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8 BEFORE THE DEPARTMENT OF CORPORATIONS
9 OF THE STATE OF CALIFORNIA

11	In the Matter of)	FILE NO. 116413
12	THE CALIFORNIA CORPORATIONS)	STATEMENT IN SUPPORT OF ORDER
13	COMMISSIONER,)	LEVYING ADMINISTRATIVE PENALTIES
14	Complainant,)	PURSUANT TO CORPORATIONS CODE
15	v.)	SECTION 25252
16	ALL WEATHER PORTFOLIO)	
17	MANAGEMENT, INC.,)	
18	Respondent.)	

19 Wayne Strumpfer, the Acting California Corporations Commissioner ("Commissioner") of
20 the Department of Corporations ("Department") alleges and charges as follows:

- 21 1. All Weather Portfolio Management, Inc. ("All Weather") holds a valid and unrevoked
22 investment adviser certificate issued by the Commissioner on August 9, 1996, pursuant to
23 Corporations Code section 25230. All Weather is an investment adviser business located at 23276
24 S. Pointe Drive, Suite 102, Laguna Hills, California 92653. All Weather is a California S
25 corporation. Duff George Mayer ("Mayer") is All Weather's president and chief executive officer.
- 26 2. On or about July 9, 2003, the Commissioner commenced a regulatory examination of
27 All Weather. The examination and subsequent follow-up inquiries revealed violations of regulations
28 promulgated pursuant to the Corporate Securities Law of 1968 (Corp. Code § 25000 et seq.).

1 3. These violations included All Weather’s failure to maintain tangible net capital
2 balances (Cal. Code Regs., title 10, § 260.237.1, subd. (a)(2).), failure to timely file annual financial
3 reports with the Commissioner within 60¹ days of the end of All Weather’s fiscal year (Cal. Code
4 Regs., title 10, § 260.241.2, subd. (a)), failure to timely file interim reports (Cal. Code Regs., title 10,
5 § 260.241.2, subds. (d)(2)(A)(1), (d)(2)(B), and (d)(3).), and failure to prepare and maintain monthly
6 computations of net capitals and aggregate indebtedness or of minimum net worth (Cal. Code Regs.,
7 title 10, § 260.241.3, subd. (j).). The books, records and reporting requirements provide the
8 Department with a regulatory mechanism to protect the public by validating the investment adviser
9 licensee’s liquidity and financial integrity on a monthly and yearly basis. All Weather’s failure to
10 meet its reporting requirements prevented the Department from determining, at the time of its
11 regulatory examination, if All Weather met the capital requirements imposed by the Corporate
12 Securities Law and the regulations enacted thereunder.

13 4. Corporations Code section 25241 provides that investment advisers are required to
14 maintain books and records that are subject to examination by, and to file such reports as required
15 by, the Commissioner. Corporations Code section 25241 provided, at the time of the Department’s
16 July 9, 2003 examination, and presently provides, in relevant part, as follows:

17 [E]very investment adviser licensed under Section 25230 shall make and keep
18 accounts, correspondence, memorandums, papers, books, and other records and shall file
19 financial and other reports as the commissioner by rule requires....

20 5. California Code of Regulations, title 10, section 260.241.2, subdivision (a) requires
21 the filing of an annual report by certain investment advisers. Subdivision (a)(2) of section 260.241.2
22 provided, prior to April 3, 2003, as follows:

23 (a) General Rule. Subject to the provisions of subsection (c) of this section, ...every
24 licensed investment adviser subject to the provisions of Section 260.237.1² of these rules,
25 shall file an annual financial report containing the information required by a form or forms to
26 be supplied or approved by the Commissioner, as follows:

27 ...

28 ¹ Within 90 days, effective April 3, 2003.

² The April 3, 2003 amendment added the language “...or Section 260.237.2, as applicable.”

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(2) The annual report for investment advisers shall contain a Statement of Financial Condition. Supporting schedules shall contain computations of net capitals, aggregate indebtedness and ratios required under Section 260.237.1³ and the certificate of the accountant required under subsection (e) of Section 260.237 of these rules.

6. California Code of Regulations, title 10, section 260.241.3 requires that investment advisers maintain specific books and records. Subdivision (j) of section 260.241.3 provided at the time of the July 9, 2003 examination, and presently provides as follows:

(j) Any investment adviser who is subject to the minimum financial requirements of Section 260.237.1 or Section 260.237.2, as applicable, shall, in addition to the records otherwise required under this section, maintain a record of the proof of money balances of all ledger accounts in the form of trial balances and a record of the computations of net capitals and aggregate indebtedness pursuant to Section 260.237.1 of these rules or minimum net worth pursuant to Section 260.237.2 of these rules (as of the trial balance date). The trial balances and computations shall be prepared currently at least once a month.

7. Prior to April 3, 2003, California Code of Regulations, title 10, section 260.237.1 contained the capital requirements for investment advisers. Subdivision (a)(2) of section 260.237.1 provided, in relevant part, as follows:

(a) No investment adviser who has any power of attorney from any investment advisory client to execute transactions . . . shall permit its total aggregate indebtedness to exceed 500% of its tangible net capital or permit its current aggregate indebtedness to exceed its current net capital; and,
...

(2) If the investment adviser has any power of attorney from any investment advisory client to execute transactions and does not have regular or periodic custody or possession of any of its investment advisory clients' securities or funds, except the receipt of prepaid subscriptions for periodic publications, or other investment advisory services, it shall at all times have and maintain tangible net capital of not less than \$5,000....

Subdivision (c) of section 260.237.1 provided that for purposes of section 260.237.1, subdivision (a), all financial information be determined in accordance with generally accepted accounting principles.

³ The April 3, 2003 amendment added the language, "...or minimum financial requirements required under section 260.237.2, as applicable."

1 8. On April 3, 2003, California Code of Regulations, title 10, section 260.237.1,
2 subdivision (a)(2) was amended to read as follows:

3 An investment adviser licensed prior to 03/01/03 may comply with either the minimum
4 financial requirements in this section or in Section 260.237.2 until January 1, 2005, at which
5 time this section shall become inoperative and an investment adviser shall comply with the
6 minimum financial requirements in Section 260.237.2.

7 (a) No investment adviser who has any power of attorney from any investment advisory
8 client to execute transactions. . . shall permit its total aggregate indebtedness to exceed 500%
9 of its tangible net capital or permit its current aggregate indebtedness to exceed its current net
10 capital; and,
11 ...

12 (2) If the investment adviser has any power of attorney from any investment advisory client
13 to execute transactions and does not have regular or periodic custody or possession of any of
14 its investment advisory clients' securities or funds, except the receipt of prepaid subscriptions
15 for periodic publications, or other investment advisory services, it shall at all times have and
16 maintain tangible net capital of not less than \$5,000;

17 9. On April 3, 2003, California Code of Regulations, title 10, section 260.237.2, was
18 added, and reads as follows:

19 An investment adviser licensed prior to 03/01/03 may comply with either the minimum
20 financial requirements in this section or in Section 260.237.1 until January 1, 2005, at which
21 time Section 260.237.1 shall become inoperative and an investment adviser shall comply
22 with the minimum financial requirements in this section.

23 (a) Every investment adviser who has custody of client funds or securities shall maintain at
24 all times a minimum net worth of \$35,000, and every investment adviser who has
25 discretionary authority over client funds or securities but does not have custody of client
26 funds or securities, shall maintain at all times a minimum net worth of \$10,000.

27 10. California Code of Regulations, title 10, section 260.241.2, subdivision (d)(2)(A)(1)
28 provides, in relevant part, as follows:

 (d) Interim Reports

 ...

 (2)(A) Every investment adviser subject to the provisions of Section 260.237.1 of
these rules shall file a report furnished or approved by the Commissioner within 15 days
after:

 1. its tangible net capital is reduced to less than 120% of its required tangible net
capital....

1 11. California Code of Regulations, title 10, section 260.241.2, subdivision (d)(2)(B)
2 provides, in relevant part, as follows:

3 (d) Interim Reports

4 ...

5 (2)(B) Every investment adviser subject to the provisions of Section 260.237.2 of
6 these rules shall file a report furnished or approved by the Commissioner within 15 days after
7 its net worth is reduced to less than 120% of its required minimum net worth....

8 12. California Code of Regulations, title 10, section 260.241.2, subdivision (d)(3)
9 provides as follows:

10 (3) The report required by subsections (d)(1) and (d)(2) of this section shall be as of a
11 date within the 15 day period. Additional reports shall be filed on the same form within 10
12 days after each subsequent monthly accounting period until three months have elapsed during
13 which none of the conditions specified in subsection (d)(1) or (d)(2) have occurred.

14 13. The Department's examiner found during the regulatory exam on July 9, 2003, that
15 All Weather had discretionary authority and power of attorney to execute transactions in the
16 brokerage accounts of its investment adviser clients. Therefore, All Weather was required to meet
17 either the net capital requirements provided for under section 260.237.1, subdivision (a)(2), or the
18 minimum net worth requirement provided for under section 260.237.2, subdivision (a), and to show
19 proof of compliance with these requirements by filing annual financial reports, in accordance with
20 California Code of Regulations, title 10, section 260.241.2, subdivision (a). All Weather was also
21 required to prepare and maintain monthly proof of ledger account money balances and either
22 monthly computations of net capitals and aggregate indebtedness, or monthly computations of
23 minimum net worth, in accordance with California Code of Regulations, title 10, section 260.241.3,
24 subdivision (j). At the time of the July 9, 2003 examination, All Weather had not prepared and
25 maintained either monthly computations of net capitals and aggregate indebtedness, or of minimum
26 net worth. As a result of All Weather's violation of California Code of Regulations, title 10, section
27 260.241.3, subdivision (j), the Department's examiner was unable to determine if the firm, at the
28 time of the examination, was in compliance with either the net capital requirements of section
260.237.1, or the minimum net worth requirement of section 260.237.2. The examiner also found

1 that All Weather had failed to submit its annual financial reports for the years 2000, 2001 and 2002
2 in violation of California Code of Regulations, title 10, section 260.241.2, subdivision (a).

3 14. On August 12, 2003, the Department sent Mayer a regulatory letter explaining the
4 violations discovered during the July 9, 2003 examination. After Mayer failed to respond to this
5 letter, the Department sent a second letter, dated October 3, 2003. On October 13, 2003, Mayer
6 responded by letter, stating in part that the net capital computations were not computed monthly, as
7 required, because he thought that they only needed to be computed annually. He also stated that the
8 annual financial reports were not timely filed because he understood them to be required only if the
9 firm was not in compliance with the net capital requirement. He further stated that his accountant
10 would prepare the annual financial reports for 2001 and 2002 and would submit them to the
11 Department by October 31, 2003.

12 15. On October 17, 2003, the Department received All Weather's annual financial reports
13 for 2001 and 2002. However, from the reports submitted, the Department's staff determined that All
14 Weather had a net capital deficiency for both 2001 and 2002, in violation of California Code of
15 Regulations, title 10, section 260.237.1, subdivision (a)(2), as that regulation read prior to April 3,
16 2003. The Department informed Mayer of this by letter of December 17, 2003, and directed All
17 Weather to submit proof that it had cured the net capital deficiency. The Department also directed
18 All Weather to begin submitting monthly interim reports reflecting compliance with the net capital
19 requirements, pursuant to California Code of Regulations, title 10, section 260.241.2, subdivision
20 (d)(2)(A)(1), beginning with the interim report for November 2003. On January 8, 2004, the
21 Department extended the date that the interim report was due to February 1, 2004, due to a family
22 tragedy. On May 11, 2004, the Department sent a follow-up letter. On June 11, 2004, Mayer
23 responded, requesting additional time to July 15, 2004 to provide the interim reports. However,
24 despite these numerous requests for extensions, Mayer did not provide the Department with any
25 reports and did not request any further extensions during the remainder of 2004. This failure to file
26 monthly interim reports, beginning with the November 2003 report, violated California Code of
27 Regulations, title 10, section 260.241.2(d)(2)(A)(1).

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1 16. On March 29, 2005 the Department, pursuant to its authority to request other reports
2 under California Code of Regulations, title 10, section 260.241.2(a)(6), demanded that All Weather
3 file a financial report for the period ending March 31, 2005. The report was to be filed by no later
4 than April 10, 2005. On April 8, 2005, Mayer faxed a request for an extension, until April 30, 2005.
5 The Department, by letter dated April 21, 2005, granted the request and stated that no further
6 extensions would be granted. Sometime thereafter, Mayer faxed the requested documents to the
7 Department, and on May 5, 2005, the Department received the hard copies of the requested
8 documents.

9 17. However, by letter dated May 5, 2005, the Department notified Mayer that it had
10 discovered several mistakes in All Weather's calculations in its financial reports for March 31, 2005.
11 The Department made its own calculations and determined that All Weather was required to file
12 interim financial reports, pursuant to California Code of Regulations, title 10, section
13 260.241.2(d)(2)(B), beginning with the report due for May 31, 2005. The Department requested that
14 All Weather respond to this letter within 10 days of the date of the letter.

15 18. Mayer responded by letter dated May 13, 2005, stating that he would not be able to
16 submit the requested revised financials until May 18, 2005. In this letter, he also stated that he had
17 deposited another \$5,000 of paid in capital on the date of the letter. During a follow-up conversation
18 on June 9, 2005, Mayer told Department staff that he would submit the requested information by the
19 week of June 13, 2005.

20 19. By letter dated June 30, 2005, Mayer submitted additional information regarding the
21 valuation of certain assets on All Weather's balance sheet. He also stated that he would submit an
22 interim report by July 30, 2005, reflecting the valuation of All Weather's assets. On July 27, 2005,
23 the Department responded, stating that the interim financial report for May 31, 2005 that it had
24 requested on May 5, 2005, had never been received. The Department requested that in his reply,
25 Mayer submit interim financial reports for April through July of 2005. By letter dated August 12,
26 2005, which was received by the Department on August 15, 2005, Mayer submitted interim reports
27 for April, May, June and July of 2005. However, the failure to file the May interim report within 15
28 days of May 31, 2005, violated California Code of Regulations, title 10, section 260.241.2(d)(2)(B).

1 The failure to file monthly interim reports for June and July within 10 days of the end of both
2 respective months violated California Code of Regulations, title 10, section 260.241.2(d)(3).

3 20. All Weather also failed to timely submit its Annual Financial Reports for the years
4 2003 and 2004, neither of which had been received by the Department as of 7/27/05. This
5 constituted additional violations of California Code of Regulations, title 10, section 260.241.2,
6 subdivision (a).

7 21. A prior regulatory examination of All Weather on December 2, 1998, also revealed
8 record keeping and reporting violations, in the form of failure to prepare and maintain monthly
9 computations of net capitals and aggregate indebtedness (Cal. Code Regs., title 10, § 260.241.3,
10 subd. (j).), and the failure to file annual financial reports. (Cal. Code Regs., title 10, § 260.241.2,
11 subd.(a).) In correspondence with the Department dated July 20, 1999, Mayer stated that he was
12 aware of the regulations pertaining to section 260.241.3 and affirmed that he would comply with
13 them. Mayer also affirmed that future annual financial reports required by section 260.241.2 would
14 be prepared and filed in a timely manner.

15 22. Corporations Code section 25252, which became effective January 1, 1999,
16 authorizes the Commissioner to issue an order levying administrative penalties against any
17 investment adviser for willful violations of any provision of the Corporate Securities Law and any
18 rules promulgated thereunder. Specifically, Corporations Code section 25252 provides, in relevant
19 part:

20 The Commissioner may, after appropriate notice and opportunity for hearing, by orders, levy
21 administrative penalties as follows:

22 ...

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

26 23. By reason of the foregoing, All Weather has willfully violated California Code of
27 Regulations, title 10, sections 260.241.2, subdivision (a), 260.241.2, subdivisions (d)(2)(A)(1),
28 (d)(2)(B) and (d)(3), 260.241.3, subdivision (j), and 260.237.1, subdivision (a)(2), justifying the

1 imposition of administrative penalties. All Weather, as a licensee, was obligated to have knowledge
2 of, and to comply with, the provisions of the Corporate Securities Law and the regulations
3 thereunder to maintain its investment adviser certificate. The Department gave All Weather prior
4 notice of the requirements of California Code of Regulations, title 10, sections 260.241.2,
5 subdivision (a), and section 260.241.3, subdivisions (j). All Weather has continued to violate
6 sections 260.241.2, subdivision (a) and 260.241.3, subdivision (j), despite Mayer's assurances of
7 future compliance. Furthermore, despite the Department's continual requests, All Weather has
8 continually been late in submitting interim reports, in violation of various subparts of section
9 260.241.2, subdivision (d).

10 24. Therefore, pursuant to Corporations Code section 25252, the Commissioner seeks
11 administrative penalties for All Weather's willful violations of the Corporate Securities Law of 1968
12 and the regulations adopted pursuant to it.

13 WHEREFORE, good cause showing, and pursuant to Corporations Code section 25252, the
14 California Corporations Commissioner prays for an order levying administrative penalties in the
15 amounts as follows, for willful violations of the following sections of title 10 of the California Code
16 of Regulations: section 260.241.2, subdivision (a)--\$375.00, section 260.241.2, subdivision
17 (d)(2)(B)--\$375.00, and section 260.241.3, subdivision (j)--\$375.00, for a total of \$1,125.00.

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19 Dated: March 15, 2006

WAYNE STRUMPFER
California Corporations Commissioner

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22 By: _____
NICHOLAS LANZA
23 Senior Corporations Counsel
24 Enforcement Division
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