

BEFORE THE  
DEPARTMENT OF BUSINESS OVERSIGHT  
STATE OF CALIFORNIA

In the Matter of

THE COMMISSIONER OF BUSINESS  
OVERSIGHT,

Complainant,

v.

STEVEN PAUL GRAGER and DELPHI  
WEALTH ADVISORS, INC.,

Respondents.

Case No. 12263

OAH No. 2013120137

**PROPOSED DECISION**

Administrative Law Judge Jill Schlichtmann, Office of Administrative Hearings, State of California, heard this matter on May 20, 2014, in Oakland, California.

Edward Kelly Shinnick, Enforcement Counsel, represented complainant Jan Lynn Owen, Commissioner of the Department of Business Oversight.

There was no appearance by or on behalf of Steven Paul Grager or Delphi Wealth Advisors, Inc. Upon proof of compliance with Government Code sections 11505 and 11509, the matter proceeded as a default pursuant to Government Code section 11520.

The matter was submitted for decision on May 20, 2014.

**FACTUAL FINDINGS**

*Introduction*

1. The Department of Business Oversight (department) is the agency responsible for enforcement of the California Corporate Securities Law, Corporations Code section 25000 et seq., and the regulations promulgated thereunder at Code of Regulations, title 10, section 260.000 et seq.

2. On August 26, 2013, complainant Jan Lynn Owen, Commissioner of Business Oversight, issued a notice of intention to issue an order: 1) revoking the investment adviser certificate of Delphi Wealth Advisors, Inc., pursuant to Corporations Code section 25232; and, 2) barring Steven Paul Grager from any position of employment, management or control of any investment adviser, broker-dealer or commodity adviser pursuant to Corporations Code section 25232.1. On the same day, complainant filed an accusation in support of the notice of intention to issue the order.

3. On April 2, 1999, the Department of Corporations,<sup>1</sup> certified Capital Advisers Group, LLC (Capital Advisers), as an investment adviser, and Steven Grager as an investment adviser representative. Capital Advisers is now known as Delphi Wealth Advisors, Inc. (Delphi Wealth).<sup>2</sup> Delphi Wealth was incorporated in Nevada in May 2012, and has a business address of 370 Diablo Road, Suite 207, Danville, California 94526. Steven Paul Grager is the president, control person and 100 percent owner of Delphi Wealth.

4. According to Grager's most recent Form ADV filing with FINRA on May 18, 2012, Delphi Wealth had 26 to 100 clients, none of whom being an individual of high net worth. The advisory services provided were financial planning, market timing and portfolio management, managing assets totaling \$7,000,000 (with discretionary authority to determine the securities to be bought or sold of \$6,000,000, and non-discretionary control of \$1,000,000). Compensation was received through fixed fees and based on a percentage of assets under management.

5. Complainant seeks to revoke the investment adviser certificate of Delphi Wealth and to bar Grager from any position of employment, management or control of any investment adviser, broker-dealer or commodity adviser as a result of: a) a FINRA Consent Order suspending Grager and Delphi Securities as a result of a series of forgeries by Grager; b) knowing misrepresentations made to the department examiner; c) unsuitable investment of client funds; d) charging fees in excess of signed contracts with clients; e) charging fees on unmanaged accounts; f) the failure to provide verification of client assets from a certified public accountant; and, g) the failure to maintain required books and records.

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<sup>1</sup> On July 1, 2013, the Department of Corporations and the Department of Financial Institutions merged to form the Department of Business Oversight in accordance with the Governor's reorganization of state departments and agencies to provide services more efficiently and effectively.

<sup>2</sup> Delphi Wealth was previously known as Delphi Securities Corporation (Delphi Securities). On May 18, 2012, Grager filed a Form ADV with the Financial Industry Regulatory Authority (FINRA) advising it that Delphi Securities Corporation had changed its name to Delphi Wealth Advisors, Inc., and was primarily conducting business under the name Delphi Wealth Advisors.

## *The FINRA Consent Order*

6. Beginning in 1987, Grager was associated, in various representative and principal capacities, with several FINRA registered broker-dealers, including Financial Network Investment Corporation (FNIC). Grager was associated with FNIC from December 2007 to June 2011. In February 2011, Grager submitted an application for broker-dealer registration on behalf of Delphi Securities. In June 2011, FNIC terminated Grager's association and registrations. On December 16, 2011, FINRA approved the application for membership from Delphi Securities.

7. On July 27, 2012, Grager signed a Letter of Acceptance Waiver and Consent (consent order) with FINRA, which was formally accepted by FINRA on August 24, 2012. In the consent order, Grager was suspended from association with any member of FINRA in any capacity for a period of 18 months and assessed a fine in the amount of \$5,000. The suspension was implemented to protect investors.

8. The findings of the consent order established that following termination of association with FNIC in June 2011, FNIC remained the dealer of record, receiving fees and commissions on transactions in directly held mutual fund accounts. In January and February 2012, Grager prepared letters with falsely affixed signatures of a representative of FNIC, without her knowledge or consent, and sent the forged letters to several customers purporting to authorize the transfer of dealer of record from FNIC to Delphi Securities. Fees and commissions of approximately \$750 were thereafter received by Delphi Securities before FINRA was made aware of the forgeries.

### *Grager's Misrepresentations to the Department Examiner*

9. On August 28, 2012, department examiner Brett O'Sullivan interviewed Grager at the office of Delphi Wealth, and began an examination of its accounts, books and records. At the interview, Grager was asked:

Has the firm or any of its representatives been involved in any regulatory investigation, action, litigation or the subject of any civil complaint, arbitration, or criminal proceeding in the last two years?  
If yes, describe.

Grager said only that there was a pending complaint made by R.G.<sup>3</sup> against the broker-dealer Delphi Securities Corporation. When Grager was asked to produce the files of all investment adviser clients, Delphi Wealth did not produce a file for R.G.

10. In fact, R.G. and his wife C.G. had filed a complaint with FINRA against Delphi Wealth as their investment adviser, as well as a complaint against Delphi Securities. In a letter to FINRA regarding an arbitration proceeding initiated by R.G. and C.G., Grager

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<sup>3</sup> Initials are used to protect the privacy of Grager's clients.

stated that the trades were “done through an investment advisory firm, a separate entity from the broker-dealer, not owned by the broker-dealer,” contending that therefore FINRA was without jurisdiction to arbitrate the dispute.<sup>4</sup> Grager’s statement to FINRA directly contradicted his statement to O’Sullivan.

11. Moreover, on September 25, 2012, when Interactive Brokers, a California registered broker-dealer that provides custodial services for Delphi Wealth, produced Delphi Wealth’s accounts in response to O’Sullivan’s request, it produced documentation of three accounts owned by R.G. and C.G. In addition, the Interactive Brokers application forms for R.G. and C.G. designate Delphi Wealth as the “Advisor’s Firm” and Grager was designated as the “Financial Advisor.” Grager’s statement to the department examiner that Delphi Wealth had not been involved in any regulatory investigations or actions in the past two years was false, and was intended to impede, obstruct or influence the examination.

12. In addition, Grager omitted to disclose to O’Sullivan a civil judgment in the amount of \$262,078 filed against him in the Superior Court of California, County of Santa Clara, on March 2, 2012, less than six months before the interview. This omission also constituted a misrepresentation to the department examiner which was intended to impede, obstruct or influence the examination.

#### *Unsuitable Investments by Grager on behalf of Clients*

13. In July 2011, Delphi Wealth moved its clients from TD Ameritrade to Interactive Brokers, where most of the assets remained in cash until late September or early October 2011. At that time, Grager, using client assets, began purchasing speculative leveraged bear market exchange-traded funds (ETF’s). Unlike an ETF that seeks investment results based on how well an index performs, these ETF’s were designed to seek investment results inverse of index performance. These leveraged ETF’s enabled Delphi Wealth to buy an ETF with leverage at multiples of two or three times, significantly increasing the amount of the gain or loss. Many of the ETF’s purchased by Delphi Wealth were targeted at markets more volatile than the broad-based U.S. indexes, such as the Dow Jones Industrial Average and the Standard and Poor’s 500 (S & P 500). The S & P 500 gained 10.91 percent from September 30, 2011, to October 31, 2011, and the involved index performed similarly. All of the ETF’s purchased by Delphi Wealth were purchased on either September 30, 2011, or October 3, 2011, causing Grager’s clients to suffer losses in excess of 30 percent in one month.

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<sup>4</sup> FINRA regulates broker-dealers, not investment advisers. However, in the R.G./C.G. arbitration proceeding, the FINRA arbitration panel concluded that broker-dealer Delphi Securities Corporation was an alter ego of Delphi Wealth Advisors and that Delphi Wealth Advisors was also known as Delphi Securities. Therefore, FINRA assumed jurisdiction over the dispute.

14. Moreover, the ETF's purchased were used in a strategic manner inconsistent with their directed use. The Direxion Prospectus relating to nearly all the ETF's purchased by Delphi Wealth stated:

The Fund seeks daily leveraged investment results and does not seek to achieve its stated investment objective over a period of time greater than one day. The Fund is different and much riskier than most exchange-traded funds.

The Fund is designed to be utilized only by knowledgeable investors who understand the potential consequences of seeking daily leveraged investment results, understand the risks associated with shorting and the use of leverage, and are willing to monitor their portfolios frequently. The Fund seeks daily leveraged investment results relative to the Index and is different and riskier than similarly benchmarked exchange-traded funds that do not leverage. Therefore, the Fund is not intended to be used by, and is not appropriate for, investors who do not intend to actively monitor and manage their portfolios.

15. Many of Delphi Wealth's clients were elderly, retired and inexperienced. Investing any investor assets, much less all of the assets of some investors, in these speculative and extremely high risk ETF's was clearly unsuitable for Delphi Wealth's clients, and in breach of an investment adviser's fiduciary duty to his clients.

#### R.G. AND C.G.

16. R.G. met Grager in 1997 or 1998, when he was introduced to him through an insurance brokerage. From that time until 2012, Grager handled R.G.'s business and insurance needs. R.G. and C.G. had three retirement accounts, one in each of their names and one joint account. Grager requested to manage R.G. and C.G.'s retirement accounts in January 2010. Grager advised R.G. that he would be actively involved in protecting the principal while growing the portfolio. The total value of the accounts in 2010 was approximately \$207,000. On January 13, 2010, R.G. and C.G. entered into an investment advisory agreement with Grager.

17. R.G. and C.G. rolled over their Pacific Life Annuity and Fidelity IRA's to TD Ameritrade in July 2011, pursuant to Grager's instructions. In mid-July, Grager advised R.G. and C.G. that a new roll over to Interactive Brokers was required. On the Interactive Brokers account applications, R.G. indicated that his investment objectives were growth and trading profits, and that he was not interested in speculation or hedging. R.G., who had limited experience with investments, gave Grager discretion to invest the funds in moderate growth stocks. The portfolio remained in cash until October 3, 2011, when Grager purchased Direxion ETF's with over 96 percent of all three account balances.



18. R.G. and C.G. were unaware of the purchase until receiving their statement later that month, which revealed that the accounts had lost over 37 percent of their value, approximately \$87,000, by October 19, 2011. R.G., who had never heard of an ETF and had not authorized Grager to invest in speculative or high risk investments, was stunned. He contacted Grager immediately to demand that the ETF's be sold. Grager insisted that the ETF's would recover their value in time, as he predicted the market would soon collapse and the ETF's would earn money. In fact, the market continued to escalate and by February 2012, when Grager eventually agreed to sell the ETF's, R.G. and C.G. had lost over 50 percent of their retirement accounts. R.G. and C.G. fired Grager and had the money transferred to Schwab, where they now manage it themselves.

19. R.G. and C.G. filed a claim with FINRA (Arbitration No. 12-01119), seeking to establish that Delphi Securities and Delphi Wealth were liable for the losses based on the unsuitable investment in ETF's. Grager did not attend the arbitration hearing. On February 25, 2013, the FINRA arbitration panel found Delphi Wealth to be liable to R.G. and C.G. in the amount of \$109,555 in compensatory damages (the total loss from the three retirement accounts), plus seven percent interest from October 28, 2011. R.G. and C.G. have been unable to collect on the award.

#### T.C. AND J.C.

20. T.C. and J.C. are married and were clients of Grager and Delphi Wealth. In October 2011, T.C. was 84 years old and J.C. was 69 years old. On July 6, 2008, they signed a suitability form with Capital Advisers indicating that their annual income was between \$50,000 and \$100,000 and their net worth was between \$500,000 and \$1,000,000. They indicated that their risk tolerance was "medium" and their investment objective was growth and income.

21. On September 1, 2011, T.C. and J.C.'s retirement accounts were valued at \$256,962. As of October 31, 2011, T.C. and J.C.'s retirement accounts, managed by Delphi Wealth, were predominately (98 percent) invested in several leveraged bear market ETF's. For the month of October 2011, their retirement account losses were approximately 33 percent, and the ETF's were sold in February 2012, at a loss of over 46 percent.

#### M.S.

22. M.S. was 71 years old in October 2011. According to the suitability form she signed on June 11, 2007, M.S. was retired with a net worth of over \$4,000,000. However, on a signed Interactive Brokers application dated July 27, 2011, M.S. stated that his annual income was between \$50,000 and \$100,000, and he had total assets of less than \$1,000,000. On the June 2007 suitability form, M.S. indicated that his risk tolerance was "medium" and his investment objective was aggressive growth.

23. On October 1, 2011, M.S.'s retirement account was valued at \$546,002.83. On October 3, 2011, Delphi Wealth purchased equal cost basis shares in several leveraged bear market ETF's, which comprised 96.9 percent of the account assets. For the month of

October 2011, M.S. suffered losses of 37.96 percent. As of June 29, 2012, the retirement account had lost 42.3 percent of its value.

R.K. AND R.K.

24. R.K., and his wife R.K., signed a suitability form dated June 6, 2008, indicating that they were 66 and 68 years old; they were retired and had a net income of between \$100,000 and \$250,000. They indicated that their risk tolerance was “moderate,” and that their investment objective was growth and income.

25. On September 1, 2011, their retirement accounts were valued at \$492,076. On September 30 and October 3, 2011, Delphi Wealth purchased equal costs basis shares in several leveraged bear market ETF’s, which comprised 97 percent of their retirement account assets. For the month of October 2011, their accounts lost 36 percent of their value. As of June 2012, the accounts had lost 40 percent of their value.

C.K.

26. C.K. signed a suitability form dated May 25, 2010, indicating she was 72 years old, retired, and had an annual income of between \$50,000 and \$100,000. She indicated she had medium risk tolerance and her investment objective was conservative growth.

27. On October 1, 2011, C.K.’s trust and retirement accounts were valued at \$278,562. On October 3, 2011, Delphi Wealth purchased equal cost basis shares in several leveraged bear market ETF’s and one leveraged bull market ETF. The investment comprised of approximately 97 percent of the trust and retirement account assets. By October 31, 2011, the accounts had lost 37 percent of their value. The ETF’s were sold in June 2012; at that time, C.K.’s accounts had lost 42 percent of their value.

D.T. AND N.T.

28. The D.T and N.T. Family Trust representatives signed suitability forms dated November 29, 2009, stating they were 84 and 91 years old, retired, and had moderate risk tolerance, and their investment objective was growth and income.

29. On October 1, 2011, the trust account balance was \$93,153. On October 3, 2011, Delphi Wealth purchased equal costs basis shares in several leveraged bear market ETF’s and one leveraged bull market ETF. The investment comprised 96.9 percent of the portfolio. As of October 31, 2011, the account had suffered losses of 18.3 percent. The ETF’s were sold in June 2012. At that time, the account had grown by 9.3 percent, demonstrating the unpredictability of these funds.

*Excessive Fees*

30. The department’s review of Delphi Wealth’s client files indicated that the majority of clients signed agreements at the time the firm was known as Capital Advisers

(prior to March 2011). The standard fee schedule in the Capital Advisers agreement provided for an annual percentage fee depending on the amount of assets under management, from 1.00 percent to 1.75 percent.

31. During the examination, Delphi Wealth provided the department with a sample of its current, updated contract. The updated contract showed a standard fee schedule providing for an annual percentage fee, depending on the amount of assets under management, of between 1.00 percent and 2.25 percent.

32. The department's review of Delphi Wealth's client files indicated that it was charging advisory fees based on, or in excess of, the higher Delphi Wealth fee schedule, regardless of the signed contracts. When requested, Delphi Wealth did not provide evidence, written or otherwise, that prior client contracts were amended or that the clients had approved the increase in fees. In addition, the department's fee analysis indicated fees exceeding the new contract rates were charged to clients for the period of July 1, 2011, to June 30, 2012. In some cases, the clients were charged more than three percent, which the department considers to be excessive.

#### *Overcharged Fees on Unmanaged Accounts*

33. In addition to clients with Interactive Brokers discretionary accounts, Delphi Wealth manages the subaccounts for various clients who maintain annuities with ING. Delphi Wealth charges clients fees to manage these accounts. Although department examiners were unable to collect sales information for all clients, information collected indicated that Grager sold the annuities to clients through Delphi Wealth, mostly during 2007 and 2008. Between July 2011 and June 2012 (the department's review period), the client subaccounts were 95 percent or more invested in the ING PIMCO Total Return Bond Portfolio. These accounts were unmanaged in that there was no trading in the accounts; however, Delphi Wealth collected management fees on the accounts. Collecting a management fee on these accounts was unreasonable. Moreover, some of the clients were charged management fees in excess of three percent.

#### *Failure to Provide Verification of Client Assets*

34. Delphi Wealth is deemed to have custody and possession of client funds and securities because it is paid automatically from the client funds upon presentation of a bill to the custodian of the client's account. Delphi Wealth did not send invoices to clients reflecting any fees, the assets the fee is based on, and how it was computed. The firm is also required to provide an annual surprise verification of client assets from an independent certified public accountant, and submit the report to the department on an annual basis. The department has not received any such report.



## *Failure to Maintain Books and Records*

35. Delphi Wealth and Delphi Securities are separate entities and are required to maintain separate financial books and records on a current and accurate basis. The department examination revealed that Delphi Wealth failed to maintain balance sheets, income statements, a general ledger, bank reconciliations and minimum calculations.

## LEGAL CONCLUSIONS

### *Causes to Revoke Investment Adviser Certificate of Delphi Wealth and to Bar Grager*

1. Corporations Code section 25232, subdivisions (d) and (e), provide that the commissioner may revoke the certificate of an investment adviser if the commissioner finds that revocation is in the public interest and that the investment adviser, or any employee of the investment adviser, has 1) been subject to any order of any national securities association suspending or expelling him from membership in that organization or exchange or from association with any member thereof; or 2) has willfully violated any provision of the Corporate Securities Law of 1968, commencing with Corporations Code section 25000, or 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.

2. Corporations Code section 25232.1, provides that the commissioner may bar from any position of employment, management or control of any investment adviser, broker-dealer or commodity adviser, any officer, director, partner, employee of, or person performing similar functions for, an investment adviser, or any other person, if the commissioner finds that the bar is in the public interest and that the person has committed any act or omission enumerated in subdivision (e) of section 25232, or is subject to any order specified in subdivision (d) of section 25232.

### THE FINRA CONSENT ORDER

3. Corporations Code section 25232, subdivision (d), provides that the commissioner may revoke an investment adviser certificate if the investment adviser has been subject to a suspension by FINRA necessary to protect the investor.

In this matter, FINRA entered into a consent order with Grager, on behalf of Delphi Securities, on August 24, 2012. The consent order suspended Grager from association with any member of FINRA for 18 months. The suspension was based on a series of letters Grager had forged, and was implemented to protect investors. (Factual Findings 6 through 8.) Cause to revoke the Delphi Wealth investment adviser certificate, and to bar Grager, therefore exists pursuant to Corporations Code sections 25232, subdivision (d), and 25232.1.

#### MISREPRESENTATIONS TO THE DEPARTMENT EXAMINER

4. Corporations Code section 25404, subdivision (b), provides that it is unlawful to make an untrue statement to the commissioner during the course of licensing, investigation, or examination, with the intent to impede, obstruct, or influence the administration or enforcement of any provision of the Corporate Securities Law.

The evidence established that Grager made untrue statements to the department examiner on August 28, 2012, when he asserted that the only complaint was against Delphi Securities (the broker-dealer). The existence and nature of the complaint was misrepresented. In addition, Grager failed to produce the R.G. file in response to the examiner's request for all investment adviser documents. (Factual Findings 9 through 11.) In addition, the evidence established that Grager omitted to disclose to the department examiner a civil judgment of \$262,078 filed against him on March 2, 2012. (Factual Finding 12.) Grager's misstatement about R.G.'s complaint, his failure to provide documents concerning R.G.'s account, and his failure to notify the examiner of the civil judgment against him, were acts intended to impede, obstruct or influence the examination. Cause to revoke the Delphi Wealth investment adviser certificate and to bar Grager therefore exists pursuant to Corporations Code sections 25232, subdivision (e), and 25232.1.

#### UNSUITABLE INVESTMENTS

5. Corporations Code section 25238 provides that no licensed investment adviser, or person associated with an investment adviser, shall engage in investment adviser activities "in contradiction of such rules as the commissioner may prescribe designed to promote fair, equitable and ethical principles." The activities so prescribed are found and listed in California Code of Regulations, title 10, section 260.238. In pertinent part, section 260.238 states that promoting fair, equitable or ethical principles does not include recommending to a client unsuitable investments, after inquiring into the client's investment objectives, financial situation and needs.

The evidence established that in late September and early October, 2011, Grager, on behalf of Delphi Wealth, willfully purchased highly speculative ETF's for clients in contradiction to their investment objectives and instructions. As a result of these actions, many retired and elderly clients lost significant percentages of their retirement accounts. (Factual Findings 13 through 29.) Cause exists to revoke the Delphi Wealth investment adviser certificate and to bar Grager pursuant to Corporations Code sections 25232, subdivision (e), and 25232.1.

#### EXCESSIVE FEES AND FEES CHARGED INCONSISTENT WITH SIGNED CONTRACTS

6. California Code of Regulations, title 10, section 260.238, subdivision (n), states in pertinent part, that it is not fair, equitable or ethical to enter into, extend or renew "any investment advisory contract, other than a contract for impersonal advisory service, unless such contract is in writing and discloses, in substance, the services to be provided, the

term of the contract, the advisory fee or the formula for computing the fee, the amount or the manner of calculation of the amount of the prepaid fee to be returned in the event of contract termination or non-performance, whether the contract grants discretionary power to the adviser or its representatives.”

The evidence established that Grager failed to obtain updated, signed agreements with clients, even after the firm changed from Capital Advisers to Delphi Wealth, and the fee structure changed. Grager willfully charged fees inconsistent with the signed contracts, and in some cases, charged excessive fees. (Factual Findings 30 through 32.) Cause exists to revoke the Delphi Wealth investment adviser certificate and to bar Grager pursuant to Corporations Code sections 25232, subdivision (e), and 25232.1.

#### EXCESSIVE FEES ON UNMANAGED ACCOUNTS

7. California Code of Regulations, title 10, section 260.238, subdivision (j), states in pertinent part that it is not fair, equitable or ethical to charge a client an advisory fee that is unreasonable in light of the type of services to be provided, the experience and expertise of the adviser, the sophistication and bargaining power of the client, and whether the adviser has disclosed that lower fees for comparable services may be available from other sources.

The evidence established that Delphi Wealth manages the subaccounts for various clients who maintain annuities with ING and charges those clients fees. Information collected by department examiners indicated that Grager sold these annuities via Delphi Securities. Over 95 percent of the investments were in ING PIMCO Total Return Bond Portfolio. The nature of these investments did not require management and there was no trading in the accounts. Charging management fees on these accounts, at times in excess of three percent, was excessive and unreasonable. (Factual Finding 33.) Cause exists to revoke the Delphi Wealth investment adviser certificate and to bar Grager pursuant to Corporations Code sections 25232, subdivision (e), and 25232.1.

#### FAILURE TO PROVIDE VERIFICATION OF CLIENT ASSETS FROM A CPA

8. Corporations Code section 25235 provides that it is unlawful for any investment adviser to engage in any act, practice or course of business that is fraudulent, deceptive or manipulative. California Code of Regulations, title 10, section 260.237, provides that it shall constitute fraudulent, deceptive or manipulative practice to have custody of funds or securities in which a client has a beneficial interest, unless the investment adviser, immediately after accepting custody of funds or securities, notifies the client in writing of the place and manner in which the funds and securities will be maintained, and sends to each client an itemized statement showing the funds or securities at the end of the period and all debits, credits and transactions in the period, and all funds and securities are verified by an actual examination at least once during each calendar year by an independent certified public accountant.

The evidence established that Delphi Wealth had custody and possession of client funds and securities. The evidence also established that Delphi Wealth does not send invoices to clients reflecting any fees, the assets the fee is based on, and how it is computed. The firm is also required to provide an annual surprise verification of client assets from an independent certified public accountant each calendar year, and submit the report to the department annually. The evidence established that Grager, on behalf of Delphi Wealth, willfully failed to provide clients with verification by an actual examination at least once per year by a certified public accountant, and submit that report to the department. (Factual Finding 34.) Cause exists to revoke the Delphi Wealth investment adviser certificate and to bar Grager pursuant to Corporations Code sections 25232, subdivision (e), and 25232.1.

#### FAILURE TO MAINTAIN BOOKS AND RECORDS

9. California Code of Regulations, title 10, section 260.241.3, provides, in pertinent part, that licensed investment advisers shall make and keep true, accurate and current books and ledgers including balance sheets, income statements, a general ledger, bank reconciliations and minimum calculations.

The evidence established that Grager, on behalf of Delphi Wealth, failed to maintain true, accurate and current books and ledgers, including balance sheets, income statements, a general ledger, bank reconciliations and minimum calculations. (Factual Finding 35.) Cause exists to revoke the Delphi Wealth investment adviser certificate and to bar Grager pursuant to Corporations Code sections 26232, subdivision (e), and 25232.1.

#### *Conclusion*

10. The regulatory scheme designed to protect investors in California depends upon full disclosure of required information by licensees; fair and equitable investments; and, carrying out fiduciary obligations to clients. Grager's failure to disclose the FINRA consent order and the civil judgment to the department examiners is serious. In addition, Grager's breach of his fiduciary duty to numerous clients resulted in significant losses in their retirement accounts. Grager has been suspended by FINRA for committing forgery in his work as an investment adviser. Grager did not appear at hearing or provide evidence of rehabilitation; nor has he paid the FINRA arbitration award.

It is in the public interest to revoke Delphi Wealth's investor adviser certificate and to bar Grager from any position of employment, management, or control of any investment adviser, broker-dealer or commodity adviser.

#### ORDER

1. The investment adviser certificate issued to Delphi Wealth Advisors, Inc., is revoked.

2. Steven Paul Grager is barred from any position of employment, management, or control of any investment adviser, broker-dealer or commodity adviser.

DATED: May 30, 2014

/s/  
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JILL SCHLICHTMANN  
Administrative Law Judge  
Office of Administrative Hearings



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DECISION

The attached Proposed Decision of the Administrative Law Judge of the Office of Administrative Hearings, dated May 30, 2014, is hereby adopted by the Department of Business Oversight as its Decision in the above-entitled matter.

This Decision shall become effective on October 12, 2014.

IT IS SO ORDERED this 12<sup>th</sup> day of September, 2014.

COMMISSONER OF BUSINESS OVERSIGHT

*/s/*

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Jan Lynn Owen