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

11	In the Matter of the Accusation of)	CASE NO.
12	THE CALIFORNIA CORPORATIONS)	FILE NO. 923-4786
13	COMMISSIONER,)	
14	Complainant,)	
15	v.)	ACCUSATION AND STATEMENT IN
16	ELSWORTH BERG CAPITAL)	SUPPORT OF CLAIM FOR ANCILLARY
17	MANAGEMENT, LLC, WILLIAM BERG)	RELIEF PURSUANT TO CORPORATIONS
18	SETTLES as an individual and DOUGLAS)	CODE SECTION 25254
19	ELSWORTH WILSON, as an individual,)	
20	Respondents.)	

21 Preston DuFauchard, the California Corporations Commissioner ("Commissioner") of the
22 Department of Corporations ("Department") alleges and charges as follows:

23 **I. JURISDICTION AND VENUE**

- 24 1. The Commissioner brings this action pursuant to the provisions of California Corporations
25 Code sections 25232.1 and 25254 and the rules and regulations promulgated thereunder.
- 26
27 2. The Commissioner is authorized to administer and enforce the provisions of the
28 Corporate Securities Law of 1968, Corporations Code section 25000 et seq., and the regulations
thereunder at California Code of Regulations, title 10, section 260.000 et seq.

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II. STATEMENT OF FACTS

3. In October 2003, pursuant to Corporations Code section 25230, the Commissioner issued an investment adviser certificate to Respondent Elsworth Berg Capital Management, LLC (referred to as “Elsworth”) (CRD #120003). The Commissioner entered an order summarily revoking the investment adviser certificate of Elsworth on November 3, 2010 pursuant to Corporations Code section 25242(c). This action is brought in order to recover ancillary relief for the clients of Elsworth pursuant to Corporations Code section 25254, in connection with the summary revocation of Elsworth’s investment adviser certificate and in connection with this action to permanently bar Respondents William Berg Settles (CRD # 2493428) (“Settles”) and Douglas Elsworth Wilson (CRD # 2378921) (“Wilson”) from any position of employment, management or control of any investment adviser, broker-dealer or commodity adviser pursuant to Corporations Code section 25232.1.

4. Elsworth Berg Capital Management, LLC is a California corporation organized in 2001 by Douglas Elsworth Wilson and William Berg Settles (hereinafter collectively referred to as “Respondents”). The last known business address of Elsworth is 4370 La Jolla Village Drive, Suite 400, San Diego, California 92122. Settles is the managing member and Wilson is the President of Elsworth.

5. In April 2004, Respondents created Elsworth Berg Currency Dynamics Managed Accounts and sold this investment to clients.

6. In 2004, Respondents came up with an idea to create an investment product that had collateral to secure the financial transactions. Respondents created a “bundled” product that combined a trading account with a “collateral reserve trust” that consisted of life settlement policies. Respondents created Elsworth Berg, Inc. a Nevada corporation to hold the assets of the “collateral reserve trust.” In 2005, Respondents began offering their clients in the Currency Dynamics Managed

1 Accounts an opportunity to collateralize their investment. Clients in the Currency Dynamics
2 Managed Accounts had the option to elect to have a portion of their investment in the “collateral
3 reserve trust.” Respondents represented that the “collateral reserve trust” will vest at a rate of 20% a
4 year for the first five years. On the five year anniversary, the entire collateral reserve in its original
5 amount will be released to the client.

6
7 7. In July 2005, Respondents formed Vortex Currency Group, LLC a Nevada limited liability
8 company (“Vortex”). Respondents sold securities in the form of investment contracts in Vortex to
9 clients from February 2006 through March 2007. Vortex is an investment product in which
10 Respondents claim that 70% of investor funds will go into a trading account and 30% of investor
11 funds will go into a “collateral reserve trust” which consisted of life settlement policies. The
12 collateral reserve trust has a five-year surrender period from date of contribution. Respondents
13 represented that on the five year anniversary of the investor’s contribution the collateral reserve
14 amount plus 20% interest and any trading losses will be released and returned to the investor. The
15 five year anniversary for the Vortex clients’ collateral reserve trust is between February 2011 and
16 March 2012.

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18 8. In June 2006, Respondents created Velocity Trading Group, LLC a Nevada limited liability
19 company (“Velocity”). In or about October 2006 through at least November 2008, Respondents
20 offered and sold securities in the form of investment contracts in Velocity to California residents.
21 Velocity is an investment product similar to Vortex, in which Respondents claim that 70% of
22 investor funds will go into a trading account and 30% of investor funds will go into a “collateral
23 reserve trust” which consisted of life settlement policies. The collateral reserve trust has a five-year
24 surrender period from date of contribution. Respondents represented that on the five year
25 anniversary of the investor’s contribution the collateral reserve amount and any trading losses will be
26 released and returned to the investor. These offers and sales in Velocity were made by means of oral
27 and written misrepresentations that:

- 28 a. The investment was 100% secured.

1 b. The investors'/clients' contribution to the collateral reserve trust and any trading losses
2 will be released to investors/clients on the five year anniversary of the contribution, when in fact
3 investors/client did not receive the promised returns.

4 c. That client funds would be transferred from the Currency Dynamics Managed Account or
5 the Vortex account to the Velocity trading account, when in fact the money was not transferred to
6 the Velocity trading account.

7
8 9. From at least May 2008 to the present, Respondents provided account statements to clients
9 that contained material discrepancies that showed clients had money in the Velocity trading account
10 when in fact their money was not in the Velocity trading account, and the balance of their account
11 was not accurate.

12
13 10. In February 2010, the Department of Corporations ("Department") initiated a routine and
14 non-routine examination of Elsworth, pursuant to allegations that Elsworth, Settles and Wilson made
15 material misrepresentations and omissions in the sale of securities. Pursuant to the examination, the
16 Department requested that Respondents provided certain documents for review including financial
17 statements, ledger and journal of cash flows. These records were necessary for the Department to
18 determine how investor contributions into the collateral reserve trust were used, and establish the
19 accuracy of the performance fee billed to clients. Elsworth failed to make available or maintain
20 records of the investment advisory business for inspection during the examination.

21
22 **III. RESPONDENTS SETTLES AND WILSON SHOULD BE BARRED**
23 **FROM ANY POSITION OF EMPLOYMENT, MANAGEMENT OR CONTROL**
24 **OF ANY INVESTMENT ADVISER, BROKER-DEALER OR COMMODITY**
25 **ADVISED PURSUANT TO CORPORATIONS CODE SECTION 25232.1 FOR**
26 **ACTS COMMITTED AS SPECIFIED UNDER CORPORATIONS CODE**
27 **SECTION 25232, SUBDIVISION (e).**

28 11. Corporations Code section 25232.1 provides, in pertinent part:

 "The commissioner may, after appropriate notice and opportunity for hearing .
 . . bar from any position of employment, management or control of any
 investment adviser, broker-dealer or commodity adviser, any officer, director,

1 partner, employee of, or person performing similar functions for, an
2 investment adviser . . .if [the commissioner] finds that the . . . bar is in the
3 public interest and that the person has committed any act or omission
enumerated in subdivision (a), (e), (f), or (g) of Section 25232”

4
5 12. Settles, as managing member of Elsworth and Wilson as President of Elsworth offered
6 and sold securities in the form of investment contracts in Velocity through material oral and written
7 statements misrepresenting the security as outlined in paragraph 8 (a) – (c), promised returns of the
8 investment, and misrepresenting how investor money was used in violation of Corporations Code
9 section 25401. Consequently, pursuant to Corporations Code section 25232.1, the Commissioner is
10 authorized to bar Settles and Wilson from any position of employment, management, or control of
11 any investment adviser, broker-dealer, or commodity dealer.
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14 13. Settles and Wilson employed a scheme to defraud clients and engaged in a course of
15 business which operated as a fraud on clients by representing to clients of the Currency Dynamics
16 Managed Account and Vortex that their money would be transferred to the Velocity trading account
17 when in fact their money was not transferred to the Velocity trading account, in violation of
18 Corporations Code section 25235 subdivisions (a) and (b). Consequently, pursuant to Corporations
19 Code sections 25232.1, the Commissioner is authorized to bar Settles and Wilson from any position
20 of employment, management, or control of any investment adviser, broker-dealer, or commodity
21 dealer.
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25 14. Settles and Wilson employed a scheme to defraud clients and engaged in a course of
26 business which operated as a fraud on clients by providing account statements to clients that
27 contained material discrepancies indicating that their money was in the Velocity trading account
28 when in fact it was not in the Velocity trading account in violation of Corporations Code section

1 25235 subdivisions (a) and (b). Consequently, pursuant to Corporations Code section 25232.1, the
2 Commissioner is authorized to bar Settles and Wilson from any position of employment,
3 management, or control of any investment adviser, broker-dealer, or commodity dealer.
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6 15. In summary, by reason of the foregoing, Respondents willfully violated the following
7 provisions:

- 8 (a) Corporations Code 25241 by failing to maintain books and records;
- 9 (b) California Code of Regulations, title 10, section 260.241.3 by failing to make,
10 keep and provide books and records to the Commissioner;
- 11 (c) Corporations Code section 25401 by making misrepresentations and
12 omissions of material fact in connection with the offer and sale of securities.
- 13 (d) Corporations Code section 25235 subdivisions (a) and (b) by employing a
14 scheme to defraud clients and engaging in a course of business which
15 operated a fraud on clients.

16 **IV. THE CLIENTS OF ELSWORTH BERG CAPITAL MANAGEMENT,
17 LLC ARE ENTITLED TO ANCILLARY RELIEF PURSUANT TO
18 CORPORATIONS CODE SECTION 25254.**

19 16. Corporations Code section 25254, in pertinent part, states:

- 20 (a) If the commissioner determines it is in the public interest, the
21 commissioner may include in any administrative action brought under
22 this part a claim for ancillary relief, including, but not limited to, a
23 claim for restitution or disgorgement or damages on behalf of the
24 persons injured by the act or practice constituting the subject matter of
25 the action, and the administrative law judge shall have jurisdiction to
26 award additional relief.
- 27 (b) In an administrative action brought under this part, the commissioner
28 is entitled to recover costs, which in the discretion of the administrative
law judge may include an amount representing reasonable attorney's fees
and investigative expenses for the services rendered, for deposit into the
State Corporations Fund for the use of the Department of Corporations.

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17. Corporations Code section 25241, subdivisions (a) and (c) provide, in pertinent part:

“(a) [E]very investment adviser licensed under Section 25230 shall make and keep accounts, correspondences, memorandums, papers, books, and other records

(c) All records referred to in this section are subject to any time and from time to time to reasonable periodic, special, or other examinations by the commissioner, within or without this state, as the commissioner deems necessary or appropriate in the public interest or for the protection of investors.”

18. California Code of Regulations section 260.241.3 states in pertinent part:

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

(1) A journal or journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of any ledger.

(2) General and auxiliary ledgers . . .

(4) All check books, bank statements, cancelled checks and cash reconciliations of the investment adviser.

19. Corporations Code section 25235 subdivisions (a) and (b) provide in pertinent part:

It is unlawful for any investment adviser, directly or indirectly, in this state:

(a) To employ any device, scheme, or artifice to defraud any client or prospective client.

(b) To engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon any client or prospective client.

20. Elsworth offered and sold securities in the form of investment contracts in Velocity through material oral and written statements misrepresenting the security as outlined in paragraph 8 (a) – (c), promised returns of the investment, and misrepresenting how investor money was used in violation of Corporations Code section 25401.

21. Elsworth employed a scheme to defraud clients and engaged in a course of business which operated as a fraud on clients by representing to clients of the Currency Dynamics Managed Account and Vortex that their money would be transferred to the Velocity trading account when in

1 fact their money was not transferred to the Velocity trading account, in violation of Corporations
2 Code section 25235 subdivision (a) and (b).

3 22. Elsworth employed a scheme to defraud clients and engaged in a course of business
4 which operated as a fraud on clients by providing account statements to clients that contained
5 material discrepancies indicating that their money was in the Velocity trading account when in fact it
6 was not invested in the Velocity trading account in violation of Corporations Code section 25235
7 subdivisions (a) and (b).

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9 23. As an investment adviser licensed in California under Corporations Code section 25230,
10 Elsworth is subject to the records and disclosure requirements under Corporations Code section
11 25241 and California Code of Regulations section 260.241.3. Elsworth's failure to make available or
12 maintain records of the investment advisory business for inspection during the examination
13 constitutes a violation of section 25241(c) and California Code of Regulations section 260.241.3.

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15 24. Respondents' have already failed to return at least one client's beneficial interest in the
16 collateral reserve trust when it matured on January 1, 2010. Respondents failed to maintain accurate
17 records and/or refused to produce records to the Department in violation of Corporations Code
18 section 25241. These records are necessary for the Department to determine the use of clients' funds
19 in the collateral reserve trust. Based on the foregoing, Respondents' clients in Currency Dynamics,
20 Vortex, and Velocity are entitled to recover the amount of their beneficial interest in the collateral
21 reserve account when their interest matures at the five-year anniversary of their contribution.

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23 25. Respondents' clients in Velocity are entitled to recover the loss of their principal and
24 receive interest at the legal rate because Respondents induced clients to invest based on fraudulent
25 misrepresentations and used investor money for purposes other than that promised.

26 **V. PRAYER**

27 **WHEREFORE**, good cause showing, and the Commissioner's determination that this action is in the
28 public interest based upon the Respondents' violations of Corporations Code sections 25401, 25235

1 subdivisions (a) and (b), section 25241, and California Code of Regulations, title 10, section
2 260.241.3, pursuant to Corporations Code section 25254 the Commissioner hereby prays for an order
3 of ancillary relief against, Elsworth, William Berg Settles and Douglas Elsworth Wilson individually,
4 jointly and severally due and payable thirty days from the date of the final order, as follows:

5 (1) Restitution to Velocity clients for the loss of principal in the
6 amount of at least \$581,245.55, or more according to proof, and
7 interest in the amount of at least \$58,124.50, or more according to
8 proof, for the material misrepresentations made during the offer
and sale of securities and for engaging in a scheme to defraud
clients; and

9 (2) Restitution to Currency Dynamics and Vortex clients in the
10 amount of at least \$324,787.54, or more according to proof, and
11 interest in the amount of at least \$32,478.00 or according to proof
12 for the amount of their beneficial interest in the collateral reserve
account due and payable when their interest matures at the five-
year anniversary of their contribution.

13 (3) Recovery of costs, investigative expenses and attorney's fees in an
14 amount of at least \$15,000.

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16 **VI. CONCLUSION**

17 Based upon the foregoing, the Commissioner finds that grounds exist and that it is in the
18 public interest to order restitution for the clients of Elsworth Berg Capital Management, LLC,
19 pursuant to Corporations Code section 25254 and to bar William Berg Settles and Douglas Elsworth
20 Wilson from any position of employment, management or control of any investment adviser, broker-
21 dealer or commodity adviser pursuant to Corporations Code section 25232.1. The Commissioner
22 hereby notifies Respondents of its intention to make such Orders final.

23 Dated: November 4, 2010

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25 PRESTON DuFAUCHARD
California Corporations Commissioner

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27 By: _____
28 MARY ANN SMITH
Senior Corporations Counsel
Enforcement Division