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BEFORE THE DEPARTMENT OF CORPORATIONS

OF THE STATE OF CALIFORNIA

In the Matter of THE COMMISSIONER OF CORPORATIONS, Complainant, v. DAMIEN PAYMAN ALEXANDER, Respondent.	(1) STATEMENT IN SUPPORT OF ORDER LEVYING ADMINISTRATIVE PENALTIES PURSUANT TO CORPORATIONS CODE SECTION 25252 (2) CLAIM FOR ANCILLARY RELIEF PURSUANT TO CORPORATIONS CODE SECTION 25254 (3) DESIST AND REFRAIN ORDER

Jan Lynn Owen, the Commissioner ("Commissioner") of the Department of Corporations ("Department"), alleges and charges as follows:

I.

JURISDICTION AND VENUE

1. The Commissioner brings this action pursuant to the provisions of California Corporations Code sections 25252, 25254, 25532, and the rules and regulations promulgated thereunder.[1]

2. The Commissioner is authorized to administer and enforce the provisions of the

[1] All references are to the Corporations Code unless otherwise indicated.

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Corporate Securities Law of 1968 (CSL) (Corporations Code section 25000 *et seq*.) and the regulations thereunder at California Code of Regulations, title 10, section 260.000 *et seq*.

II.

STATEMENT OF FACTS

3. At all relevant times, Damien Payman Alexander ("Alexander") was a California resident who conducted business at 1500 7th Street, Penthouse 1, Sacramento, California, 95814 and at 101 Parkshore Drive, Suite 100, Folsom, California, 95630.

4. Since June 2001 Alexander has held a license issued by the California Department of Insurance to sell insurance products (License# 0D34070). He operates his insurance business under the names Damien Alexander Insurance Agency Inc. and Quality Insurance 1.

5. In 1996, Alexander passed the Series 6 and Series 63 exams, which allows him to sell limited investment products such as mutual funds, annuities, and insurance products. Passing these exams does not qualify Alexander to sell stocks or other corporate securities.

6. From May 1996 to July 2011, Alexander worked as a registered representative (CRD# 2724252) for several financial services companies that were registered with the Financial Industry Regulatory Authority (FINRA).[2]

7. In July 2011, Alexander was allowed to resign from Financial Network Investment Corporation during the investigation of customer complaint that he had obtained an improper loan from a client.

8. In December 2011, Alexander attempted to seek employment as a registered representative with International Financial Solutions, Inc., but his registration was terminated in February 2012 for failure to file required disclosure documents.

9. Alexander has not worked in an authorized capacity for a FINRA-member firm since leaving Financial Network Investment Corporation on July 1, 2011.

10. Donald Raymond Dunakin III (Dunakin) was a registered broker-dealer from 1999 to December 2009 (CRD # 2838663). Following a FINRA investigation into allegations of

[2] Formerly known as the National Association of Securities Dealers ("NASD"), FINRA is a self-regulatory organization that oversees the financial services industry, including broker-dealers.

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misconduct, Dunakin was ordered permanently barred from associating with any FINRA member in any capacity on December 3, 2009.

11. Dunakin Investments, Inc. (Dunakin Investments) is or was a California corporation formed by Dunakin in January 2010, with a principal business address at 101 Parkshore Drive, Suite 100, Folsom, California, 95630.

12. Platinum Performance Holdings, LLC (PPH) is or was a California limited liability company formed by Dunakin in February 2009, with a principal business address at 101 Parkshore Drive, Suite 100, Folsom, California, 95630. According to PPH's private placement memorandum, the fund's purported investment strategy was the "purchase and sale of long positions in publicly-traded securities."

13. Preferred Diversified Holdings, LLC (PDH) is or was a California limited liability company also formed by Dunakin in February 2009, with a principal business address at 101 Parkshore Drive, Suite 100, Folsom, California, 95630. PDH's purported investment strategy was substantially similar to that of PPH.

14. In or about July 2011, Alexander began working with Dunakin. Alexander provided clients business cards identifying himself as the "Sales Director" for Dunakin Investments and/or the "Wealth Manager" for PPH.

15. During the period of August 2011 to April 2012, Alexander offered and sold securities in the form of limited liability company membership interests in PPH and PDH to at least 21 California investors, almost all of which had been insurance or advisory clients of Alexander. Based on these established relationships of trust, Alexander was able to persuade most of his former clients, many of whom were also members of the local Persian community, to transfer money from mutual funds and other regulated retirement accounts to self-directed IRAs so that they could invest in PPH and PDH. Alexander met with most of his clients at their homes, where he gave them investor packets containing promotional brochures, financial statements, performance charts, and subscription agreements with wire transfer instructions.

16. As compensation for convincing his clients to invest approximately $1.7 million with Dunakin's companies, Alexander was paid commissions ranging from 9.00 to 9.25 percent of each

client's principal investment, which amounted to $145,986.89. Dunakin also provided Alexander office space, a BMW, expensed travel and entertainment, and cash bonuses for his services.

17. In or about September 2012, unbeknownst to investors, Dunakin used their funds to open a Sacramento nightclub called Purgatory. Although Alexander had approached Dunakin about managing the nightclub, this never transpired because club operations were shut down in less than six months.

18. On March 22, 2013, Dunakin pleaded guilty to three counts of securities fraud arising out of the offer and sale of securities in PPH and PDH. For these crimes, Dunakin received a sentence of eight years in state prison. No charges were brought against Alexander.

II.

OFFER AND SALE OF UNQUALIFIED, NONEXEMPT SECURITIES IN VIOLATION OF CORPORATIONS CODE SECTION 25110

19. Corporations Code section 25110 prohibits the offer or sale of unqualified, nonexempt securities in issuer transactions in the State of California.

20. During the period of August 2011 to April 2012, Alexander offered and sold securities in the form of limited liability company membership interests in PPH and PDH. These securities are subject to qualification under section 25110. These securities were offered or sold in this state in issuer transactions. The Department has not issued a permit or other form of qualification authorizing any person to offer or sell these securities in this state. Additionally, the offer or sale of these securities was not exempt.

21. Accordingly, the Commissioner finds that Alexander offered and sold unqualified, nonexempt securities in violation of section 25110.

III.

MISREPRESENTATIONS AND OMISSIONS OF MATERIAL FACTS IN VIOLATION OF CORPORATIONS CODE SECTION 25401

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22. Corporations Code section 25401 prohibits the offer and/or sale of securities in this state by means of written or oral communications that include untrue statements of material fact or omits material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

23. In connection with the offer and sale of the limited liability company membership interests offered in PPH and PDH, Alexander made, or caused to be made, misrepresentations of material fact or omitted to state material facts including, but not limited to, the following:

(a) Alexander did not hold a certificate authorizing him to engage in the business of effecting transactions in securities during the period he offered and sold securities for Dunakin;

(b) On July 27, 2011, Alexander settled a civil lawsuit filed against him by a prior client whereby he agreed to pay $17,000 in restitution to resolve allegations of mismanagement of funds;

(c) In December 2009, Dunakin was permanently barred from associating with any FINRA member in any capacity;

(d) Dunakin Investments was never registered as an investment adviser or broker-dealer with the Securities Exchange Commission (SEC) or the Commissioner;

(e) Although the private placement memoranda issued for both PPH and PDH stated that securities were being offered under a private offering exemption, neither company had filed a notice of exemption with the SEC or the Commissioner;

(f) In December 2010, Dunakin had filed for Chapter 13 bankruptcy;

(g) Investors were told their money would be placed in "publicly traded securities" when, in fact, investor money was used to pay sales commissions to Alexander and fund Dunakin's lavish lifestyle, which included luxury cars, multiple residences, a Sacramento nightclub, and trips to Las Vegas;

(h) Financial statements that Alexander used to lure clients to invest in Dunakin's companies attested that incredibly high annual returns, ranging between 20.77% and 1102.53%, had been generated since 2007; however, neither PPH nor PDH was even incorporated until 2009; and,

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(i)Without having any reasonable basis to make such representations, Alexander assured his clients that their investments in PPH and PDH would bear low or minimal risk despite current market conditions and they could double or triple their investments in two to three years.

24. Accordingly, the Commissioner finds that Alexander offered and sold securities in this state by means of written or oral communications that included untrue statements of material fact or omitted material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, in violation of section 25401.

IV.

ACTING AS A BROKER-DEALER WITHOUT A CERTIFICATE IN VIOLATION OF CORPORATIONS CODE SECTION 25210

25. Corporations Code section 25004, in pertinent part, states:

> (a) "Broker-dealer" means any person engaged in the business of effecting transactions in securities in this state for the account of others or for his own account.

26. Corporations Code section 25210, in pertinent part, states:

> (a) Unless exempted under the provisions of Chapter 1 (commencing with Section 25200) of this part, no broker-dealer shall effect any transaction in, or induce or attempt to induce the purchase or sale of, any security in this state unless the broker-dealer has first applied for and secured from the commissioner a certificate, then in effect, authorizing that person to act in that capacity.

27. Between August 2011 and April 2012, Alexander engaged in the business of effecting transactions in securities in this state for the account of others when he induced, or attempted to induce, at least 21 of his clients to purchase limited liability company membership interests in PPH and PDH. During this time, Alexander did not have a certificate from the Commissioner authorizing him to act as a broker-dealer, in violation of section 25210.

V.

USE OF MANIPULATIVE, DECEPTIVE OR OTHER FRAUDULENT, SCHEME, DEVICE, OR CONTRIVANCE IN VIOLATION OF CORPORATIONS CODE SECTION 25216

28. Corporations Code section 25216 provides in pertinent part:

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(a) No broker-dealer or agent shall effect any transaction in, or induce or attempt to induce the purchase or sale of, any security in this state by means of any manipulative, deceptive, or other fraudulent scheme, device, or contrivance.

29. California Code of Regulations, Title 10, section 260.216 provides in pertinent part:

The phrase, "manipulative, deceptive, or other fraudulent scheme or device, or contrivance," as used in subdivision (a) of Section 25216 of the Code, is hereby defined to include:

(a) Any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person; and

(b) Any untrue statement of material fact and any omission to state a material fact necessary in order to make the statement made, in the light of the circumstances under which they are made, not misleading, if the person making the statement or omission knows or has reasonable grounds to believe that it is untrue or misleading.

30. When Alexander induced, or attempted to induce, his clients to purchase securities in PPH and PDH, he had reasonable grounds to believe that he was required to have a certificate from the Commissioner authorizing him to act in the capacity of a broker-dealer. Having taken and passed the Series 6 and Series 63 exams, Alexander was charged with knowledge of state securities laws and, thus, had reasonable grounds to believe that he could not induce, or attempt to induce, the purchase or sale of the securities of PPH and PDH without first obtaining a certificate from the Commissioner. Because Alexander failed to disclose to his clients that he was required to have a certificate to sell these securities, and did not in fact have such a certificate, the Commissioner finds that he induced, or attempted to induce, the purchase or sale of securities in this state by means of a manipulative, deceptive, or other fraudulent scheme, device, or contrivance, in violation of section 25216.

31. Moreover, the Commissioner finds that Alexander had reasonable grounds to believe that many of the material statements and omissions that he made to investors, including but not limited to those identified in paragraph 23 above, were untrue or misleading.

VI.

ORDER LEVYING ADMINISTRATIVE PENALTIES FOR VIOLATIONS OF CORPORATIONS CODE SECTIONS 25110, 25401, 25210, and 25216

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32. Based on the foregoing, the Commissioner is of the opinion that Alexander willfully violated the following provisions of the CSL:

> (1) Offered and sold unqualified, nonexempt securities in violation of section 25110;
> (2) Made misrepresentations or omissions of material fact in violation of section 25401;
> (3) Engaged in broker-dealer activity without a certificate in violation of section 25210; and
> (4) Effected transactions of securities in this state by means of a manipulative, deceptive, or other fraudulent scheme, device, or contrivance, in violation of section 25216.

33. Section 25232, subdivision (b), authorizes the Commissioner to issue an order levying administrative penalties against any broker-dealer or investment adviser for willful violations of any provisions of the CSL and any rules promulgated thereunder.

34. Subdivision (b) of section 25252 provides, in relevant part:

> The Commissioner may, after appropriate notice and opportunity for hearing, by order levy administrative penalties as follows: . . .
>
> (b) Any broker-dealer or investment adviser that willfully violates any provision of this division to which it is subject, or that willfully violates any rule or order adopted or issued pursuant to this division and to which it is subject, is liable for administrative penalties of not more than five thousand dollars ($5,000) for the first violation, not more than ten thousand dollars ($10,000) for the second violation, and not more than fifteen thousand dollars ($15,000) for each subsequent violation….

35. Based on the foregoing, the Commissioner finds that Alexander willfully violated section 25110 by offering and selling in an issuer transaction unqualified, nonexempt securities in the form of limited liability company membership interests to at least 21 investors in this state including:

i. A.F. and AM.F.

ii. M.T.

iii. K.D. and W.F.

iv. S.A.

v. M.B.

vi. H.A.

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vii. L.J. and T.J.

viii. B.P.

ix. F.M.

x. M.M.

xi. G.M.

xii. J.ST.

xiii. E.G.

xiv. Q.S.

xv. B.G. and M.G.

xvi. S.AR.

xvii. L.P.

xviii. M.A.

xix. A.L.

xx. C.R.

xxi. P.N.

36. Based on the foregoing, the Commissioner further finds that Alexander violated section 25401 by offering or selling securities in the form of limited liability company membership interests in PPH and PDH to at least 21 investors in this state, as set forth in paragraph 35 above, by means of any written or oral communication which contained misstatements and/or omitted to state material facts.

37. The Commissioner further finds that Alexander violated section 25210 by inducing, or attempting to induce, at least 21 investors in this state, as detailed in paragraph 35 above, to

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purchase limited liability company membership interests of PPH and PDH for their own accounts.

38. The Commissioner further finds that Alexander violated section 25216 by inducing, or attempting to induce, the purchase of securities in this state to at least 21 investors, as set forth in paragraph 35 above, by means of a manipulative, deceptive, or other fraudulent scheme, device, or contrivance.

WHEREFORE, good cause showing, and pursuant to subdivision (b) of section 25252, the Commissioner prays for an order levying administrative penalties as follows:

a. Five thousand dollars ($5,000) for the first violation of section 25110, ten thousand dollars ($10,000) for the second violation of section 25110, and fifteen thousand dollars ($15,000) for each of the subsequent 21 violations of section 25110, as set forth in paragraph 33 above, in the amount of three hundred fifteen thousand dollars ($330,000);

b. Fifteen thousand dollars ($15,000) for each of 21 violations of section 25401, as set forth in paragraph 33 above, in the amount of three hundred fifteen thousand dollars ($315,000);

c. Fifteen thousand dollars ($15,000) for each of the 21 violations of section 25210, as set forth in paragraph 33 above, in the amount of three hundred fifteen thousand dollars ($315,000); and,

d. Fifteen thousand dollars ($15,000) for each of the 21 violations of section 25216, as set forth in paragraph 33 above, in the amount of three hundred fifteen thousand dollars ($315,000).

The total amount of administrative penalties levied pursuant to subdivision (b) of section 25252 against Alexander Damien Payman Alexander, is one million two hundred seventy five thousand dollars ($1,275,000), or according to proof.

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VII.
CLAIM FOR ANCILLARY RELIEF

39. Corporations Code section 25254 authorizes the Commissioner to seek ancillary relief on behalf of any person injured by violations of any provision of the CSL and any rules promulgated thereunder. Section 25254 states:

> (a) If the commissioner determines it is in the public interest, the commissioner may include in any administrative action brought under this part a claim for ancillary relief, including, but not limited to, a claim for restitution or disgorgement or damages on behalf of the persons injured by the act or practice constituting the subject matter of the action, and the administrative law judge shall have jurisdiction to award additional relief.
>
> (b) In an administrative action brought under this part, the commissioner is entitled to recover costs, which in the discretion of the administrative law judge may include an amount representing reasonable attorney's fees and investigative expenses for the services rendered, for deposit into the State Corporations Fund for the use of the Department of Corporations.

40. Based on the foregoing findings, the Commissioner finds that during the period of August 2011 through April 2012, when Alexander did not have a certificate to engage in activity as a broker-dealer, he received approximately $145,986.89 in transaction-based commissions from the fraudulent sale of unqualified, nonexempt securities.

WHEREFORE, good cause showing, and the Commissioner's determination that this action is in the public interest and necessary to effectuate the Department's primary, legitimate regulatory purpose based upon the Alexander's violations of the CSL, the Commissioner hereby prays for an order of ancillary relief pursuant to section 25254 against Alexander as follows:

a. Disgorgement of all commissions, bonuses, fees, and other compensation that Alexander received in connection with the unqualified, nonexempt offer and sale of securities in PPH and PDH, in an amount of at least one hundred forty-five thousand nine hundred eighty-six

dollars and eighty-nine cents ($145,986.89), or according to proof, and including interest at the legal rate; and,

b. Recovery of reasonable attorney's fees, investigative expenses, and costs in an amount of at least fifteen thousand dollars ($15,000.00), or according to proof.

VIII.

DESIST AND REFRAIN ORDER

41. Corporations Code section 25532, in pertinent part, states:

> (a) If, in the opinion of the commissioner, (1) the sale of a security is subject to qualification under this law and it is being or has been offered or sold without first being qualified, the commissioner may order the issuer or offeror of the security to desist and refrain from the further offer or sale of the security until qualification has been made under this law or (2) the sale of a security is subject to the requirements of Section 25100.1, 25101.1, or 25102.1 and the security is being or has been offered or sold without first meeting the requirements of those sections, the commissioner may order the issuer or offeror of that security to desist and refrain from the further offer or sale of the security until those requirements have been met.
>
> (b) If, in the opinion of the commissioner, a person has been or is acting as a broker-dealer or investment adviser, or has been or is engaging in broker-dealer or investment adviser activities, in violation of Section 25210, 25230, or 25230.1, the commissioner may order that person to desist and refrain from the activity until the person has been appropriately licensed or the required filing has been made under this law.
>
> …(c) If, in the opinion of the commissioner, a person has violated or is violating Section 25401, the commissioner may order that person to desist and refrain from the violation.

42. Based upon the foregoing, the Commissioner is of the opinion that the securities offered or sold by Alexander in the form of limited liability company membership interests in PPH and PDH are subject to qualification and are being offered or have been offered or sold in this state without first being qualified, in violation of section 25110 of the Corporate Securities Law of 1968.

43. The Commissioner is further of the opinion that the securities in the form of limited liability company membership interests in PPH and PDH were offered or sold in this state by means of written or oral communications that included untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in the light of the

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circumstances under which they were made, not misleading, in violation of section 25401 of the Corporate Securities Law of 1968.

44. Further, based on the foregoing, the Commissioner is of the opinion that Damien Payman Alexander is subject to the laws regulating broker-dealers and investment advisers under the Corporate Securities Law of 1968 and, working alone or in concert or participation with others, has effected transactions in securities as a broker-dealer, or induced or attempted to induce the purchase or sale of any security, in this state, and has engaged in investment adviser activities without having first applied for and secured from the Commissioner a certificate, then in effect, authorizing him to act in such capacity, in violation of sections 25210 and 25230 of the Corporate Securities Law of 1968.

IT IS HEREBY ORDERED EFFECTIVE IMMEDIATELY THAT:

Pursuant to section 25532 of Corporate Securities Law of 1968, Damien Payman Alexander is hereby ordered to desist and refrain from the further offer or sale in the State of California of securities, including but not limited to limited liability company membership interests, in violation of section 25110 unless and until qualification has been made under said law or unless exempt.

And, pursuant to section 25532 of the Corporate Securities Law of 1968, Damien Payman Alexander is hereby ordered to desist and refrain from offering or selling any security in the State of California, including but not limited to limited liability membership interests, by means of any written or oral communication which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, in violation of section 25401.

Further, pursuant to section 25532 of the Corporate Securities Law of 1968, Damien Payman Alexander is hereby ordered to desist and refrain from effecting any transaction in

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securities as a broker-dealer, or inducing or attempting to induce the purchase or sale of any security, in this state, and/or engaging in investment adviser activities, in violation of section 25210, unless and until certification has been made under said laws or unless exempt.

This Order is necessary, in the public interest, for the protection of investors and consistent with the purposes, policies, and provisions of the Corporate Securities Law of 1968.

Dated: April 2, 2013
Sacramento, CA

JAN LYNN OWEN
California Corporations Commissioner

By: _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

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