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8 Attorneys for Complainant

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

12 In the Matter of)

CASE NO.

13 THE CALIFORNIA CORPORATIONS)
14 COMMISSIONER,)

FILE NO. 923-4433

15 Complainant,)

STATEMENT OF ISSUES IN SUPPORT OF
NOTICE OF INTENTION TO ISSUE
ORDERS:

16 v.)

17 MITCHELL M. MAYNARD (TERRA VISTA)
FINANCIAL PLANNERS, DBA);)
18 MITCHELL M. MAYNARD, as an individual;)
19 and DORICE A. MAYNARD, as an individual)

1. DENYING THE INVESTMENT
ADVISER CERTIFICATE OF
MITCHELL M. MAYNARD (TERRA
VISTA FINANCIAL PLANNERS,
DBA)

20 Respondents.)
21)
22)
23)
24)
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26)
27)

2. BARRING MITCHELL M. MAYNARD
FROM ANY POSITION OF
EMPLOYMENT, MANAGMENT
OR CONTROL OF ANY
INVESTMENT ADVISER, BROKER-
DEALER OR COMMODITY ADVISER

3. BARRING DORICE A. MAYNARD
FROM ANY POSITION OF
EMPLOYMENT, MANAGMENT
OR CONTROL OF ANY
INVESTMENT ADVISER, BROKER-
DEALER OR COMMODITY ADVISER

(California Corporations Code Sections 25232
and 25232.1)

1 Preston DuFauchard, California Corporations Commissioner ("Commissioner") of the
2 Department of Corporations ("Department") alleges and charges as follows:

3 **I. JURISDICTION AND VENUE**

4 1. This action is brought to deny the investment adviser application¹ of Mitchell
5 M. Maynard (Terra Vista Financial Planners, DBA) ("Terra Vista"), pursuant to Corporations Code
6 section 25232, subdivisions (d)(3) & (h), and to bar Mitchell M. Maynard (proprietor of Terra
7 Vista) and Dorice A. Maynard (wife and associate of Terra Vista) (collectively "Respondents"),
8 from any position of employment, management, or control of any investment adviser, broker-dealer,
9 or commodity adviser pursuant to Corporations Code section 25232.1.

10 2. Corporations Code section 25600 authorizes the Commissioner to administer and
11 enforce the provisions of the Corporate Securities Law of 1968² (Corp. Code, § 25000 *et seq.*) and
12 the regulations promulgated thereunder (Cal. Code Regs., tit. 10, § 260.000 *et seq.*).

13 3. Terra Vista Financial Planners is a California sole proprietorship and was located at
14 11249 Amiata Drive, Rancho Cucamonga, California 91730.

15 4. Respondents jointly filed for a Chapter 7 voluntary bankruptcy on September 10,
16 2002 with the United States Bankruptcy Court, Central District of California (Riverside).
17 Respondents' debts were discharged by a final decree issued by the Court on or about December 26,
18 2002.

19 **II. STATEMENT OF FACTS**

20 5. In February 1999, Respondents created Leveraged Index Management Company
21 (LIMCO), an investment advisory firm incorporated in the State of Vermont. Mitchell M. Maynard
22 was LIMCO's controlling officer, president, treasurer, and investment adviser representative.
23 Dorice A. Maynard acted as LIMCO's vice president and secretary. From February 1999 until June
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26 ¹ The investment adviser application in issue is a "Form ADV (Paper Version) Uniform Application for Investment
27 Adviser Registration" promulgated by the Securities Exchange Commission ("SEC") pursuant to 17 Code of Federal
28 Regulations 279.1 as amended by the SEC Release No. IA-1916, 34-43758. (*See* Corp. Code, § 260.231.2) All
registered investment advisers with less than \$25 million in client assets must register with the securities regulator in the
state of the adviser's principal place of business, here, in this instance, the State of California.

² Hereinafter "CSL."

1 of 2000, LIMCO was located in Vermont. Thereafter, the Respondents relocated to California,
 2 where they continued to run LIMCO until it ceased operations sometime in early 2001. On or about
 3 July 17, 2001, the State of Vermont Department of Banking, Insurance, Securities, and Health Care
 4 Administration, Securities Division (“Vermont Securities Administration”), notified Mitchell M.
 5 Maynard that he was under investigation for his activities as the principal of LIMCO. He was
 6 requested at that time to immediately provide an amendment to his U-4³, disclosing that he was
 7 subject to an investigation by the Vermont Securities Administration.

8 6. On or about December 11, 2001, Terra Vista and Respondents filed an application
 9 for an investment adviser certificate with the Department. The application lists the Respondents,
 10 Mitchell M. Maynard and Dorice A. Maynard, as Terra Vista’s direct owners and executive officers.
 11 At the disclosure history section of the application, Part 1A, Item 11.G., Terra Vista was asked if it
 12 “or any *advisory affiliate*⁴ now the subject of a regulatory *proceeding*⁵ that could lead to a ‘yes’
 13 answer to any part of item . . . 11.D⁶. . . (emphasis in original)” Terra Vista answered “no.” It further
 14 provided “no” responses to Item 2.E.⁷ of Part 1B of the Form ADV, which asked if Terra Vista or
 15 “[a]ny *advisory affiliate* or any *management person*⁸ currently the subject of . . . [an] administrative
 16 *proceeding* involving [investment-related business or activity, fraud, false statement, or omission,
 17 theft, embezzlement, dishonest or unethical practices] (emphasis in original).”
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 19 _____

20 ³ Form U-4 is used by broker-dealers, *i.e.*, persons engaged in the business of effecting transactions in securities for the
 21 account of others or their own account, to register and terminate the registrations of associated persons with self-
 regulatory organizations and the subject jurisdiction.

22 ⁴ Defined as the applicant’s “(1) [c]urrent employees (other than employees performing only clerical, administrative,
 23 support or similar functions); (2) all of your officers, partners, or directors . . .; and (3) all persons directly or indirectly
 controlling you or controlled by you . . .” (Form ADV, Part 1A, Item 11, Disclosure Information.)

24 ⁵ Defined as a formal administrative or civil action initiated by a governmental agency. (Form ADV, Glossary of Terms,
 ¶ 30.)

25 ⁶ Item 11.D., of the Form ADV, Part 1A, pertains to state regulatory agency actions concerning an advisory affiliate’s
 26 unethical conduct and/or violations of securities regulations.

27 ⁷ Former Item 2.E., now Item 2.F.

28 ⁸ Defined as “[a]nyone with the power to exercise, directly or indirectly, a controlling influence over your firm’s
 management or policies, or to determine the general investment advice given to the clients of your firm.” (Form ADV,
 Glossary of Terms, ¶ 19.)

1 7. Upon receipt of Terra Vista's application a Departmental review of the Central
2 Registration Depository system, which contains the qualification, employment, and disclosure
3 histories of securities employees, showed that Mitchell M. Maynard was then under investigation
4 with the Vermont Securities Administration concerning his activities as principal of LIMCO.
5 Accordingly, on or about January 16, 2002, the Department notified Terra Vista and Respondents,
6 by deficiency letter, of its findings concerning the Vermont Securities Administration's
7 investigation. The Department requested that Mitchell M. Maynard provide all of the details
8 surrounding the investigation and any relevant documentation.

9 8. On February 2, 2002, Dorice A. Maynard responded to the Department's inquiry by
10 letter, in which she wrote, "[w]e cannot provide much detail about the VERMONT SECURITIES
11 DIVISION investigation. Enclosed please find copies of the only correspondence we have received
12 from them. In Vermont, Mitchell M. Maynard and Dorice A. Maynard were officers and employees
13 of the investment advisor firm [LIMCO], which was also incorporated in the State of Vermont.
14 LIMCO ceased all operations as of January 31, 2001." Dorice A. Maynard duly produced copies of
15 correspondence pertaining to the Vermont Securities Administration investigation concerning
16 LIMCO. The first letter dated July 17, 2001, informed Mitchell M. Maynard that he was under
17 investigation by the Vermont Securities Administration. A second letter, dated August 7, 2001,
18 reiterated the fact that Mitchell M. Maynard was under investigation concerning his activities as the
19 principal of LIMCO.

20 9. On or about March 6, 2002, the Vermont Securities Administration served
21 Respondents with a notice of intent to seek administrative sanctions against Mitchell M. Maynard
22 and Dorice A. Maynard for violations of Vermont's securities laws concerning their activities as
23 principals of LIMCO. The notice of intent alleged that Respondents had defrauded investors and
24 misappropriated client funds.

25 10. On April 9, 2002, Dorice A. Maynard faxed the Department a copy of Respondent's
26 answer to the Vermont Securities Administration's notice of intent, dated April 4, 2002.
27 Respondents generally denied all of the allegations contained therein and requested an administrative
28 hearing before a state hearing officer.

1 11. Based upon the foregoing events, in lieu of enforcement referral, the Department
2 requested Terra Vista and Respondents withdraw their application, pending the resolution of the
3 Vermont Securities Administration matter. In an email dated August 23, 2002, Dorice A. Maynard
4 requested that Terra Vista's application remain open and that Respondents would make changes to
5 the Form ADV regarding personnel. Pursuant to Respondents' request, the Department held Terra
6 Vista's application open.

7 12. In August of 2003, during the course of seven days of hearings, the
8 Vermont Securities Administration and Respondents presented the testimony of witnesses, including
9 that of Respondents, and numerous investors, presented documentary evidence, and offered legal
10 argument for the consideration of the hearing officer. At the conclusion of the proceedings, and in
11 light of the evidence offered regarding Respondents' conduct in defrauding investors and the
12 diversion of monies for Respondents' personnel use, the hearing officer recommended that
13 Respondents receive monetary sanctions, be subjected to a permanent bar, make restitution, and pay
14 administrative fines.

15 13. Respondents contested the hearing officer's recommendation before the Vermont
16 Securities Administration Commissioner. Upon consideration of the evidence, legal argument, and
17 analysis presented by Respondents and the Vermont Securities Administration, the commissioner
18 issued an order on January 3, 2007, barring Respondents from any association or employment with
19 any registered broker-dealer or investment adviser, or any federal covered investment adviser for a
20 five-year period. In addition, Respondents were obligated, jointly and severally, to make restitution
21 to the LIMCO investors in the amount of \$400,000 and pay an administrative penalty in the amount
22 of \$20,000. Respondents failed to timely appeal the "[Vermont] Commissioner's Findings of Fact,
23 Conclusions of Law, and Order," rendering the order final.

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1 **III. FIRST CAUSE FOR DENIAL OF APPLICATION: THE VERMONT**
2 **SECURITIES ADMINISTRATION’S BAR ORDER ISSUED AGAINST**
3 **RESPONDENTS PURSUANT TO CORPORATIONS CODE SECTION 25232,**
4 **SUBDIVISION (d)(3).**

5 14. Paragraphs 1 through 13 are hereby realleged and incorporated herein by reference as
6 if set forth in their entirety.

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

8 The commissioner may, after appropriate notice and opportunity for hearing, by order
9 censure, deny a certificate to, or suspend for a period not exceeding 12 months or
10 revoke the certificate of, an investment adviser, if the commissioner finds that the
11 censure, denial, suspension, or revocation is in the public interest and that the
12 investment adviser, whether prior or subsequent to becoming such, or **any partner,**
13 **officer or director thereof or any person performing similar functions or any**
14 **person directly or indirectly controlling the investment adviser, whether prior or**
15 **subsequent to becoming such, or any employee of the investment adviser while**
16 **so employed has done any of the following** (emphasis added):

17 (d) Is or has been subject to . . . (3) **any other order of the commission or any**
18 **administrator**, association, or exchange referred to in this subdivision⁹ which is or
19 has been necessary for the protection of any investor (emphasis added)
20 (Corp. Code, § 25232, subd. (d)(3).)

21 16. On or about January 3, 2007, the Commissioner of the Vermont Securities
22 Administration issued an order barring Respondents from any association or employment with any
23 registered broker-dealer or investment adviser, or any federal covered investment adviser under
24 Vermont's securities laws, for a five-year period. In addition, Respondents were ordered, both
25 jointly and severally, to make restitution to the LIMCO investors in the amount of \$400,000 and pay
26 an administrative penalty in the amount of \$20,000. The Vermont Securities Administration found
27 that Respondents had engaged in numerous violations of Vermont securities law, including
28 embezzling client funds for personal use, making false and misleading statements to LIMCO
investors, engaging in fraudulent, dishonest, and unethical practices. Cause, therefore, exists to deny

⁹ Subdivision (d)(1) of Corporations Code section 25232 refers in pertinent part to “any order of the [SEC] or the securities administrator of any other state . . .”, *i.e.*, in this instance, the securities administrator of the State of Vermont.

1 Terra Vista and Respondents' investment adviser application pursuant to Corporations Code section
2 25232, subdivision (d)(3).

3 **IV. SECOND CAUSE FOR DENIAL OF APPLICATION: FOR ACTS**
4 **COMMITTED PURSUANT TO CORPORATIONS CODE SECTION**
5 **25232 AS SPECIFIED UNDER CORPORATIONS CODE SECTION 25232(h).**

6 17. Paragraphs 1 through 16 are hereby realleged and incorporated herein by reference as
7 if set forth in their entirety.

8 18. Corporations Code section 25232, subdivision (h), provides, in pertinent part:

9 (h) Has violated any provision of this division or the rules thereunder or, in the
10 case of an applicant only, any similar regulatory scheme of the State of
11 California or a **foreign jurisdiction** (emphasis added).

12 19. Terra Vista and Respondents violated a similar regulatory scheme of a foreign
13 jurisdiction, namely, the securities regulations of the State of Vermont, as evidenced by the bar order
14 issued by the Vermont's State Commissioner on January 3, 2007. Cause, therefore, exists to deny
15 Terra Vista and Respondents' investment adviser application pursuant to Corporations Code section
16 25232, subdivision (h) on the grounds of Respondents' violations of the securities regulations of the
17 State of Vermont.

18 **V. AS SPECIFIED UNDER CORPORATIONS CODE SECTION 25232,**
19 **SUBDIVISION (d)(3), RESPONDENTS, MITCHELL M. MAYNARD AND**
20 **DORICE A. MAYNARD, SHOULD BE BARRED FROM ANY POSITION OF**
21 **EMPLOYMENT, MANAGEMENT, OR CONTROL OF ANY INVESTMENT**
22 **ADVISER, BROKER-DEALER, OR COMMODITY ADVISER PURSUANT**
23 **TO CORPORATIONS CODE SECTION 25232.1 AS THEY ARE SUBJECT**
24 **TO A BAR ORDER ISSUED BY THE VERMONT SECURITIES**
25 **ADMINISTRATION.**

26 20. Paragraphs 1 through 19 are hereby realleged and incorporated herein by reference as
27 if set forth in their entirety.

28 21. Corporations Code Section 25232.1 provides in relevant part:

1 The commissioner may, after appropriate notice and opportunity for hearing, by order
2 censure, or suspend for a period not exceeding 12 months, or **bar from any position**
3 **of employment, management or control of any investment adviser, broker-dealer**
4 **or commodity adviser, any officer, director, partner, employee of, or person**
5 **performing similar functions for, an investment adviser, or any other person**, if
6 he or she finds that the censure, suspension or bar is in the public interest and that the
7 person has committed any act or omission enumerated in subdivision (a), (e), (f), or
8 (g) of Section 25232 or . . . **is subject to any order specified in subdivision (d) of**
9 **Section 25232** (emphasis added).

10 22. The Vermont Securities Administration issued a bar order against Mitchell M.
11 Maynard and Dorice A. Maynard on January 3, 2007, thus, Respondents are subject to the provisions
12 of Corporations Code section 25232, subdivision (d)(3), as more fully described above in section
13 III., paragraphs 15-16. Specifically, the Vermont Securities Administration ordered Respondents
14 barred from any association or employment with any registered broker-dealer or investment adviser,
15 or any federal covered investment adviser for a five-year period. Furthermore, Respondents, both
16 jointly and severally, were obligated to make restitution to the LIMCO investors and pay
17 administrative penalties. Cause, therefore, exists under the CSL to bar Respondents from any
18 position of employment, management, or control of any investment adviser, broker-dealer, or
19 commodity adviser pursuant to Corporations Code section 25232.1.

20 VI. RELIEF REQUESTED

21 WHEREFORE, based upon the foregoing, the Commissioner finds it is in the public interest
22 to deny the investment adviser certificate of Mitchell M. Maynard, dba Terra Vista Financial
23 Planners, pursuant to Corporations Code section 25232, subdivisions (d)(3) & (h) and to bar Mitchell
24 M. Maynard and Dorice A. Maynard from any position of employment, management, or control of
25 any investment adviser, broker-dealer, or commodity adviser pursuant to Corporations Code section
26 25232.1 for having been subject to the bar order issued by the Vermont Securities Administration as
27 specified in Corporations Code section 25232, subdivision (d)(3).

28 WHEREFORE, IT IS PRAYED that Mitchell M. Maynard's, dba Terra Vista Financial
Planners, investment adviser application be denied pursuant to Corporations Code section 25232,
subdivisions (d)(3) & (h) and that Respondents Mitchell M. Maynard and Dorice A. Maynard be
barred from any position of employment, management, or control of any investment adviser, broker-

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dealer, or commodity adviser pursuant to Corporations Code section 25232.1 for having been subject to a bar order by the Vermont Securities Administration as specified in Corporations Code section 25232, subdivision (d)(3).

Dated: April 19, 2007

PRESTON DUFAUCHARD
California Corporations Commissioner

By: _____
BLAINE A. NOBLETT
Corporations Counsel
Enforcement Division