

1 PRESTON DuFAUCHARD
California Corporations Commissioner
2 ALAN S. WEINGER
Deputy Commissioner
3 MARY ANN SMITH (CA Bar No. 230943)
Senior Corporations Counsel
4 1515 K Street, Suite 200
5 Sacramento, CA 95814
6 Tel: (916) 322-6067
7 Fax: (916) 445-6985
Attorneys for Complainant

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

10 THE CALIFORNIA CORPORATIONS	)	CASE NO.
11 COMMISSIONER,)	
	)	FILE NO. 923-4786
12 Complainant,)	
)	
13 v.	)	ORDER BARRING WILLIAM BERG
	)	SETTLES FROM ANY POSITION OF
14 ELSWORTH BERG CAPITAL	)	EMPLOYMENT, MANAGEMENT OR
15 MANAGEMENT, LLC, WILLIAM BERG	)	CONTROL OF ANY INVESTMENT
16 SETTLES as an individual and DOUGLAS	)	ADVISER, BROKER-DEALER OR
17 ELSWORTH WILSON, as an individual,	)	COMMODITY ADVISER PURSUANT TO
	)	CORPORATIONS CODE SECTION 25232.1
	)	AND ORDER IMPOSING ANCILLARY
18 Respondents.	)	RELIEF

19 To: William Berg Settles
20 Elsworth Berg Capital Management, LLC
21 378 Blackshaw Lane
San Ysidro, California 92173

22 Preston DuFauchard, the California Corporations Commissioner (“Commissioner”) of the
23 Department of Corporations (“Department”), finds that:

- 24 1. On November 4, 2010, the Commissioner brought an action to bar William Berg
25 Settles (hereinafter referred to as “Respondent”) by issuing a Notice of Intention to Issue Orders
26 Barring William Berg Settles and Douglas Elsworth Wilson From Any Position Of Employment,
27 Management Or Control Of Any Investment Adviser, Broker-Dealer Or Commodity Adviser

1 Pursuant To Corporations Code Section 25232.1 And Claim For Ancillary Relief Pursuant to
2 Corporations Code Section 25254; Accusation And Statement In Support of Claim For Ancillary
3 Relief Pursuant To Corporations Code Section 25252; and Statement to Respondents.

4 2. In October 2003, pursuant to Corporations Code section 25230, the Commissioner
5 issued an investment adviser certificate to Respondent Elsworth Berg Capital Management, LLC
6 (referred to as “Elsworth”) (CRD #120003). The Commissioner entered an order summarily
7 revoking the investment adviser certificate of Elsworth on November 3, 2010 pursuant to
8 Corporations Code section 25242(c).

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

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

16 5. In 2004, Respondents came up with an idea to create an investment product that had
17 collateral to secure the financial transactions. Respondents created a “bundled” product that
18 combined a trading account with a “collateral reserve trust” that consisted of life settlement policies.
19 Respondents created Elsworth Berg, Inc. a Nevada corporation to hold the assets of the “collateral
20 reserve trust.” In 2005, Respondents began offering their clients in the Currency Dynamics Managed
21 Accounts an opportunity to collateralize their investment. Clients in the Currency Dynamics
22 Managed Accounts had the option to elect to have a portion of their investment in the “collateral
23 reserve trust.” Respondents represented that the “collateral reserve trust” will vest at a rate of 20% a
24 year for the first five years. On the five year anniversary, the entire collateral reserve in its original
25 amount will be released to the client.

26 6. In July 2005, Respondents formed Vortex Currency Group, LLC a Nevada limited
27 liability company (“Vortex”). Respondents sold securities in the form of investment contracts in
28 Vortex to clients from February 2006 through March 2007. Vortex is an investment product in which

1 Respondents claim that 70% of investor funds will go into a trading account and 30% of investor
2 funds will go into a “collateral reserve trust” which consisted of life settlement policies. The
3 collateral reserve trust has a five-year surrender period from date of contribution. Respondents
4 represented that on the five year anniversary of the investor’s contribution the collateral reserve
5 amount plus 20% interest and any trading losses will be released and returned to the investor. The
6 five year anniversary for the Vortex clients’ collateral reserve trust is between February 2011 and
7 March 2012.

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

- 18 a. The investment was 100% secured.
- 19 b. The investors’/clients’ contribution to the collateral reserve trust and any trading losses
20 will be released to investors/clients on the five year anniversary of the contribution, when in fact
21 investors/client did not receive the promised returns.
- 22 c. That client funds would be transferred from the Currency Dynamics Managed Account or
23 the Vortex account to the Velocity trading account, when in fact the money was not transferred to
24 the Velocity trading account.

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

1 9. In February 2010, the Department of Corporations (“Department”) initiated a routine
2 and non-routine examination of Elsworth, pursuant to allegations that Elsworth, Settles and Wilson
3 made material misrepresentations and omissions in the sale of securities. Pursuant to the
4 examination, the Department requested that Respondents provided certain documents for review
5 including financial statements, ledger and journal of cash flows. These records were necessary for
6 the Department to determine how investor contributions into the collateral reserve trust were used,
7 and establish the accuracy of the performance fee billed to clients. Elsworth failed to make available
8 or maintain records of the investment advisory business for inspection during the examination.

9 10. On November 10, 2010, Respondent, William Berg Settles was personally served
10 with the following documents: Notice of Intention to Issue Orders Barring William Berg Settles
11 and Douglas Elsworth Wilson From Any Position Of Employment, Management Or Control Of Any
12 Investment Adviser, Broker-Dealer Or Commodity Adviser Pursuant To Corporations Code Section
13 25232.1 And Claim For Ancillary Relief Pursuant to Corporations Code Section 25254; Accusation
14 And Statement In Support of Claim For Ancillary Relief Pursuant To Corporations Code Section
15 25252; and Statement to Respondents; Notice of Defense, and Government Code Sections 11507.5,
16 11507.6 and 11507.7.

17 11. Respondent, William Berg Settles did not file a notice of defense or otherwise request
18 a hearing on this matter within 30 days after the personal service of the documents as required by
19 California Corporations Code section 25233. The time period to request a hearing has expired.

20 Based upon the foregoing the Commissioner finds that this order is in the public interest
21 based upon William Berg Settles’ violations of Corporations Code sections 25401, 25235
22 subdivisions (a) and (b), section 25241, and California Code of Regulations, title 10, section
23 260.241.3.

24 NOW THEREFORE, GOOD CAUSE SHOWING, IT IS ORDERED that William Berg
25 Settles is barred in the State of California from any position of employment, management or control
26 of any investment adviser, broker-dealer or commodity adviser pursuant to California Corporations
27 Code section 23232.1 for acts committed as specified in California Corporations Code section 25232
28 subdivision (e). This order is effective immediately.

1 IT IS FURTHER ORDERED that William Berg Settles is hereby ordered, jointly and
2 severally, due and payable thirty days from the date of this final order to the Commissioner as
3 follows:

4 (1) Restitution to Velocity clients for the loss of principal in the
5 amount of \$581,245.55, and interest in the amount of \$58,124.50,
6 and continuing to accrue until full payment is made, for the
7 material misrepresentations made during the offer and sale of
8 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 \$324,787.54, and interest in the amount of \$32,478.00
11 and continuing to accrue until full payment is made for the
12 amount of their beneficial interest in the collateral reserve account
13 due and payable when their interest matures at the five-year
14 anniversary of their contribution.

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

17 Dated: March 30, 2011

18 PRESTON DuFAUCHARD
19 California Corporations Commissioner

20 By: _____
21 ALAN S. WEINGER
22 Deputy Commissioner
23 Enforcement Division
24
25
26
27
28