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

11 In the Matter of:) CRD NOS.: 137495, 3113695
12)
13 THE COMMISSIONER OF FINANCIAL)
PROTECTION AND INNOVATION,)
14) CONSENT ORDER
Complainant,)
15)
16 v.)
17)
PMB ADVISORS, an entity, and PATRICK)
18)
MICHAEL BERESH, an individual,)
19)
20 Respondents.)
)

21 This Consent Order is entered into between the Commissioner of Financial Protection and
22 Innovation (Commissioner), and PMB Advisors and Patrick Michael Beresh (Respondents)
23 (collectively, the Parties) and is made with respect to the following facts:

24 **I.**

25 **Recitals**

26 A. The Commissioner is the head of the Department of Financial Protection and
27 Innovation (Department) and is responsible for the licensing and regulation of any person engaged in
28 the business of investment advising under the Corporate Securities Law of 1968 (CSL)

1 (Corporations Code section 25000 et seq.).

2 B. At all times, PMB Advisors was an investment adviser registered through the Central
3 Registration Depository (CRD) number 137495. The Financial Industry Regulatory Authority
4 (FINRA) maintains the CRD database, which contains information concerning all companies and
5 individuals working in the securities industry. PMB Advisors maintained a place of business at 101
6 Larkspur Landing Circle, Suite 200, Larkspur, California 94939-1746. On April 26, 2012, the
7 Commissioner issued an investment adviser certificate to PMB Advisors.

8 C. At all times, Patrick Michael Beresh (Beresh) was an investment adviser
9 representative, CRD number 3113695.

10 D. Beresh is the sole owner of PMB Advisors, and is authorized to enter into this
11 Consent Order on behalf of PMB Advisors.

12 E. On August 19, 2019, the Department commenced an examination of PMB
13 Advisors' books and records. PMB Advisors' trading activities from the period of April 1,
14 2019 to June 30, 2019 were examined (Examination).

15 F. The Examination revealed that the Respondents engaged in preferential
16 allocation of investment opportunities causing a conflict of interest with their fiduciary duty.
17 The preferential distribution of profits is an unsafe business practice, under Corporations
18 Code section 25250, and does not promote fair, equitable and ethical principles, in violation
19 of Corporations Code section 25238.

20 G. On May 30, 2019, block level trading activity on equity security, Soliton Inc.
21 (SOLY), showed preferential allocation of profits. Specifically, profits gained on that date
22 from block trades of SOLY were favorably distributed to a select group of client accounts
23 over other participants. The Respondents made two block purchases.

24 H. The first block purchase consisted of 3,000 shares of SOLY purchased at an
25 average cost of \$17.61 per share. Those shares were evenly distributed among six client
26 accounts (Favored Group).

27 I. Following the initial purchase, the Respondents proceeded to sell all 3,000
28 shares as SOLY began appreciating in price. During this period, shares of SOLY were sold at

1 an average price of \$20.56 per share, resulting in gross profits of \$8,850.00 that was
2 allocated to the Favored Group clients.

3 J. Three out of the six Favored Group clients receiving favorable allocations are
4 Beresh’s family members.

5 K. Favorable allocation of SOLY on May 30, 2019, resulted in the distribution of
6 \$1,475.00 in profits to each Favored Group client, including Beresh’s family accounts.

7 L. Subsequently, the Respondents made a second block purchase consisting of
8 15,000 shares of SOLY purchased at an average cost of \$22.95. These shares were then
9 allocated among 46 clients’ accounts (Second Group) and were held for the rest of the day,
10 except for 5,000 shares sold at an average price of \$24.25 for three client accounts.

11 M. Beresh’s decision to favorably distribute opportunities to family members
12 ahead of other clients caused a conflict of interest with his fiduciary duty as an investment
13 adviser representative. Among the specific obligations that flow from an adviser’s fiduciary
14 duty is a duty to act in the best interest of all clients. The favorable allocation of investment
15 opportunities to personal or family accounts is not in the best interest of other clients.

16 N. On December 4, 2019, the Department sent a regulatory examination report to
17 the Respondents, citing all the violations discovered during the Examination.

18 O. Effective March 10, 2020, PMB Advisors registered with the Securities
19 Exchange Commission (SEC). On June 25, 2020, PMB Advisors filed a Partial Form ADV-
20 W, also known as a Notice of Withdrawal from Registration as an Investment Adviser,
21 requesting termination from California to maintain registration solely with the SEC.

22 P. PMB Advisors’ Form ADV Part 2A in effect in February 2019 required PMB
23 Advisors to make a fair and equitable allocation of block trades over time among firm clients,
24 but did not specify if this allocation should be made before or after the block trades had
25 occurred. To avoid future risk of preferential allocation, the Respondents are representing
26 that they have implemented a policy to make such allocations before the trades occur,
27 whenever feasible.

28 ///

1 Q. Without admitting or denying the Commissioner’s findings as set forth in
2 paragraphs F – O, the Respondents desire to enter into this Consent Order which the
3 Commissioner finds is appropriate, in the public interest, and consistent with the purposes
4 fairly intended by the CSL.

5 R. Based upon the foregoing, the Commissioner finds that the Respondents’
6 practice of preferential allocation of funds is an unsafe business practice, under Corporations
7 Code section 25250, and does not promote fair, equitable and ethical principles, in violation
8 of Corporation Code section 25238. Consumers were harmed when they were not given the
9 opportunity to benefit from the profitable trades made by the Respondents.

10 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set
11 forth herein, the Parties agree as follows:

12 **II.**

13 **Terms and Conditions**

14 1. Purpose. This Consent Order resolves the issues before the Commissioner set forth
15 in paragraphs A through R, above, in a manner that avoids the expense of a hearing and other
16 possible court proceedings, protects consumers, is in the public interest, and is consistent with the
17 purposes and provisions of the CSL.

18 2. Final Desist and Refrain Order. Pursuant to Corporations Code section 25532,
19 subdivision (d), PMB Advisors and Patrick Michael Beresh are hereby ordered to desist and refrain
20 from the violations set forth herein, violating the CSL section 25238 (activities that do not promote
21 fair, equitable and ethical principles), and section 25250 (unsafe or injurious business practices).
22 PMB Advisors and Patrick Michael Beresh agree to comply with this Desist and Refrain Order and
23 stipulate this Desist and Refrain Order is hereby deemed final and effective from the effective date
24 of this Consent Order, as defined in paragraph 25 (Effective Date).

25 3. Penalty. Pursuant to section 25252, subdivision (b), PMB Advisors and Patrick
26 Michael Beresh, jointly and severally, are hereby ordered to pay a penalty in the amount of
27 \$10,000.00, no later than 15 days after the Effective Date of this Consent Order. The penalty
28 payment shall be made in the form of a cashier’s check or Automated Clearing House deposit

1 payable to the “Department of Financial Protection and Innovation” and transmitted to the attention
2 of “Accounting – Litigation” at Department of Financial Protection and Innovation, 2101 Arena
3 Boulevard, Sacramento, California 95834. Notice of the payment shall be concurrently sent to Affi
4 Eghbaldari, via e-mail at: affi.eghbaldari@dfpi.ca.gov.

5 4. Refunds. PMB Advisors and Patrick Michael Beresh hereby agree to refund
6 \$8,850.00 to the 46 client accounts that were excluded from receiving the profits from trades of
7 SOLY on May 30, 2019 (Refund Payments). PMB Advisors and Patrick Michael Beresh shall:

8 a. Credit the accounts of the current clients in the Second Group (44 out of 46
9 clients in the Second Group) in the amount of \$192.39, no later than 30 days after the Effective
10 Date of this Consent Order;

11 b. Send the former clients (2 out of 46 clients in the Second Group) a cashier’s
12 check in the amount of \$192.39, no later than 30 days after the Effective Date of this Consent
13 Order;

14 c. Send all 46 clients in the Second Group a letter explaining the reason for the
15 credit and refund, along with a copy of this Consent Order, no later than 30 days after the Effective
16 Date of this Consent Order;

17 d. Submit to the Commissioner satisfactory evidence of the credits and refunds:
18 (i) a roster of client names and addresses in electronic format; and (ii) satisfactory documentation
19 evidencing the Respondents issued the credits and refunds; and (iii) a copy of each transmittal letter
20 sent to the clients in the Second Group, no later than 45 days after the Effective Date of this
21 Consent Order; and

22 e. PMB Advisors and Patrick Michael Beresh shall be responsible for ensuring
23 that any outstanding Refund Payments owed to any client are escheated to the State of California
24 pursuant to the provisions of the California Unclaimed Property Law (Code of Civil Procedure
25 section 1500 et seq.).

26 5. Withdrawal from Registration in California. In consideration of the Respondents’
27 agreement to the issuance of the final desist and refrain order, payment of penalties and refunds,
28 and other relief as provided in this Consent Order, the Commissioner hereby agrees that he will

1 accept PMB Advisors' request to terminate its registration with the State of California after the
2 Respondents submit satisfactory proof of compliance with the penalty and refund provisions of this
3 Consent Order, pursuant to paragraphs 3 and 4. PMB Advisors and Patrick Michael Beresh shall
4 submit a copy of this Consent Order to the Securities and Exchange Commission, no later than 30
5 days after the Effective Date of this Consent Order.

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

15 7. Full and Final Settlement. The Parties hereby acknowledge and agree that this
16 Consent Order is intended to constitute a full, final, and complete resolution of the violations and
17 Desist and Refrain Order as identified herein. No further proceedings or actions will be brought by
18 the Commissioner in connection with these matters under the CSL, or any other provision of law,
19 excepting therefrom any proceeding to enforce compliance with the terms of this Consent Order.

20 8. Failure to Comply with Consent Order. The Respondents agree that if they fail to
21 comply with any terms of this Consent Order or the Desist and Refrain Order, the Commissioner
22 may, summarily suspend/revoke any of the Respondents' CSL licenses or certificates and/or deny
23 any pending license or certificate applications of the Respondents and/or their respective affiliates,
24 successors, and assigns, by whatever names they might be known, in addition to all other available
25 remedies it may invoke under the CSL. The Respondents waive any notice and hearing rights to
26 contest such summary suspensions, revocation or denial which may be afforded under the CSL, the
27 California Administrative Procedure Act, the California Code of Civil Procedure, or any other
28 provision of law in connection therewith.

1 9. Information Willfully Withheld. The Consent Order may be revoked, and the
2 Commissioner may pursue any and all remedies available under law against the Respondents if the
3 Commissioner discovers that the Respondents knowingly or willfully withheld or misrepresented
4 information used for and relied upon in this Consent Order.

5 10. Future Actions by Commissioner. If the Respondents fail to comply with any terms
6 of the Consent Order or violate the Desist and Refrain Order, they agree that the facts in this Consent
7 Order and Desist and Refrain Order are admitted for the purpose of proving a violation of this
8 Consent Order and Desist and Refrain Order. The Respondents further agree that the Commissioner
9 may institute proceedings for any and all violations otherwise unresolved under this Consent Order.
10 The Commissioner reserves the right to bring any future actions against the Respondents, or any of
11 their partners, owners, officers, shareholders, directors, employees, or successors for any and all
12 unknown violations of the CSL.

13 11. Assisting Other Agencies. Nothing in this Consent Order limits the Commissioner’s
14 ability to assist a government agency (whether city, county, state, or federal) with any
15 administrative, civil or criminal action brought by that agency against the Respondents or any other
16 person based upon any of the activities alleged in this matter or otherwise.

17 12. Independent Legal Advice. Each of the Parties represents, warrants, and agrees that
18 he, she, or it has received independent advice from its attorney(s) or representative(s) with respect to
19 the advisability of executing the Consent Order.

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

23 14. Binding. This Consent Order is binding on all heirs, assigns, and/or successors in
24 interest.

25 15. Reliance. Each of the Parties represents, warrants, and agrees that in executing this
26 Consent Order it has relied solely on the statements set forth herein and the advice of its own
27 counsel. Each of the Parties further represents, warrants, and agrees that in executing this Consent
28 Order it has placed no reliance on any statement, representation, or promise of any other party, or

1 any other person or entity not expressly set forth herein, or upon the failure of any party or any other
2 person or entity to make any statement, representation or disclosure of anything whatsoever. The
3 Parties have included this clause: (1) to preclude any claim that any party was in any way
4 fraudulently induced to execute this Consent Order; and (2) to preclude the introduction of parol
5 evidence to vary, interpret, supplement, or contradict the terms of this Consent Order.

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

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

18 18. Governing Law. This Consent Order will be governed by and construed in
19 accordance with California law. Each of the Parties hereto consents to the jurisdiction of such court,
20 and hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient
21 forum to the maintenance of such action or proceeding in such court.

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

25 20. Effect Upon Future Proceedings. If the Respondents apply for any license, permit or
26 qualification under the Commissioner's current or future jurisdiction, or are the subject of any future
27 action by the Commissioner to enforce this Consent Order, then the subject matter hereof shall be
28 admitted for the purpose of such application(s) or enforcement proceeding(s).

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

Dated: May 24, 2021

MANUEL P. ALVAREZ
Commissioner of Financial Protection and Innovation

By: _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

Dated: May 21, 2021

PMB ADVISORS, AND PATRICK MICHAEL
BERESH

By: _____
PATRICK MICHAEL BERESH
individually and as the owner of PMB Advisors

Approved as to Form and Content:

By: _____
Patrick T. Murphy, Esq.
Murphy Cooke LLP
Counsel for PMB Advisors, and Patrick Michael Beresh