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7
8 BEFORE THE DEPARTMENT OF CORPORATIONS
9 OF THE STATE OF CALIFORNIA

10
11 In the Matter of) FILE NO. 116413
12 THE CALIFORNIA CORPORATIONS)
13 COMMISSIONER,) STATEMENT IN SUPPORT OF ORDER TO
14 Complainant,) DISCONTINUE VIOLATIONS PURSUANT
15 v.) TO CORPORATIONS CODE SECTION 25249
16 ALL WEATHER PORTFOLIO) AND COMMISSIONER’S INTENTION TO
17 MANAGEMENT, INC.,) MAKE ORDER FINAL
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 such 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.

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

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

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

(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;

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

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

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

10. California Code of Regulations, title 10, section 260.241.2, subdivision (d)(2)(A)(1) 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....

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

1 (d) Interim Reports

2 ...

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

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

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

13 13. The Department's examiner found during the regulatory exam on July 9, 2003, that
14 All Weather had discretionary authority and power of attorney to execute transactions in the
15 brokerage accounts of its investment adviser clients. Therefore, All Weather was required to meet
16 either the net capital requirements provided for under section 260.237.1, subdivision (a)(2), or the
17 minimum net worth requirement provided for under section 260.237.2, subdivision (a), and to show
18 proof of compliance with these requirements by filing annual financial reports, in accordance with
19 California Code of Regulations, title 10, section 260.241.2, subdivision (a). All Weather was also
20 required to prepare and maintain monthly proof of ledger account money balances and either
21 monthly computations of net capitals and aggregate indebtedness, or monthly computations of
22 minimum net worth, in accordance with California Code of Regulations, title 10, section 260.241.3,
23 subdivision (j). At the time of the July 9, 2003 examination, All Weather had not prepared and
24 maintained either monthly computations of net capitals and aggregate indebtedness, or of minimum
25 net worth. As a result of All Weather's violation of California Code of Regulations, title 10, section
26 260.241.3, subdivision (j), the Department's examiner was unable to determine if the firm, at the
27 time of the examination, was in compliance with either the net capital requirements of section
28 260.237.1, or the minimum net worth requirement of section 260.237.2. The examiner also found
that All Weather had failed to submit its annual financial reports for the years 2000, 2001 and 2002
in violation of California Code of Regulations, title 10, section 260.241.2, subdivision (a).

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

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

26 16. On March 29, 2005 the Department, pursuant to its authority to request other reports
27 under California Code of Regulations, title 10, section 260.241.2(a)(6), demanded that All Weather
28 file a financial report for the period ending March 31, 2005. The report was to be filed by no later

1 than April 10, 2005. On April 8, 2005, Mayer faxed a request for an extension, until April 30, 2005.
2 The Department, by letter dated April 21, 2005, granted the request and stated that no further
3 extensions would be granted. Sometime thereafter, Mayer faxed the requested documents to the
4 Department, and on May 5, 2005, the Department received the hard copies of the requested
5 documents.

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

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

17 19. By letter dated June 30, 2005, Mayer submitted additional information regarding the
18 valuation of certain assets on All Weather's balance sheet. He also stated that he would submit an
19 interim report by July 30, 2005, reflecting the valuation of All Weather's assets. On July 27, 2005,
20 the Department responded, stating that the interim financial report for May 31, 2005 that it had
21 requested on May 5, 2005, had never been received. The Department requested that in his reply,
22 Mayer submit interim financial reports for April through July of 2005. By letter dated August 12,
23 2005, which was received by the Department on August 15, 2005, Mayer submitted interim reports
24 for April, May, June and July of 2005. However, the failure to file the May interim report within 15
25 days of May 31, 2005, violated California Code of Regulations, title 10, section 260.241.2(d)(2)(B).
26 The failure to file monthly interim reports for June and July within 10 days of the end of both
27 respective months violated California Code of Regulations, title 10, section 260.241.2(d)(3).
28

1 20. All Weather also failed to timely submit its Annual Financial Reports for the years
2 2003 and 2004, neither of which had been received by the Department as of 7/27/05. This
3 constituted additional violations of California Code of Regulations, title 10, section 260.241.2,
4 subdivision (a).

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

13 22. Corporations Code section 25249, authorizes the Commissioner to issue an order
14 directing any investment adviser to discontinue any violation of any provision of the Corporate
15 Securities Law and any rules promulgated thereunder. Specifically, Corporations Code section
16 25249 provides as follows:

17 If, after examination or investigation, the Commissioner has reasonable grounds to believe
18 that any broker-dealer or investment adviser has violated any law or any rule binding upon it,
19 the commissioner shall, by written order addressed to the broker-dealer or investment
20 adviser, direct discontinuance of the violation. The order shall be effective immediately, but
21 shall not become final except in accordance with the provisions of Section 25251.

22 23. Corporations Code section 25251 provides as follows:

23 (a) No order issued pursuant to Section 25249 or 25250 may become final except after
24 notice to the affected broker-dealer or investment adviser of the commissioner's intention to
25 make the order final and the reasons for the finding. The commissioner shall also notify the
26 broker-dealer or investment adviser that upon receiving a request the matter shall be set for
27 hearing to commence within 15 business days after receipt of the request. The broker-dealer
28 or investment adviser may consent to have the hearing commence at a later date. If no
hearing is requested within 30 days after the mailing or service of the required notice, and
none is ordered by the commissioner, the order may become final without a hearing and the
broker-dealer or investment adviser shall immediately discontinue the practices named in the
order. If a hearing is requested or ordered, it shall be held in accordance with the provisions

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of the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the 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 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.

24. By reason of the foregoing, All Weather has willfully violated California Code of Regulations, title 10, sections 260.241.2, subdivision (a), 260.241.2, subdivisions (d)(2)(A)(1), (d)(2)(B) and (d)(3), 260.241.3, subdivision (j), and 260.237.1, subdivision (a)(2), justifying the issuance of an order to discontinue violations. All Weather, as a licensee, was obligated to have knowledge of, and to comply with, the provisions of the Corporate Securities Law and the regulations thereunder to maintain its investment adviser certificate. The Department gave All Weather prior notice of the requirements of California Code of Regulations, title 10, sections 260.241.2, subdivision (a), and section 260.241.3, subdivision (j). All Weather has continued to violate sections 260.241.2, subdivision (a) and 260.241.3, subdivision (j), despite Mayer's assurances of future compliance. Furthermore, despite the Department's continual requests, All Weather has continually been late in submitting interim reports, in violation of various subparts of section 260.241.2, subdivision (d).

25. Therefore, pursuant to Corporations Code section 25249, the Commissioner has issued an order directing Palisades to discontinue violating California Code of Regulations, title 10, sections 260.241.2, subdivision (a), 260.241.2, subdivisions (d)(2)(A)(1), (d)(2)(B) and (d)(3), 260.241.3, subdivision (j), and 260.237.1, subdivision (a)(2),

WHEREFORE, good cause showing, and pursuant to Corporations Code section 25251, the California Corporations Commissioner hereby notifies All Weather Portfolio Management of his intention to make the Order to Discontinue Violations Pursuant to Corporations Code Section 25249

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final.

Dated: March 15, 2006

WAYNE STRUMPFER
California Corporations Commissioner

By: _____
NICHOLAS LANZA
Senior Corporations Counsel
Enforcement Division