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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.	ACCUSATION TO BAR DAMIEN PAYMAN ALEXANDER FROM ANY POSITION OF EMPLOYMENT, MANAGEMENT OR CONTROL OF ANY INVESTMENT ADVISER, BROKER-DEALER OR COMMODITY ADVISER (Corporations Code § 25213)

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 25213 and the rules and regulations promulgated thereunder.

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

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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).[1]

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

[1] 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.

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.

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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.

III.

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.[2] 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.

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

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IV.

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

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 in this state 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 Alexander agreed to pay $17,000 in restitution to resolve allegations of mismanagement of client 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 company or broker-dealer with the Securities Exchange Commission (SEC) or the Commissioner;

(e) Although the private placement memoranda issued for both PPH and PDH claimed 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 to incredibly high annual returns, ranging between 20.77% and 1102.53%, during the period of 2007 to 2010; however, neither PPH nor PDH was even incorporated until 2009; and,

(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 could double or triple 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.

V.

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

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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.

VI.
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:

> (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.

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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 21 above, were untrue or misleading.

VII.
ALEXANDER SHOULD BE BARRED FROM ANY POSITION OF EMPLOYMENT, MANAGEMENT OR CONTROL OF ANY INVESTMENT ADVISER, BROKER-DEALER OR COMMODITY ADVISER PURSUANT TO CORPORATIONS CODE SECTION 25213 FOR ACTS COMMITTED AS SPECIFIED UNDER CORPORATIONS CODE SECTION 25212, SUBDIVISION (e)

32. Alexander is subject to being barred from any position of employment, management or control of any investment adviser, broker-dealer or commodity adviser pursuant to Corporations Code Section 25213 for acts committed as specified in Corporations Code section 25212, subdivision (e).

33. Corporations Code Section 25213 provides, in pertinent part:

> The commissioner may, after appropriate notice and opportunity for hearing, by order censure, or suspend for a period not exceeding 12 months, or deny or bar from any position of employment, management or control of any broker-dealer or investment adviser, any officer, director, partner, employee of, or person performing similar functions for, a broker-dealer, or any other person, if the commissioner finds that the censure, suspension, denial, or bar is in the public interest and that the person has committed any act or omission enumerated in subdivision (a), (e), (f), or (g) of Section 25212….

34. Corporations Code Section 25212 provides, in pertinent part:

> The commissioner may, after appropriate notice and opportunity for hearing, by order censure, deny a certificate to, suspend for a period not exceeding 12 months or revoke the certificate of, any broker-dealer if the commissioner finds that the censure, denial, suspension, or revocation is in the public interest and that the broker-dealer, whether prior or subsequent to becoming a broker-dealer, or any partner, officer or director, or branch manager of the broker-dealer, whether prior or subsequent to becoming associated with the broker-dealer…or any agent employed by the broker-dealer while so employed has done any of the following:
>
> … (e) Has willfully violated any provision of…Title 4 (commencing with Section 25000)…or of any rule or regulation under any of those statutes, or any order of the commissioner which is or has been necessary for the protection of any investor.

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35. 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.

WHEREFORE, good cause showing, the Commissioner finds it is in the public interest, for the protection of investors and consistent with the purposes, policies, and provisions of the CSL, to bar Damien Payman Alexander from any position of employment, management, or control of any investment-adviser, broker-dealer, or commodity adviser pursuant to section 25213.

Dated: April 2, 2013

JAN LYNN OWEN
California Corporations Commissioner

By: _____
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Enforcement Division

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