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

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11	In the Matter of)	FILE NO. 126812
12	THE CALIFORNIA CORPORATIONS)	
13	COMMISSIONER,)	
14	Complainant,)	STATEMENT IN SUPPORT OF ORDER
15	v.)	LEVYING ADMINISTRATIVE PENALTIES
16	MARK H. HULL,)	PURSUANT TO CORPORATIONS CODE
17	Respondent.)	SECTION 25252
18)	
19)	

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21 Wayne Strumpfer, the Acting California Corporations Commissioner (“Commissioner”) of
22 the Department of Corporations (“Department”) alleges and charges as follows:

23 1. Mark H. Hull (“Hull”) holds a valid and unrevoked investment adviser certificate
24 issued by the Commissioner pursuant to Corporations Code section 25230 on February 17, 1994. As
25 of September 5, 2003, Hull’s investment advisory business was located at 1633 West Lewis Street,
26 San Diego, California 92103. Hull operates his investment adviser as a sole proprietor.

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1 2. On or about March 20, 2003, the Commissioner commenced a regulatory examination
2 of Hull. The examination revealed violations of regulations promulgated pursuant to the Corporate
3 Securities Law of 1968, found at Corporations Code section 25000 et seq.

4 3. These violations included Hull's failure to file annual financial reports with the
5 Commissioner (Cal. Code Regs., tit. 10, § 260.241.2, subd. (a)), failure to file interim reports (Cal.
6 Code Regs., tit. 10, § 260.241.2, subd. (d)(2)(A)(3)), and Hull's failure to prepare and maintain
7 monthly records of trial balances and computations of net capital and aggregate indebtedness or of
8 minimum net worth (Cal. Code Regs., tit. 10, § 260.241.3, subd. (j)). The books and records
9 requirements and the annual report filing requirements provide the Department with a regulatory
10 mechanism to validate a firm's liquidity and financial integrity to ensure that licensees maintain the
11 necessary net capital for the protection of the public. Hull's violation of these books and records
12 provisions prevented the Department from determining, as part of its regulatory examination, if Hull
13 met the capital requirements imposed by the Corporate Securities Law of 1968 and the regulations
14 enacted thereunder.

15 4. Corporations Code section 25241 provides that investment advisers are required to
16 maintain books and records that are subject to examination, and to file such reports as required by,
17 the Commissioner. Corporations Code section 25241, at the time of the March 20, 2003 regulatory
18 examination, provided, in relevant part, the following¹:

19 [E]very broker dealer and every investment adviser licensed under Section 25230 shall make
20 and keep accounts, correspondence, memorandums, papers, books, and other records and
21 shall file financial and other reports as the commissioner by rule requires

22 5. California Code of Regulations, title 10, section 260.241.2, subdivision (a) requires
23 the filing of an annual report by certain investment advisers. Subdivision (a)(2) of section 260.241.2,
24 at the time of the March 20, 2003 regulatory examination, provided, in relevant part, the following:

25 (a) General Rule. Subject to the provisions of Subsection (c) of this section, . . . every
26 licensed investment adviser subject to the provisions of Section 260.237.1 of these rules, shall
27 file an annual financial report containing the information required by a form or forms to be
28 supplied or approved by the Commissioner, as follows:

¹ Various provisions of the Corporations Code and California Code of Regulations, title 10, were amended and became effective April 3, 2003. This action relates to acts that occurred under statutes and rules prior to the effective date of the amendments.

1 . . .

2 (2) The annual report for investment advisers shall contain a Statement of Financial
3 Condition. Supporting schedules shall contain computations of net capitals, aggregate
4 indebtedness and ratios required under Section 260.237.1 and the certificate of the accountant
5 required under subsection (e) of Section 260.237 of these rules.

6 6. California Code of Regulations, title 10, section 260.241.2, subdivision (d)(2)(A)(3)
7 requires the filing of interim reports under certain conditions. California Code of Regulations, title
8 10, section 260.241.2, subdivision (d)(2)(A)(3), at the time of the March 20, 2003 examination,
9 provided the following:

10 (d) Interim reports.

11 (2) Every investment adviser subject to the provisions of Section 260.237.1 of these rules
12 shall file a report furnished or approved by the Commissioner within 15 days after:

13 (A) Its tangible net capital is reduced to less than 120% of its required minimum tangible net
14 capital . . .

15 (3) The report required by subsections (d)(1) and (d)(2) of this section shall be as of a date
16 within the 15 day period. Additional reports shall be filed on the same from within 10 days
17 after each subsequent monthly accounting period until three successive months have elapsed
18 during which none of the conditions specified in subsection (d)(1) or (d)(2) of this section
19 have occurred.

20 7. California Code of Regulations, title 10, section 260.241.3 requires that investment
21 advisers maintain specific books and records. At the time of the March 20, 2003 examination,
22 subdivision (j) of section 260.241.3, provided the following:

23 (j) Any investment adviser who is subject to the minimum financial requirements of Section
24 260.237.1 shall, in addition to the records otherwise required under this section, maintain a
25 record of the proof of money balances of all ledger accounts in the form of trial balances and
26 a record of the computations of net capitals and aggregate indebtedness pursuant to Section
27 260.237.1 of these rules (as of the trial balance date). The trial balances and computations
28 shall be prepared currently at least once a month.

8. At the time of the March 20, 2003 regulatory examination, California Code of
Regulations, title 10, section 260.237.1, contained the capital requirements for investment advisers.
Subdivision (a)(2) of section 260.237.1 provided, in relevant part, as follows:

(a) No investment adviser who has any power of attorney from any investment advisory
client to execute transactions . . . shall permit its total aggregate indebtedness to exceed 500%

1 of its tangible net capital or permit its current aggregate indebtedness to exceed its current net
 2 capital; and,

3 . . .

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

9 Subdivision (c) of section 260.237.1 provided that for purposes of section 260.237.1,
 10 subdivision (a), all financial information shall be determined in accordance with generally accepted
 11 accounting principles.

12 9. The Department's examiner found during the regulatory examination on March 20,
 13 2003, that Hull had discretionary authority and power of attorney over advisory client accounts to
 14 execute transactions and, therefore, Hull was required to meet the net capital requirements provided
 15 for under California Code of Regulations, title 10, section 260.237.1, subdivision (a)(2), and to show
 16 proof of compliance with this regulation by filing annual financial reports, in accordance with
 17 California Code of Regulations, title 10, section 260.241.2, subdivision (a). Hull was also required to
 18 prepare and maintain monthly proof of ledger account money balances and either monthly
 19 computations of net capitals and aggregate indebtedness, or monthly computations of minimum net
 20 worth, in accordance with California Code of Regulations, title 10, section 260.241.3, subdivision (j).
 21 At the time of the March 20, 2003 examination, Hull had not prepared and maintained monthly proof
 22 of ledger account money balances and either monthly computations of net capitals and aggregate
 23 indebtedness, or of minimum net worth, in violation of California Code of Regulations, title 10,
 24 section 260.241.3, subdivision (j). The Department examiner also found that Hull had failed to
 25 submit his annual financial reports for the years 2000, 2001 and 2002. As a result of Hull's violation
 26 of California Code of Regulations, title 10, sections 260.241.2(a) and 260.241.3(j), the Department's
 27 examiner was unable to determine if Hull, at the time of the examination, was in compliance with net
 28 capital requirements of section 260.237.1.

10. Moreover, the Department's examiner also found during the regulatory examination
 on March 20, 2003, that Hull's tangible net capital as of February 28, 2003 fell below 120% of the

1 required tangible net capital and, therefore, Hull was required to file interim reports in accordance
2 with California Code of Regulations, title 10, section 260.241.2, subdivision (d)(2)(A)(3). At the
3 time of the March 20, 2003 examination, Hull had not filed an interim report for February 2003.

4 11. On June 23, 2003, the Department sent Hull a regulatory letter explaining the
5 violations discovered during the March 20, 2003 examination, including violations of California
6 Code of Regulations, title 10, sections 260.241.3, subdivision (j), and 260.241.2, subdivisions (a) and
7 (d)(2)(A)(3). Hull responded by letter dated August 9, 2003 and enclosed the requested annual
8 reports. In his letter, Hull stated that that his office had not filed the reports due to an oversight. He
9 vowed to file timely reports in the future. Additionally, Hull declared his intention to abide by all
10 relevant code sections.

11 12. A prior regulatory examination of Hull conducted by the Department in 1998 revealed,
12 in part, identical regulatory violations. On July 8, 1998, the Department sent a letter notifying Hull,
13 among other things, of his failure to prepare and maintain monthly records of trial balances and
14 computations of net capitals and aggregate indebtedness in violation of California Code of
15 Regulations, title 10, section 260.241.3, subdivision (j). Hull had also failed to file annual reports in
16 violation of California Code of Regulations, title 10, section 260.241.2, subdivision (a), and failed to
17 file interim reports when his tangible net capital fell below the minimum requirements in violation of
18 California Code of Regulations, title 10, section 260.241.2, subdivision (d)(2)(A)(3). Hull replied by
19 letter dated July 14, 1998 and declared that he would comply with all relative statutes. Hull
20 specifically stated that he would begin to file annual reports and maintain the net capital and
21 aggregate indebtedness reports at least monthly.

22 13. Corporations Code section 25252, which became effective January 1, 1999, authorizes
23 the Commissioner to issue an order levying administrative penalties against any investment adviser
24 for willful violations of any provision of the Corporate Securities Law of 1968 and any rules
25 promulgated thereunder. Specifically, Corporations Code section 25252 provides, in relevant part:

26 The commissioner may, after appropriate notice and opportunity for hearing, by orders, levy
27 administrative penalties as follows:

28 (b) Any broker-dealer or investment adviser that willfully violates any provision of this
division to which it is subject, or that willfully violates any rule or order adopted or issued

1 pursuant to this division and to which it is subject, is liable for administrative penalties of not
2 more than five thousand dollars (\$5,000) for the first violation, not more than ten thousand
3 dollars (\$10,000) for the second violation, and not more than fifteen thousand dollars
(\$15,000) for each subsequent violation.

4 14. By reason of the foregoing, Hull willfully violated California Code of Regulations,
5 title 10, sections 260.241.2, subdivisions (a) and (d)(2)(A)(3), and 260.241.3, subdivision (j),
6 justifying the imposition of administrative penalties. Hull, as a licensee, was obligated to have
7 knowledge of, and to comply with, the provisions of the Corporate Securities Law of 1968 and the
8 regulations thereunder to maintain its investment adviser certificate. Furthermore, on July 2, 1998,
9 the Department notified Hull of the requirements of California Code of Regulations, title 10, sections
10 260.241.2, subdivisions (a) and (d)(2)(A)(3), and 260.241.3, subdivision (j). Hull violated these
11 sections again despite Hull's assurances of future compliance after the first examination.

12 15. Therefore, pursuant to Corporations Code section 25252, the Commissioner seeks
13 administrative penalties for Hull's failure to file annual financial statements, failure to prepare and
14 maintain monthly trial balances and failure to file interim reports in willful violation of California
15 Code of Regulations, title 10, section 260.241.3, subdivision (j), and section 260.241.2, subdivisions
16 (a) and (d)(2)(A)(3).

17 WHEREFORE, good cause showing, and pursuant to Corporations Code section 25252, the
18 California Corporations Commissioner prays for an order levying administrative penalties in the
19 amounts as follows, for willful violations of the following sections of title 10 of the California Code
20 of Regulations: section 260.241.3, subdivision (j) --\$750.00, section 260.241.2, subdivisions (a) --
21 \$750.00, and (d)(2)(A)(3) -- \$750.00 for a total of \$2,250.00.

23 Dated: July 28, 2005
24 Los Angeles, California

WAYNE STRUMPFER
Acting California Corporations Commissioner

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26 By: _____
27 MARLOU de LUNA
28 Senior Corporations Counsel
Enforcement Division