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9 Attorneys for Complainant

10 BEFORE THE DEPARTMENT OF CORPORATIONS
11 OF THE STATE OF CALIFORNIA
12

13	In the Matter of)	CASE NO.
14)	
15	THE CALIFORNIA CORPORATIONS)	FILE NO. 923-3308
16	COMMISSIONER,)	
17	Complainant,)	STATEMENT IN SUPPORT OF ORDER
18)	LEVYING ADMINISTRATIVE PENALTIES
19	v.)	PURSUANT TO CORPORATIONS CODE
20	MELVIN A. DE LA MOTTE, JR., DBA DE LA)	SECTION 25252
21	MOTTE INVESTMENT SERVICES,)	
22	Respondent.)	

23 William P. Wood, the California Corporations Commissioner ("Commissioner") of the
24 Department of Corporations ("Department") alleges and charges as follows:

25 1. Melvin A. De La Motte, Jr., dba De La Motte Investment Services ("De La Motte")
26 holds a valid and unrevoked investment adviser certificate issued by the Commissioner pursuant to
27 Corporations Code section 25230 on June 19, 1996. De La Motte's investment adviser business is
28

1 located at 1239 Higuera Street, San Luis Obispo, California 93401. De La Motte is a sole
2 proprietorship that is owned by Melvin A. De La Motte, Jr.

3 2. On or about June 9, 2003, the Department commenced a regulatory examination of De
4 La Motte's investment adviser business. The examination revealed violations of the books and
5 records provisions of the Corporate Securities Law of 1968, Corporations Code section 25000 et
6 seq., and the regulations thereunder found at California Code of Regulations, title 10, section
7 260.000 et seq.

8 3. These violations consisted of De La Motte's failure to keep true, accurate and current
9 books and records, including: 1) failing to maintain a general ledger accounting system; and 2)
10 failing to file its annual financial reports. The books and records requirements provide the
11 Department with a regulatory mechanism to validate a firm's liquidity and financial integrity on a
12 monthly basis to ensure that licensees maintain the necessary net capital for the protection of the
13 public. De La Motte's failure to keep true, accurate and current books and records prevents the
14 Department from determining as part of its regulatory examination, if it meets the capital
15 requirements imposed by the Corporations Code and the regulations enacted thereunder.

16 4. Corporations Code section 25241 provides that investment advisers are required to
17 maintain books and records that are subject to examinations by the Commissioner. Section 25241
18 provided, in relevant part, as follows:

19 [E]very investment adviser licensed under Section 25230 shall make and keep such accounts,
20 correspondence, memoranda, papers, books, and other records and shall file such financial
21 and other reports as the commissioner by rule requires, subject to the limitations of . . .
22 Section 222 of the Investment Advisers Act of 1940 with respect to investment advisers. All
23 records so required shall be preserved for the time specified in the rule. All records referred
24 to in this section are subject at any time and from time to time to such reasonable periodic,
25 special, or other examinations by the commissioner, within or without this state, as the
26 commissioner deems necessary or appropriate in the public interest or for the protection of
27 investors.

28 5. California Code of Regulations, title 10, section 260.241.3 sets forth the specific books
and records, which are required to be maintained by investment advisers. Specifically, subdivision
(a)(2) of section 260.241.3 provides as follows:

1 (a) Every licensed investment adviser shall make and keep true, accurate and current the
2 following books and records relating to such person's investment advisory business:

3 (2) General and auxiliary ledgers (or other comparable records) reflecting asset, liability,
4 reserve, capital, income and expense accounts.

5 6. The Department's examiner found during the regulatory examination on June 9,
6 2003, that De La Motte did not maintain a general ledger accounting system. De La Motte,
7 therefore, failed to maintain a general ledger in violation of California Code of Regulations, title 10,
8 section 260.241.3, subdivision (a)(2).

9 7. California Code of Regulations, title 10, section 260.241.2, subdivision (a) requires the
10 filing of an annual report by certain investment advisers. Prior to April 3, 2003¹, California Code of
11 Regulations, section 260.241.2, subdivision (a)(2), provided as follows:

12 (a) General Rule. Subject to the provisions of Subsection (c) of this section, ...every
13 licensed investment adviser subject to the provisions of Section 260.237.1 of these rules,
14 shall file an annual financial report containing the information required by a form or forms to
be supplied or approved by the Commissioner, as follows:

15 ...
16 (2) The annual report for investment advisers shall contain a Statement of Financial
17 Condition. Supporting schedules shall contain computations of net capitals, aggregate
indebtedness and ratios required under Section 260.237.1 and the certificate of the accountant
required under subsection (e) of Section 260.237 of these rules.

18 8. California Code of Regulations, title 10, section 260.237.1 contains the alternative
19 minimum capital requirements for investment advisers. California Code of Regulations, title 10,
20 section 260.237.1, subdivision (a)(2) provided, and presently provides, in relevant part, as follows:

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

24 ...
25 (2) If the investment adviser has any power of attorney from any investment advisory client
26 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

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28 ¹ Various provisions of the California Code of Regulations were amended and became effective April 3, 2003. This
action seeks an administrative order based on violations that occurred under statutes and rules in effect both prior and
subsequent to the effective date of the amendments.

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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. Subdivision (c) of California Code of Regulations, title 10, section 260.237.1 provided, and currently provides, that for purposes of California Code of Regulations, title 10, section 260.237.1, subdivision (a), all financial information shall be determined in accordance with generally accepted accounting principles. Likewise, California Code of Regulations, title 10, section 260.237.2, subdivision (d) provides that a licensee's net worth shall be determined by generally accepted accounting principles.

10. De La Motte has power of attorney or discretionary power to execute transactions in the brokerage accounts of its investment adviser clients. Therefore, prior to April 3, 2003, De La Motte was required to meet the capital requirements provided for under California Code of Regulations, title 10, section 260.237.1, subdivision (a)(2) and to show proof of compliance with this regulation by filing annual financial reports required by section 260.241.2, subdivision (a).

11. As of June 9, 2003, De La Motte has failed to submit its annual financial report for the years 1999 through 2002, in violation California Code of Regulations section 260.241.2, subdivision (a).

12. On July 9, 2003, the Department sent De La Motte a regulatory letter notifying it of the various violations discovered during the June 2003 examination conducted pursuant to Corporations Code section 25241, including violations of California Code of Regulations, title 10, sections 260. 241.3, subdivision (a)(2), and 260.241.2, subdivision (a). The Department's letter also requested that De La Motte confirm that proper books, records and reports would be maintained in the future, and requested that De La Motte submit specific records. The Department requested that De La Motte provide the following: 1) A description of the accounting system established to comply with the law, an affirmation that the system will be posted on at least a monthly basis and that a written record of net capital will be prepared each month and maintained as a business record; and 2) Confirmation that De La Motte would file all future annual financial reports timely and include the financial reports for the years ending 2001 and 2002 with an explanation of why the reports have not been filed since our last regulatory letter notifying it of this requirement.

1 13. In a letter dated August 26, 2003, De La Motte responded to the Department's letter
2 and confirmed that it had installed Quickbooks so that in the future it could comply with California
3 Code of Regulations, title 10, section 260.241.3, subdivision (a)(2). De La Motte also confirmed
4 that it would file annual reports as required by law so that it could comply with California Code of
5 Regulations, title 10, section 260.241.2, subdivision (a).

6 14. A prior regulatory examination of De La Motte conducted by the Department in
7 1998 revealed similar books and records violations to those that were found in the 2003 exam.

8 15. As a result of the Department's 1998 examination, a regulatory letter was sent on
9 October 19, 1998, notifying De La Motte of its failure to maintain true, accurate and current books
10 and records in violation of California Code of Regulations, title 10, sections 260.241.3, subdivision
11 (a)(2) and 260.241.2, subdivision (a). During this exam, it was revealed that De La Motte failed to
12 maintain a general ledger account as required and failed to file its annual financial reports. In this
13 1998 letter, the Department requested that De La Motte confirm that a general ledger has been
14 established and that in the future annual financial reports would be filed. In letters dated November
15 25, 1998, and August 3, 1999, in response to the Department's requests in regulatory letters, De La
16 Motte confirmed that it had established an accounting system and would maintain it to comply with
17 California Code of Regulations, title 10, section 260.241.3, subdivision (a)(2), and that it would
18 submit its annual financial reports to comply with 260.241.2, subdivision (a). Notwithstanding these
19 assurances, De La Motte continued to violate these regulations.

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

24 The Commissioner may, after appropriate notice and opportunity for hearing, by order levy
25 administrative penalties as follows:

- 26 (a) Any broker-dealer or investment adviser that willfully violates any provision of this
27 division to which it is subject, or that willfully violates any rule or order adopted or
28 issued 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

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more than ten thousand dollars (\$10,000) for the second violation, and not more than fifteen thousand dollars (\$15,000) for each subsequent violation.

17. By reason of the foregoing, De La Motte has willfully violated California Code of Regulations, title 10, sections 260.241.2, subdivision (a), and 260.241.3, subdivision (a)(2), justifying the imposition of administrative penalties. De La Motte, as a licensee, was obligated to have knowledge of, and to comply with, the provisions of the Corporations Code and the regulations thereunder to maintain its investment adviser certificate.

18. Therefore, pursuant to Corporations Code section 25252, the Commissioner seeks administrative penalties for: De La Motte's failure to: 1) Maintain a general ledger in willful violation of California Code of Regulations, title 10, section 260.241.3, subdivision (a)(2) in the amount of \$750.00; and 2) File the required annual financial reports in willful violation of California Code of Regulations, title 10, section 260.241.2, subdivision (a) in the amount of \$750.00.

WHEREFORE, good cause showing, and pursuant to Corporations Code section 25252, the California Corporations Commissioner prays for an order levying administrative penalties for a total of \$1500.00.

Dated: February 14, 2005

WILLIAM P. WOOD
California Corporations Commissioner

By: _____
MICHELLE LIPTON
Corporations Counsel
Enforcement and Legal Services Division