

1 PRESTON DuFAUCHARD
California Corporations Commissioner
2 ALAN S. WEINGER
Acting Deputy Commissioner
3 MARY ANN SMITH (CA BAR NO. 230943)
Senior Corporations Counsel
4 Department of Corporations
1515 K Street, Suite 200
5 Sacramento, California 95814
Telephone: (916) 322-6067
6 Facsimile: (916) 445-6985

7 Attorneys for Complainant

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

11	In the Matter of	)	OAH CASE NO: 2011010361
12	THE CALIFORNIA CORPORATIONS)	
13	COMMISSIONER,	)	STIPULATION TO ORDER BARRING
14	Complainant,	)	DOUGLAS ELSWORTH WILSON FROM
15	v.	)	ANY POSITION OF EMPLOYMENT,
16	ELSWORTH BERG CAPITAL	)	MANAGEMENT OR CONTROL OF ANY
17	MANAGEMENT, LLC, WILLIAM BERG	)	INVESTMENT ADVISER, BROKER-
18	SETTLES as an individual and DOUGLAS	)	DEALER OR COMMODITY ADVISER
19	ELSWORTH WILSON, as an individual,	)	PURSUANT TO CORPORATIONS CODE
20	Respondents.	)	SECTION 25232.1 AND ORDER IMPOSING
		)	ANCILLIARY RELIEF
		)	Date: July 25, 2011
		)	Time: 9:00 p.m.
		)	Place: 1350 Front Street, Ste. 3005
		)	San Diego, CA 92101

21 It is hereby stipulated and agreed by and between Respondents Elsworth Berg Capital
22 Management and Douglas Elsworth Wilson (hereinafter "Respondents") and Complainant the
23 California Corporations Commissioner ("Commissioner") as follows:

24 **RECITALS**

25 A. Douglas Elsworth Wilson ("Wilson") is the president of Elsworth Berg Capital Management,
26 LLC (referred to as "Elsworth") (CRD #120003) which held an investment adviser certificate issued
27 by the California Corporations Commissioner in October 2003. On November 4, 2010, the
28

1 Commissioner entered an order summarily revoking the investment adviser certificate of Elsworth
2 pursuant to Corporations Code section 25242(c).

3 B. On November 4, 2010 the Commissioner issued a notice to Douglas Elsworth Wilson and
4 William Berg Settles of the intention of the Commissioner to issue orders to permanently bar
5 Douglas Elsworth Wilson (“Wilson”) and William Berg Settles (“Settles”) from any position of
6 employment, management or control of any investment adviser, broker-dealer or commodity adviser
7 pursuant to Corporations Code section 25232.1, and claim for ancillary relief pursuant to
8 Corporations Code Section 25254. The Commissioner also issued an Accusation and Statement in
9 Support of Notice of Intention to Issue orders on November 4, 2010.

10 C. Respondent Wilson issued a timely notice of defense and request for hearing, and waiving
11 the statutory time provision for the hearing. The hearing was set for July 25, 2011 before the Office
12 of Administrative Hearings in San Diego.

13 D. It is the intention and the desire of the parties at this time to resolve the matter without the
14 need for a hearing.

15 THEREFORE, in consideration of the foregoing, and the terms and conditions set forth
16 herein, the parties agree and stipulate as follows:

17 1. This Stipulation is entered into for the purpose of judicial economy and efficiency, and to
18 avoid the expense of a hearing, and possible other court proceedings.

19 2. Wilson and Elsworth admit to the jurisdiction of the Department of Corporations over them
20 and over the subject matter hereof. Wilson and Elsworth do not admit or deny the allegations
21 contained in the Orders and Accusation referred to above and attached hereto as Exhibit A.

22 However, if Wilson or Elsworth (i) apply to vacate the bar or judgment imposed by the orders
23 contemplated herein; (ii) apply for any license under the Department of Corporations’s current or
24 future jurisdiction, or (iii) are the subjects of an action by the Commissioner to enforce the orders
25 contemplated herein, then the allegations contained in the orders and accusation shall be admitted for
26 the purpose of such application or enforcement proceedings. In the event that either Wilson or
27 Elsworth become the subject of bankruptcy proceedings under title 11 of the United States Code,
28 then neither Wilson nor Elsworth shall be deemed in such proceedings to have admitted or denied

1 the allegations contained in the Orders and Accusation referred to above and attached hereto as
2 Exhibit A by virtue of this Stipulation.

3 3. Wilson and Elsworth hereby agree to the issuance by the Commissioner of a final order
4 barring Douglas Elsworth Wilson from any position of employment, management or control of any
5 investment adviser, broker-dealer or commodity adviser pursuant to Corporations Code section
6 25232.1, and imposing an order of restitution in the amount of \$298,689.55 against Wilson and
7 Elsworth jointly and severally due and payable sixty (60) days from the date the final order is signed.
8 A copy of the final order is attached hereto as Exhibit B.

9 4. Wilson and Elsworth agree to withdraw their notice of defense and request for hearing.

10 5. The parties hereby acknowledge and agree that this Stipulation is intended to constitute a
11 full, final and complete resolution of this matter. The parties further acknowledge and agree that
12 nothing contained in this Stipulation shall operate to limit the Commissioner's ability to
13 assist any other agency, (county, state or federal) with any prosecution, administrative, civil or
14 criminal, brought by any such agency against Wilson or Elsworth based upon any of the activities
15 alleged in this matter or otherwise. This Stipulation shall not limit the ability of the Commissioner
16 to bring any administrative or civil action to enforce compliance with the orders attached hereto or
17 seek penalties for their violation.

18 6. Each of the parties represents, warrants, and agrees that it has received independent
19 advice from its attorney(s) and/or representatives with respect to the advisability of executing this
20 Stipulation.

21 7. Each of the parties represents, warrants, and agrees that in executing this Stipulation
22 it has relied solely on the statements set forth herein and the advice of its own counsel and/or
23 representative. Each of the parties further represents, warrants, and agrees that in executing this
24 Stipulation it has placed no reliance on any statement, representation, or promise of any other party,
25 or any other person or entity not expressly set forth herein, or upon the failure of any party or any
26 other person or entity to make any statement, representation or disclosure of anything whatsoever.
27 The parties have included this clause: (1) to preclude any claim that any party was in any way
28 fraudulently induced to execute this Stipulation; and (2) to preclude the introduction of parol

1 evidence to vary, interpret, supplement, or contradict the terms of this Stipulation.

2 8. This Stipulation is the final written expression and the complete and exclusive
3 statement of all the agreements, conditions, promises, representations, and covenants between the
4 parties with respect to the subject matter hereof, and supercedes all prior or contemporaneous
5 agreements, negotiations, representations, understandings, and discussions between and among the
6 parties, their respective representatives, and any other person or entity, with respect to the subject
7 matter covered hereby.

8 9. In that the parties have had the opportunity to draft, review and edit the language of this
9 Stipulation, no presumption for or against any party arising out of drafting all or any part of this
10 Stipulation will be applied in any action relating to, connected, to, or involving this Stipulation.
11 Accordingly, the parties waive the benefit of California Civil Code § 1654 and any successor or
12 amended statute, providing that in cases of uncertainty, language of a contract should be interpreted
13 most strongly against the party who caused the uncertainty to exist.

14 10. This Stipulation may be executed in one or more counterparts, each of which shall be an
15 original but all of which, together, shall be deemed to constitute a single document.

16 11. Each signator hereto covenants that he/she possesses all necessary capacity and
17 authority to sign and enter into this Stipulation.

18
19 PRESTON DUFAUCHARD
20 California Corporations Commissioner

21 Dated: 7/22/11

22 By _____
23 MARY ANN SMITH
24 Senior Corporations Counsel

25 Dated: 7/22/2011

26 By _____
27 DOUGLAS ELSWORTH WILSON, as an individual

28 Dated: 7/22/2011

By _____
DOUGLAS ELSWORTH WILSON, President
on behalf of Elsworth Berg Capital Management, LLC.