

1 WAYNE STRUMPFER
Acting California Corporations Commissioner
2 ALAN S. WEINGER (CA BAR NO. 86717)
Acting Deputy Commissioner
3 EDWARD KELLY SHINNICK (CA Bar No. 96209)
Corporations Counsel
4 71 Stevenson Street, Ste. 2100
5 San Francisco, CA 94105-2908
6 Tel: 415/972-8544
7 Fax: 415/972-8550
Attorneys for Complainant

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

12	In the Matter of)	CASE NO.
13	THE CALIFORNIA CORPORATIONS)	FILE NO. 923-4200
14	COMMISSIONER,)	STATEMENT IN SUPPORT OF ORDER
15	Complainant,)	LEVYING ADMINISTRATIVE PENALTIES
16	v.)	PURSUANT TO CORPORATIONS CODE
17	MARINA CAPITAL MANAGEMENT, INC.,)	SECTION 25252
18	Respondent.)	
19)	
20)	
21)	

22 WAYNE STRUMPFER, the acting California Corporations Commissioner
23 ("Commissioner") of the Department of Corporations ("Department") alleges and charges as follows:

24 1. MARINA CAPITAL MANAGEMENT, INC. ("Marina Capital") holds a valid and
25 unrevoked investment adviser certificate issued by the Commissioner pursuant to Corporations Code
26 section 25230 on February 8, 1999. Marina Capital is in the investment adviser business and is
27 located at 21811 S. Vera Street, #68, Carson, CA 90745 with a mailing address of 553 N. Pacific
28

1 Coast Hwy., Suite 344, Redondo Beach, CA 90277. Al Tatro is the president, CEO and sole
2 shareholder of the corporation.

3 2. On or about August 27, 2003, the Department commenced a regulatory examination of
4 Marina Capital's investment adviser business. The examination revealed violations of the books and
5 records provisions of the Corporate Securities Law of 1968, Corporations Code section 25000 et
6 seq., and the regulations thereunder found at California Code of Regulations, title 10, section
7 260.000 et seq.

8 3. These violations consisted of Marina Capital's failure to keep true, accurate and current
9 books and records, including: 1) failing to maintain a general ledger accounting system that is in
10 accordance with generally accepted accounting principles ("GAAP"); and 2) failing to file annual
11 financial reports. The books and records requirements provide the Department with a regulatory
12 mechanism to validate a firm's liquidity and financial integrity on a monthly basis to ensure that
13 licensees maintain the necessary net capital for the protection of the public. Marina Capital's failure
14 to keep true, accurate and current books and records prevents the Department from determining as
15 part of its regulatory examination, if it meets the capital requirements imposed by the Corporations
16 Code and the regulations enacted thereunder.

17 4. Corporations Code section 25241 provides that investment advisers are required to
18 maintain books and records that are subject to examinations by the Commissioner. Section 25241
19 provides, in relevant part, as follows:

20 "(a) Every...investment adviser licensed under Section 25230 shall make and keep such
21 accounts, correspondence, memoranda, papers, books, and other records and shall file such
22 financial and other reports as the commissioner by rule requires, subject to the limitations of .
23 . . Section 222 of the Investment Advisers Act of 1940 with respect to investment advisers.
24 (b) All records so required shall be preserved for the time specified in the rule.
25 (c) All records referred to in this section are subject at any time and from time to time to such
26 reasonable periodic, special, or other examinations by the commissioner, within or without
27 this state, as the commissioner deems necessary or appropriate in the public interest or for the
28 protection of investors...."

5. California Code of Regulations, title 10, section 260.241.3 sets forth the specific books
and records that are required to be maintained by investment advisers. Specifically, subdivision
(a)(2) of section 260.241.3 provides as follows:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

“(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:…
(2) General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts....”

6. The Department's examiner found during the regulatory examination on or about August 27, 2003, that Marina Capital was using Quicken on which to maintain its accounting records. Since Quicken is not a business accounting software and does not provide a general ledger accounting system that is in accordance with GAAP, Marina Capital failed to maintain a general ledger in violation of California Code of Regulations, title 10, section 260.241.3, subdivision (a)(2).

7. Marina Capital has also failed to file annual financial reports. California Code of Regulations Section 260.241.2(a) requires the filing of an annual report by investment advisers, who like Marina Capital have discretionary authority over client funds or securities but do not have custody of client funds or securities. California Code of Regulations, section 260.241.2, subdivision (a)(2), provides as follows:

“(a) General Rule. Subject to the provisions of subsection (c) of this section, ...every licensed investment adviser subject to the provisions of Section 260.237.1 or Section 260.237.2, as applicable, of these rules, shall file an annual financial report containing the information required by a form or forms to be supplied or approved by the Commissioner, as follows:
... (2) The annual report for investment advisers shall contain a Statement of Financial Condition. Supporting schedules shall contain computations of net capitals, aggregate indebtedness and ratios required under Section 260.237.1 or minimum financial requirements required under Section 260.237.2, as applicable....”

8. California Code of Regulations Sections 260.237.1 provides in pertinent part as follows:

“An investment Adviser licensed prior to 03/01/03 may comply with either the minimum financial requirements in this section or in Section 260.237.2 until January 1, 2005, at which time this section shall become inoperative and an investment adviser shall comply with the minimum financial requirements in Section 260.237.2
(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% of its tangible net capital or permit its current aggregate indebtedness to exceed its current net capital; and,

- 1 (1) The investment adviser shall at all times have and maintain tangible net capital of not
2 less than \$25,000; or,
- 3 (2) If the investment adviser has any power of attorney from any investment advisory
4 client to execute transactions and does not have regular or periodic custody or possession of
5 any of its investment advisory clients' securities or funds...it shall at all times have and
6 maintain tangible net capital of not less than \$5,000....
- 7 (c) Definitions. For purposes of subsection (a) of this section, all financial information shall
8 be determined in accordance with generally accepted accounting principles....”

9 9. The alternative minimum financial requirement California Code of Regulations Section
10 260.237.2 provides in pertinent part as follows:

- 11 “An investment adviser licensed prior to 03/01/03 may comply with either the minimum
12 financial requirements in this section or in Section 260.237.1 until January 1, 2005....
- 13 (a) Every investment adviser...who has discretionary authority over client funds or
14 securities but does not have custody of client funds or securities, shall maintain at all times a
15 minimum net worth of \$10,000....
- 16 (d) For purposes of this rule, the term “net worth” shall mean an excess of assets over
17 liabilities, as determined by generally accepted accounting principles....”

18 10. Marina Capital has power of attorney or discretionary power to execute transactions in
19 the brokerage accounts of its investment adviser clients. Therefore, Marina Capital was required to
20 meet the capital requirements provided for under either California Code of Regulations Section
21 260.237.1 or section 260.237.2, and to show proof of compliance with these regulations by filing
22 annual financial reports required by section 260.241.2.

23 11. As of May 4, 2005, Marina Capital has failed to submit annual financial reports that
24 comply with GAAP for the years 2001 through 2004, in violation California Code of Regulations
25 section 260.241.2.

26 12. On October 1, 2003, the Department sent Al Tatro of Marina Capital a regulatory
27 letter notifying Marina Capital of various violations discovered during the August 2003 examination
28 as noted above, including violations of California Code of Sections 260.241.3 and 260.241.2. The
Department's letter also requested that in response Marina Capital set forth the action taken to
establish a general ledger accounting system that is in accordance with GAAP. The Department
letter also noted the failure to file financial reports and requested copies of annual financial reports

1 for the year-ends 2001 and 2002, a verification form to accompany both reports, and a confirmation
2 that Marina Capital would file annual reports as required in the future.

3 13. In a letter dated December 25, 2003, Al Tatro of Capital Management responded to the
4 Department's letter confirming that it had set up QuickBooks for managing the firm's accounts and
5 created a General Ledger for 01-01-2001 to the date 12-18-2003. Al Tatro elected on behalf of
6 Marina Capital to comply with Section 260.237.1 and confirmed that Marina Capital does not
7 maintain custody of client account funds or securities but does maintain discretionary authority. Al
8 Tatro forwarded what he stated were Annual Financial Reports for 2001 and 2002 and a financial
9 statement for September 30, 2003 with copies of bank statements of August 26, 2003 and August 31,
10 2003. Mr. Tatro promised that Annual Financial Reports would be filed in the future.

11 14. On January 9, 2004 the Department sent Al Tatro a certified letter stating that the
12 financial reports and statements submitted had not been prepared in accordance with GAAP as
13 required, and it was requested that financial reports and statements in compliance with GAAP be re
14 submitted within ten days. On January 12, 2004 the Department received Marina Capital's
15 December 2003 annual financial report but it too was not prepared in accordance with GAAP.

16 15. On January 20, 2004, March 5, 2004, and April 12, 2004 a Department examiner spoke
17 with either Mr. Tatro or someone on his staff; reports and statements in accordance with GAAP were
18 promised. As of May 4, 2005, no further reports have been received by the Department and Marina
19 Capital has also failed to file its annual report for 2004.

20 16. Corporations Code section 25252 authorizes the Commissioner to issue an order levying
21 administrative penalties against any investment adviser for willful violations of any provision of the
22 Corporations Code and any rules promulgated thereunder. Specifically, section 25252 provides, in
23 relevant part:

24 "The Commissioner may, after appropriate notice and opportunity for hearing, by orders,
25 levy administrative penalties as follows: ...

- 26 (b) Any broker-dealer or investment adviser that willfully violates any provision of this
27 division to which it is subject, or that willfully violates any rule or order adopted or
28 issued pursuant to this division and to which it is subject, is liable for administrative
penalties of not more than five thousand dollars (\$5,000) for the first violation, not

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

more than ten thousand dollars (\$10,000) for the second violation, and not more than fifteen thousand dollars (\$15,000) for each subsequent violation.

17. By reason of the foregoing, Marina Capital has willfully violated California Code of Regulations, title 10, sections 260.241.2, subdivision (a), and 260.241.3, subdivision (a)(2), justifying the imposition of administrative penalties. Marina Capital, as a licensee, was obligated to have knowledge of, and to comply with, the provisions of the Corporations Code and the regulations thereunder to maintain its investment adviser certificate.

18. Therefore, pursuant to Corporations Code section 25252, the Commissioner seeks administrative penalties for: Marina Capital’s failure to: 1) Maintain a general ledger in willful violation of California Code of Regulations, title 10, section 260.241.3, subdivision (a)(2) in the amount of \$750.00; and 2) File the required annual financial reports in willful violation of California Code of Regulations, title 10, section 260.241.2, subdivision (a) in the amount of \$750.00.

WHEREFORE, good cause showing, and pursuant to Corporations Code section 25252, the California Corporations Commissioner prays for an order levying administrative penalties for a total of \$1,500.00.

Dated: May 10, 2005

WAYNE STRUMPFER
Acting California Corporations Commissioner

By: _____
EDWARD KELLY SHINNICK
Corporations Counsel
Enforcement Division