.

16 25. However, neither GPS nor Wu told their approximately 269 clients that they had
17 allowed an ex-employee to retain access to GPS' advisory platform at Fidelity, which included access
18 to their accounts and personal identifiable information (PII).

19 26. Therefore, GPS and Wu willfully omitted statements of material fact, regarding the
20 investment adviser's services and willfully provided a third-party, access to client accounts and PII, in
21 violation of Corporations Code section 25238 and California Code of Regulations, title 10, section
22 260.238 (h) and (m).

23 **D. Cal. Corp. Code § 25403**

24 27. From May 27, 2020, through October 15, 2021, GPS and Wu allowed Chen to retain
25 access to GPS' advisory platform at Fidelity, despite Chen no longer being employed by GPS, which
26 included access to at least 269 client accounts and PII. The access also included the ability to use GPS'
27 omnibus trading account, for Chen to effect securities transactions in securities for the account of
28 others.

1 28. Pursuant to Corporations Code section 25403, any person who controls or induces
2 another person to violate a provision of the CSL, or any person who provides substantial assistance to
3 another person in violation of the CSL, shall be liable for the violations.

4 IV.

5 **THE COMMISSIONER HAS GROUNDS TO REVOKE GPS CAPITAL MANAGEMENT'S**
6 **INVESTMENT ADVISER CERTIFICATE**

7 29. Corporations Code section 25232 provides in pertinent part:

8 The commissioner may, after appropriate notice and opportunity for hearing, by order
9 ... revoke the certificate of, an investment adviser, if the commissioner finds that the ...
10 revocation is in the public interest and that the investment adviser, whether prior or
11 subsequent to becoming such, or any partner, officer or director thereof or any person
12 performing similar functions or any person directly or indirectly controlling the
13 investment adviser, whether prior or subsequent to becoming such, or any employee of
14 the investment adviser while so employed has done any of the following:

13 ...
(e) Has *willfully violated . . . Title 4* (commencing with Section 25000)... [Emphasis
14 added.]

14 ...
(h) *Has violated any provision of this division or the rules thereunder....* [Emphasis
15 added.]

16 (Cal. Corp. Code, § 25232 (e) and (h))

17 30. As alleged in paragraphs 15, 20, and 26 herein, GPS and Wu willfully violated several
18 provisions of the CSL, thus warranting the revocation of GPS' investment adviser certificates pursuant
19 to Corporations Code section 25232 (e).

20 31. As alleged in paragraphs 15, 20, and 26 herein, GPS and Wu violated several
21 provisions of the CSL, thus warranting the revocation of GPS' investment adviser certificates pursuant
22 to Corporations Code section 25232 (h).

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V.

CONCLUSION

32. Based on the foregoing, the Commissioner finds that grounds exist, and that it is in the public interest to enter an order to revoke the investment adviser certificate of GPS Capital Management LLC, pursuant to Corporations Code section 25232. The Commissioner hereby notifies GPS Capital Management LLC and Daniel Wu 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