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10 BEFORE THE DEPARTMENT OF CORPORATIONS
11 OF THE STATE OF CALIFORNIA

13	In the Matter of:)	CRD NO.: 130165
14	THE COMMISSIONER OF BUSINESS)	
15	OVERSIGHT,)	STATEMENT IN SUPPORT OF ORDER
16	Complainant,)	IMPOSING ADMINISTRATIVE PENALTIES
17	v.)	PURSUANT TO CORPORATIONS CODE
18	FRANCIS CAPITAL MANAGEMENT, LLC,)	SECTION 25252
19	Respondent.)	

22 Jan Lynn Owen, the Commissioner of Business Oversight (Commissioner), alleges and
23 charges as follows:

24 **I.**

25 **Jurisdiction and Venue**

26 1. The Commissioner, as head of the Department of Business Oversight (Department), is
27 authorized to administer and enforce the provisions of the Corporate Securities Law of 1968 (CSL)

1 (Corp. Code, § 25000 et seq.) and the regulations promulgated thereunder at title 10 of the California
2 Code of Regulations (Cal. Code Regs., tit.10, § 260.000 et seq.).

3 2. The Commissioner brings this action against Respondent Francis Capital
4 Management, LLC (FCM) pursuant to the provisions of Corporations Code section 25252,
5 subdivision (b) and the rules and regulations promulgated thereunder.

6 **II.**

7 **Statement of Facts**

8 3. FCM holds a valid and unrevoked investment adviser certificate issued by the
9 Commissioner on October 8, 2015. FCM's principal office is located at 1453 3rd Street, Suite 470,
10 Santa Monica, California 90401. At all relevant times herein, FCM is the managing member of
11 Catalysis Partners, LLC and the investment manager of Catalysis Offshore, Ltd. (collectively the
12 Funds).

13 4. John P. Francis (Francis), at all relevant times herein, served as the president and
14 managing member of FCM.

15 5. Triple A Partners, a Delaware limited liability company, formed in or about June of
16 2006, holds a valid and unrevoked broker-dealer certificate issued by the Commissioner on May 21,
17 2007 under Corporations Code section 25210. The company's principal office is located at 2032
18 Armacost Avenue., Los Angeles, California 90025. Triple A Partners maintains a website at
19 www.tripleapartners.net. Triple A Partners is a subsidiary of Triple A Partners, Inc.

20 6. George R. Pidgeon, Jr. (Pidgeon), holds a valid and unrevoked investment adviser
21 representative certificate issued by the Commissioner on August 15, 2017. Pidgeon, at all relevant
22 times herein, was affiliated with Triple A Partners, and through this affiliation, acted as an investment
23 adviser representative for FCM.

24 7. On or about January 9, 2017, the Commissioner, by and through the Department's
25 examiners, commenced an examination of FCM at its business location in Santa Monica, California.

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1 8. Documents obtained from FCM¹ showed that Pidgeon entered into a solicitor
2 arrangement with FCM through his affiliation with different broker-dealers since February of 2005.
3 Specifically, on February 14, 2005, FCM and Pidgeon, through Wunderlich Securities, entered into
4 an agreement whereby Pidgeon would solicit investors for the Funds. Thereafter, FCM and Pidgeon,
5 through Lamont and Stern, Inc., entered into a similar agreement on August 21, 2009. Then on
6 February 8, 2012, FCM and Pidgeon, through Triple A Partners, entered into the same agreement
7 (2012 Agreement). Following the 2012 Agreement, an amended agreement was executed on August
8 20, 2015 (2015 Amended and Restated Agreement). Since at least 2005, Pidgeon solicited six
9 investors for the Funds.

10 9. Both the 2012 Agreement and the 2015 Amended and Restated Agreement indicated
11 that Pidgeon, through Triple A Partners, would be paid a “Placement Fee” of 20 percent of the
12 quarterly management fees for the referred investors that purchased interests in the Funds. In fact,
13 FCM’s “Calculation of Solicitation Payment to Triple A Partners LLC” (Solicitation Payment) for
14 2016 showed that FCM paid Triple A Partners \$6,704.00 from January 2016 to November 2016. For
15 the prior year, 2015, FCM paid \$4,336.00 to Triple A Partners for the period from August 2015 to
16 December 2015.

17 10. The Form D, Notice of Exempt Offering of Securities (Form D), filed by FCM with
18 the Securities and Exchange Commission for the Fund, dated July 7, 2015, disclosed that Pidgeon
19 received sales compensation. The estimated amount of sales and compensation and finder’s fees
20 expenses (section 15 of the Form D) was approximately \$301,169.00. However, it was subsequently
21 amended on August 11, 2015 to remove Pidgeon’s name as the recipient of sales compensation
22 (section 12 of the Form D – Sales of Compensation). Similarly, the Form D filed on August 16, 2016
23 did not identify anyone who received sales compensation.

24 11. On July 22, 2015, the Department sent a written request to FCM asking for additional
25 clarification or documentation concerning, among other things, Pidgeon’s employment with FCM.
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28 ¹ These documents include: (1) Referral and Placement Agreement Between Francis Capital Management, LLC, George Robert Pidgeon, Jr. and Triple A. Partners, LLC as of February 8, 2012, and (2) Amended and Restated Referral and Placement Agreement.

1 The Department advised FCM that the company is prohibited from engaging a solicitor who is not
2 registered. Moreover, the Department also notified FCM that to continue FCM's arrangement with
3 Pidgeon, FCM is required to report Pidgeon as a solicitor in California by filing a Form U4. FCM's
4 written response of August 7, 2015 stated that FCM is "no longer compensating Mr. Pidgeon, Jr. and
5 he is no longer acting as a solicitor for Francis Capital." But, information subsequently provided by
6 FCM indicated that Pidgeon was not terminated until December of 2017. Notably, as of May 31,
7 2018, Pigeon's CRD² (Central Registration Depository) information still shows FCM as Pidgeon's
8 employer.

9 III.

10 Applicable Law

11 12. Corporations Code section 25009.5 provides:

12 (a) "Investment adviser representative" or "associated person of an
13 investment adviser" means any partner, officer, director of (or a person
14 occupying a similar status or performing similar functions) or other
15 individual, except clerical or ministerial personnel, who is employed by
16 or associated with, or subject to the supervision and control of, an
17 investment adviser that has obtained a certificate or that is required to
18 obtain a certificate under this law, and who does any of the following:

16 (1) Makes any recommendations or otherwise renders advice regarding
17 securities.

18 (2) Manages accounts or portfolios of clients.

19 (3) Determines which recommendation or advice regarding securities
20 should be given.

21 (4) Solicits, offers, or negotiates for the sale or sells investment
22 advisory services.

22 (5) Supervises employees who perform any of the foregoing.

23 (b) "Investment adviser representative" means, with respect to an
24 investment adviser subject to Section 25230.1, a person defined as an
25 investment adviser representative by Rule 203A-3 of the Securities and
26 Exchange Commission (17 C.F.R. 275.203A-3) and who has a place
27 of business in this state.

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² CRD is the central licensing and registration system for the U.S. securities industry and its regulators.

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13. Corporations Code section 25230 in relevant part provides:

(b) No person, on behalf of an investment adviser that has obtained a certificate pursuant to Section 25231, may, in this state: offer or negotiate for the sale of investment advisory services of the investment adviser; determine which recommendations shall be made to, make recommendations to, or manage the accounts of, clients of the investment adviser; or determine the reports or analyses concerning securities to be published by the investment adviser, unless the investment adviser and that person have complied with rules that the commissioner may adopt for the qualification and employment of those persons.

14. Corporations Code section 25230.1 in relevant parts provides:

(a) [A]n investment adviser representative that has a place of business in this state may be required to obtain a certificate pursuant to Section 25231.

(b) A person subject to subdivision (a) shall:

(1) File with the commissioner an annual notice, consisting of those documents filed with the Securities and Exchange Commission pursuant to the securities laws that the commissioner by rule or order deems appropriate or, in lieu thereof, a form prescribed by the commissioner, and a consent to service of process under Section 25240.

(2) Pay the notice filing fee provided for in subdivision (d) of Section 25608.1.

(c) No investment adviser representative, on behalf of an investment adviser subject to subdivision (a), may, in this state: offer or negotiate for the sale of investment advisory services of the investment adviser ... unless the investment adviser representative has complied with rules that the commissioner may adopt for the qualification and employment of investment adviser representatives.

15. Corporations Code section 25245 provides:

It is unlawful for any person willfully to make any untrue statement of a material fact in any application, notice, or report filed with the commissioner under this part, or willfully to omit to state in any such application, notice, or report any material fact which is required to be stated therein.

16. Corporations Code section 25252, provides in relevant parts:

The commissioner may, after appropriate notice and opportunity for hearing, by orders, levy administrative penalties as follows:

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(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.

(d) The administrative penalties available to the commissioner pursuant to this section are not exclusive, and may be sought and employed in any combination with civil, criminal, and other administrative remedies deemed advisable by the commissioner to enforce the provisions of this division.

(e) After the exhaustion of the review procedures provided in accordance with the provisions of the Administrative Procedure Act, Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, the commissioner may apply to the appropriate superior court for a judgment in the amount of the administrative penalty and costs awarded in a final decision and order compelling the respondent, or the named or cited person, to comply with the final decision of the commissioner brought under this division. The application shall include a certified copy of the final decision of the commissioner and shall constitute a sufficient showing to warrant the issuance of the judgment and order from superior court.

17. California Code of Regulations section 260.236.1 provides:

(a) The procedures set forth in this subsection are applicable to investment advisers licensed pursuant to Section 25230 of the Code. References to an investment adviser representative shall mean both an investment adviser representative and an associated person of an investment adviser, as those terms are defined in Section 25009.5(a) of the Code.

(1) Upon employment of an individual as an investment adviser representative, the investment adviser shall:

(A) Obtain a properly executed application for registration, Form U4,

(B) Obtain for its records evidence that such investment adviser representative meets the qualification requirements of Section 260.236 of these rules, and

(C) Have the responsibility and duty to ascertain by reasonable investigation the good character, business reputation, qualifications,

1 and experience of an individual upon employment or engagement as an
2 investment adviser representative. Where an individual has previously
3 been reported to the Central Registration Depository (“CRD”), the
4 investment adviser shall obtain and review a copy of Form U5 filed
5 with CRD by such individual's most recent previous employer, together
6 with any amendments thereto.

7 The investment adviser shall conduct the investigation required by this
8 section no later than thirty (30) days following the filing of Form U4
9 with CRD, or demonstrate that it has made a reasonable effort to
10 comply with this section. Upon completion of the investigation, the
11 investment adviser shall take whatever action is deemed appropriate in
12 accordance with sound business practice and the protection of
13 investors.

14 Evidence of compliance with Section 260.236 and investigation of the
15 investment adviser representative shall be maintained as a part of the
16 records of the investment adviser as required by Section 260.241.3 of
17 these rules.

18 (2) Upon employment or engagement of an individual as an investment
19 adviser representative, the investment adviser shall file Form U4 with
20 CRD in accordance with its procedures, and pay the fee prescribed by
21 Section 25608(p) for transmission to the Commissioner. Form U4,
22 including any Disclosure Reporting Page(s), shall be completed in
23 accordance with the form instructions. The filing of Form U4 with
24 CRD does not constitute an automatic “approval” of the filing by the
25 Commissioner. Investment advisers shall not consider an investment
26 adviser representative “registration” with CRD approved until approved
27 by the Commissioner and the approval has been received by CRD. If
28 requested by the Commissioner, additional information, documentation
or detail pertaining to Form U4 or the investment adviser
representative's compliance with the qualification requirements shall be
filed directly with the Commissioner within 15 days from the date of
the request. In accordance with Section 250.16, Form U4 may be
abandoned if the Commissioner does not receive the requested
information within the time prescribed. The Commissioner shall
“reject” with CRD an abandoned Form U4.

(3) Within thirty (30) days of any changes to the information contained
in Form U4, an amendment to Form U4 shall be filed with CRD. If
Form U4 is being amended due to a disciplinary occurrence, a copy of
the amendment shall be filed with the Commissioner upon request.

(4) Within thirty (30) days after the termination of an individual as an
investment adviser representative, Form U5 shall be filed with CRD in
accordance with the form instructions. Form U5 shall clearly state the

1 reason(s) for termination. If an investment adviser representative has
2 been terminated for cause, Form U5 shall, upon request, be filed
3 directly with the Commissioner.

4 An investment adviser shall be responsible for the acts, practices, and
5 conduct of an investment adviser representative in connection with
6 acting as an investment adviser representative on its behalf until such
7 time as the investment adviser representative has been terminated and
8 Form U5 has been filed with CRD. No civil liability in favor of any
9 private party shall arise against any person as a result of this provision,
10 except as expressly provided in the Code.

11 (b) The procedures set forth in this subsection are applicable to
12 investment adviser representatives subject to the provisions of Section
13 25230.1(c) of the Code.

14 (1) The reporting of an investment adviser representative shall be made
15 by completing Form U4 in accordance with the form instructions and
16 by filing Form U4 with CRD in accordance with its procedures, and by
17 paying the fee prescribed by Section 25608.1(d) for transmission to the
18 Commissioner.

19 The filing of Form U4 with CRD does not constitute an automatic
20 "approval" of the filing by the Commissioner. An investment adviser
21 representative "registration" with CRD shall not be considered
22 approved until approved by the Commissioner and the approval has
23 been received by CRD. If requested by the Commissioner, additional
24 information, documentation or detail pertaining to Form U4 or the
25 investment adviser representative's compliance with the qualification
26 requirements shall be filed directly with the Commissioner within 15
27 days from the date of the request. In accordance with Section 250.16,
28 Form U4 may be abandoned if the Commissioner does not receive the
requested information within the time prescribed. The Commissioner
shall "reject" with CRD an abandoned Form U4.

(2) Within thirty (30) days of any changes to the information contained
in Form U4, an amendment to Form U4 shall be filed with CRD. If
Form U4 is amended due to a disciplinary occurrence, a copy of the
amendment shall be filed directly with the Commissioner upon request.

(3) Within thirty (30) days after the termination of an individual as an
investment adviser representative, Form U5 shall be filed with IARD in
accordance with the form instructions. Form U5 shall clearly state the
reason(s) for termination. If an investment adviser representative is
terminated for cause, Form U5 shall, upon request, be filed directly
with the Commissioner.

1 (c) The notices in subsection (j) of Section 260.231 are hereby made
2 part of Form U4 and Form U5.

3 18. As discussed in paragraphs 8 through 11 above, FCM has engaged Pidgeon as an
4 investment adviser representative through Triple A Partners since it obtained its investment adviser
5 certificate from the Commissioner in October of 2015. But Pidgeon was not registered to act as an
6 investment adviser representative until August of 2017. Moreover, FCM failed to report Pidgeon as
7 an investment adviser representative. Under California law, an investment adviser representative
8 must be registered with the state. Specifically, Corporations Code section 25230, subdivision (b) and
9 section 260.236.1, subdivision (a) (2) of the California Code of Regulations require all investment
10 adviser representatives and associated persons of an investment adviser as those terms are defined in
11 Corporations Code section 25009.5, subdivision (a), to be registered in California. Additionally,
12 FCM is obligated to report Pidgeon as an investment adviser representative under section 260.236.1,
13 subdivision (b) (1) of the California Code of Regulations.

14 19. As discussed in paragraph 11 above, on or about August 7, 2015, FCM claimed that it
15 was “no longer compensating Mr. Pidgeon, Jr.” Moreover, Pidgeon was “no longer acting as a
16 solicitor for Francis Capital.” But, two weeks after FCM made this claim, the 2015 Amended and
17 Restated Agreement between FCM and Pidgeon was executed. Notably, information subsequently
18 provided by FCM indicated that Pidgeon was not terminated until December of 2017. Moreover,
19 FCM paid Pidgeon, through Triple A Partners, a placement fee in the amount of \$6,704.00 from
20 January 2016 to November 2016. Accordingly, FCM made untrue statements to the Commissioner
21 during the application process for its investment adviser certificate.

22 20. By reason of the foregoing, FCM has willfully violated Corporations Code section
23 25245 and California Code of Regulations section 260.236.1 justifying the imposition of
24 administrative penalties. FCM, as a licensee, is obligated to comply with the provisions of the CSL
25 and the regulations thereunder to maintain its investment adviser certificate.

26 21. The Commissioner is authorized to impose administrative penalties against any
27 investment adviser for willful violations of any provisions of the CSL as provided in Corporation
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1 Code section 25252. Therefore, under section 25252 of the Corporations Code, the Commissioner
2 seeks administrative penalties for FCM’s violation of the CSL.

3 **V.**

4 **Conclusion**

5 Based upon the foregoing, good cause showing, and pursuant to Corporations Code section
6 25252, the Commissioner prays for an order imposing administrative penalties in the total amount of
7 \$15,000.00 for violation of section 25245 of the Corporations Code and section 260.236.1 of the
8 California Code of Regulations. Pursuant to Corporations Code section 25252, subdivision (b), the
9 penalties are calculated as follows: for the two violations noted during the 2017 examination,
10 \$5,000.00 for the first violation and \$10,000.00 for the second violation.

11 Dated: June 29, 2018

JAN LYNN OWEN
Commissioner of Business Oversight

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13 By: _____
14 MARLOU de LUNA
15 Senior Counsel
16 Enforcement Division
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