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4 DEPARTMENT OF CORPORATIONS  
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6 Attorneys for Complainant

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

10 In the Matter of ) FILE NO. 923-3577  
11 )  
12 THE CALIFORNIA CORPORATIONS ) STATEMENT IN SUPPORT OF ORDER  
COMMISSIONER, ) LEVYING ADMINISTRATIVE PENALTIES  
13 ) PURSUANT TO CORPORATIONS CODE  
Complainant, ) SECTION 25252  
14 v. )  
15 HAYDEN CAPITAL MANAGEMENT, INC., )  
16 Respondent. )  
17 )  
18 )

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  
22 investment adviser certificate issued by the Commissioner pursuant to Corporations Code section  
23 25230<sup>1</sup>. HCM is an investment adviser business located at 1150 North Mountain Avenue, Suite 206,  
24 Upland, CA 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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28 <sup>1</sup> 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 capital requirements. On or  
10 about February 16, 2001, the Commissioner notified HCM by letter that the schedule of assets was  
11 not acceptable and that a trial balance, prepared in accordance with GAAP was required.

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

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

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

1 memorialized in a letter dated June 8, 2001. HCM responded in a letter dated June 22, 2000, where it  
2 attempted to explain 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. Again from November 30, 2002 to December 31, 2003, the interim reports showed that  
28 HCM was in compliance with capital requirements.

1           15. However, on or about February 18, 2004, the Department received HCM’s interim  
2 report as of January 31, 2004 and the tangible net capital was again found deficient, this time by  
3 \$106.25.

4           16. The capital requirement for investment advisers, prior to January 1, 2005, is set out in  
5 California Code of Regulations (“CCR”), Title 10, section 260.237.1. CCR, Title 10, section  
6 260.237.1(a)(2) provided, in relevant part, as follows:

7           (a) No investment adviser who has any power of attorney from any investment advisory  
8 client to execute transactions...shall permit its total aggregate indebtedness to exceed 500%  
9 of its tangible net capital or permit its current aggregate indebtedness to exceed its current net  
10 capital; and,  
11 ...

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

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

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

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

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

28           19. The books and records keeping requirement for investment advisors is set out in  
CCR, Title 10, section 260.241.3 and provides, in relevant part, as follows:

(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:

...  
(e)(1) All books and records required to be made under the provisions of subsections (a) to  
(c) (1), inclusive, of this section shall be maintained and preserved in an easily accessible

1 place for a period of not less than five years from the end of the fiscal year during which the  
2 last entry was made on such record, the first two years in an appropriate office of the  
3 investment adviser.

4 20. Corporations Code section 25252, which became effective January 1, 1999,  
5 authorizes the Commissioner to issue an order levying administrative penalties against any  
6 investment adviser for willful violations of any provision of the California Securities Law of 1968  
7 and any rule promulgated thereunder. Specifically, Corporations Code section 25252 provides, in  
8 relevant part:

9 The Commissioner may, after appropriate notice and opportunity for hearing, by order levy  
10 administrative penalties as follows:

11 ...

12 (b) Any broker-dealer or investment adviser that willfully violates any provision of this  
13 division to which it is subject, or that willfully violates any rule or order adopted or issued  
14 pursuant to this division and to which it is subject, is liable for administrative penalties of not  
15 more than five thousand dollars (\$5,000) for the first violation, not more than ten thousand  
16 dollars (\$10,000) for the second violation, and not more than fifteen thousand dollars  
17 (\$15,000) for each subsequent violation.

18 By reason of the foregoing, HCM has violated the CCR, title 10, sections 260.237.1(a)(2)  
19 (prior to January 1, 2005), 260.237.2(a) and 260.241.3, therefore justifying the issuance of an order  
20 levying administrative penalties against HCM. HCM, as a licensee, is obligated to have knowledge  
21 and comply with the provisions of the CCR and to maintain its investment adviser certificate.  
22 However, despite the Commissioner's prior notice, HCM has continued and will continue to violate  
23 the CCR Title 10, sections 260.237.1(a)(2), 260.237.2(a) and 260.241.3.

24 Therefore, pursuant to Corporations Code section 25252, the Commissioner will seek  
25 administrative penalties for Hayden Capital Management Inc.'s violation of the CCR, Title 10,  
26 sections 260.237.1(a)(2), 260.237.2(a) and 260.241.3.

27 WHEREFORE, good cause showing, and pursuant to Corporations Code section 25252, the  
28 California Corporations Commissioner gives notice of his intent to issue an order levying  
administrative penalties in the amount of \$750 for each violation setout above. Specifically,  
administrative penalties of \$1,500 for violating CCR, Title 10, section 260.241.3 on two (2) separate  
occasions; administrative penalties of \$6,000 for violating CCR, Title 10, section 260.237.1(a)(2)  
(prior to January 1, 2005) on eight (8) separate occasions, and administrative penalties of \$750 for

1 violating CCR, Title 10, section 260.237.2(a) on one (1) occasion, for a total of \$8,250 in  
2 administrative penalties.

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4 Dated: March 21, 2006  
5 Los Angeles, California

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7 WAYNE STRUMPFER  
8 Acting California Corporations Commissioner

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10 By: \_\_\_\_\_  
11 SEAN M. ROONEY  
12 Corporations Counsel  
13 Enforcement and Legal Services Division

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