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7
8 BEFORE THE DEPARTMENT OF CORPORATIONS
9 OF THE STATE OF CALIFORNIA

10 In the Matter of)	FILE NO. 923-3577
)	
11 THE CALIFORNIA CORPORATIONS)	STATEMENT IN SUPPORT OF ORDER TO
12 COMMISSIONER,)	DISCONTINUE VIOLATIONS PURSUANT
)	TO CORPORATIONS CODE SECTION 25249
13 Complainant,)	AND COMMISSIONER'S INTENTION TO
)	MAKE ORDER FINAL
14 v.)	
)	
15 HAYDEN CAPITAL MANAGEMENT, INC.,)	
)	
16 Respondent.)	
)	

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19 Wayne Strumpfer, the Acting California Corporations Commissioner ("Commissioner") of
20 the Department of Corporations ("Department") alleges and charges as follows:

21 1. Hayden Capital Management, Inc. ("HCM") holds a valid and unrevoked investment
22 adviser certificate issued by the Commissioner pursuant to Corporations Code section 25230¹. HCM
23 is an investment adviser business located at 1150 North Mountain Avenue, Suite 206, Upland, CA
24 91786. Robert J. Hayden is the President of HCM.

25 2. On or about April 18, 2000 the Commissioner commenced a regulatory examination of
26 HCM's investment adviser business. The examination revealed violations of provisions of the
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1 All further statutory references are to the Corporations Code unless otherwise indicated.

1 California Code of Regulations (“CCR”) sections 260.241.3 and 260.237.1(a)(2). These violations
2 consisted of HCM’s failure to maintain current books and records and the continued failure to
3 maintain a minimum tangible net capital of \$5,000 respectively.

4 3. On or about August 9, 2000 the Commissioner noted these deficiencies to HCM
5 through a regulatory letter. Failure by HCM to respond to this letter resulted in a follow-up letter
6 dated January 29, 2001. On or about February 16, 2001, HCM responded to the regulatory letter
7 explaining that the accounting problems were due to various inadequacies and that they were
8 working to correct the problem. HCM also provided various schedules of assets with computation
9 and aggregate indebtedness worksheets to substantiate that HCM met the tangible net capital
10 requirements. On or about February 16, 2001, the Commissioner notified HCM by letter that the
11 schedule of assets was not acceptable and that a trial balance, prepared in accordance with GAAP
12 was required.

13 4. On or about March 1, 2001, the Commissioner received a letter from HCM stating that
14 the account statements and schedule of assets were verifiable proof of compliance. On or about
15 March 12, 2001, the Commissioner sent a letter to HCM to explain the requirements again, request
16 another financial statement, and inform HCM that failure to comply may result in administrative
17 action. On or about March 22, 2001, the Commissioner sent HCM a formal letter requesting
18 financial statements and warned HCM that failure to comply may result in suspension or revocation
19 of their Certificate.

20 5. On or about March 30, 2001, HCM submitted financial reports as of February 28, 2001.
21 The computation of net capital and aggregate indebtedness revealed HCM’s tangible net capital to be
22 deficient by \$12,013.64. On or about April 4, 2001 the Department summarily suspended HCM’s
23 Certificate. Conditions were imposed on the suspension in that HCM was to notify all current clients
24 of the suspension and not accept any new clients.

25 6. On or about June 4, 2001, a letter was received from HCM submitting the April 30,
26 2001 financial reports. The Commissioner found that HCM’s tangible net capital was deficient by
27 \$6,680.80, its aggregate indebtedness exceeded its current net capital by \$2,272.00, and the financial
28 report was not prepared in accordance with GAAP. These deficiencies were memorialized in a letter

1 dated June 8, 2001. HCM responded in a letter dated June 22, 2000, where it attempted to explain
2 the deficiencies and errors and submitted the May 31, 2001 financial reports.

3 7. The Department's computation net capital and aggregate indebtedness as of May 31,
4 2001 revealed that HCM's tangible net capital was deficient by \$9,752.43 and its current aggregate
5 indebtedness exceeded its current net capital by \$5,343.64. HCM was notified of the deficiencies in
6 a letter dated July 3, 2001. On or about July 17, 2001, HCM submitted its June 30, 2001 financial
7 report. The Department's computations revealed HCM's tangible net capital to be deficient by
8 \$11,546.74 and its current aggregate indebtedness exceeded its current net capital by \$7,497.95.

9 8. On or about August 10, 2001 the Department received HCM's July 31, 2001 financial
10 reports and, pursuant to these reports, found HCM's tangible net capital to still be deficient by
11 \$2,609.53. Furthermore, HCM's financial reports were not prepared in accordance with GAAP.

12 9. On or about August 29, 2001, the Department received a revised set of financial
13 reports, for the period ending July 31, 2001. The Department found the revised financial reports were
14 still not properly prepared as the net income on the income statements and the net income on the
15 balance sheet were different. Furthermore, HCM's tangible net capital was deficient by \$2,895.04.

16 10. On September 13, 2001, HCM filed an interim report as of August 31, 2001. The
17 computation of net capital and aggregate indebtedness indicated that HCM's net capital was
18 \$5,384.07, \$384.07 above the minimum required. The current net capital was \$4,792.86 above the
19 aggregate indebtedness. The Order Summarily Suspending its Investment Advisor Certificate was
20 removed effective September 17, 2001.

21 11. On or about October 12, 2001, the Department received HCM's interim report as of
22 September 30, 2001 and the tangible net capital was found deficient by \$299.90.

23 12. From October 21, 2001 to September 31, 2002, the interim reports showed that HCM
24 was in compliance with capital requirements.

25 13. On or about November 18, 2002, the Department received HCM's interim report as of
26 October 31, 2002 and the tangible net capital was found deficient by \$82.33.

27 14. From November 30, 2002 to December 31, 2003, the interim reports showed that HCM
28 was in compliance with capital requirements.

1 15. On or about February 18, 2004, the Department received HCM’s interim report as of
2 January 31, 2004 and the tangible net capital was again found deficient, this time by \$106.25.

3 16. The capital requirement for investment advisers, prior to January 1, 2005, is set out in
4 California Code of Regulations (“CCR”), Title 10, section 260.237.1. CCR, Title 10, section
5 260.237.1(a)(2) provides, in relevant part, as follows:

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

10 ...
11 (2) If the investment adviser has any power of attorney from any investment advisory client
12 to execute transactions and does not have regular or periodic custody or possession of any of
13 its investment advisory clients’ securities or funds, except the receipt of prepaid subscriptions
14 for periodic publications, or other investment advisory services, it shall at all times have and
15 maintain tangible net capital of not less than \$5,000...

16 17. On or about January 23, 2006, the Department received HCM’s interim report as of
17 December 31, 2005 and the tangible net capital was again found deficient, this time by \$57.01.

18 18. The capital requirement for investment advisers, subsequent to January 1, 2005, is set
19 out in CCR, Title 10, section 260.237.2. CCR, Title 10, section 260.237.2(a) and (b) provide, in
20 relevant part, as follows:

21 (a) Every investment adviser who has custody of client funds or securities shall maintain at
22 all times a minimum net worth of \$35,000, and every investment adviser who has
23 discretionary authority over client funds or securities but does not have custody of client
24 funds or securities, shall maintain at all times a minimum net worth of \$10,000.

25 (b) Every investment adviser who accepts prepayment of more than \$500 per client and six
26 or more months in advance shall maintain at all times a positive net worth.

27 By reason of the foregoing, HCM has violated the CCR, Title 10, sections 260.237.1(a)(2)
28 (prior to January 1, 2005) and 260.237.2(a), therefore justifying the issuance of an Order to
Discontinue Violations. HCM, as a licensee, is obligated to have knowledge and comply with the
provisions of the CCR and to maintain its investment adviser certificate. However, despite the
Commissioner’s prior notice, HCM has continued and will continue to violate the CCR, Title 10,
sections 260.237.1(a)(2) (prior to January 1, 2005) and 260.237.2(a).

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Therefore, pursuant to California Corporations Code section 25249, the Commissioner issues this Order directing HCM to discontinue violating the CCR, Title 10, sections 260.237.1(a)(2) (prior to January 1, 2005) and 260.237.2(a).

WHEREFORE, good cause showing, and pursuant to Corporations Code section 25251, the California Corporations Commissioner hereby notifies Hayden Capital Management, Inc. of his intention to make final the Order to Discontinue Violations Pursuant to Corporations Code Section 25249.

Dated: March 21, 2006
Los Angeles, California

WAYNE STRUMPFER
Acting California Corporations Commissioner

By: _____
SEAN M. ROONEY
Corporations Counsel
Enforcement and Legal Services Division