

1 MARY ANN SMITH
Deputy Commissioner
2 SEAN M. ROONEY
Assistant Chief Counsel
3 MARLOU de LUNA (State Bar No. 162259)
4 Senior Counsel
Department of Business Oversight
5 320 West 4th Street, Suite 750
Los Angeles, California 90013-2344
6 Telephone: (213) 576-7606
7 Facsimile: (213) 576-7181
8 Attorneys for Complainant

9
10 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
11 OF THE STATE OF CALIFORNIA

12 In the Matter of:) CRD NO.: 130165
13)
14 THE COMMISSIONER OF BUSINESS)
OVERSIGHT,) SETTLEMENT AGREEMENT
15)
16 Complainant,)
17 v.)
18 FRANCIS CAPITAL MANAGEMENT, LLC,)
19 Respondent.)
20)

21
22 This Settlement Agreement (Settlement Agreement) is entered into between the
23 Commissioner of Business Oversight (Commissioner) and Francis Capital Management, LLC (FCM)
24 (collectively, the Parties) and is made with respect to the following:

25 **RECITALS**

26 A. The Commissioner, as head of the Department of Business Oversight
27 (Department), is authorized to administer and enforce the provisions of the Corporate Securities Law
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1 of 1968 (CSL) (Corp. Code, § 25000 et seq.) and the regulations promulgated thereunder at title 10 of
2 the California Code of Regulations (CCR) (Cal. Code Regs., tit.10, § 260.000 et seq.).

3 B. Francis Capital Management, LLC holds a valid and unrevoked investment adviser
4 certificate issued by the Commissioner on October 8, 2015. FCM's principal office was located at
5 1453 3rd Street, Suite 470, Santa Monica, California 90401. At all relevant times herein, FCM is the
6 managing member of Catalysis Partners, LLC and was the investment manager of Catalysis Offshore,
7 Ltd. prior to its dissolution (collectively, the Funds).

8 C. John P. Francis is the president and managing member of FCM, and as such, is
9 authorized to enter into this Settlement Agreement on behalf of FCM.

10 D. The Commissioner, through her staff, commenced a regulatory examination of FCM
11 on January 9, 2017 (2017 Examination) during the course of which the Department determined that
12 FCM engaged George R. Pidgeon (Pidgeon) as an unregistered solicitor or investment adviser
13 representative, in violation of Corporations Code section 25245; FCM did not report Pidgeon as its
14 solicitor or investment adviser representative, in violation of CCR section 260.236.1, subdivision
15 (b)(1); and FCM made untrue statements to the Commissioner concerning Pidgeon's employment, in
16 violation of Corporations Code section 25245. Pidgeon had been registered with FINRA as a
17 registered representative of various Broker-Dealers during his relationship with FCM and FCM
18 entered into signed placement agent agreements with whichever Broker-Dealer at which Pidgeon was
19 employed during the time period when Pidgeon introduced investors to FCM's Funds. FCM paid the
20 Broker-Dealers where Pidgeon was employed on account of investors who purchased interests in the
21 Funds according to the terms of the placement agreements.

22 E. On July 22, 2015, the Department sent a written request to FCM asking for additional
23 clarification or documentation concerning, among other things, Pidgeon's employment with FCM.
24 The Department advised FCM that the company is prohibited from engaging a solicitor who is not
25 registered. Moreover, the Department also notified FCM that to continue FCM's arrangement with
26 Pidgeon, FCM was required to report Pidgeon as a solicitor in California by filing a Form U4. FCM's
27 written response of August 7, 2015 stated that FCM is "no longer compensating Mr. Pidgeon, Jr. and
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1 he is no longer acting as a solicitor for Francis Capital.” FCM subsequently filed a Form U4 on
2 behalf of Pidgeon on August 15, 2017, which was eventually terminated in December of 2017. As of
3 May 31, 2018, Pigeon’s CRD¹ (Central Registration Depository information showed FCM as
4 Pidgeon’s employer.

5 F. It is the intention and desire of the parties to resolve this matter without the necessity
6 of a hearing or other litigation. FCM neither admits nor denies the fact allegations set forth in the
7 Statement in Support of Order Imposing Administrative Penalties Pursuant to Corporations Code
8 Section 25252.

9 G. The Commissioner finds that this action is appropriate, in the public interest, and
10 consistent with the purposes fairly intended by the policy and provisions of this law.

11 NOW, THEREFORE, in consideration of the foregoing and the terms and conditions set forth
12 herein, the Parties agree as follows:

13 **TERMS AND CONDITIONS**

14 1. Purpose. This Settlement Agreement resolves the issues before the Commissioner
15 concerning the matters identified during the 2017 Examination for FCM set forth in paragraph D.
16 above in a manner that avoids the expense of a hearing and other possible court proceedings, protects
17 consumers, is in the public interest, and is consistent with the purposes, policies and provisions of the
18 CSL.

19 2. Finality of Settlement Agreement. FCM hereby agrees to comply with this Settlement
20 Agreement and, further stipulates that this Settlement Agreement is hereby deemed final, enforceable,
21 and issued pursuant to the Commissioner’s authority under Corporations Code section 25252.

22 3. Administrative Penalties. FCM agrees to pay administrative penalties of \$10,000.00
23 within 10 days of the effective date of this Settlement Agreement, as such date is defined Paragraph
24 20, made payable in the form of a cashier’s check or Automated Clearing House deposit to the
25 “Department of Business Oversight,” and transmitted to the attention of Accounting – Enforcement
26 Division, Department of Business Oversight, 1515 K Street, Suite 200, Sacramento, California,
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28 ¹ CRD is the central licensing and registration system for the U.S. securities industry and its regulators.

1 95814. Notice of payment shall be sent via email or letter to Marlou de Luna, Senior Counsel,
2 Department of Business Oversight, 320 West 4th Street, Suite 750, Los Angeles, California 90013.

3 4. Waiver of Hearing Rights. FCM acknowledges that the Commissioner is ready,
4 willing, and able to proceed with the enforcement action based on the facts contained in this
5 Settlement Agreement, and FCM hereby waives the right to a hearing, and to any reconsideration,
6 appeal, or other right to review which may be afforded pursuant to the CSL. FCM further expressly
7 waives any requirement for the filing of a Statement of Issues that may be afforded by Government
8 Code section 11415.60 (b), the California Administrative Procedure Act, the California Code of Civil
9 Procedure, or any other provision of law; and by waiving such rights, including those rights under
10 Corporations Code sections 25232, 25232.1 and 25233, and to judicial review of this matter pursuant
11 to Code of Civil Procedure section 1094.5 with respect to the issuance of this Settlement Agreement,
12 FCM effectively consents to this Settlement Agreement becoming final.

13 5. Full and Final Resolution. The Parties hereby acknowledge and agree that this
14 Settlement Agreement is intended to constitute a full, final, and complete resolution of the violations
15 described herein, and that no further proceedings or actions will be brought by the Commissioner in
16 connection with these matters under the CSL or any other provision of law, except for any (i)
17 proceeding to enforce compliance with the terms of this Settlement Agreement or (ii) proceeding that
18 is based upon discovery of new and further violations of the CSL which (a) do not form the basis for
19 this Settlement Agreement or (b) which FCM knowingly concealed from the Commissioner.

20 6. Failure to Comply with Settlement Agreement. FCM agrees that if it fails to comply
21 with the terms of this Settlement Agreement, the Commissioner may, in addition to all other available
22 remedies it may invoke under the CSL, summarily suspend the investment adviser certificate of FCM
23 until FCM is in compliance. FCM waives any notice and hearing rights to contest such summary
24 suspensions which may be afforded under the CSL, the California Administrative Procedure Act, the
25 California Code of Civil Procedure, or any other provision of law in connection therewith.

26 7. Information Willfully Withheld. This Settlement Agreement may be revoked, and the
27 Commissioner may pursue any and all remedies available under law against FCM if the
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1 Commissioner later discovers that FCM knowingly or willfully withheld information used for and
2 relied upon in this Settlement Agreement. Further, FCM agrees that this Settlement Agreement does
3 not resolve any penalties that may be assessed by the Commissioner upon discovery of new and
4 further violations of the CSL.

5 8. Future Actions by Commissioner. If FCM fails to comply with any terms of the
6 Settlement Agreement, the Commissioner may institute proceedings for any and all violations
7 otherwise resolved under this Settlement Agreement. The Commissioner reserves the right to bring
8 any future actions against FCM, or any of its partners, owners, officers, shareholders, directors,
9 employees or successors for any and all unknown violations of the CSL.

10 9. Assisting Other Agencies. Nothing in this Settlement Agreement limits the
11 Commissioner's ability to assist any other government agency (city, county, state or federal) with any
12 prosecution, administrative, civil or criminal, brought by any such agency against FCM or any other
13 person based upon any of the activities alleged in these matters or otherwise.

14 10. Binding. This Settlement Agreement is binding on all heirs, assigns, and/or
15 successors in interest.

16 11. Third Party Actions. It is the intent and understanding between the Parties that this
17 Settlement Agreement does not create any private rights or remedies against FCM, create any liability
18 for FCM or limit defenses of FCM for any person or entity not a party to this Settlement Agreement.

19 12. Independent Legal Advice. Each of the parties represents, warrants, and agrees that it
20 has received independent advice from its attorney(s) and/or representatives with respect to the
21 advisability of executing this Settlement Agreement.

22 13. Waiver, Modification, and Qualified Integration. The waiver of any provision of this
23 Settlement Agreement shall not operate to waive any other provision set forth herein. No waiver,
24 amendment, or modification of this Settlement Agreement shall be valid or binding to any extent
25 unless it is in writing and signed by all of the parties affected by it.

26 14. Headings. The headings in this Settlement Agreement are for convenience only and do
27 not affect its meaning.

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1 15. Governing Law. This Settlement Agreement will be governed by and construed and
2 enforced in accordance with the laws of the State of California.

3 16. Counterparts. The Parties agree that this Settlement Agreement may be executed in
4 one or more separate counterparts, each of which when so executed, shall be deemed an original.
5 Such counterparts shall together constitute and be one and the same instrument.

6 17. Full Integration. Each of the parties represents, warrants, and agrees that in executing
7 this Settlement Agreement it has relied solely on the statements set forth herein and the advice of its
8 own counsel. Each of the parties further represents, warrants, and agrees that in executing this
9 Settlement Agreement it has placed no reliance on any statement, representation, or promise of any
10 other party, or any other person or entity not expressly set forth herein, or upon the failure of any
11 party or any other person or entity to make any statement, representation or disclosure of anything
12 whatsoever. The Parties have included this clause: (1) to preclude any claim that any party was in any
13 way fraudulently induced to execute this Settlement Agreement; and (2) to preclude the introduction
14 of parol evidence to vary, interpret, supplement, or contradict the terms of this Settlement Agreement.

15 18. No Presumption Against Drafting Party. In that the Parties have had the opportunity
16 to draft, review and edit the language of this Settlement Agreement, no presumption for or against
17 any party arising out of drafting all or any part of this Settlement Agreement will be applied in any
18 action relating to, connected to, or involving this Settlement Agreement. Accordingly, the Parties
19 waive the benefit of Civil Code section 1654 and any successor or amended statute, providing that in
20 cases of uncertainty, language of a contract should be interpreted most strongly against the party who
21 caused the uncertainty to exist.

22 19. Voluntary Agreement. FCM enters into this Settlement Agreement voluntarily and
23 without coercion and acknowledges that no promises, threats or assurances have been made by the
24 Commissioner or any officer, or agent thereof, about this Settlement Agreement.

25 20. Effective Date. This Settlement Agreement shall not become effective until signed by
26 all parties and delivered by the Commissioner's counsel by email to jfrancis@franciscapital.com.

27 21. Notice. Any notices required under this Settlement Agreement shall be provided to
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1 each party at the following addresses:

2 If to Respondent: Francis Capital Management, LLC
3 610 Main Street
4 Venice, CA 90291

4 If to the Commissioner: Marlou de Luna, Senior Counsel
5 Department of Business Oversight
6 320 West 4th Street, Suite 750
7 Los Angeles, California 90013

7 22. Public Record. FCM acknowledges that this Settlement Agreement is a public record.

8 23. Authority to Execute. Each signatory hereto covenants that he or she possesses all
9 necessary capacity and authority to sign and enter into this Settlement Agreement.

10 IN WITNESS WHEREOF, the Parties hereto have approved and executed this Stipulation on
11 the dates set forth opposite their respective signatures.

12 Dated: 6/3/19 MANUEL P. ALVAREZ
13 Commissioner of Business Oversight

14
15 By _____
16 MARY ANN SMITH
17 Deputy Commissioner
18 Enforcement Division

19 Dated: 5/31/19 FRANCIS CAPITAL MANAGEMENT, LLC

20
21 By _____
22 JOHN P. FRANCIS
23 President

24 Approved as to Form and Content

25
26 By _____
27 Arthur Zwickel
28 Paul Hastings LLP
Counsel for Francis Capital Management, LLC