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9 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION
10 OF THE STATE OF CALIFORNIA

11 In the Matter of:) CRD NOS.: 118291 and 2122275
12 THE COMMISSIONER OF FINANCIAL) CONSENT ORDER
13 PROTECTION AND INNOVATION,)
14 Complainant,)
15 v.)
16 BLACK HILL CAPITAL PARTNERS INC.;)
17 and SANGBUM KIM a.k.a. SAM KIM,)
18 Respondents.)

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20 This Consent Order is entered into between the Commissioner of Financial Protection and
21 Innovation (Commissioner) and Respondents Black Hill Capital Partners Inc. (Black Hill) and
22 Sangbum Kim a.k.a. Sam Kim (Kim) (collectively, Respondents) and is made with respect to the
23 following facts:

24 **I.**

25 **RECITALS**

26 A. The Commissioner has jurisdiction over the licensing and regulation of investment
27 advisers in California under the Corporate Securities Law of 1968 (Corp. Code, § 25000 et seq.)
28 (CSL). The Commissioner is authorized to administer the CSL and the rules and regulations

1 promulgated in California Code of Regulations, title 10 (CCR), section 260.000 et seq.

2 B. At all relevant times, Black Hill is a Delaware limited liability company organized on
3 or around February 4, 1998, with a principal place of business located at 2520 Sacramento Street,
4 San Francisco, California 94115.

5 C. At all relevant times, Black Hill is licensed as an investment adviser under the CSL
6 with Central Registration Depository (CRD) number 118291. The Financial Industry Regulatory
7 Authority maintains the CRD database, which contains information concerning all companies and
8 individuals working in the securities industry.

9 D. At all relevant times, Kim is the owner, Chief Executive Officer, Managing Member,
10 and investment adviser representative of Black Hill with CRD number 2122275. Kim is authorized
11 to enter into this Consent Order on behalf of Black Hill.

12 E. In or around September 2016, the Department commenced a regulatory examination
13 of Black Hill (Regulatory Exam), which disclosed the facts described below.

14 F. Beginning in or around August 2012 Respondents offered securities in the form of
15 limited partnership interests in a hedge fund called Black Hill Voyager Fund, L.P. (the Fund). Kim
16 was the sole shareholder of Black Hill, and Black Hill was the General Partner and Investment
17 Manager of the Fund.

18 G. Kim and Black Hill hired brokerage firms, including but not limited to Interactive
19 Brokers, LLC (Interactive Brokers), to hold and maintain the Fund's securities. Interactive Brokers
20 provided custodian services for Black Hill from in or around June 2015 through May 2017, when
21 Kim liquidated the Fund.

22 H. On or around April 29, 2013, Respondents offered and sold a limited partnership
23 interest in the Fund to a WA resident (Sole Limited Partner), for \$1,000,000.00. On or around
24 October 10, 2013, the Sole Limited Partner invested a second time in the amount of \$1,000,030.00,
25 for a total investment of \$2,000,030.00

26 I. As of on or around April 30, 2013, immediately prior to receiving the Sole Limited
27 Partner's investments, the Fund consisted of funds belonging to Kim's relatives, in the amount of
28 approximately \$666,149.00.

1 J. Between April 2013 through March 2017, when the Fund was liquidated, there were
2 no further capital contributions to the Fund other than the Sole Limited Partner's investment of
3 \$2,000,030.00. The Fund was a single pooled account consisting of Kim's relatives' funds and the
4 Sole Limited Partner's investment of \$2,000,030.00, with a starting value of approximately
5 \$666,149.00.

6 K. Kim had no ownership interest in the Fund, yet Kim was the sole authorized account
7 signer of the Fund's bank account as well as Black Hill's general bank account, both of which were
8 maintained at First Republic Bank. Kim also exercised direct and/or indirect control over the funds
9 held by the Fund's custodian, Interactive Brokers.

10 L. Respondents never engaged an independent certified public accountant to conduct an
11 unnoticed audit of the Fund, as required by the custody rules set forth in California Code of
12 Regulations, title 10 (10 CCR), section 260.237, subdivision (a), which provides in relevant part:

13 It is unlawful and deemed to be a fraudulent, deceptive, or manipulative
14 act, practice or course of business within the meaning of **Section 25235** of
15 the Code for an investment adviser licensed or required to be licensed, to
16 have custody of client funds or securities **unless . . . (6) Independent**
17 **Verification.** The client funds and securities of which the investment
18 adviser has custody are verified by actual examination **at least once**
19 **during each calendar year**, by an independent certified public
20 accountant, pursuant to a written agreement between the investment
21 adviser and the independent certified public accountant, at a time that is
22 chosen by the independent certified public accountant **without prior**
23 **notice or announcement** to the investment adviser and that is irregular
24 from year to year (Emphasis applied.)

25 M. Respondents also never provided audited financial statements to the Sole Limited
26 Partner and therefore failed to comply with the rules applying to limited partnerships subject to
27 annual audit set forth in 10 CCR section 260.237, subdivision (b).

28 N. From January 2014 through November 2014, Respondents withdrew monies from the
Fund, depleting all of Kim's relatives' equity, as reflected in Black Hill's December 2014 financial
statements showing that the Sole Limited Partner's capital percentage was approximately 103%, and
Kim's relatives' ending capital was negative approximately 3.6%.

1 O. From January 2015 through December 2015, Respondents continued to withdraw
2 monies from the Fund even though Kim's relatives account had a negative balance of approximately
3 \$345,408.27. Black Hill's December 2015 financial statements indicate that the Sole Limited
4 Partner's ending capital percentage in the Fund was approximately 100% and Kim's relatives
5 account capital percentage was 0.

6 P. Throughout the period from January 2016 through December 2016, Respondents'
7 practice of withdrawing monies from the Fund continued on a nearly monthly basis, until Kim's
8 relatives' account disclosed a negative balance of approximately \$554,670.21 in December 2016.

9 Q. During the period from April 30, 2013 through December 2016, Respondents made
10 no distributions to the Sole Limited Partner.

11 R. From at least December 2014 through February 2017, Respondents made
12 approximately 38 transfers from Fund's bank account to Black Hill's general partnership account
13 held at First Republic Bank, even though Kim's relatives had no remaining equity in the Fund as of
14 December 2014. Each of these 38 withdrawals from the Fund's bank account resulting in a growing
15 negative balance for Kim's relatives' equity and corresponding depletion of the Sole Limited
16 Partner's capital percentage. This constituted borrowing money or securities from a client, and is
17 prohibited by 10 CCR section 260.238, subdivision (f), which provides in relevant part:

18 The following activities do not promote "fair, equitable or ethical
19 principles," as that phrase is used in **Section 25238** of the Code: . . . (f)
20 **Borrowing money or securities** from a client unless the client is a broker-
21 dealer, an affiliate of the adviser, or a financial institution engaged in the
22 business of loaning funds or securities (Emphasis applied.)

23 S. In or around December 2016, the Sole Limited Partner requested to withdraw his
24 equity in the Fund. As of January 31, 2017, the Sole Limited Partner's equity was approximately
25 \$1,227,722.37, but the Fund's balance sheet evidenced a shortage of approximately \$440,656.63.

26 T. From in or around March 2017 through May 2017, Respondents received
27 approximately \$550,000.00 from Kim's relatives to pay back the Sole Limited Partner and liquidate
28 the Fund.

1 U. On or around April 6, 2017, Respondents transferred \$1,022,309.00 to the Sole
2 Limited Partner. On or around January 9, 2018, Respondents transferred the remaining \$205,413.00
3 to the Sole Limited Partner, for a total amount of \$1,227,722.00.

4 V. On or around December 7, 2020, while the Regulatory Exam was pending,
5 Respondents requested to surrender Black Hill’s investment adviser certificate by filing with the
6 Commissioner a Notice of Withdrawal from Registration as an Investment Adviser (Form ADV-W).

7 W. On or around December 11, 2020, the Commissioner issued an Order Imposing
8 Conditions on Surrender of Certificate as Investment Adviser (Order Imposing Conditions), which
9 postponed the effectiveness of surrender until all the conditions contained therein, including, but not
10 limited to, completion of the Regulatory Exam and investigation of Black Hill, were met.

11 X. The Commissioner finds that entering into this Consent Order is in the public interest
12 and consistent with the purposes fairly intended by the policies and provisions of the CSL.

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

15 **II.**

16 **TERMS AND CONDITIONS**

17 1. Purpose. This Consent Order resolves the issues before the Commissioner set forth in
18 Paragraphs A through X above in a manner that avoids the expense of a hearing and other possible
19 court proceedings, protects investors, is in the public interest, and is consistent with the purposes,
20 policies, and provisions of the CSL.

21 2. Final Desist and Refrain Order. Respondents hereby agree that pursuant to
22 Corporations Code section 25532, subdivision (d), they are ordered to desist and refrain from
23 violating Corporations Code sections 25235 and 25238 and 10 CCR sections 260.237, subdivision
24 (a) and 260.238, subdivision (f) (Order). Respondents further agree that the Order is a final order.

25 3. Penalty. Respondents shall pay a penalty in the amount of \$50,000.00 for the
26 violations set forth herein, payable in the form of a cashier’s check or Automated Clearing House
27 deposit to the Department of Financial Protection and Innovation and transmitted to the attention of
28 Accounting – Litigation, at the Department of Financial Protection and Innovation, 2101 Arena

1 Boulevard, Sacramento, California 95814-2306, with notice of the payment concurrently sent to
2 Sophia C. Kim via e-mail at: Sophia.Kim@dfpi.ca.gov, as follows:

- 3 a. By no later than October 22, 2021: \$20,000.00;
- 4 b. By no later than February 23, 2022: \$20,000.00;
- 5 c. By no later than June 23, 2022: \$10,000.00.

6 4. Revocation of Investment Adviser Certificate. Pursuant to Corporations Code section
7 25232, subdivision (e), Black Hill’s investment adviser certificate is hereby revoked.

8 5. Waiver of Hearing Rights. Respondents acknowledge that the Commissioner is
9 ready, willing, and able to proceed with the filing of an administrative enforcement action on the
10 charges contained in this Consent Order. Respondents hereby waive the right to any hearings, and to
11 any reconsiderations, appeal, or other right to review which may be afforded pursuant to the CSL,
12 the California Administrative Procedure Act, the California Code of Civil Procedure, or any other
13 provision of law. Respondents further expressly waive any requirement for the filing of an
14 Accusation pursuant to Government Code section 11415.60, subdivision (b). By waiving such
15 rights, Respondents effectively consent to this Consent Order and Order becoming final.

16 6. Failure to Comply with Consent Order. Respondents agree that if they fail to comply
17 with the terms of this Consent Order, the Commissioner may, in addition to all other available
18 remedies he may invoke under the CSL, deny any application and/or summarily suspend or revoke
19 any license granted by the Commissioner to Respondents until Respondents are in compliance.
20 Respondents waive any notice and hearing rights to contest such denial or summary suspension or
21 revocation which may be afforded under the CSL, the California Administrative Procedure Act, the
22 California Code of Civil Procedure, or any other provision of law in connection therewith.

23 7. Information Willfully Withheld or Misrepresented. This Consent Order may be
24 revoked and the Commissioner may pursue any and all remedies available under law against
25 Respondents if the Commissioner discovers that Respondents knowingly or willfully withheld or
26 misrepresented information used for and relied upon in this Consent Order.

27 8. Future Actions by Commissioner. If Respondents fail to comply with any terms of
28 the Consent Order or Order, the Commissioner may institute proceedings for any and all violations

1 otherwise resolved under this Consent Order. The Commissioner reserves the right to bring any
2 future actions against Respondents, or any of their partners, owners, officers, shareholders, directors,
3 employees or successors for any and all unknown violations of the CSL.

4 9. Assisting Other Agencies. Nothing in this Consent Order limits the Commissioner’s
5 ability to assist any other government agency (city, county, state, or federal) with any prosecution,
6 administrative, civil or criminal brought by that agency against Respondents or any other person
7 based upon any of the activities alleged in this matter or otherwise.

8 10. Headings. The headings to the paragraphs of this Consent Order are inserted for
9 convenience only and will not be deemed a part hereof or affect the construction or interpretation of
10 the provisions hereof.

11 11. Binding. This Consent Order is binding on all heirs, assigns, and/or successors in
12 interest.

13 12. Reliance. Each of the parties represents, warrants, and agrees that in executing this
14 Consent Order it has relied solely on the statements set forth herein and the advice of its own
15 counsel. Each of the parties further represents, warrants, and agrees that in executing this Consent
16 Order it has placed no reliance on any statement, representation, or promise of any other party, or
17 any other person or entity not expressly set forth herein, or upon the failure of any party or any other
18 person or entity to make any statement, representation or disclosure of anything whatsoever. The
19 parties have included this clause: (1) to preclude any claim that any party was in any way
20 fraudulently induced to execute this Consent Order; and (2) to preclude the introduction of parol
21 evidence to vary, interpret, supplement, or contradict the terms of this Consent Order.

22 13. No Presumption Against Drafting Party. Each party acknowledges that it has had the
23 opportunity to draft, review, and edit the language of this Consent Order. Accordingly, the parties
24 intend that no presumption for or against the drafting party will apply in construing any part of this
25 Consent Order. The parties waive the benefit of Civil Code section 1654 as amended or
26 corresponding provisions of any successor statute, which provide that in cases of uncertainty,
27 language of a contract should be interpreted most strongly against the party that caused the
28 uncertainty to exist.

1 14. Independent Legal Advice. Each of the parties represents, warrants, and agrees that it
2 has received independent advice from its attorney(s) and/or representatives with respect to the
3 advisability of executing this Consent Order.

4 15. Waiver, Amendments, and Modifications. No waiver, amendment, or modification of
5 this Consent Order will be valid or binding unless it is in writing and signed by each of the parties.
6 The waiver of any provision of this Consent Order will not be deemed a waiver of any other
7 provision. No waiver by either party of any breach of, or of compliance with, any condition or
8 provision of this Consent Order by the other party will be considered a waiver of any other condition
9 or provision or of the same condition or provision at another time.

10 16. Full Integration. This Consent Order is the final written expression and the complete
11 and exclusive statement of all the agreements, conditions, promises, representations, and covenants
12 between the parties with respect to the subject matter hereof, and supersedes all prior or
13 contemporaneous agreements, negotiations, representations, understandings, and discussions
14 between and among the parties, their respective representatives, and any other person or entity, with
15 respect to the subject matter covered hereby.

16 17. Governing Law. This Consent Order shall be construed and enforced in accordance
17 with and governed by California law.

18 18. Counterparts. This Consent Order may be executed in one or more separate
19 counterparts, each of which when so executed, shall be deemed an original. Such counterparts shall
20 together constitute a single document.

21 19. Effect Upon Future Proceedings. If Respondents apply for any license, permit or
22 qualification under the Commissioner’s current or future jurisdiction, or are the subject of any future
23 action by the Commissioner to enforce this Consent Order, then the subject matter hereof shall be
24 admitted for the purpose of such application(s) or enforcement proceeding(s).

25 20. Voluntary Agreement. Respondents enter into this Consent Order voluntarily and
26 without coercion and acknowledge that no promises, threats or assurances have been made by the
27 Commissioner or any officer, or agent thereof, about this Consent Order. The parties each represent
28

1 and acknowledge that he, she or it is executing this Consent Order completely voluntarily and
2 without any duress or undue influence of any kind from any source.

3 21. Notice. Any notice required under this Consent Order shall be provided to each party
4 at the following addresses:

5 To Respondents:

6 Sangbum Kim a.k.a. Sam Kim, 2520 Sacramento Street, San Francisco, California
7 94115; jgrand@tslg-law.com.

8 To the Commissioner:

9 Sophia C. Kim, Senior Counsel, Enforcement Division, Department of Financial
10 Protection and Innovation, 320 West 4th Street, Suite 750, Los Angeles, California
11 90013; Sophia.Kim@dfpi.ca.gov.

12 22. Signatures. A fax or electronic mail signature shall be deemed the same as an
13 original signature.

14 23. Public Record. Respondents hereby acknowledge that this Consent Order is and will
15 be a matter of public record.

16 24. Effective Date. This Consent Order shall become final and effective when signed by
17 all parties and delivered by the Commissioner’s counsel via e-mail to Respondents at jgrand@tslg-
18 law.com.

19 25. Authority to Sign. Each signatory hereto covenants that he/she possesses all
20 necessary capacity and authority to sign and enter into this Consent Order and undertake the
21 obligations set forth herein.

22 Dated: 9/28/21

CHRISTOPHER S. SHULTZ
Acting Commissioner of Financial Protection and Innovation

23
24 By _____
MARY ANN SMITH
25 Deputy Commissioner
26 Enforcement Division

27 Dated: 9/27/21

By _____
SANGBUM KIM, Individually and as
28 Chief Executive Officer on behalf of
Black Hill Capital Partners Inc.