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7
8 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
9 OF THE STATE OF CALIFORNIA
10

11 In the Matter of:) CRD Nos. 3195829 and 131073
12 VINTAGE CAPITAL ADVISORS, LLC and)
13 DAVID WILLIAM STEWART) CONSENT ORDER
14 Respondents.)
15)
16)

17 The Commissioner of Business Oversight (Commissioner), and David William Stewart and
18 Vintage Capital Advisors, LLC, (collectively, the parties), enter into this Consent Order (Order)
19 with respect to the following facts:

20 RECITALS

21 A. The Commissioner is authorized to administer and enforce the provisions of the Corporate
22 Securities Law of 1968 (Corp. Code, § 25000 et seq.) (“CSL”) and the regulations promulgated
23 thereunder at title 10 of the California Code of Regulations, which include the licensure,
24 examination, and regulation of investment advisers.

25 B. Vintage Capital Advisors, LLC (Vintage) is a California limited liability company formed
26 on or about February 25, 2004. Vintage’s business address is at 215 Lake Boulevard, Suite 675,
27 Redding, California 96003. The Department of Business Oversight (DBO) issued Vintage an
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1 investment adviser certificate on April 27, 2004. Vintage's Central Registry Depository (CRD)
2 number is 131073.

3 C. At all relevant times, David William Stewart (Stewart) was the sole owner and control person
4 of Vintage and is registered with the DBO as an "investment adviser representative" of Vintage.
5 Stewart's CRD number is 3195829.

6 D. The DBO conducted a routine regulatory examination being on November 13, 2012 and
7 subsequent investigation of Vintage's investment adviser business. Based on the examination and
8 investigation results, the DBO found that Vintage and Stewart committed violations of the CSL.
9 These violations included findings that Stewart and Vintage sold securities issued by an investment
10 fund called Vintage Asset Management Fund, LLC (Fund) by means of misrepresentation and
11 omission of material fact in violation of Corporations Code section 25401. Stewart entirely
12 managed and controlled the Fund. Stewart failed to disclose that he had filed for personal
13 bankruptcy in 2006, with a discharge in 2007. Stewart also failed to disclose his bankruptcy on his
14 form ADV on file with the Financial Industry Regulatory Authority (FINRA) as is required under
15 FINRA rules and California Code of Regulations, title 10, section 260.241.4 subdivision (e) that
16 requires the form ADV be updated annually.

17 E. The DBO further found Stewart and Vintage engaged in conduct that violated the
18 Corporations Code sections 25235 (prohibiting fraudulent deceptive or manipulative acts by an
19 investment adviser) and 25238 (violation of rules proscribed by the commissioner to promote fair,
20 equitable, and ethical principles by investment advisers) by (1) issuing financial reports to Clients
21 that failed to disclose large losses to the Fund; (2) artificially inflating the Fund's value in financial
22 reports to clients by including a credit line available to the Fund as an "asset" in violation of
23 generally accepted accounting principles; (3) charging excessive and improper fees to clients based
24 on the artificially inflated value of the Fund in violation of California Code of Regulations, title 10,
25 section 260.238 subdivisions (h) and (j); (4) engaging in excessive trading of client accounts in
26 violation of California Code of Regulations, title 10, section 260.238 subdivision (e); and (5)
27 recommending unsuitable investments to clients in violation of subdivision California Code of
28 Regulations, title 10, section 260.238 subdivision (a).

1 F. Stewart and Vintage’s unsuitable investment recommendations included recommending in
2 2010 a client invest \$100,000 in a foreign currency trading (Forex) scheme operated by a company
3 called FXKB Inc. and its owner Taze Claiborne Ellis (Ellis) without performing due diligence that
4 would have revealed (1) Ellis’ conviction in 2002 for financial fraud, grand theft and tax evasion;
5 (2) that the National Future Association had not registered Ellis to engage in Forex trading; and (3)
6 the DBO had not registered FXKB Inc. to sell securities. Ellis immediately appropriated and stole
7 the client’s investment and was later charged with grand theft and criminal violations of the CSL for
8 his actions in operating FXKB Inc.’s fraudulent investment scheme.

9 G. In or about January 2019, the DBO informed Stewart and Vintage of its examination
10 findings, and of its intent to bring an administrative enforcement action to revoke Vintage’s
11 investment adviser certificate pursuant to Corporations Code section 25232 and bar Stewart from
12 any position of employment, management or control of any investment adviser, broker-dealer or
13 commodity adviser pursuant to Corporations Code section 25232.1. In order to avoid the filing of
14 that enforcement action, Stewart and Vintage agreed to the entry of this Consent Order (Order)
15 pursuant to the following terms.

16 H. Stewart and Vintage admit to the jurisdiction of the Commissioner with respect to the
17 subject matter of this Order and consent to the issuance of this Order as resolution of the matter
18 without the need to file an accusation to initiate administrative action.

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

21 NOW, THEREFORE, in consideration of the foregoing, and of the terms and conditions set
22 forth herein, the parties agree as follows:

23 TERMS AND CONDITIONS

24 1. Purpose.

25 The purpose of this Order is to resolve the issues only as to the Commissioner's revocation
26 of the investment adviser certificate of Vintage and the barring of Stewart from any position of
27 employment, management or control of any investment adviser, broker-dealer or commodity
28 adviser in California in a manner that avoids the expense of a hearing and possible further court

1 proceedings on those issues. Respondents consent to the terms of this Order as to the revocation and
2 bar, without admitting or denying any of the findings of the Commissioner as to violations made in
3 this Order.

4 2. Bar Order.

5 The Commissioner hereby orders that Stewart is barred from any position of employment,
6 management or control of any investment adviser, broker-dealer or commodity adviser pursuant to
7 Corporations Code section 25232.1. Stewart hereby stipulates to the finality of this bar order.

8 3. Revocation of License.

9 The Commissioner hereby orders that the investment adviser certificate of Vintage is revoked
10 pursuant to Corporations Code section 25232. Vintage hereby stipulates to the finality of this
11 revocation order.

12 4. Waiver of Hearing Rights.

13 Stewart and Vintage acknowledge that the Commissioner is ready, willing, and able to proceed
14 with the filing of an administrative enforcement action on the charges contained in this Consent Order,
15 and Stewart and Vintage hereby waive the right to a hearing, and to any reconsideration, appeal, or
16 other right to review which may be afforded pursuant to the CSL. Stewart and Vintage further expressly
17 waive any requirement for the filing of an Accusation that may be afforded by Government Code
18 section 11415.60 (b); the California Administrative Procedure Act, the California Code of Civil
19 Procedure, or any other provision of law; and by waiving such rights, Stewart and Vintage effectively
20 consent to this Order becoming final.

21 5. Future Actions by the Commissioner.

22 The Commissioner reserves the right to bring any future action(s) against Stewart and
23 Vintage, or any of its partners, owners, officers, directors, shareholders, employees, or successors
24 for any and all past or future violations of the Corporations Code and Stewart and Vintage reserve
25 any and all defenses and objections thereto. This Order shall not serve to exculpate Stewart and
26 Vintage or any of its partners, owners, officers, directors, shareholders, employees, or successors
27 from any administrative, civil or criminal liability for any past or future violations of the CSL or to
28 estop Stewart and Vintage, or any of its partners, owners, officers, directors, shareholders,

1 employees, or successors from asserting objections or defenses to any assertions of administrative,
2 civil or criminal liability for any past or future violations of the CSL.

3 6. Independent Legal Advice.

4 Each party represents, warrants, and agrees that it has received independent advice from its
5 attorney(s) and/or representatives with respect to the advisability of executing this Order.

6 7 Counterparts.

7 The parties agree that this Order may be executed in one or more separate counterparts, each
8 of which when so executed, shall be deemed an original. Such counterparts shall together constitute
9 and be one and the same instrument.

10 8. Waiver, Modification, and Qualified Integration.

11 The waiver of any provision of this Order shall not operate to waive any other provision set
12 forth herein. No waiver, amendment, or modification of this Order shall be valid or binding to any
13 extent unless it is in writing and signed by all of the parties affected by it.

14 9. Headings and Governing Law.

15 The headings to the paragraphs of this Order are inserted for convenience only and will not
16 be deemed a part hereof or affect the construction or interpretation of the provisions hereof. This
17 Order shall be construed and enforced in accordance with and governed by California law.

18 10. Full Integration.

19 Each party represents, warrants, and agrees that in executing this Order it has relied solely
20 on the statements set forth herein and the advice of its own counsel. Each of the parties further
21 represents, warrants, and agrees that in executing this Order it has placed no reliance on any
22 statement, representation, or promise of any other party, or any other person or entity not expressly
23 set forth herein, or upon the failure of any party or any other person or entity to make any statement,
24 representation or disclosure of anything whatsoever. The parties have included this clause to
25 preclude any claim that any party was in any way fraudulently induced to execute this Order, and
26 preclude the introduction of parol evidence to vary, interpret, supplement, or contradict the terms of
27 this Order.

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1 11. Voluntary Agreement.

2 Vintage and Stewart enter into this Order voluntarily and without coercion and acknowledge
3 that no promises, threats or assurances have been made by the Commissioner or any officer, or
4 agent thereof, about this Order.

5 12. Public Record.

6 Vintage and Stewart acknowledge that this Order is a public record.

7 13. Authority to Execute.

8 Each signatory hereto covenants that he or she possesses all necessary capacity and authority
9 to sign and enter into this Order.

10 14. Effective Date. This Order shall not become effective until signed by all parties and
11 delivered by the Commissioner’s counsel by email to the attorney for Stewart and Vintage at the
12 email addresses afishman@jralp.com

13 Dated: 3/4/19

JAN LYNN OWEN
Commissioner of Business Oversight

16 By _____

MARY ANN SMITH
Deputy Commissioner
Enforcement Division

19 Dated: 3/1/19

DAVID WILLIAM STEWART as an individual
and on behalf of VINTAGE CAPITAL ADVISORS, LLC

22 By _____

DAVID WILLIAM STEWART

24 APPROVED AS TO FORM AND CONTENT:

25 _____
26 Alvin L. Fishman
27 JRA Law Partners, LLP.
28 Counsel for Vintage Capital Advisors, LLC and David William Stewart