

1 MARY ANN SMITH  
Deputy Commissioner  
2 DOUGLAS M. GOODING  
Assistant Chief Counsel  
3 MIRANDA LEKANDER (State Bar No. 210082)  
Senior Counsel  
4 DEPARTMENT OF BUSINESS OVERSIGHT  
1515 K Street, Suite 200  
5 Sacramento, California 95814  
Telephone: (916) 322-8730  
6 Facsimile: (916) 445-6985

7 Attorneys for Complainant

8  
9

**BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT  
OF THE STATE OF CALIFORNIA**

10  
11

<p>12 In the Matter of the Investment Adviser 13 Application of: 14 BERYL CAPITAL MANAGMENT, LLC</p>	<p>CRD No.: 269959 STIPULATION</p>
--	--

15

16 This STIPULATION is entered into by and between the California Department of  
17 Business Oversight (Department) through the Commissioner of Business Oversight  
18 (Commissioner), on the one hand, and Beryl Capital Management, LLC and David Alexander  
19 Witkin (collectively, Respondents) on the other hand (hereafter, the Parties).

20

RECITALS

21

A. Beryl Capital Management, LLC (CRD No. 269959) is a Delaware limited liability  
22 company formed on January 2, 2013, that maintains a business address at 220 South Juanita  
23 Avenue, Suite B, Redondo Beach, California 90277.

24

B. At all relevant times, David Alexander Witkin (Witkin) (CRD No. 4443572) is or  
25 was the manager, sole owner, and registered agent for service of process of Beryl Capital  
26 Management, LLC.

27

C. On September 22, 2015, Beryl Capital Management, LLC filed with the  
28 Commissioner an initial Form ADV, applying for an investment adviser certificate.

1 D. In response to the Commissioner’s inquiry about possible unlicensed investment  
2 adviser activities, Respondents provided additional information disclosing that, beginning in or  
3 about June 2013 to the date hereof, Respondents conducted business as an investment adviser in  
4 this state, by providing advisory services to at least nine clients, without first applying for and  
5 securing from the Commissioner a certificate, then in effect, authorizing them to do so, in  
6 violation of Corporations Code section 25230, subdivision (a).

7 E. The Commissioner has determined that the public interest will not be served by  
8 denying the request for registration submitted by Beryl Capital Management, LLC, and it is the  
9 intention and desire of the Parties to resolve this matter without the necessity of a hearing and/or  
10 other litigation.

11 NOW, THEREFORE, for good and valuable consideration, and the terms and conditions  
12 set forth herein, the Parties agree as follows:

13 TERMS AND CONDITIONS

14 1. Purpose. The purpose of this Stipulation is to settle and resolve the matters  
15 between the Parties hereto, for judicial economy and expediency, and to avoid the expense of a  
16 hearing, and possible further court proceedings.

17 2. Desist and Refrain Order: Respondents stipulate to the issuance of the Desist and  
18 Refrain Order pursuant to Corporations Code section 25532, in the form attached hereto as  
19 Exhibit A, directing Respondents to desist and refrain from engaging in investment adviser  
20 activities unless and until certification has been made under the California Corporate Securities  
21 Law of 1968 (CSL) or unless exempt. Respondents agree to accept service of the executed Desist  
22 and Refrain Order by the Commissioner’s agent sending a copy to their counsel at  
23 thertog@investmentlawgroup.com.

24 3. Waiver of Hearing Rights. Respondents acknowledge their right to a hearing under  
25 the California Corporate Securities Law of 1968 in connection with the Desist and Refrain Order  
26 attached as Exhibit A, and hereby waive such rights to a hearing, and to any reconsideration,  
27 appeal, or other right to review which may be afforded pursuant to the CSL, the California  
28 Administrative Procedure Act (APA), the California Code of Civil Procedure (CCP), or any other

1 provision of law, and by waiving such rights, consent to the Commissioner’s Desist and Refrain  
2 Order becoming final.

3 4. Certification. Respondents stipulate to undertake all appropriate steps designed to  
4 assure full compliance with the laws of California in connection with the licensing of  
5 Respondents’ business as an investment adviser. Respondents acknowledge that failure to comply  
6 with any term of this Stipulation shall be a breach of this Stipulation and shall be cause for the  
7 Commissioner to immediately revoke any licenses held by, and/or deny any pending application(s)  
8 of Respondents, their successors and assigns, by whatever names they might be known.  
9 Respondents hereby waive any notice and hearing rights to contest such revocations and/or  
10 denial(s) which may be afforded under the CSL, the APA, the CCP, or any other provision of law  
11 in connection with this action.

12 5. Acknowledgement. Respondents acknowledge that they did not timely obtain an  
13 investor advisor certificate from the Department, or otherwise qualify for a lawful exemption, as  
14 required by Corporations Code section 25230. Although Respondents maintain such failure was  
15 neither willful nor intentional, Respondents acknowledge that such conduct was inconsistent with  
16 the provisions of the California Corporate Securities Law of 1968. The acknowledgment of  
17 Respondents is for the purposes of this and any other future proceedings that may be initiated by  
18 or brought before the Department. The Parties agree that this Stipulation and any  
19 acknowledgements hereunder shall not be admissible or binding against Respondents in any  
20 action(s) brought against Respondents by third parties who are not signatories to this Stipulation.

21 6. Administrative Penalty. Respondents agree to pay to the Commissioner an  
22 administrative penalty in the amount of \$45,000.00 (Administrative Penalty) pursuant to  
23 Corporations Code section 25532, subdivision (b), for conducting unlicensed investor adviser  
24 activity in violation of Corporations Code section 25230, subdivision (a). Such Administrative  
25 Penalty shall be paid by Respondents within 30 days of the Effective Date of this Stipulation, as  
26 such date is defined in Paragraph 21 below. The cashier’s check shall be made payable to “The  
27 Department of Business Oversight,” and shall be sent to the attention of the Commissioner’s agent  
28 specified in Paragraph 22 below. In the event the payment due date falls on a weekend or holiday,

1 the payment shall be due the next business day. Respondents acknowledge that failure to timely  
2 pay the Administrative Penalty shall be a violation of this Stipulation. Respondents further agree  
3 that this Stipulation shall constitute a final decision for the purpose of the Commissioner applying  
4 ex parte to the superior court, without further notice to Respondents, for a civil judgment in the  
5 amount of the Administrative Penalty stipulated herein and procuring an order pursuant to  
6 Corporations Code section 25252, subdivision (e).

7       7.       Investor Adviser Certificate Application. No later than 30 days after the  
8 Commissioner, in her sole discretion, has certified pursuant to Paragraph 4 that Beryl Capital  
9 Management, LLC has met all conditions to conduct business as an investment adviser, and  
10 provided that Respondents have strictly complied with the terms specified in Paragraph 6, the  
11 Commissioner will issue to Beryl Capital Management, LLC an investment adviser certificate  
12 pursuant to Corporations Code section 25230.

13       8.       Forfeiture of Fees. Respondents forfeit the right to receive all management and/or  
14 performance fees owed to Respondents pertaining to any investment adviser services provided in  
15 this state prior to the date of issuance of an investment adviser certificate issued by the  
16 Commissioner; further, Respondents agree to disgorge and return any such fees to the principal(s)  
17 no later than 30 days from the Effective Date of this Stipulation.

18       9.       Future Actions by the Commissioner. The Commissioner reserves the right to  
19 bring any future action(s) against Respondents or any of the managers, officers, directors,  
20 shareholders, or employees of Respondents for any and all unknown or future violations of the  
21 CSL. This Stipulation shall not serve to exculpate Respondents or any of the managers, officers,  
22 directors, shareholders, or employees of Respondents from liability for any and all unknown or  
23 future violations of the CSL. Respondents further agree and acknowledge that nothing in this  
24 Stipulation shall preclude the Commissioner or her agents, officers, or employees, to the extent  
25 authorized by law, from referring any evidence or information regarding this matter to any other  
26 state or federal law enforcement official, or from assisting or cooperating with regard to any  
27 investigation and/or action.

28

1           10.     Commissioner’s Remedy for Violation. Respondents agree that for 12 months  
2 immediately following the Effective Date of this Stipulation, if the Commissioner makes a finding  
3 that Respondent(s) has violated or is violating any provision of this Stipulation, or of the CSL, and  
4 such Respondent(s) fails to cure said violation(s) within 10 days after being provided written  
5 notice of said violation(s) by the Commissioner, the Commissioner may, in her sole discretion,  
6 immediately revoke any licenses held by, and/or deny any pending application(s) of Respondents,  
7 their successors and assigns, by whatever names they might be known. Respondents hereby waive  
8 any notice and hearing rights to contest such revocations and/or denial(s) which may be afforded  
9 under the CSL, the APA, the CCP, or any other provision of law in connection therewith.

10           11.     Independent Legal Advice. Each of the Parties represents, warrants, and agrees  
11 that it has received or been advised to seek independent legal advice from its attorneys with  
12 respect to the advisability of executing this Stipulation.

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

22           13.     Modifications and Qualified Integration. No amendment, change or modification  
23 of this Stipulation shall be valid or binding to any extent unless it is in writing and signed by all of  
24 the parties affected by it.

25           14.     Full Integration. This Stipulation is the final written expression and the complete  
26 and exclusive statement of all the agreements, conditions, promises, representations, and  
27 covenants between the Parties with respect to the subject matter hereof, and supersedes all  
28

1 discussions between and among the Parties, their respective representatives, and any other person  
2 or entity, with respect to the subject matter covered hereby.

3 15. No Presumption From Drafting. In that the Parties have had the opportunity to  
4 draft, review and edit the language of this Stipulation, no presumption for or against any party  
5 arising out of drafting all or any part of this Stipulation will be applied in any action relating to,  
6 connected to, or involving this Stipulation. Accordingly, the Parties waive the benefit of Civil  
7 Code section 1654 and any successor or amended statute, providing that in cases of uncertainty,  
8 language of a contract should be interpreted most strongly against the party who caused the  
9 uncertainty to exist.

10 16. Counterparts. This Stipulation may be executed in any number of counter-parts by  
11 the Parties, and when each party has signed and delivered at least one such counterpart to the other  
12 party, each counterpart shall be deemed an original and taken together shall constitute one and the  
13 same Stipulation. A fax signature shall be deemed the same as an original signature.

14 17. Terms, Headings and Governing Law. All terms used, but not defined herein, shall  
15 have the meaning assigned to them by the Corporate Securities Law of 1968. The headings to the  
16 paragraphs of this Stipulation are inserted for convenience only and will not be deemed a part  
17 hereof or affect the construction or interpretation of the provisions hereof. This Stipulation shall  
18 be construed and enforced in accordance with, and governed by, the laws of the State of  
19 California.

20 18. Authority For Settlement. Each party warrants and represents that such party is  
21 fully entitled and duly authorized to enter into and deliver this Stipulation. In particular, and  
22 without limiting the generality of the foregoing, each party warrants and represents that it is fully  
23 entitled to enter into the covenants, and undertake the obligations set forth herein.

24 ///  
25 ///  
26 ///  
27 ///  
28 ///

1           19.     Public Record. Respondents hereby acknowledge that this Stipulation and the  
2 exhibits attached hereto will be a matter of public record. Respondents further understand and  
3 agree to not make any statement or representation that is inconsistent with this Stipulation.

4           20.     Voluntary Agreement. The Parties each represent and acknowledge that he, she or  
5 it is executing this Stipulation completely voluntarily and without any duress or undue influence  
6 of any kind from any source.

7           21.     Effective Date. This Stipulation and the attached Desist and Refrain Order shall  
8 become effective when executed by the Commissioner or her designee and transmitted by  
9 electronic mail to Respondents’ counsel at thertog@investmentlawgroup.com.

10          22.     Notice. Any notices required under this Settlement Agreement shall be provided to  
11 each party at the following addresses:

12           If to Respondents to:                   Thomas Hertog, Compliance Director  
13   Investment Law Group  
14   1230 Peachtree Street, NE, Suite 2445  
  Atlanta, Georgia 30309

15           If to the Commissioner to:           Miranda LeKander, Senior Counsel  
16   Department of Business Oversight  
17   1515 K Street, Suite 200  
  Sacramento, California 95814

18           ///  
19           ///  
20           ///  
21           ///  
22           ///  
23           ///  
24           ///  
25           ///  
26           ///  
27           ///  
28           ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IN WITNESS WHEREOF, the Parties hereto have approved and executed this Stipulation on the dates set forth opposite their respective signatures.

Dated: 7/12/16

JAN LYNN OWEN  
Commissioner of Business Oversight

By: \_\_\_\_\_  
MARY ANN SMITH  
Deputy Commissioner

Dated: 7/5/16

\_\_\_\_\_  
DAVID ALEXANDER WITKIN, individually  
and on behalf of Beryl Capital Management,  
LLC

APPROVED AS TO FORM:

By \_\_\_\_\_  
THOMAS HERTOOG, Compliance Director  
INVESTMENT LAW GROUP  
On behalf of David Alexander Witkin and Beryl Capital Management, LLC