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California Corporations Commissioner  
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8  
9 BEFORE THE DEPARTMENT OF CORPORATIONS  
10 OF THE STATE OF CALIFORNIA  
11

12	In the Matter of	)	CASE NO.
13	THE CALIFORNIA CORPORATIONS	)	
14	COMMISSIONER,	)	ACCUSATION RE INTENT TO ISSUE
15	Complainant,	)	ORDER BARRING FARHANG OSHIDARY
16	v.	)	FROM ANY POSITION OF EMPLOYMENT,
17	FARHANG OSHIDARY	)	MANAGEMENT OR CONTROL OF ANY
18	Respondent.	)	BROKER DEALER OR INVESTMENT
19		)	ADVISER PURSUANT TO CORPORATIONS
20		)	CODE SECTION 25213;
21		)	

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23 Preston DuFauchard, the California Corporations Commissioner ("Commissioner") of the  
24 Department of Corporations ("Department") alleges and charges as follows:

25 **I. JURISDICTION AND VENUE**

26 1. The Commissioner is authorized to administer and enforce the provisions of the  
27 Corporate Securities Law of 1968 (Corp. Code, § 25000 et seq.) and the regulations promulgated  
28 thereunder (Cal. Code Regs., tit. 10, § 260.000 et seq.), pursuant to Corporations Code section

1 25600.

2 2. Farhang Oshidary (“Oshidary”) was a registered agent holding CRD #1545176 in the  
3 Central Records Depository. His last listed employment with a broker-dealer was with Citigroup  
4 Global Markets, Inc., known as Smith Barney, in its office in Menlo Park, County of San Mateo,  
5 California. Pursuant to Government Code section 11508, venue for administrative adjudication is  
6 proper in Oakland, California. Oshidary held a title of Vice President for Financial Investments for  
7 Smith Barney.

## 8 **II. STATEMENT OF FACTS**

9 3. During the time he was employed by Smith Barney, Oshidary maintained numerous  
10 regular clients and consulted with them regarding their investments, and effected the purchase and  
11 sale of securities for their accounts. During various times from 2000 through 2005, Oshidary  
12 recommended to various of his Smith Barney clients that they buy large amounts of shares of stock  
13 in a company called Blue Control Technologies, Inc. (“BCT”). This was a high tech start-up  
14 company attempting to develop, market and sell its patented methods for improved production of  
15 computer chips. It had no significant record of growth or profitability, had never paid dividends to  
16 stockholders, and was not publicly traded.

17 4. BCT was not a stock that had been approved by Smith Barney for its agents to  
18 recommend or sell to Smith Barney clients. In fact, as to at least one of his clients, Oshidary warned  
19 the client not to discuss the pending purchase with anyone at Smith Barney, because it would result  
20 in his being fired.

21 5. BCT has since ceased operations and has filed for bankruptcy protection. Oshidary has  
22 been sued by at least six of his former Smith Barney clients, who allege numerous breaches of  
23 fiduciary duty and misrepresentations by Oshidary. Oshidary was terminated by Smith Barney for  
24 these activities in 2006.

25 6. In recommending and effecting the purchases of BCT stock by his Smith Barney clients,  
26 Oshidary was acting as a broker dealer without having a license to do so, in violation of  
27 Corporations Code section 25210, since BCT was not an approved stock for sale by Smith Barney  
28 agents.

1           7. In recommending and effecting the purchases of stock in a start-up company with little  
2 history of stable growth or profitability and no public market, Oshidary was recommending a  
3 purchase that was not suitable for his clients, in violation of the Commissioner's rules, 10 CCR  
4 260.218.2. This was in turn a violation of Corporations Code section 25216(c), as set forth below.

5 **III. FIRST CAUSE FOR DISCIPLINE—VIOLATIONS OF CORPORATIONS CODE**  
6 **SECTION 25216, SUBDIVISION (c) and 10 CCR 260.218.2**

7           8. Corporations Code section 25216(c) provides as follows:

8                   (c) No broker-dealer or agent shall effect any transaction in, or  
9 induce or attempt to induce the purchase or sale of, any security in  
10 this state in contravention of such rules as the commissioner may  
11 prescribe as necessary or appropriate in the public interest or for  
12 the protection of investors to provide safeguards with respect to the  
13 financial responsibility of broker-dealers. Subject to the  
14 limitations of Section 15(h) of the Securities Exchange Act of 1934,  
15 those rules may require a minimum capital for broker-dealers or  
16 prescribe a ratio between net capital and aggregate indebtedness or  
17 both and a fidelity bond.

18           9. One of the rules so prescribed by the Commissioner is 10 CCR 260.218.2, which provides  
19 as follows:

20                   Any broker-dealer and any agent employed by such a broker-dealer  
21 who recommends to a customer the purchase, sale or exchange or any  
22 security shall have reasonable grounds to believe that the  
23 recommendation is not unsuitable for such customer on the basis of  
24 information furnished by such customer after reasonable inquiry  
25 concerning the customer's investment objectives, financial situation  
26 and needs, and any other information known by such broker-dealer or  
27 agent.

28           10. In recommending to his clients the purchase of BCT stock, Oshidary effected the  
purchase of securities that were not suitable for such customers. BCT was a start-up company with  
little history of growth or profitability, had never paid stock dividends, and was not publicly traded.  
Furthermore, the stock was not one of those approved by Oshidary's employer, Smith Barney.

1 11. Oshidary's recommendations of unsuitable and unapproved securities were willful  
 2 violations of a rule or regulation under Title 4 of the California Corporations Code. Therefore, cause  
 3 exists to discipline Respondent Oshidary, as more fully set forth herein.

4 **IV. SECOND CAUSE FOR DISCIPLINE--VIOLATIONS OF CORPORATIONS CODE**  
 5 **SECTION 25210**

6 12. Corporations Code section 25210(a) provides as follows:

7 Unless exempted under the provisions of Chapter 1 (commencing with Section  
 8 25200) of this part, no broker-dealer shall effect any transaction in, or induce or  
 9 attempt to induce the purchase or sale of, any security in this state unless the broker-  
 10 dealer has first applied for and secured from the commissioner a certificate, then in  
 11 effect, authorizing that person to act in that capacity.

12 13. Corporations Code section 25004(a) provides in pertinent part as follows:

13 (a) "Broker-dealer" means any person engaged in the business  
 14 of effecting transactions in securities in this state for the  
 15 account of others or for his own account. "Broker-dealer" also  
 16 includes a person engaged in the regular business of issuing or  
 17 guaranteeing options with regard to securities not of his own issue.  
 18 "Broker-dealer" does not include any of the following:

- 19 (1) Any other issuer.
- 20 (2) An agent, when an employee of a broker-dealer or issuer...

21 14. By recommending to his clients the purchase of securities that were not approved by  
 22 Smith Barney, Oshidary was acting outside the scope of his employment with Smith Barney. In so  
 23 doing, he was not acting as "an employee of a broker-dealer..." as defined by section 25004(a). He  
 24 was therefore required to have a certificate as a broker-dealer in his own right, and he did not have  
 25 one. He has therefore violated Corporations Code section 25210(a) on each and every occasion on  
 26 which he recommended BCT stock to his clients. Therefore, cause exists to discipline Respondent  
 27 Oshidary, as more fully set forth herein.

28 **V. CAUSE EXISTS TO BAR FARHANG OSHIDARY FROM ANY POSITION OF**  
**EMPLOYMENT, MANAGEMENT OR CONTROL OF ANY BROKER-DEALER OR**  
**INVESTMENT ADVISER**

15. Corporations Code section 25212, subdivision (e), provides in relevant part, as follows:

The commissioner may, after appropriate notice and opportunity for hearing, by  
 order censure, deny a certificate to, suspend for a period not exceeding 12 months

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or revoke the certificate of, any broker-dealer if the commissioner finds that the  
censure, denial, suspension, or revocation is in the public interest and that the broker-  
dealer, whether prior or subsequent to becoming a broker-dealer, or any partner,  
officer, director, or branch manager of the broker-dealer, whether prior or  
subsequent to becoming associated with the broker-dealer, or any person directly or  
indirectly controlling the broker-dealer, whether prior or subsequent to becoming  
such, or any agent employed by the broker-dealer while so employed has done any of  
the following:...

(e) Has willfully violated any provision of . . . or Title 4 (commencing with  
Section 25000)... or of any rule or regulation under any of those statutes....

16. However, there is clear statutory authority for more stringent discipline of agents in  
situations of this sort. Corporations Code section 25213 provides, in relevant part:

The commissioner may, after appropriate notice and opportunity for hearing, by order  
censure, or suspend for a period not exceeding 12 months, or deny or bar from any  
position of employment, management or control of any broker-dealer or investment  
adviser, any officer, director, partner, agent, employee of, or person performing  
similar functions for, a broker-dealer, or any other person, if the commissioner finds that the  
censure, suspension, denial or bar is in the public interest and that the person has  
committed any act or omission enumerated in subdivision...(e)...of Section  
25212....(Emphasis added.)

17. As previously set forth, Oshidary has violated 10 CCR 260.218.2, one of the  
commissioner’s rules established under the authority conveyed under Title 4; and he has violated  
sections 25210 and 25216, also a part of Title 4. Under section 25213, violations described in  
section 25212(e) are grounds on which to bar an agent of a broker-dealer. The violations committed  
by Oshidary were substantial and serious in nature. The California Corporations Commissioner  
finds that it is in the public interest to bar Respondent Farhang Oshidary from any position of  
employment, management or control of any broker-dealer or investment adviser, as further set forth  
in the Prayer for Relief, herein.

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**PRAYER FOR RELIEF**

18. **WHEREFORE**, good cause showing, the California Corporations Commissioner prays for an Order barring Respondent Farhang Oshidary from any position of employment, management or control of any broker-dealer or investment adviser.

Dated: October 14, 2010  
San Francisco, California

PRESTON DuFAUCHARD  
California Corporations Commissioner

By: \_\_\_\_\_  
DOUGLAS M. GOODING  
Senior Corporations Counsel  
Enforcement Division