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9 BEFORE THE DEPARTMENT OF CORPORATIONS
10 OF THE STATE OF CALIFORNIA
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| 12 | In the Matter of |) | CASE NO. |
| 13 | THE CALIFORNIA CORPORATIONS | } | ACCUSATION |
| 14 | COMMISSIONER, | | |
| 15 | Complainant, | | |
| 16 | v. | } | |
| 17 | BENCHMARK FINANCIAL SERVICES, INC., | | |
| 18 | a California corporation and STEVEN ARTHUR | | |
| 19 | SCOTT, an individual, and doing business as | | |
| 20 | BENCHMARK FINANCIAL SERVICES, | } | |
| 20 | Respondents. | | |

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22 Preston DuFauchard, California Corporations Commissioner (“Commissioner”) of the
23 Department of Corporations (“Department”), acting to protect the public from unlicensed and
24 unlawful investment advisers, alleges and charges as follows:

25 **I. JURISDICTION AND VENUE**

26 1. The Commissioner brings this action pursuant to the provisions of California
27 Corporations Code sections 25232 and 25232.1 and the rules and regulations promulgated
28 thereunder.

1 8. On or about December 7, 2000, the NASD fined Scott \$15,000.00 and suspended him
2 from associating with any NASD member for two years, for violations of NASD Rules 2110, 3030
3 and 3040. Scott signed a Letter of Acceptance, Waiver and Consent stating that during April 1995
4 through May 1998, "Scott sold securities in the form of promissory notes to 13 public customers,"
5 raising approximately \$160,000.00. "Scott told investors that their funds would be used to finance
6 his company called Master Market Forum ('MMF'). MMF was a developmental stage company
7 through which Scott intended to conduct financial planning seminars and produce video tapes."
8 "With respect to three of the customers ... Scott charged them \$500 annually in exchange for various
9 financial planning services." Further, the Letter of Acceptance, Waiver and Consent indicates that
10 Scott engaged in these activities without first receiving permission from his employer firm.

11 9. In or about 1999, Scott began providing discretionary investment advice to
12 California residents in connection with his business Benchmark Financial Services. Benchmark
13 Financial Services provides services including asset management, investment management and
14 portfolio analysis and evaluation. Further, Benchmark Financial Services researches, "picks" and
15 recommends mutual funds for clients to invest in.

16 10. Benchmark Financial Services receives compensation for the investment advisory
17 services it provides to California residents. Benchmark Financial Services charges a fee, which can
18 reach up to \$2,000.00 per client, for developing and drafting financial plans. Further, for Benchmark
19 Financial Services' mutual fund research and recommendations, clients are charged a 1% annual fee
20 based on the balance held in clients' mutual fund accounts. The fee is charged in semi-annual
21 increments on December 31 and June 30, which is billed to clients in January and July, respectively.

22 11. Scott estimated that Benchmark Financial Services has about 40 clients with
23 approximately \$15,000,000.00 invested in mutual funds. Thus, Benchmark Financial Services
24 receives approximately \$150,000.00, in commissions, annually as a result of the 1% fee charged to
25 clients for the mutual fund research and recommendations.

26 12. In order to attract new clients, Benchmark Financial Services hosts monthly seminars
27 that are geared toward senior citizens. Attendees commonly receive a free meal at the seminar.
28 Solicitation materials provided to seminar attendees identify Scott as "founder of BENCHMARK

1 FINANCIAL SERVICES ... an independent financial planner and Registered Investment Advisor.”

2 13. Scott knowingly has conducted business as an unlicensed investment adviser. Scott
3 admits that he has been “out of compliance” with the California Corporations Code for two years
4 and more specifically admits that he is not licensed to provide investment advice and is not
5 registered as an investment adviser.

6 14. Although Scott has full knowledge that he is not a licensed investment adviser, Scott
7 has distributed solicitation materials to potential clients which misrepresent that Scott is a “financial
8 planner” and “Registered Investment Advisor.”

9 15. On June 16, 2006, the Department filed an application for a temporary restraining
10 order (“TRO”) and accompanying civil complaint against Respondents Scott, an individual, and
11 doing business as Benchmark Financial Services in Orange County Superior Court, case number
12 06CC07158. That same date, Judge Nakamura signed the TRO enjoining Scott and Benchmark
13 Financial Services, in relevant part, from violating California Corporations Code sections 25230 and
14 25235 by engaging in unlicensed investment adviser activity and distributing solicitation materials
15 containing untrue statements of material fact, respectively.

16 16. On July 11, 2006, as a result of stipulation by all parties, Judge Andler entered a
17 preliminarily injunction enjoining Respondents Scott and Benchmark Financial Services from
18 further violations of the California Corporations Code.

19 17. On July 28, 2006, Respondent Scott filed an application with the Commissioner for a
20 certificate to engage in the business of an investment adviser under the name Benchmark Financial
21 Services, Inc., a California corporation incorporated on July 13, 2006 (CRD # 141086). The
22 application identifies Steven Arthur Scott as the President and Chief Compliance Office of the
23 company and Deborah Anne Scott (CRD # 5184845) as the Secretary of the company.

24 18. According to records of the California Secretary of State, Steven Arthur Scott at 3151
25 Airway Ave, Suite # F-2, Costa Mesa, CA 92626 is the registered agent for service of process for
26 Benchmark Financial Services, Inc.

27 19. California Corporations Code section 25230 provides that it is unlawful to conduct
28 business as an investment adviser in this state without having first applied for and secured a

1 certificate from the California Corporations Commissioner, or unless exempt. Scott and Benchmark
 2 Financial Services have never held a valid investment adviser certificate issued by the California
 3 Corporations Commissioner nor have they been an investment adviser registered with the Securities
 4 and Exchange Commission. Further, Scott and Benchmark Financial Services are not exempt from
 5 the certification requirement of California Corporations Code section 25230.

6 20. California Corporations Code section 25235, subdivision (d) provides that it is
 7 unlawful for any investment adviser, directly or indirectly, to engage in any act, practice or course of
 8 business which is fraudulent, deceptive, or manipulative. Sections of the California Code of
 9 Regulations further define fraudulent, deceptive, or manipulative practices to include the distribution
 10 of advertisements containing untrue statements of material fact. Scott distributed solicitation
 11 materials to potential clients containing untrue statements that Scott is a “financial planner” and
 12 “Registered Investment Advisor.”

13 **III. RESPONDENT BENCHMARK FINANCIAL SERVICES, INC.’S INVESTMENT**
 14 **ADVISER CERTIFICATE SHOULD BE DENIED PURSUANT TO CORPORATIONS**
 15 **CODE SECTION 25232 FOR ACTS COMMITTED AS SPECIFIED UNDER**
 16 **CORPORATIONS CODE SECTION 25232, SUBDIVISIONS (c) AND (e).**

17 21. California Corporations Code section 25232 provides, in relevant part:
 18 The commissioner may, after appropriate notice and opportunity for hearing by
 19 order censure, *deny* a certificate to, or suspend for a period not exceeding 12 months
 20 or revoke the certificate of, an investment adviser, if the commissioner finds that the
 21 censure, denial, suspension, or revocation is in the public interest and that the
 22 investment adviser, whether prior or subsequent to becoming such, or any partner,
 23 officer or director thereof or any person performing similar functions or any person
 24 directly or indirectly controlling the investment adviser, whether prior or subsequent
 25 to become such, or any employee of the investment adviser while so employed:
 26 ...
 27 (c) Is permanently or temporarily enjoined by order, judgment, or decree of any court
 28 of competent jurisdiction from acting as an investment adviser.
 ...
 (e) Has willfully violated any provision of ... Title 4 (commencing with Section
 25000) ... or of any rule or regulation under any of those statutes, or any order of the
 commissioner which is or has been necessary for the protection of any investor.

(Corp. Code, § 25232 [emphasis added].)

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1 22. California Corporations Code section 25009 defines "investment adviser," in relevant
2 part, as:

3 (a) "Investment Adviser" means any person who, for compensation, engages in the
4 business of advising others, either directly or through publications or writings, as to
5 the value of securities or as to the advisability of investing in, purchasing or selling
6 securities ...

7 (b) "Investment Adviser" also includes any person who uses the title "financial
8 planner" and who, for compensation, engages in the business ... of advising others,
9 either directly or through publications or writings, as to the value of securities or as
10 to the advisability of investing in, purchasing or selling securities ...

11 (Corp. Code, § 25009, subds. (a) & (b).)

12 23. California Corporations Code section 25230, subdivision (a), in relevant part,
13 provides:

14 It is unlawful for any investment adviser to conduct business as an investment adviser
15 in this state unless the investment adviser has first applied for and secured from the
16 commissioner a certificate ... authorizing the investment adviser to do so or unless
17 the investment adviser is exempted by the provisions of Chapter 1 (commencing with
18 Section 25200) of this part or unless the investment adviser is subject to Section
19 25230.1.

20 (Corp. Code, § 25230, subd. (a).)

21 24. California Corporations Code section 25235, subdivision (d) provides that it is
22 unlawful for any investment adviser, directly or indirectly, to engage in any act, practice, or course
23 of business which is fraudulent, deceptive, or manipulative. (Cal. Corp. Code, § 25235, subd. (d).)

24 25. California Code of Regulations, title 10, section 260.235 defines the terms fraudulent,
25 deceptive or manipulative as used in California Corporations Code section 25235. Section 260.235,
26 in relevant part, provides:

27 (a) It shall constitute a fraudulent, deceptive, or manipulative act, practice or course
28 of business, within the meaning of Section 25235 of the Code, for an investment
adviser, directly or indirectly, to publish, circulate or distribute any advertisement:¹

...
(5) which contains any untrue statement of a material fact, or which is otherwise false
or misleading.

(Corp. Code, § 25235.)

¹ For the purpose of section 260.235, the term "advertisement" includes "any notice, circular, letter or other written communication addressed to more than one person" (Cal. Code Regs., tit. 10, § 260.235, subd. (b).)

1 26. Respondent Benchmark Financial Services, Inc. should be denied an investment
2 adviser certificate pursuant to California Corporations Code section 25232, subdivisions (c) and (e)
3 due to the fact that Respondents Scott, an individual, and doing business as Benchmark Financial
4 Services have been temporarily, and preliminarily, enjoined by court order from acting as an
5 investment adviser, have willfully engaged in the business of an investment adviser without first
6 applying for and securing a certificate from the Commissioner authorizing him to do so, and have
7 willfully distributing advertisements containing untrue statements of material fact – that Scott is a
8 “financial planner” and “Registered Investment Advisor.”

9 27. In or about 1999, Scott began providing discretionary investment advice to California
10 residents in connection with his business Benchmark Financial Services. Scott provides services
11 including asset management, investment management and portfolio analysis and evaluation. Scott
12 also conducts market research and monitoring, and recommends investment opportunities to clients.
13 Furthermore, Scott receives compensation for the investment advice provided.

14 28. Scott, in conducting said investment adviser business, is an investment adviser within
15 the meaning of California Corporations Code section 25009.

16 29. At all relevant times, neither Respondents Scott nor Benchmark Financial Services
17 have possessed a certificate from the Commissioner authorizing them to engage in the business
18 activities of an investment adviser. Further, Scott nor Benchmark Financial Services are exempt
19 from the provisions of California Corporations Code section 25230 requiring investment advisers to
20 obtain a certificate from the Commissioner

21 30. Scott admits that for at least two years he has knowingly engaged in unlicensed
22 investment adviser activity.

23 31. Potential clients that attend seminars hosted by Scott are provided solicitation
24 materials containing the representation that Scott is a “financial planner” and “Registered Investment
25 Advisor.” These representations are untrue and misleading to potential clients who are interested in
26 receiving the professional services of an investment adviser.

27 32. In distributing solicitation materials containing untrue statements, Scott has engaged
28 in fraudulent, deceptive, or manipulative practices within the meaning of California Corporations

1 Code section 25235. Further, by virtue of the fact that for at least two years Scott has knowingly
2 engaged in unlicensed investment adviser activity, Scott has willfully distributed solicitation
3 materials containing untrue statements of material fact to potential clients.

4 33. The Department obtained a TRO, and a preliminary injunction, from the Orange
5 County Superior Court enjoining Respondents Scott and Benchmark Financial Services from acting
6 as an investment adviser. These injunctions were obtained by order of a court of competent
7 jurisdiction pursuant to Corporations Code section 25232, subdivision (c).

8 34. By engaging in unlicensed investment adviser activity and distributing solicitation
9 materials containing untrue statements, Scott has willfully violated provisions of the Corporations
10 Code, Title 4, section 25000 et seq. pursuant to Corporations Code section 25232, subdivision (e).

11 35. Now Respondent Scott seeks to obtain an investment adviser certificate from the
12 Commissioner under the name Benchmark Financial Services, Inc., a recently incorporated
13 California corporation. Based on the foregoing, this application should be denied.

14 **IV. RESPONDENT SCOTT SHOULD BE BARRED FROM ANY POSITION OF**
15 **EMPLOYMENT, MANAGEMENT OR CONTROL OF ANY INVESTMENT ADVISER,**
16 **BROKER-DEALER OR COMMODITY ADVISER PURSUANT TO CORPORATIONS**
17 **CODE SECTION 25232.1 FOR ACTS COMMITTED AS SPECIFIED UNDER**
18 **CORPORATIONS CODE SECTION 25232, SUBDIVISION (c) AND (e).**

19 36. California Corporations Code section 25232.1 provides, in relevant part:

20 The commissioner may, after appropriate notice and opportunity for hearing, by order
21 ... *bar* from any position of employment, management or control of any investment
22 adviser, broker-dealer or commodity adviser, any officer, director, partner, employee
23 of, or person performing similar functions for, an investment adviser, or any other
24 person, if he or she finds that the ... *bar* is in the public interest and that the person
25 has committed any act or omission enumerated in subdivision ... (e) ... of Section
26 25232 ... or is enjoined from any act, conduct or practice specified in subdivision (c)
27 of Section 25232 ...

28 (Corp. Code, § 25232.1 [emphasis added].)

37. As stated above, subdivision (e) of section 25232 subjects an investment adviser to
action by the Department if the investment adviser has willfully violated any provision of Title 4
(commencing with section 25000) or of any rule or regulation under those statutes. (Corp. Code,
§ 25232, subd. (e).)

1 38. As stated above, subdivision (c) of section 25232 subjects an investment adviser to
2 action by the Department if the investment adviser is permanently or temporarily enjoined by order
3 of any court of competent jurisdiction from acting as an investment adviser. (Corp. Code, § 25232,
4 subd. (c).)

5 39. Respondent Scott is subject to being barred from any position of employment,
6 management or control of any investment adviser, broker-dealer or commodity adviser pursuant to
7 California Corporations Code section 25232.1 for acts committed as specified in California
8 Corporations Code section 25232, subdivisions (c) and (e) for being temporarily, and preliminarily,
9 enjoined by a court order from acting as an investment adviser, for willfully engaging in unlicensed
10 investment adviser activity, and for distributing advertisements containing untrue statements of
11 material fact.

12 40. In or about 1999, Scott began providing discretionary investment advice, for
13 compensation, to California residents in connection with his business Benchmark Financial Services.

14 41. Potential clients that attend seminars hosted by Scott are provided solicitation
15 materials containing the misrepresentation that Scott is a “financial planner” and “Registered
16 Investment Advisor.”

17 42. Respondents Scott and Benchmark Financial Services have never possessed a
18 certificate from the Commissioner or the Securities and Exchange Commission (“SEC”) authorizing
19 them to engage in the business activities of an investment adviser. Further, Scott and Benchmark
20 Financial Services are not exempt from the provisions of California Corporations Code section
21 25230 requiring investment advisers to obtain a certificate from the Commissioner.

22 43. Scott admits that he has been “out of compliance” with the California Corporations
23 Code for two years and more specifically admits that he is not licensed to provide investment advice
24 and is not registered as an investment adviser.

25 44. The Department obtained a TRO and preliminary injunction enjoining Scott and
26 Benchmark Financial Services from acting as an investment adviser.

27 45. Therefore, Scott should be barred from employment, management or control of any
28 investment adviser, broker-dealer or commodity adviser pursuant to California Corporations Code

1 section 25232.1 for acts committed as specified in California Corporations Code section 25232,
2 subdivisions (c) and (e).

3 **V. RELIEF REQUESTED**

4 WHEREFORE, based upon the foregoing, the Commissioner finds it is in the public interest
5 to deny an investment adviser certificate to Respondent Benchmark Financial Services, Inc. pursuant
6 to California Corporations Code section 25232, and to bar Respondents Steven Arthur Scott, an
7 individual, and doing business as Benchmark Financial Services from any position of employment,
8 management or control of any investment adviser, broker-dealer or commodity adviser pursuant to
9 California Corporations Code section 25232.1 for acts committed as specified in California
10 Corporations Code section 25232, subdivisions (c) and (e).

11 WHEREFORE, IT IS PRAYED that Respondent Benchmark Financial Services, Inc. be
12 denied an investment adviser certificate pursuant to California Corporations Code section 25232,
13 and that Respondents Steven Arthur Scott, an individual, and doing business as Benchmark
14 Financial Services be barred from any position of employment, management or control of any
15 investment adviser, broker-dealer or commodity adviser pursuant to California Corporations Code
16 section 23232.1 for acts committed as specified in California Corporations Code section 25232,
17 subdivisions (c) and (e).

18 Dated: August 3, 2006

19 PRESTON DuFAUCHARD
20 California Corporations Commissioner

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22 By: ALEXANDER M. CALERO
23 Corporations Counsel
24 Enforcement Division
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