

1 MARY ANN SMITH  
Deputy Commissioner  
2 SEAN ROONEY  
Assistant Chief Counsel  
3 ALEX M. CALERO (State Bar No. 238389)  
Senior Counsel  
4 Department of Business Oversight  
5 1350 Front Street, Room 2034  
6 San Diego, CA 92101  
Telephone: (619) 525-4044  
7 Facsimile: (619) 525-4045

8 Attorneys for the Complainant

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

12 In the Matter of:

IA LICENSE NO.: 133716

13 THE COMMISSIONER OF BUSINESS  
14 OVERSIGHT,

ACCUSATION TO: (1) REVOKE THE  
INVESTMENT ADVISER CERTIFICATE OF  
RESPONDENT; (2) BAR RESPONDENT  
FROM THE INVESTMENT INDUSTRY;  
AND (3) CLAIM FOR ANCILLARY RELIEF  
AND RECOVERY OF COSTS

15 Complainant,

16 v.

17 ROBERT ALVIN DAVIS, doing business as  
18 CONTINENTAL INVESTMENT  
19 MANAGEMENT COMPANY, an individual,

(CORPORATIONS CODE §§ 25232.1; 25232;  
and 25254)

20 Respondent.

21  
22 Manuel P. Alvarez, Commissioner of Business Oversight (Commissioner) of the Department  
23 of Business Oversight (DBO), acting to protect the public, alleges and charges as follows:

24 **I.**

25 **Statement of Facts**

26 **A. Failure to cooperate with a routine regulatory examination**

27 At all relevant times, Robert Alvin Davis, doing business as Continental Investment  
28 Management Company, (Davis) holds a valid and unrevoked investment adviser certificate issued by  
the Commissioner on October 25, 1978, pursuant to Corporations Code section 25230. At all

1 relevant times, Davis maintains a place of business at 20075 Live Oak Road, Red Bluff, California,  
2 96080.

3 On or about October 3, 2017, the Commissioner's staff contacted Davis by telephone, at  
4 Davis' designated telephone number on file with the Investment Adviser Registration Depository  
5 (IARD), to schedule a routine regulatory examination of Davis' investment adviser business. The  
6 Commissioner's staff and Davis agreed that the examination would commence on October 11, 2017.

7 On or about October 11, 2017, the Commissioner's staff conducted a routine regulatory  
8 examination of Davis' investment adviser business. The examination identified several deficiencies  
9 in the conduct of Davis' investment adviser business, including:

10 1. Failure to maintain books and records, such as certain financial records, limited  
11 powers of attorney for clients, advisory agreements signed by clients, and correspondence showing  
12 client approval of securities purchases and sales;

13 2. Failure to file annual updating amendments to a disclosure report (Form ADV) with  
14 IARD for the years 2012, 2013, 2014, 2015, 2016, 2017, and 2018. Davis reports to IARD that his  
15 fiscal year ends in December; and

16 3. Charging two clients excessive fees in the total amount of \$2,084.62.

17 On or about November 30, 2017, the Commissioner sent Davis a letter summarizing these  
18 deficiencies and requested a response from Davis by December 23, 2017. The November 30, 2017  
19 letter was sent to Davis by U.S. mail, to Davis' designated address on file with IARD.

20 On or about January 3, 2018, the Commissioner's staff contacted Davis by telephone, at  
21 Davis' designated telephone number on file with IARD, to inquire why Davis failed to timely  
22 respond to the November 30, 2017 letter. Davis told the Commissioner's staff that he never received  
23 the November 30, 2017 letter.

24 During this telephone call, Davis informed the Commissioner's staff that he had no intention  
25 of renewing his investment adviser certificate. The Commissioner's staff told Davis that in order to  
26 surrender his investment adviser certificate, Davis must file the appropriate withdrawal form (ADV-  
27 W) with IARD and that before the withdrawal would be accepted, Davis must respond to the  
28 deficiencies identified in the examination. Davis told the Commissioner's staff that he would not file

1 ADV-W and that “*you can take me to jail.*”

2 Also, on or about, January 3, 2018, the Commissioner’s staff re-sent the November 30, 2017  
3 letter to Davis by email, to Davis’ designated email on file with IARD.

4 On or about January 4, 2018, the Commissioner’s staff re-sent the November 30, 2017 letter  
5 to Davis by U.S. mail return receipt requested, to Davis’ designated address on file with IARD. U.S.  
6 Postal Service tracking shows that delivery of that letter was refused.

7 On or about March 12, 2018, the Commissioner’s staff again contacted Davis by telephone.  
8 Davis again stated that he had no intention of renewing his investment adviser certificate. The  
9 Commissioner’s staff reminded Davis that he must file the ADV-W and respond to the deficiencies  
10 identified in the examination. Davis expressed he had no interest in complying with the  
11 Commissioner’s staff’s request.

12 On or about July 13, 2018, the Commissioner’s staff sent another letter to Davis by U.S. mail  
13 return receipt requested, to Davis’ designated address on file with IARD. The July 13, 2018 letter  
14 details the efforts of the Commissioner’s staff to contact Davis and instructed Davis to respond to  
15 deficiencies identified in the examination. The July 13, 2018 letter advised Davis that failure to  
16 comply may result in disciplinary action against him, including revocation of his investment adviser  
17 certificate, barring Davis from the investment industry, and monetary penalties. U.S. Postal Service  
18 tracking shows that delivery of that letter was refused.

19 To date, Davis has not responded to the Commissioner’s requests or the deficiencies  
20 identified in the examination.

21 On or about November 27, 2017, the Commissioner sent an email to Davis at the designated  
22 email address on file with IARD, advising Davis of the December 18, 2017 deadline to pay his 2018  
23 annual renewal fee. The Commissioner informed Davis that failure to pay the 2018 annual renewal  
24 fee will result in revocation of Davis’ investment adviser certificate. Davis failed to pay his 2018  
25 annual renewal fee by the December 18, 2017 deadline.

26 On or about January 3, 2018, the Commissioner sent an email to Davis at the designated  
27 email address on file with IARD, advising Davis that he failed to pay his 2018 annual renewal fee.  
28 The Commissioner informed Davis that failure to pay the 2018 annual renewal fee within 10 days

1 from the date of the email will result in revocation of Davis' investment adviser certificate.

2 Similarly, On or about November 26, 2018, the Commissioner sent an email to Davis, at the  
3 designated email address on file with IARD, advising Davis of the December 17, 2018 deadline to  
4 pay his 2019 annual renewal fee. This email informed Davis that failure to pay the 2019 annual  
5 renewal fee will result in revocation of Davis' investment adviser certificate. Davis failed to pay his  
6 2019 annual renewal fee by the December 17, 2018 deadline.

7 To date, Davis has not paid the 2018 and 2019 annual renewal fees.

## 8 II.

### 9 Law

10 Every investment adviser licensed by the Commissioner is required to maintain certain books  
11 and records and file reports as the Commissioner and regulation requires. (Corp. Code § 25241,  
12 subd. (a).) Further an investment adviser's books and records are subject at any time to examination  
13 by the Commissioner, as the Commissioner deems necessary or appropriate in the public interest or  
14 for the protection of investors. (Corp. Code § 25241, subd. (c).)

15 Among other books and records, the Commissioner's regulations require an investment  
16 adviser to maintain the following: financial records, such as general ledgers (Cal. Code Regs., tit. 10,  
17 § 260.241.3, subd. (a)(1) and (a)(2); limited powers of attorney for clients (Cal. Code Regs., tit. 10, §  
18 260.241.3, subd. (a)(9); advisory agreements signed by clients (Cal. Code Regs., tit. 10, § 260.241.3,  
19 subd. (a)(10)); and correspondence showing client approval of securities purchases and sales (Cal.  
20 Code Regs., tit. 10, § 260.241.3, subd. (a)(7)).

21 Every investment adviser licensed by the Commissioner is required to file an annual updating  
22 amendment to Form ADV with IARD within ninety days of the end of the investment adviser's  
23 fiscal year. (Corp. Code § 25241, subd. (a); and Cal. Code Regs., tit. 10, § 260.241.4, subd. (e).)

24 An investment adviser licensed by the Commissioner is prohibited from engaging in  
25 activities in contradiction of the regulations prescribed by the Commissioner to promote fair,  
26 equitable and ethical principles. (Corp. Code § 25238.) California Code of Regulations, Title 10,  
27 section 260.238, subdivision (j), states that charging a client excessive advisory fees is not a fair,  
28 equitable or ethical activity. (Cal. Code Regs., tit. 10, § 260.238, subd. (j).)

1 Corporations Code section 25608 requires every investment adviser licensed by the  
2 Commissioner to pay an annual renewal fee.

3 Pursuant to Corporations Code section 25232, the Commissioner may, after notice and  
4 opportunity for hearing, revoke the certificate of an investment adviser, if the Commissioner finds  
5 that the revocation is in the public interest and that the investment adviser has “willfully violated any  
6 provision of . . . Title 4 (commencing with Section 25000) . . . or regulation under any of those  
7 statutes.” (Corp. Code § 25232, subd. (e); see also subd. (h).)

8 Further, under Corporations Code section 25232.1, the Commissioner may, after notice and  
9 opportunity for hearing, “bar from any position of employment, management or control any  
10 investment adviser, broker-dealer or commodity adviser, any officer, director, partner, employee of,  
11 or person performing similar functions for, an investment adviser, or any other person,” if the  
12 Commissioner finds the bar is in the public interest” and that the person has committed any act  
13 enumerated in subdivision (e) of section 25232. (Corp. Code § 25232.1.)

14 Lastly, under Corporations Code section 25254, if the Commissioner determines it is in the  
15 public interest, the Commissioner may request ancillary relief, including disgorgement on behalf of  
16 injured persons. (Corp. Code § 25254, subd. (a).) The Commissioner is entitled to recover costs,  
17 including an amount representing reasonable attorney’s fees and investigative expenses. (Corp. Code  
18 § 25254, subd. (b).)

19 **III.**

20 **Prayer for Relief**

21 The Commissioner finds, by reason of the foregoing, Robert Alvin Davis, doing business as  
22 Continental Investment Management Company, has violated:

- 23 1. Corporations Code section 25241, subdivision (c), by failing to allow the  
24 Commissioner to exam the books and records of the investment advisory business;
- 25 2. Corporations Code section 25241, subdivision (a), and California Code of  
26 Regulations, Title 10, section 260.241.3, subdivision (a)(1), by failing to maintain financial records,  
27 such as general ledgers;
- 28 3. Corporations Code section 25241, subdivision (a), and California Code of

1 Regulations, Title 10, section 260.241.3, subdivision (a)(9), by failing to maintain limited powers of  
2 attorney for clients;

3 4. Corporations Code section 25241, subdivision (a), and California Code of  
4 Regulations, Title 10, section 260.241.3, subdivision (a)(10), by failing to maintain advisory  
5 agreements signed by clients;

6 5. Corporations Code section 25241, subdivision (a), and California Code of  
7 Regulations, Title 10, section 260.241.3, subdivision (a)(7), by failing to maintain correspondence  
8 showing client approval of securities purchases and sales;

9 6. Corporations Code section 25241, subdivision (a), and California Code of  
10 Regulations, Title 10, section 260.241.1, subdivision (e), by failing to file annual updating  
11 amendments to Form ADV with IARD within ninety days of the end of the investment adviser's  
12 fiscal year for 2012, 2013, 2014, 2015, and 2016, 17, and 18;

13 7. Corporations Code section 25238 and California Code of Regulations, Title 10,  
14 section 260.238, subdivision (j), by charging two clients excessive fees in the total amount of  
15 \$2,084.62; and

16 8. Corporations Code section 25608 by failing to pay the annual renewal fee for 2018  
17 and 2019.

18 Based on the foregoing, grounds exist to order: (1) the revocation of the investment adviser  
19 certificate of Robert Alvin Davis, doing business as Continental Investment Management Company;  
20 (2) the bar of Robert Alvin Davis, doing business as Continental Investment Management Company,  
21 from the investment industry; (3) Robert Alvin Davis, doing business as Continental Investment  
22 Management Company, to disgorge \$2,084.62 in excessive fees charged to two clients; and (4)  
23 Robert Alvin Davis, doing business as Continental Investment Management Company, to pay costs,  
24 including an amount representing reasonable attorney's fees and investigative expenses, in an  
25 amount of at least \$870.00, or according to proof.

26 WHEREFORE, IT IS PRAYED that:

27 1. The investment adviser certificate of Robert Alvin Davis, doing business as  
28 Continental Investment Management Company, be revoked;

