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8 Attorneys for Complainant

9 BEFORE THE DEPARTMENT OF CORPORATIONS
10 OF THE STATE OF CALIFORNIA
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12	In the Matter of the Accusation of)	CASE NO.
13	THE CALIFORNIA CORPORATIONS)	FILE NO. 923-4714
14	COMMISSIONER,)	ACCUSATION
15	Complainant,)	
16	v.)	
17	BOROGROVE (DAVID CARR FRANK,)	
18	DBA); and DAVID CARR FRANK, as an)	
19	individual,)	
20	Respondents.)	

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

24 **I. JURISDICTION AND VENUE**

25 1. The Commissioner brings this action pursuant to the provisions of California
26 Corporations Code sections 25232 and 25232.1 and the rules and regulations promulgated
27 thereunder.

28 2. The Commissioner is authorized to administer and enforce the provisions of the

1 Corporate Securities Law of 1968, Corporations Code section 25000 et seq., and the regulations
2 thereunder at California Code of Regulations, title 10, section 260.000 et seq.

3 II. STATEMENT OF FACTS

4 3. This action is brought in order to revoke a certificate of investment adviser previously
5 issued to Respondent Borogrove (David Carr Frank, DBA) (“Borogrove”) pursuant to Corporations
6 Code section 25232 and to bar Respondent David Carr Frank (“Frank”) from any position of
7 employment, management or control of any investment adviser, broker-dealer or commodity adviser
8 pursuant to Corporations Code section 25232.1. At all relevant times Frank was the managing and
9 sole member of Borogrove. Borogrove is or was a California sole proprietorship company, formed
10 in October 2002, and was located at One World Trade Center, Long Beach, California 90831. On
11 February 11, 2003, Borogrove received its investment adviser certificate from the Commissioner.

12 4. From November 21, 2001 and continuing until April 19, 2002, Frank was a registered
13 representative of Western International Securities, Inc. (“WIS”), a licensed broker-dealer. WIS
14 allowed Frank to resign from the firm.

15 5. From April through July 2002, Frank transferred approximately 109 client accounts
16 from WIS to Charles Schwab (“Schwab”) with Borogrove being given power of attorney to execute
17 trades on behalf of these clients. Frank was not a registered representative of Schwab at any time.
18 Frank and Borogrove received compensation while engaging in the business of advising others
19 directly as to the advisability of investing in, purchasing or selling securities and as such were acting
20 as an unlicensed investment adviser. While at Schwab, Frank traded excessively and too
21 aggressively, prompting Schwab to ask him to leave and transfer his client accounts at the end of
22 2002.

23 6. On or about February 10, 2003, Frank and Borogrove filed a Uniform Application for
24 Investment Adviser Registration (“investment adviser application”). The investment adviser
25 application stated that Frank and Borogrove had not provided investment advisory services to any
26 clients, individual, commercial or other, during the most recently completed fiscal year. In fact,
27 Frank and Borogrove did provide investment advisory services to at least 6 clients while not licensed
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1 as an investment adviser. On February 11, 2003, Borogrove was issued an investment adviser
2 certificate.

3 7. On August 13, 2003, the Department sent an inquiry to all accounts with Borogrove
4 as its power of attorney, asking among other things, whether or not the clients paid Borogrove
5 investment advisory fees. The responses to these inquiries revealed that Borogrove was receiving
6 investment advisory fees from clients before being licensed as an investment adviser with the
7 Department on February 11, 2003. These clients paid the fees directly to Borogrove and not out of
8 their accounts.

9 8. Therefore, as of at least April 2002 and continuing until February 11, 2003, Frank and
10 Borogrove engaged in unlicensed investment adviser activity in violation of Corporations Code
11 section 25230.

12 9. Prior to obtaining an investment adviser license, Frank's and Borogrove's customers
13 paid a fee for "Assets Under Management" for investment adviser activities relating to their
14 accounts. Frank and Borogrove charged customer accounts semi-annually based on how much
15 money was under management at the time of billing.¹ These fees were charged to customers using
16 Borogrove invoices and were paid directly by the customer rather than subtracted from the
17 customer's account.
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19 10. Beginning in or around April 2002 and continuing until February 11 2003, Frank and
20 Borogrove did not have a valid investment adviser certificate issued by the Department of
21 Corporations or the United States Securities and Exchange Commission ("SEC"). However, during
22 this time Frank and Borogrove continued to provide investment advice for which they charged a fee
23 in violation of Corporations Code section 25230.
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28 ¹ Customers were charged 1.5% for assets under \$500,000; 1.3% for assets ranging from \$500,000 to \$1,000,000; 1.0%
for assets ranging from \$2,000,000; 0.8% for assets ranging from \$2,000,000 to \$5,000,000; and "negotiable"
percentage rates for assets in excess of \$5,000,000.

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III. RESPONDENT BORO GROVE’S INVESTMENT ADVISER CERTIFICATE SHOULD BE REVOKED PURSUANT TO CORPORATIONS CODE SECTION 25232 FOR ACTS COMMITTED AS SPECIFIED UNDER CORPORATIONS CODE SECTION 25232, SUBDIVISIONS (a) AND (e).

11. Corporations Code section 25232 provides, in pertinent part:

The commissioner may, after appropriate notice and opportunity for hearing, by order censure, deny a certificate to, or suspend for a period not exceeding 12 months or revoke the certificate of, an investment adviser, if the commissioner finds that the censure, denial, suspension, or revocation is in the public interest and that the investment adviser, whether prior or subsequent to becoming such, or any partner, officer or director thereof or any person performing similar functions or any person directly or indirectly controlling the investment adviser, whether prior or subsequent to becoming such, or any employee of the investment adviser while so employed:

(a) Has willfully made or caused to be made in any application for a certificate or any report filed with the commissioner under this division . . . any statement which was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has willfully omitted to state in the application or report any material fact which is required to be stated therein. . .

(e) Has willfully violated any provision of . . . Title 4 (commencing with Section 25000)... or of any rule or regulation under any of those statutes, or any order of the commissioner which is or has been necessary for the protection of any investor. . .

12. Corporations Code section 25009 provides in relevant part as follows:

(a) “Investment adviser” means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing or selling securities....

13. Corporations Code section 25230 provides in relevant part as follows:

(a) It is unlawful for any investment adviser to conduct business as an investment adviser in this state unless the investment adviser has first applied for and secured from the commissioner a certificate, then in effect, authorizing the investment adviser to do so or unless the investment adviser is exempted by the provisions of Chapter 1 (commencing with Section 25200) of this part or unless the investment adviser is subject to Section 25230.1.

1 14. Borogrove is subject to revocation of its investment adviser certificate pursuant to
2 Corporations Code section 25232, subdivision (a) for willfully making false statements on its
3 investment adviser application. Also, Borogrove is subject to revocation of its investment adviser
4 certificate pursuant to Corporations Code section 25232, subdivision (e) for willfully violating
5 Corporations Code section 25230 by engaging in investment adviser activities without a license.
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7 15. Borogrove falsely stated in its investment adviser application that it had not provided
8 investment advisory services to any clients. In fact, Borogrove did provide investment advisory
9 services to at least six clients from April 2002 until February 11, 2003.
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11 16. Borogrove willfully made the above false statement of material facts on its
12 investment adviser application, and therefore Borogrove's investment adviser certificate should be
13 revoked pursuant to Corporations Code section 25232, subdivision (a).
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15 17. Beginning in or around April 2002 and continuing until February 11, 2003,
16 Borogrove did not have a valid investment adviser certificate. However, during this time Borogrove
17 continued to provide investment advice to its customers for which it charged a fee in violation of
18 Corporations Code section 25230.
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20 18. By engaging in unlicensed investment adviser activity, Borogrove has willfully
21 violated provisions of the Corporations Code, Title 4, section 25000 et seq. Therefore, Borogrove's
22 investment adviser certificate should be revoked pursuant to Corporations Code section 25232,
23 subdivision (e).
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25 **IV. RESPONDENT FRANK SHOULD BE BARRED FROM ANY POSITION OF**
26 **EMPLOYMENT, MANAGEMENT OR CONTROL OF ANY INVESTMENT ADVISER,**
27 **BROKER-DEALER OR COMMODITY ADVISER PURSUANT TO CORPORATIONS**
28 **CODE SECTION 25232.1 FOR ACTS COMMITTED AS SPECIFIED UNDER**
 CORPORATIONS CODE SECTION 25232, SUBDIVISIONS (a) AND (e).

 19. Corporations Code Section 25232.1 provides, in pertinent part:

1 The commissioner may, after appropriate notice and opportunity for hearing,
2 by order censure, or suspend for a period not exceeding 12 months, or bar
3 from any position of employment, management or control of any investment
4 adviser, broker-dealer or commodity adviser, any officer, director, partner,
5 employee of, or person performing similar functions for, an investment
6 adviser, or any other person, if he or she finds that the censure, suspension or
7 bar is in the public interest and that the person has committed any act or
8 omission enumerated in subdivision (a), (e), (f), or (g) of Section 25232...

9 20. Frank is subject to being barred from any position of employment, management or
10 control of any investment adviser, broker-dealer or commodity adviser pursuant to Corporations
11 Code section 25232.1, for acts committed as specified in Corporations Code section 25232,
12 subdivision (a) for willfully making false statements on Borogrove's investment adviser application
13 filed with the Commissioner. Also, Frank is subject to being barred from any position of
14 employment, management or control of any investment adviser, broker-dealer or commodity adviser
15 pursuant to Corporations Code section 25232.1, for acts committed as specified in Corporations
16 Code section 25232, subdivision (e) for willfully violating Corporations Code section 25230 by
17 engaging in investment adviser activities without a license.

18 21. Frank willfully made the false statement of material facts listed in paragraph
19 15 above on Borogrove's investment adviser application. Therefore, Frank should be barred from
20 any position of employment, management or control of any investment adviser, broker-dealer or
21 commodity adviser pursuant to Corporations Code section 25232.1, for willfully making false
22 statements on Borogrove's investment adviser application filed with the commissioner as specified
23 in Corporations Code section 25232, subdivision (a).

24 22. Beginning in or around April 2002 and continuing until February 11, 2003, Frank did
25 not have a valid investment adviser certificate. However, during this time Frank continued to
26 provide investment advice to his customers for which he charged a fee in violation of Corporations
27 Code section 25230.
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23. By engaging in unlicensed investment adviser activity, Frank has willfully violated provisions of the Corporations Code, Title 4, section 25000 et seq. Therefore, Frank should be barred from employment, management or control of any investment adviser, broker-dealer or commodity adviser pursuant to Corporations Code section 25232.1 for engaging in unlicensed investment adviser activities as specified in Corporations Code section 25232, subdivision (e).

V. RELIEF REQUESTED

WHEREFORE, based upon the foregoing, the Commissioner finds it is in the public interest to revoke Borogrove’s investment adviser certificate, pursuant to Corporations Code section 25232 for willful acts committed as specified in Corporations Code section 25232, subdivisions (a) and (e), and to bar Frank from any position of employment, management or control of any investment adviser, broker-dealer or commodity adviser pursuant to Corporations Code section 25232.1 for willful acts committed as specified in Corporations Code section 25232, subdivisions (a) and (e).

WHEREFORE, IT IS PRAYED that Respondent Borogrove’s investment adviser certificate be revoked pursuant to Corporations Code section 25232, subdivisions (a) and (e) and that Respondent Frank be barred from any position of employment, management or control of any investment adviser, broker-dealer or commodity adviser pursuant to Corporations Code section 23232.1 for acts committed as specified in Corporations Code section 25232, subdivisions (a) and (e).

Dated: January 12, 2004

WILLIAM P. WOOD
California Corporations Commissioner

By: _____
ALAN S. WEINGER
Supervising Counsel
Enforcement and Legal Services Division