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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 FOCAL POINT CAPITAL MANAGEMENT,
18 LLC,

19 Respondent.

CRD NO.: 277160

ACCUSATION IN SUPPORT OF ORDER TO
REVOKE INVESTMENT ADVISER
CERTIFICATE

(Cal. Corp. Code §§ 25232, 25242)

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21 The Commissioner of Financial Protection and Innovation (Commissioner) is informed and
22 believes, and based upon such information and belief, alleges and charges as follows:

23 **I.**

24 **Jurisdiction and Venue**

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

1 9. Chan and Focal Point offered and sold these securities to members of the public,
2 including investment advisory clients.

3 10. In connection with the offers and sales of securities, Chan and Focal Point made the
4 following misrepresentations, and employed a device, scheme, or artifice to defraud investment
5 advisory clients; engaged in a transaction, practice, or course of business which operates as a fraud
6 or deceit upon clients; or engaged in an act, practice, or course of business which is fraudulent,
7 deceptive, or manipulative in violation of sections 25401 and 25235 of the CSL:

- 8 a. Client and investor funds would be invested in GPB Income Investment.
9 Contrary to this representation, client and investor funds were never invested
10 in GPB Income Investment.
- 11 b. The pooled investment funds for 707 Washington Development Project
12 would be used to own, develop, manage, operate, mortgage, lease or sell real
13 property located at 707 Washington Street, Oakland, California. Contrary to
14 this representation, the investor funds were not used to own, develop,
15 manage, operate, mortgage, lease or sell real property located at 707
16 Washington Street, Oakland, California.
- 17 c. The pooled investment funds for 300 & 350 Octavia, LLC Project would be
18 used to own, develop, manage, operate, mortgage, lease or sell real properties
19 located at 300 Octavia Street, San Francisco, California and 350 Octavia
20 Street, San Francisco, California. Contrary to this representation, the investor
21 funds were not used to own, develop, manage, operate, mortgage, lease or
22 sell real properties located at 300 Octavia Street, San Francisco, California
23 and 350 Octavia Street, San Francisco, California.

24 11. Beginning in 2020, clients and investors’ attempts to contact Chan and Focal Point
25 were unsuccessful.

26 12. On October 20, 2020, the Commissioner issued a Desist and Refrain Order to Chan
27 and Focal Point for employing a device, scheme, or artifice to defraud investment advisory clients;
28 engaging in a transaction, practice, or course of business which operates as a fraud or deceit upon

1 clients; or engaging in an act, practice, or course of business which is fraudulent, deceptive, or
2 manipulative in violation of section 25235 of the CSL, and for making material misrepresentations
3 in connection to the offer or sale of securities in violation of section 25401 of the CSL.

4 **III.**

5 **Violations of the CSL**

6 13. Corporations Code section 25608, subdivision (q)(1), provides, in part, “[e]very
7 investment adviser who has secured from the commissioner a certificate shall, in order to keep the
8 certificate in effect for an additional period, pay a renewal fee of one hundred twenty-five dollars
9 (\$125) on or before the 31st day of December.”

10 14. Focal Point failed to pay its renewal fee since December of 2020 as required by
11 Corporations Code section 25608, subdivision (q)(1).

12 15. Corporations Code section 25401, states that “[i]t is unlawful for any person to offer
13 or sell a security in this state, or to buy or offer to buy a security in this state, by means of any
14 written or oral communication that includes an untrue statement of a material fact or omits to state a
15 material fact necessary to make the statements made, in the light of the circumstances under which
16 the statements were made, not misleading.”

17 16. Corporations Code section 25235, provides, in part, that it is unlawful for an
18 investment adviser (a) to employ any device, scheme, or artifice to defraud any client or prospective
19 client, (b) to engage in any transaction, practice, or course of business which operates or would
20 operate as a fraud or deceit upon any client or prospective client ... [or] (d) to engage in any act,
21 practice, or course of business which is fraudulent, deceptive, or manipulative....”

22 17. Corporations Code section 25238 provides, in part, that a licensed investment adviser
23 is prohibited from engaging “in investment advisory activities ... in this state in contradiction of
24 such rules as the commissioner may prescribe designed to promote fair, equitable and ethical
25 principles.”

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1 18. California Code of Regulations, title 10, section 260.238, subdivision (o) provides
2 that “[m]aking any untrue statement of a material fact or omitting a statement of material fact
3 necessary in order to make the statements made, in light of the circumstances under which they are
4 made, not misleading in the solicitation of advisory clients,” does not promote “fair, equitable or
5 ethical principles,” as that phrase is used in Corporations Code section 25238.

6 19. From 2018 to 2019, Chan and Focal Point recommended pooled investment vehicles,
7 and offered and sold securities in the form of pooled investment vehicles, including, GPB Income
8 Investment, 707 Washington Development Project and 300 & 350 Octavia, LLC Project.

9 20. An investment adviser owes a fiduciary duty to clients. An investment adviser should
10 continuously occupy an impartial and disinterested position and should scrupulously avoid any act
11 that subjects his position to challenge in this respect. Focal Point violated this fiduciary duty to
12 clients by committing acts, omissions, and violations of the CSL.

13 21. As stated in paragraphs 3-11 herein, in connection to the offer and sale of the above
14 securities and in recommending these investment vehicles, Focal Point made material
15 misrepresentations and employed a device, scheme, or artifice to defraud investment advisory
16 clients; engaged in a transaction, practice, or course of business which operates as a fraud or deceit
17 upon clients; or engaged in an act, practice, or course of business which is fraudulent, deceptive, or
18 manipulative.

19 22. Corporations Code section 25232, subdivision (d)(3) provides, in pertinent part, the
20 person is subject to “any other order of the commission or any administrator, association, or
21 exchange referred to in this subdivision which is or has been necessary for the protection of any
22 investor.”

23 23. As stated in paragraph 12 herein, the Commissioner issued a Desist and Refrain
24 Order against Focal Point in October of 2020.

25 24. Therefore, Focal Point violated Corporations Code sections 25401, 25235, 25232,
26 and 25238 and California Code of Regulations, title 10, section 260.238, subdivision (o).

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IV.

Grounds for Revoking Investment Adviser Certificate of Focal Point Capital Management

25. Corporations Code section 25232, subdivision (e) provides, in pertinent part, “the commissioner may, after appropriate notice and opportunity for hearing, by 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 ... has willfully violated Title 4 (commencing with Section 25000).”

26. Corporations Code section 25232, subdivision (h) provides, in pertinent part, “the commissioner may, after appropriate notice and opportunity for hearing, by 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 ... or any partner, officer or director thereof or any person performing similar functions or any person directly or indirectly controlling the investment adviser ... has violated any provision of this division or the rules thereunder.”

27. As stated in paragraphs 3-11 herein, in connection to the offer and sale of the above securities and by recommending these investment vehicles, Focal Point made material misrepresentations and employed a device, scheme, or artifice to defraud investment advisory clients; engaged in a transaction, practice, or course of business which operates as a fraud or deceit upon clients; or engaged in an act, practice, or course of business which is fraudulent, deceptive, or manipulative, in violation of Corporations Code section 25401, 25235, and 25238 and California Code of Regulations, title 10, section 260.238, subdivision (o).

28. As stated in paragraph 12 herein, Chan is subject to the Commissioner’s October 2020 Desist and Refrain Order in violation of Corporations Code section 25232, subdivision (d)(3).

29. Corporations Code section 25242, subdivision (c)(1), provides in pertinent part, “[t]he commissioner may summarily... revoke the certificate of a[n] ... investment adviser if [they] fail[] to pay any fee required by [Corporations Code] Section 25608....”

30. As stated in paragraphs 3-5 herein, Focal Point has failed to pay its renewal fee since December of 2020 as required by Corporations Code section 25608, subdivision (q)(1).

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V.

Conclusion

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 Focal Point Capital Management, LLC, pursuant to Corporations Code sections 25232 and 25242. The Commissioner hereby notifies Focal Point Capital Management, LLC of her intention to make such orders final.

DATED: August 27, 2024
San Diego, California

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and Innovation

By: _____
AFSANEH EGHBALDARI
Senior Counsel
Enforcement Division