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 12 BEFORE THE DEPARTMENT OF CORPORATIONS
 13 OF THE STATE OF CALIFORNIA
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15 In the Matter of
 16 THE CALIFORNIA CORPORATIONS
 COMMISSIONER,
 17 Complainant,
 18 v.
 19 CALIFORNIA MORTGAGE AND REALTY
 20 INC.; and CMR MORTGAGE FUND III, LLC;
 21 Respondents.

Case No.
 File No. 506-3136
 ACCUSATION

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 26 Preston DuFauchard, the California Corporations Commissioner (“Commissioner”) of the
 27 Department of Corporations (“Department”) alleges and charges as follows:
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1 1. CMR Mortgage Fund III LLC (“CMR Fund III”) is a California limited liability
2 company located at 62 First Street, 4th Floor, San Francisco, California 94105. California Mortgage
3 and Realty Inc. (“CMR Inc.”) is a Delaware corporation, incorporated in 1995, and located at 62
4 First Street, 4th Floor, San Francisco, California 94105, and is the manager of CMR Mortgage Fund
5 LLC, (“CMR Fund I”),CMR Mortgage Fund II LLC (“CMR Fund II”) and CMR Fund III. The
6 principals of CMR Inc. are the same principals who organized and operated all three funds, and the
7 business plans of all three funds are substantially the same.

8 2. On January 3, 2008, the Commissioner issued a permit under Corporations Code
9 section 25113 to CMR Fund III to offer and sell securities for the purpose of investing in loans
10 secured by deeds of trust secured primarily by California real estate, including commercial and
11 residential properties and unimproved land. CMR Fund III has also been issued a permit in 2007.
12 CMR Fund III is a licensed California Finance Lender and broker, License No. 506-3136. The
13 permit to sell securities expires on January 3, 2009.

14 3. The permit was issued under a limited offering qualification authorizing the offer and
15 sale of Respondent’s securities only to:

16 a) Investors with (i) a net worth (exclusive of home, furnishings and automobiles) of
17 at least \$250,000 and annual gross income of at least \$65,000; or (ii) a net worth (exclusive of home
18 furnishings and automobiles) of at least \$500,000; and

19 b) The amount of each investor’s investment must not exceed ten percent (10%) of
20 such investor’s net worth (exclusive of home, furnishings, and automobiles).

21 4. In November 2008, the Department determined that Respondent CMR Fund III had
22 violated the terms of the permit in the following manner:

23 a) In the Offering Circular submitted to the Department of Corporations as part of the
24 permit process the Respondents undertook to provide within six months of the close of the year
25 audited financial statements, and a report summarizing the Fund’s performance for the year covered
26 by the report. The Manager and CMR Fund III have failed to provide such audited financials or a
27 summary report as of November 21, 2008.
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1 b) In the Offering Circular submitted to the Department as part of the permit
2 application process, the Respondents undertook to provide “promptly, after the end of each calendar
3 month” an amount of cash equal to the Member’s proportionate share of the Fund’s accrued net
4 income during such month, subject to adjustments for bad debt reserves or deductions as the
5 Manager would deem appropriate. In effect the Manger undertook to provide prompt and accurate
6 statements of account to each Member electing to receive cash distributions on a monthly basis. The
7 Manager and Fund III have failed to provide such monthly statements for six consecutive months in
8 2008, June through December.

9 c) In the Offering Circular it was stated that “Upon not less than 60 days written
10 notice to the Manager, Members may withdraw all or part of their capital accounts from the Fund,
11 subject to the limitations discussed below.” The Offering Circular went on to note that the Fund
12 does not intend to allow withdrawal or redemptions of more than 10% of the Fund’s aggregate
13 outstanding capital during any 12 month period. What the Offering Circular omitted to inform
14 investors at the time the permit was issued, was that CMR Fund III had already received redemption
15 requests in the second half of 2007 that exceeded 10% of the aggregate outstanding capital. New
16 investors were not informed that there was a substantial probability they would not be able to
17 successfully redeem their investment in 2008 should they opt to do so. This was an omission of a
18 material fact. A total of 66 new investors subscribed to the CMN Fund III offering between January
19 and April of 2008. In April of 2008 CMR Fund III ceased accepting new investors.

20 5. Respondents also violated the terms of a prior permit issued to CMR Fund I
21 which expired on January 16, 2004. Respondents sold interests in the CMR Fund I to an investor
22 who did not qualify or meet the suitability standards required by the Department of Corporations.
23 These standards were similar suitability standards as issued for 2008 permit issued to CMR Fund III.

24 6. The Offering Circular for CMR Fund III clearly stated a geographical limitation on
25 the utilization of proceeds of the subscription. It stated, “Less than 20% of the proceeds of this
26 offering will be used to invest in loans secured by properties outside California.” The Offering
27 Circular for CMR Fund III further stated “No fund loan (or Fund interest in a loan) will exceed the
28 greater of (a) \$1,000,000 or (b) 25% of total Fund capital at the time of the loan.” This provision

1 was the exact same provision that was included in the Offering Circular for CMR Fund I. However,
2 in March of 2007 Fund I participated in an investment outside of California and which comprised
3 approximately 40% of Fund I capital. The Offering Circular for Fund III omitted to inform Fund III
4 investors that although the exact same covenant had been provided to previous CMR Fund I
5 investors by the manager, CMR Inc. the manager had failed to adhere to the assurances provided
6 investors in the Offering Circular of CMR Fund I as to geographical limitations and loan
7 concentrations.

8 7. Corporations Code section 25140 (a)(1) provides in pertinent part as follows:

9 The commissioner...may suspend or revoke any permit issued under Section 25113
10 or 25122 if he or she finds (A) that the order is in the public interest and (B) that the
11 proposed plan of business of the issuer or the proposed issuance or sale of securities
12 is not fair, just, or equitable, or that the issuer does not intend to transact its business
13 fairly and honestly, or that the securities proposed to be issued or the method to be
14 used in issuing them will tend to work a fraud upon the purchaser thereof.

15 8. Corporations Code section 25143 (a) provides in pertinent part as follows:

16 The commissioner may by order summarily postpone or suspend the effectiveness of
17 any qualification pending final determination of any proceeding under this chapter.
18 Upon the entry of the order, the commissioner shall promptly notify each person
19 specified in subdivision (b) of this section that it has been entered and of the reasons
20 therefore and that upon receipt of a written request the matter will be set down for
21 hearing to commence within 15 business days after such receipt unless the applicant
22 consent to a later date. If no hearing is requested and none is ordered by the
23 commissioner, the order will remain in effect until it is modified or vacated by the
24 commissioner. If a hearing is requested or ordered, the commissioner, after notice
25 and hearing in accordance with subdivision (b) of this section, may modify or vacate
26 the order or extend it until final determination.

27 9. The Commissioner finds that summarily suspending the permit issued to Respondent
28 is in the public interest and Respondent's proposed plan of business and proposed issuance of
securities is no longer fair, just and equitable, or that the issuer did not intend to transact its business
fairly and honestly, or that the securities proposed to be issued or the method to be used in issuing
them would tend to work a fraud upon the purchaser in violation of Corporation Code section
25140(a)(1) because the Respondent's Offering Circular contains material misrepresentations and
omissions about the investment and the Respondent is not conducting business as disclosed in the
Offering Circular.

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10. Corporations Code section 25401 provides:

It is unlawful for any person to offer or sell a security in this state or buy or offer to buy a security in this state by means of any written or oral communication which includes an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

The Commissioner finds that the offer or sale of securities by Respondent to be in violation of Corporations Code section 25401 in that the sale of securities in CMR Fund III was accomplished by means of the omission of a material fact necessary in order to make the statement made, in the light of the circumstances under which it was made, not misleading.

WHEREFORE, the permit issued under Corporations Code section 25113 to CMR Mortgage Fund III LLC is summarily suspended as of this date.

WHEREFORE, IT IS PRAYED that the permit issued under Corporations Code section 25113 to CMR Mortgage Fund III LLC be revoked.

Dated: December 9, 2008

PRESTON DuFAUCHARD
California Corporations Commissioner

By: _____
John R. Drews
Corporations Counsel
Enforcement Division