

1 WILLIAM P. WOOD
California Corporations Commissioner
2 VIRGINIA J. DUNLAP (CA BAR NO, 142221)
Deputy Commissioner
3 ALAN S. WEINGER (CA BAR NO. 86717)
Supervising Counsel
4 JOAN E. KERST (CA BAR NO. 123351)
Senior Corporations Counsel
5 DEPARTMENT OF CORPORATIONS
71 Stevenson Street, Suite 2100
6 San Francisco, California 94105
Telephone: (415) 972-8547
7

8 Attorneys for Complainant

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

12 In the Matter of)
13 THE CALIFORNIA CORPORATIONS) FILE NO. 925-1926
14 COMMISSIONER,) FINAL ORDER TO DISCONTINUE
15 Complainant,) VIOLATIONS
16 v.) AND
17 THE SOCIAL EQUITY GROUP, INC.,) ORDER LEVYING ADMINSTRATIVE
18 Respondent.) PENALTIES PURSUANT TO
CORPORATIONS CODE SECTION 25252
19

20 TO: The Social Equity Group, Inc.
21 Duncan Meaney, President
22 2550 9th Street, Suite 204A
Berkeley, California 94710
23
24
25
26
27
28

1 WILLIAM P. WOOD, THE CALIFORNIA CORPORATIONS COMMISSIONER
2 ("COMMISSIONER") OF THE DEPARTMENT OF CORPORATIONS ("DEPARTMENT")
3 FINDS THAT:

4 1. The Corporate Securities Law of 1968 (Corp. Code, § 25000 et seq.), and the
5 California Code of Regulations, title 10, (§ 260.000 et seq.), contain provisions that govern
6 persons licensed to operate in the securities industry. To ensure the protection of the public, the
7 Commissioner requires compliance by licensees with the Corporate Securities Law and
8 regulations. Licensees are required to keep accurate books and records, to file annual reports, to
9 correct deficiencies and to provide accurate information to the Commissioner in a timely manner.

10 2. On August 28, 1992, Respondent, The Social Equity Group, Inc., ("Respondent"),
11 a California corporation, first sought an investment adviser certificate from the Commissioner by
12 filing its application on a Form ADV (Department File No. 925-1926). On January 1, 1993, the
13 Commissioner issued an investment adviser certificate to The Social Equity Group, Inc., based
14 upon representations made to the Commissioner in its application on the Form ADV.

15 3. During relevant times, The Social Equity Group, Inc.'s office was located at 2550
16 9th Street, Suite 204A, Berkeley, California 94710, and Duncan Meaney was its major
17 shareholder, president, chief executive officer, chief financial officer and director. Duncan
18 Meaney and The Social Equity Group, Inc., managed their investment advisory clients'
19 investment portfolios for a fee, had discretionary authority to purchase and sell securities directly
20 for clients and possessed a power of attorney from them.

21 4. On July 23, 1997, Duncan Meaney filed with the Department a Securities and
22 Exchange Commission ("SEC") Form ADV T in which he stated that he had assets of \$25
23 million under management and was exempt from California regulation. Under federal law, an
24 investment adviser that is regulated or required to be regulated as an investment adviser in the
25 state in which it maintains its principal office and place of business is prohibited from registering
26 with the SEC unless the adviser (i) has assets under management of not less than \$25 million, or
27 (ii) is an adviser to an investment company registered under the Investment Company Act of
28 1940. (15 U.S.C. § 80 (b)-(3)(A)(a)). The Social Equity Group, Inc.'s investment adviser

1 certificate (Department File No. 925-1926) was surrendered with an effective date of September
2 26, 1997, as a result of Respondent's claim of its eligibility for federal registration.

3 5. The Social Equity Group, Inc., (SEC File Number 801-41893), did not meet the
4 criteria for SEC registration; it was ineligible to be registered by the SEC, lacked sufficient assets
5 under management and was so notified by the SEC. On January 28, 1998, Duncan Meaney filed
6 the SEC Form ADV W to withdraw The Social Equity Group, Inc.'s SEC registration and at the
7 same time requested the Department reinstate The Social Equity Group Inc.'s investment adviser
8 certificate, which it had previously surrendered. On February 11, 1998, the Commissioner
9 reissued the certificate to Respondent (Department File No. 925-1926).

10 6. The Department conducted regulatory examinations of The Social Equity Group,
11 Inc.'s investment adviser business, which revealed, among other violations, that Respondent
12 failed to follow record keeping and reporting requirements. Respondent repeatedly failed to (1)
13 file annual reports, (2) maintain a general ledger, and (3) compute net capital and aggregate
14 indebtedness on a monthly basis. These failures prevented the Department from determining, as
15 part of its regulatory examination, whether The Social Equity Group, Inc., fulfilled the legal
16 requirements of the Corporate Securities Law and its regulations.

17 7. Corporations Code section 25241 provides that investment advisers are required
18 to maintain books and records for examination by the Commissioner and, in part, states:

19 Every investment adviser licensed under Section 25230 shall make and
20 keep such accounts, correspondence, memoranda, papers, books, and
21 other records and shall file such financial and other reports as
22 the commissioner by rule requires subject to the limitations . . . of
23 Section 222 of the Investment Advisers Act of 1940 with respect to
24 investment advisers. All records so required shall be preserved for the
25 time specified in the rule. All records referred to in this section are
26 subject at any time and from time to time to such reasonable periodic,
27 special, or other examinations by the commissioner, within or without
28 this state, as the commissioner deems necessary or appropriate in the
public interest or for the protection of investors.

///

///

1 8. Corporations Code section 25241, augmented by California Code of Regulations,
 2 title 10, section 260.241.3, identifies the particular books and records that investment advisers
 3 are required to make and to keep current and accurate. Subdivisions (a)(1), (a)(2), and (a)(4) of
 4 the California Code of Regulations, title 10, section 260.241.3, state:

5 (a) Every licensed investment adviser shall make and keep true, accurate and
 6 current the following books and records relating to such person's
 investment advisory business:

- 7 (1) A journal or journals, including cash receipts and
 8 disbursements records, and any other records of original entry
 forming the basis of entries in any ledger.
- 9 (2) General and auxiliary ledgers (or other comparable records)
 10 reflecting asset, liability, reserve, capital, income and expense
 11 accounts . . .
- 12 (4) All check books, bank statements, cancelled checks and
 13 cash reconciliations of the investment adviser . . .

14 9. Corporations Code section 25237, authorizes the Commissioner to prescribe rules
 15 for investment advisers who have custody of the clients' securities or funds or who have any
 16 power of attorney from their clients to execute transactions. The Commissioner has done so by
 17 specifying, among other requirements, the minimum capital requirements such investment
 18 adviser must maintain. During relevant times herein, subdivision (a)(2) of the California Code of
 19 Regulations, title 10, section 260.237.1, specified the monetary amount of net capital an
 20 investment adviser must maintain and states, in part, that:

- 21 (a) No investment adviser who has any power of attorney from any
 investment advisory client to execute transactions . . .
- 22 (2) If the investment adviser has any power of attorney from
 23 any investment advisory client to execute transactions and does
 24 not have regular or periodic custody or possession of any of its
 investment advisory clients' securities or funds, except the
 25 receipt of prepaid subscriptions for periodic publications, or
 other investment advisory services, it shall at all times have
 26 and maintain tangible net capital of not less than \$5,000.00.

27 10. To verify compliance with the above-described capital requirements the
 28 Commissioner has imposed a specific bookkeeping obligation on investment advisers to

1 maintain records to prove they possess the minimum capital. During relevant times, subdivision
2 (j) of California Code of Regulations, title 10, section 260.241.3, stated:

3 (j) Any investment adviser who is subject to the minimum capital
4 requirements of Section 260.237.1 shall, in addition to the records
5 otherwise required under this section, maintain a record of the proof of
6 money balances of all ledger accounts in the form of trial balances and
7 a record of the computations of net capitals and aggregate indebtedness
8 pursuant to Section 260.237.1 of these rules (as of the trial balance
9 date). The trial balances and computations shall be prepared currently
10 at least once a month.

11 11. The Social Equity Group, Inc., subject to the capital requirements under California
12 Code of Regulations, title 10, section 260.237.1, was also required to file annual financial reports.
13 During relevant times, California Code of Regulations, title 10, section 260.241.2, set forth the
14 specific annual financial report required by investment advisers.

15 12. Section 260.241.2, subdivision (a) provides, in relevant part, as follows:

16 (a) General Rule. Subject to the provisions of subsection (c) of this
17 section, every . . . licensed investment adviser subject to the
18 provisions of section 260.237.1 or 260.237.2, as applicable, of these
19 rules, shall file an annual financial report containing the information
20 required by a form or forms to be supplied or approved by the
21 Commissioner. . .

22 13. The regulatory examinations of Respondent's business revealed violations of
23 Corporations Code section 25241, and corresponding regulations as follows. Examiners found
24 The Social Equity Group, Inc., violated California Code of Regulations, title 10, section
25 260.241.2(a), by failing to timely file annual reports for the fiscal years of 1995, 1996, 1997,
26 1998, 1999, 2000, 2001 and 2002. Examiners found The Social Equity Group, Inc., violated
27 subdivisions (1), (2) and (4) of California Code of Regulations, title 10, section 260.241.3(a),
28 respectively, by not maintaining a journal, ledger and cash reconciliations. Although The Social
Equity Group, Inc., did provide a spreadsheet of income and expenses by month, this was
inadequate to suffice as a journal and ledger, lacking the generally accepted accounting
principles of a double entry system for recording financial transactions. Respondent did not
reconcile the brokerage statements to the cash balance maintained in the cash ledger.

1 Examiners determined that The Social Equity Group, Inc., violated California Code of
2 Regulations, title 10, section 260.241.3(j), by failing to prepare trial balances and compute net
3 capital and aggregate indebtedness on a monthly basis to meet and prove compliance with the
4 capital requirements of California Code of Regulations, title 10, section 260.237.1, as required,
5 since Respondent had power of attorney and discretion to trade securities within customers'
6 accounts. As a result of The Social Equity Group, Inc.'s violations of California Code of
7 Regulations, title 10, section 260.241.3(j), the Department was unable to determine if The Social
8 Equity Group, Inc., was in compliance with the net capital requirements under California Code
9 of Regulations, title 10, section 260.237.1.

10 14. On September 9, 1996, the Department sent Respondent a regulatory letter
11 providing written notice and instructing them to correct various violations discovered during the
12 regulatory examination, which included, inter alia, violations of California Code of Regulations,
13 title 10, section 260.241.2(a), (reports by investment advisers); subdivision (1) of California
14 Code of Regulations, title 10, section 260.241.3(a), (books and records to be maintained by
15 investment advisers); and, California Code of Regulations, title 10, section 260.241.3(j),
16 (computation of net capital and aggregate indebtedness). The Department's letter specifically
17 notified The Social Equity Group, Inc., of California Code of Regulations, title 10, section
18 260.241.3, requirement to maintain books and records relating to the investment advisory
19 business including the following:

- 20 1. General and auxiliary ledgers; and
- 21 2. Computations of net capital and aggregate indebtedness.

22 15. On September 23, 1996, Duncan Meaney filed a written response to the
23 Commissioner's September 9, 1996, letter stating, "All changes outlined in your letter have been
24 made . . . [m]y accountant is working with me to set up a monthly general ledger conforming
25 [sic] the codes capital and reporting requirements."

26 16. In March 2003 the Department conducted a regulatory examination of
27 Respondent, which revealed violations of Corporations Code section 25241, and California Code
28 of Regulations, title 10, section 260.241.2(a); violations of California Code of Regulations, title

1 10, section 260.241.3, subdivisions (a)(1), (a)(2), (a)(4), and (j). The examiner determined that
2 notwithstanding the fact that in 1996 the Department informed Duncan Meaney and The Social
3 Equity Group, Inc., about some of these violations, they failed to correct them. Respondent
4 continued to violate California Code of Regulations, title 10, section 260.241.2(a), by not filing
5 the annual reports as required for the years ending 1996, 1997, 1998, 1999, 2000, 2001 and 2002.
6 Respondent continued to violate California Code of Regulations, title 10, section 260.241.3,
7 subdivisions (a)(1), (a)(2), (a)(4), and (j), by not maintaining a journal, general ledger, cash
8 reconcilations and by not computing net capital and aggregate indebtedness as required.

9 17. In August 2003 after a regulatory examination, the Department wrote to
10 Respondent informing it that it had not complied with various legal requirements. On September
11 2, 2003, The Social Equity Group, Inc., filed a response to the Commissioner and enclosed what
12 purports to be an SEC examiner checklist allegedly used by the SEC to examine The Social
13 Equity Group, Inc. The SEC examiner checklist is not what The Social Equity Group, Inc.,
14 claimed it to be and was not used as Respondent described. Duncan Meaney on behalf of The
15 Social Equity Group, Inc., wrote that:

16 Then the SEC examiner reviewed my office in 1997. I enclose the
17 financial checklist of items she reviewed. She seemed to be
18 satisfied and no comments were made about it.

19 In fact, the SEC examiner informed Duncan Meaney that The Social Equity Group, Inc., had a
20 number of violations and also informed Duncan Meaney that these violations and other
21 violations would be a violation of the same and similar rules that apply in other states and that
22 The Social Equity Group, Inc., was ineligible to be registered with the SEC. To the contrary,
23 Duncan Meaney falsely stated to the Commissioner that the SEC examiner used a “checklist”
24 that is not and never has been an SEC document. Duncan Meaney also falsely stated to the
25 Commissioner that the SEC examiner seemed satisfied and no comments were made when she
26 reviewed the office of The Social Equity Group, Inc.

27 ///
28 ///

1 18. Corporations Code section 25249, authorizes the Commissioner to issue an order
2 directing any investment adviser to discontinue any violation of the Corporations Code and any
3 corresponding rules stating, in relevant part:

4 If, after examination or investigation, the commissioner has reasonable
5 grounds to believe that any . . . investment adviser has violated any law
6 or rule binding upon it, the commissioner shall, by written order
7 addressed to the . . . investment adviser, direct the discontinuance of the
8 violation. The order shall be effective immediately, but shall not
9 become final except in accordance with the provisions of Section 25251.

10 19. The procedure for issuance of orders pursuant to Corporations Code section
11 25249, is set forth in Corporations Code section 25251, which provides:

12 (a) No order issued pursuant to Section 25249 or 25250 may become
13 final except after notice to the affected broker-dealer or investment
14 adviser of the commissioner's intention to make the order final and of
15 the reasons for the finding.

16 The commissioner shall also notify the broker-dealer or investment
17 adviser that upon receiving a request the matter shall be set for
18 hearing to commence within 15 business days after receipt of the
19 request. The broker-dealer or investment adviser may consent to
20 have the hearing commence at a later date. If no hearing is requested
21 within 30 days after the mailing or service of the required notice, and
22 none is ordered by the commissioner, the order may become final
23 without a hearing and the broker-dealer or investment adviser shall
24 immediately discontinue the practices named in the order. If a
25 hearing is requested or ordered, it shall be held in accordance with the
26 provisions of the Administrative Procedure Act (Chapter 5
27 (commencing with Section 11500) of Part 1 of Division 3 of 2 of the
28 Government Code), and the commissioner shall have all of the
powers granted under that act. If, upon the conclusion of the hearing,
it appears to the commissioner that the broker-dealer or investment
adviser is conducting business in an unsafe or injurious manner or is
violating any law of this state or any rule binding upon it, the
commissioner shall make the order of discontinuance final and the
broker-dealer or investment adviser shall immediately discontinue the
practices named in the order.

(b) The broker-dealer or investment adviser may within 10 days after
an order is made final commence an action to restrain enforcement of
the order. If the enforcement of the order is not enjoined within 10
days by the court in which the action is brought, the broker-dealer or
investment adviser shall comply with the order.

1 20. The Social Equity Group, Inc., during relevant times, violated the Corporate
2 Securities Law and regulations thereunder, which justifies the issuance of an Order to
3 Discontinue Violations. The Social Equity Group, Inc., having applied for and secured an
4 investment adviser certificate, is obligated to have knowledge of and comply with the provisions
5 of the Corporations Code and the regulations thereunder to maintain its investment adviser
6 certificate.

7 21. By reason of the foregoing, Respondent violated the following provisions:

- 8 a. Corporations Code section 25241, by failing to maintain books and records;
- 9 b. California Code of Regulations, title 10, section 260.241.2(a),
10 by failing to file annual reports;
- 11 c. California Code of Regulations, title 10, section 260.241.3, subdivision (a)(1),
12 by failing to maintain journals;
- 13 d. California Code of Regulations, title 10, section 260.241.3, subdivision (a)(2),
14 by failing to maintain ledgers;
- 15 e. California Code of Regulations, title 10, section 260.241.3, subdivision (a)(4),
16 by failing to maintain cash reconciliations; and,
- 17 f. California Code of Regulations, title 10, section 260.241.3, subdivision (j),
18 by failing to prepare monthly trial balances and monthly computations of
19 net capital and aggregate indebtedness;

20 22. Therefore, pursuant to Corporations Code section 25249, the Commissioner has
21 issued an Order directing Respondent to discontinue violating Corporations Code section 25241;
22 California Code of Regulations, title 10, section 260.241.2(a); subdivisions (1), (2), and (4) of
23 California Code of Regulations, title 10, section 260.241.3(a); and, California Code of
24 Regulations, title 10, section 260.241.3(j).

25 23. Further, the above-described violations of the Corporate Securities Law and
26 regulations thereunder by The Social Equity Group, Inc., justify the issuance of an Order
27 Levying Administrative Penalties. The Social Equity Group, Inc., having applied for and
28 secured an investment adviser certificate is obligated to have knowledge of and comply with the
provisions of the Corporate Securities Law and regulations. Duncan Meaney, The Social Equity

1 Group, Inc.'s president is a licensed securities professional who has been operating in the
2 securities industry for many years, and is also obligated to have knowledge of and comply with
3 provisions of the Corporate Securities Law and regulations.

4 24. Corporations Code section 25252 authorizes the Commissioner to issue an Order
5 Levying Administrative Penalties against any investment adviser for willful violations of any
6 provisions of the Corporate Securities Law and any rules promulgated thereunder.

7 Corporations Code section 25252, provides, in relevant part:

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

10 (b) Any broker-dealer or investment adviser that willfully violates
11 any provision of this division to which it is subject, or that willfully
12 violates any rule or order adopted or issued pursuant to this division
13 and to which it is subject, is liable for administrative penalties of not
14 more than five thousand dollars (\$5,000) for the first violation, not
15 more than ten thousand dollars (\$10,000) for the second violation,
16 and not more than fifteen thousand dollars (\$15,000) for each
17 subsequent violation . . .

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

23 25. In summary by reason of the foregoing, The Social Equity Group, Inc., willfully
24 violated the following provisions:

- 25 a. California Code section 25241, by failing to maintain books and records;
- 26 b. California Code of Regulations, title 10, section 260.241.2(a),
27 by failing to file annual reports;
- 28 c. California Code of Regulations, title 10, section 260.241.3, subdivision
(a)(1), by failing to maintain journals;
- d. California Code of Regulations, title 10, section 260.241.3, subdivision
(a)(2), by failing to maintain ledgers;
- e. California Code of Regulations, title 10, section 260.241.3, subdivision
(a)(4), by failing to prepare and maintain cash reconciliations; and,

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

f. California Code of Regulations, title 10, section 260.241.3, subdivision (j), by failing to prepare monthly trial balances and monthly computations of net capital and aggregate indebtedness.

NOW THEREFORE, good cause showing, and pursuant to Corporations Code section 25251, the California Corporations Commissioner hereby makes final the Order to Discontinue Violations Pursuant to Corporations Code Section 25249 issued on October 19, 2004. Respondent shall discontinue violating Corporations Code section 25241; California Code of Regulations, title 10, section 260.241.2(a); and California Code of Regulations, title 10, section 260.241.3, subdivisions (a)(1), (a)(2), (a)(4), and (j).

NOW THEREFORE, good cause showing, and pursuant to Corporations Code section 25252, the California Corporations Commissioner finds that Respondent, has willfully violated Corporations Code section 25241; California Code of Regulations, title 10, section 260.241.2(a); and California Code of Regulations, title 10, section 260.241.3, subdivisions (a)(1), (a)(2), (a)(4), and (j). and hereby orders Respondent to pay the Commissioner administrative penalties in the amount of \$9,000.

Dated: November 19, 2004
Los Angeles, California

WILLIAM P. WOOD
California Corporations Commissioner

By: _____
ALAN S. WEINGER
Supervising Counsel
Enforcement and Legal Services