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10 BEFORE THE DEPARTMENT OF CORPORATIONS
11 OF THE STATE OF CALIFORNIA

13 In the Matter of)
14 THE CALIFORNIA CORPORATIONS) FILE NO. 131178
15 COMMISSIONER,) **ACCUSATION RE INTENT TO ISSUE**
16 Complainant,) **ORDER REVOKING THE INVESTMENT**
17 v.) **ADVISER CERTIFICATE OF MARINA**
18 MARINA CAPITAL MANAGEMENT, INC.,) **CAPITAL MANAGEMENT, INC.**
19 Respondent.) **PURSUANT TO CORPORATIONS CODE**
20) **SECTION 25232**
21)
22)

23 PRESTON DuFAUCHARD, the California Corporations Commissioner ("Commissioner")
24 of the Department of Corporations ("Department") alleges and charges as follows:

25 1. MARINA CAPITAL MANAGEMENT, INC. ("Marina Capital") has held an
26 investment adviser certificate issued by the Commissioner pursuant to Corporations Code ("CC")
27 section 25230 since February 8, 1999. Marina Capital is in the investment adviser business. Marina
28 Capital is located at 27520 Hawthorne Blvd., Ste #146, Rolling Hills Estate, CA 90274, with a

1 mailing address of 553 N. Pacific Coast Hwy., Suite 344, Redondo Beach, CA 90277. Alvin Tatro
2 is the president, CEO and sole shareholder of the corporation.

3 2. On August 27, 2003, the Department commenced a regulatory examination of Marina
4 Capital’s investment adviser business. The examination revealed violations of the books and records
5 provisions of the California Corporate Securities Law. These violations consisted of Marina
6 Capital’s failure to maintain an accounting system in accordance with generally accepted accounting
7 principles (“GAAP”) required by CC section 25241 and California Code of Regulations (“CCR”)
8 section 260.241.3, and the failure to provide the Department with annual financial reports for the
9 years 2001 and 2002 required by CCR section 260.241.2. The books and records requirements
10 provide the Department with a regulatory mechanism to validate a firm's liquidity and financial
11 integrity and to ensure that licensees maintain the necessary net capital for the protection of the
12 public.

13 3. CCR section 260.237.2 provides in pertinent part:

14 “a) Every investment adviser...who has discretionary authority over client funds or
15 securities but does not have custody of client funds or securities, shall maintain at all
16 times a minimum net worth of \$10,000....(d) For purposes of this rule, the term “net
17 worth” shall mean an excess of assets over liabilities, as determined by generally
18 accepted accounting principles....”

19 4. At the August 27, 2003 examination the Department determined that Marina Capital has
20 power of attorney or discretionary power to execute transactions in the brokerage accounts of its
21 investment adviser clients, and does not have custody of client funds. Therefore, Marina Capital is
22 required to maintain a net worth of \$10,000 under CCR section 260.237.2.

23 5. On October 1, 2003 the Department formally demanded that Marina Capital comply with
24 these books and records provisions of the California Corporate Securities Law and provide the
25 Department with evidence of compliance. For several months the Department made efforts, orally
26 and in writing, to obtain the required documentation, but without success. On May 10, 2005 the
27 Department served Marina Capital with notice of intention to make final an Order to Discontinue
28 Violations of CC section 25241 and CCR sections 260.241.2 and 260.241.3. On May 10, 2005, the
Department also served Marina Capital with notice of its intention to issue an Order Levying

1 Administrative Penalties of \$1,500 for these same violations of the Corporate Securities Law and
2 CCR. The Orders were not contested and became final on October 13, 2005. The Orders
3 specifically provided that the accounting system used by Marina Capital needed to conform to
4 GAAP, and that Marina Capital had a capital requirement and had failed to show proof of
5 compliance with that capital requirement through the filing of required annual financial reports.

6 6. On September 27, 2005 the Department received annual financial reports for December
7 2001, 2002, 2003, and 2004 from Marina Capital. These annual reports conformed to GAAP.
8 However, on November 21, 2005, the Department received a verified interim financial report for the
9 month ending October 31, 2005 that showed Marina Capital had a net worth of only \$2,092, which is
10 \$7,908 deficient of the \$10,000 in capital required by CCR section 260.237.2. The Department gave
11 Marina Capital an extension of time to resolve its capital deficiency and warned that this matter may
12 be referred for formal administrative action against its Investment Adviser Certificate.

13 7. CCR section 260.241.2(d)(2)(B) provides that every investment adviser subject to the
14 provisions of section 260.237.2 shall file a report "within 15 days after its net worth is reduced to
15 less than 120% of its required minimum net worth". Section 260.241.2(d)(3) provides that monthly
16 reports shall continue to be filed within 10 days after each subsequent monthly accounting period
17 until three successive months have elapsed during which the net worth has remained at or above
18 120% of the required minimum.

19 8. Marina Capital provided the Department with interim financial reports for the periods
20 ending November 30, 2005, December 31, 2005 and January 31, 2006 that showed that although the
21 minimum financial requirement had been met, the 120% test of CCR section 260.241.2(d) had not
22 been met, so Marina Capital was required to continue submitting monthly interim financial reports.

23 9. Financial reports were received for the periods ending February 28, 2006, March 31,
24 2006, and April 30, 2006, and they showed that Marina Capital was again deficient of its capital
25 requirement by \$6,278, \$8,162 and \$8,999, respectively.

26 10. On May 4, 2006 and again on May 16, 2006 the Department sent certified
27 correspondence to Marina Capital demanding within ten days remedial action of the capital
28 deficiency, a written confirmation that it would not accept further clients until the deficiency is

1 eliminated, and a copy of a letter to all clients informing them that the financial condition of Marina
 2 Capital is reasonably likely to impair its ability to meet its contractual commitments citing CCR
 3 section 260.235.4. Marina Capital increased its net worth to over \$10,000 but did not provide the
 4 Department with the writings requested.

5 11. Marina Capital provided interim reports for the months of May 31, 2006 and June 30,
 6 2006 that met both the minimum capital requirement and the 120% test of Section 260.241.2(d), but
 7 the interim report of July 31, 2006, while meeting the minimum capital requirement, failed to meet
 8 the 120% test, so continued filing of monthly interim financial reports was required.

9 12. The August 31, 2006 interim financial report reflected that Marina Capital was \$391
 10 deficient in required capital. On September 22, 2006 the Department sent Marina Capital a certified
 11 letter again demanding within ten days remedial action, a written confirmation that it would not
 12 accept further clients until the capital deficiency is eliminated, and a copy of a letter to all clients
 13 informing them that the financial condition of Marina Capital is reasonably likely to impair its
 14 ability to meet its contractual commitments. Marina Capital failed to respond, has never provided
 15 the Department with any of the writings requested, and continued to file monthly interim reports that
 16 showed capital deficiencies for each month through the remainder of 2006.

17 13. In 2007 Marina Capital has thus far filed four interim reports, two of which were capital
 18 deficient. The interim report for May 2007 was due on June 10, 2007 and has not yet been filed in
 19 violation of CCR 260.241.2(d).

20 14. The following is a table of each interim report filed with the Department by Marina
 21 Capital, indicating the net worth and capital deficiencies, from October 31, 2005 to April 30, 2007:

Balance Sheet Date	Actual Capital/Net Worth	Excess Capital/Net Worth
4/30/07	\$ 3,248	(\$ 6,752)
3/31/07	-- \$1,893	(\$ 11,893)
2/28/07	\$ 10,352	\$ 352
1/31/07	\$ 12,661	\$ 2,661
12/31/06	\$ 8,641	(\$ 1,359)
11/30/06	\$ 8,665	(\$ 1,335)

1	10/31/06	\$ 9,137	(\$ 863)
2	9/30/06	\$ 9,734	(\$ 266)
3	8/31/06	\$ 9,609	(\$ 391)
4	7/31/06	\$ 11,581	\$ 1,581
5	6/30/06	\$ 12,722	\$ 2,722
6	5/31/06	\$ 23,313	\$ 13,313
7	4/30/06	\$ 1,001	(\$ 8,999)
8	3/31/06	\$ 1,838	(\$ 8,162)
9	2/28/06	\$ 3,722	(\$ 6,278)
10	1/31/06	\$ 11,538	\$ 1,538
11	12/31/05	\$ 11,594	\$ 1,594
12	11/30/05	\$ 10,219	\$ 219
13	10/31/05	\$ 2,092	(\$ 7,908)

14
15 In summary, between October 2005 and May 2007, eleven out of the last nineteen months
16 Marina Capital had a net worth of less than \$10,000, in violation of CCR section 260.237.2.

17 15. Corporations Code section 25232 provides, in pertinent part:

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

27 (e) Has willfully violated any provision of the Securities Act of 1933, the Securities
28 Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company
Act of 1940, the Commodity Exchange Act, or Title 4 (commencing with Section
25000)...or 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....

1 (h) Has violated any provision of this division or the rules thereunder or, in the case of
2 an applicant only, any similar regulatory scheme of the State of California or a foreign
3 jurisdiction.”

4 16. Corporations Code section 25233 provides:

5 No order may be entered under Section 25232, 25232.1 or 25252 except after
6 notice to the person affected thereby of the intention of the commissioner to
7 enter that order and of the reasons therefor and that upon receipt of a request
8 the matter shall be set down for hearing to commence within 15 business days
9 after that receipt unless the person affected consents to a later date. If no
10 hearing is requested within 30 days after the mailing of that notice and none is
11 ordered by the commissioner, the order may be entered without hearing to
12 remain in effect until it is modified or vacated by the commissioner....If a
13 hearing is requested or ordered, it shall be held in accordance with the
14 provisions of the Administrative Procedure Act (Chapter 5 (commencing with
15 Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), and
16 the commissioner shall have all of the powers granted thereunder.

17 17. The foregoing reasons are grounds under California Corporations Code section 25232,
18 justifying the issuance of an Order revoking Marina Capital Management Inc.’s investment adviser
19 certificate. Marina Capital Management, Inc., as a licensee, was obligated to have knowledge of,
20 and to comply with, the provisions of the Corporations Code to maintain its investment adviser
21 certificate.

22 18. Therefore, pursuant to Corporations Code section 25232, the Commissioner intends to
23 issue an Order revoking Marina Capital Management Inc.’s investment adviser certificate.

24 WHEREFORE, good cause showing, and pursuant to Corporations Code section 25232, the
25 California Corporations Commissioner hereby finds that it is in the public interest to revoke Marina
26 Capital Management Inc.’s investment adviser certificate, and hereby notifies Marina Capital
27 Management Inc. of its intention to make final the Order revoking Marina Capital Management
28 Inc.’s investment adviser certificate.

Dated: June 22, 2007

PRESTON DuFAUCHARD
California Corporations Commissioner

By: _____
EDWARD KELLY SHINNICK
Corporations Counsel
Enforcement Division