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California Corporations Commissioner  
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Deputy Commissioner  
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7 Attorneys for Complainant

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

11 In the Matter of the Accusation of  
12 THE CALIFORNIA CORPORATIONS  
13 COMMISSIONER,  
14 Complainant,  
15 v.  
16 OPTIMVEST, LLC and STEFAN FORKER,  
as an individual,  
17 Respondents.  
18

) FILE NO. 138751  
)  
) **ACCUSATION IN SUPPORT OF NOTICE**  
) **OF INTENTION TO ISSUE ORDERS:**  
)  
) **1. REVOKING THE INVESTMENT**  
) **ADVISER CERTIFICATE OF**  
) **OPTIMVEST, LLC**  
)  
) **2. BARRING STEFAN FORKER FROM**  
) **ANY POSITION OF**  
) **EMPLOYMENT, MANAGMENT**  
) **OR CONTROL OF ANY**  
) **INVESTMENT ADVISER, BROKER-**  
) **DEALER OR COMMODITY**  
) **ADVISER**

19 \_\_\_\_\_ )  
20 - (California Corporations Code Sections 25232  
and 25232.1)

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

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1           **I.        JURISDICTION AND VENUE**

2           1.        This action is brought to revoke the investment adviser certificate of Optimvest, LLC,  
3 ("Optimvest") pursuant to Corporations Code section 25232 and to bar Stefan Forker  
4 ("Forker")(Optimvest's president and sole managing member) from any position of employment,  
5 management, or control of any investment adviser, broker-dealer, or commodity adviser pursuant to  
6 Corporations Code section 25232.1.

7           2.        Corporations Code section 25600 authorizes the Commissioner to administer and  
8 enforce the provisions of the Corporate Securities Law of 1968<sup>1</sup> (Corp. Code, §§ 25000 *et seq.*) and  
9 the regulations promulgated thereunder (Cal. Code Regs., tit. 10, §§ 260.000 *et seq.*).

10          3.        Optimvest holds a valid and unrevoked investment adviser certificate issued by the  
11 Commissioner on July 12, 2006, pursuant to Corporations Code section 25230. Optimvest is an  
12 investment adviser business located at 3042 Livonia Avenue, Unit D-8, Los Angeles, California,  
13 with a mailing address of Post Office Box 341800, Los Angeles, California. Optimvest is a  
14 California limited liability company.

15          4.        Forker is Optimvest's president and sole managing member.

16           **II.        FIRST CAUSE FOR REVOCATION: VIOLATIONS OF CORPORATIONS**  
17 **CODE SECTION 25235, SUBDIVISIONS (a) AND (b) (CORP. CODE, § 25232, SUBD.**  
18 **(e)).**

19          5.        Paragraphs 1 through 4 are hereby realleged and incorporated herein by reference as  
20 if set forth in their entirety.

21          6.        Corporations Code section 25232, subdivision (e), provides that the Commissioner  
22 may revoke an investment adviser certificate for any violation of the CSL, which is found in Title 4  
23 of the Corporations Code, or any of its rules. Subdivision (e) of section 25232 provides:

24                   (e) Has willfully violated any provision of the Securities Act of 1933, the  
25                   Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the  
26                   Investment Company Act of 1940, the Commodity Exchange Act, or Title 4  
27                   (commencing with Section 25000), including the Franchise Investment Law,  
28                   Division 5 (commencing with Section 31000), or the California Commodity

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<sup>1</sup> Hereinafter "CSL."

1 Law of 1990, Division 4.5 (commencing with Section 29500), or of any rule  
2 or regulation under any of those statutes, or any order of the commissioner  
3 which is or has been necessary for the protection of any investor. (Footnotes  
omitted.)

4 7. Corporations Code section 25235, subdivisions (a) and (b), provide as follows:

5 It is unlawful for any investment adviser, directly or indirectly, in this state:

6 (a) To employ any device, scheme, or artifice to defraud any client or  
7 prospective client.

8 (b) To engage in any transaction, practice or course of business which  
9 operates or would operate as a fraud or deceit upon any client or prospective  
client.

10 8. According to the broker-dealer account applications signed by Optimvest's  
11 investment adviser clients, Optimvest's licensed broker-dealer, Interactive Brokers, LLC, was to  
12 send all trade confirmations and client account statements directly to Optimvest. In turn, Optimvest  
13 was to send out quarterly, and in some instances, monthly, statements that it had created on behalf of  
14 its investment adviser clients, reflecting account balances and trade activity.

15 9. Beginning on or about September 30, 2008, and continuing through at least March 31,  
16 2009, Optimvest, by and through Forker, provided its investment adviser clients with fabricated  
17 account statements. The quarterly account statements provided by Optimvest to its clients showed  
18 false account balances.

19 10. In one such instance, the account balance reflected in the client's Optimvest quarterly  
20 account statement for the First Quarter of 2009, dated March 31, 2009, showed an ending balance in  
21 his brokerage account of \$2,441,741.80. When the Optimvest quarterly account statement is  
22 compared to the broker-dealer's account statement for the same period, the true balance held in the  
23 client's brokerage account was only \$589,996.70. Thus, the Optimvest account statement overstated  
24 the assets actually held in the client's account by at least \$1,851,745.10.

25 11. In an e-mail dated July 18, 2009, which was sent to one of his investment adviser  
26 clients, Forker states:

27 As an adviser with trading rights for my clients, I have made serious mistakes  
28 that have cost my clients over \$2 million. In an attempt to correct a mistake, I  
have traded excessively both in terms of risk and frequency.

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This was unsuitable for the client and led to severe losses.

12. Through the use of fraudulent account statements sent to the firm's investment adviser clients, Optimvest, by and through Forker, was able to conceal its trading losses during the period of at least September 30, 2008 through at least March 31, 2009.

13. Forker's misstatements and omissions of material facts, and fraudulent actions in regards to the fabricated account statements sent to Optimvest's investment adviser clients, as set forth in paragraphs 8-12, *supra*, were transactions, practices, and a course of business that operated as a fraud and a deceit upon the Optimvest investment adviser clients and thus, were willful violations of Corporations Code section 25235, subdivision (b). Furthermore, Forker's repetition of these fraudulent statements, transactions, practices and course of business to multiple clients, was the employment of a device, scheme or artifice to defraud the Optimvest clients and thus were willful violations of Corporations Code section 25235, subdivision (a). Therefore, cause exists to revoke Optimvest's investment adviser certificate pursuant to Corporations Code section 25232, subdivision (e).

**III. SECOND CAUSE FOR REVOCATION: VIOLATIONS OF CORPORATIONS CODE SECTION 25238 AND CALIFORNIA CODE OF REGULATIONS, TITLE 10, SECTION 260.238, SUBDIVISIONS (a), (e), and (o) (CORP. CODE, § 25232, SUBD. (e)).**

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

15. Corporations Code section 25232, subdivision (e), provides that the Commissioner may revoke an investment adviser certificate for any violation of the CSL, which is found in Title 4 of the Corporations Code, or for any of its rules. Subdivision (e) of section 25232 of the Corporations Code states, in relevant part:

(e) Has willfully violated any provision of . . . Title 4 (commencing with Section 25000), . . . or of 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. (Footnotes omitted.)

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16. Corporations Code section 25238 provides:

No investment adviser licensed under this chapter and no natural person associated with the investment adviser shall engage in y activities, or attempt to engage in y activities, in this state in contradiction of such rules as the commissioner may prescribe designed to promote fair, equitable and ethical principles.

17. California Code of Regulations, title 10, section 260.238 provides, in relevant part:

The following activities do not promote "fair, equitable or ethical principles," as that phrase is used in Section 25238 of the Code.

(a) Recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known or acquired by the adviser after reasonable examination of such of the client's records as may be provided to the adviser.

...

(e) Inducing trading in a client's account that is excessive in size and frequency in view of the financial resources, investment objectives and character of the account.

...

(o) Making any untrue statement of material fact or omitting a statement of material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading in the solicitation of advisory clients.

18. As set forth more fully in section II., paragraphs 8-13, *supra*, Optimvest, by and through the actions of Forker, violated section 25238 and California Code of Regulations, title 10, section 260.238, subdivisions (a), (e), and (o), by making unsuitable trading recommendations to its investment adviser clients, by making excessive trades, in terms of frequency and risk, in the firm's clients' accounts, and by issuing fraudulent account statements to its investment adviser clients. The aforementioned conduct constitutes a failure to promote "fair, equitable or ethical principles," as that phrase is used in Section 25238 of the Code. Therefore, cause exists to revoke Optimvest's investment adviser certificate pursuant to Corporations Code section 25232, subdivision (e).

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**IV. AS SPECIFIED UNDER CORPORATIONS CODE SECTION 25232.1, CAUSE EXISTS TO BAR STEFAN FORKER FROM ANY POSITION OF EMPLOYMENT, MANAGEMENT, OR CONTROL OF ANY INVESTMENT ADVISER, BROKER-DEALER, OR COMMODITY ADVISER PURSUANT TO CORPORATIONS CODE SECTION 25232, SUBDIVISION (e).**

19. Paragraphs 1 through 18 are hereby realleged and incorporated herein by reference as if set forth in their entirety.

20. Corporations Code Section 25232.1 provides in relevant part:

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

21. Subdivision (e) of section 25232 of the Corporations Code states, in relevant part:

(e) Has willfully violated any provision of . . . Title 4 (commencing with Section 25000), . . . or of 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. (Footnotes omitted.)

22. As set forth more fully in section II., paragraphs 8-13, and section III., paragraph 18, *supra*, Forker, by and through his actions as the president and sole managing member of Optimvest, has willfully violated Title 4 of the Corporations Code sections 25235, subdivisions (a) and (b), section 25238, and California Code of Regulations, title 10, section 260.238, subdivisions (a), (e) and (o). Therefore, cause exists under section 25232, subdivision (e), to bar Forker from any position of employment, management, or control of any investment adviser, broker-dealer, or commodity adviser pursuant to Corporations Code section 25232.1.

**V. RELIEF REQUESTED**

WHEREFORE, based upon the foregoing, the Commissioner finds it is in the public interest to revoke the investment adviser certificate of Optimvest, LLC pursuant to Corporations Code

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section 25232, subdivision (e) and to bar Stefan Forker from any position of employment, management, or control of any investment adviser, broker-dealer, or commodity adviser pursuant to Corporations Code section 25232.1.

WHEREFORE, IT IS PRAYED that Optimvest LLC's investment adviser certificate be revoked pursuant to Corporations Code section 25232, subdivision (e) and that Stefan Forker be barred from any position of employment, management, or control of any investment adviser, broker-dealer, or commodity adviser pursuant to Corporations Code section 25232.1.

Dated: October 20, 2009  
Los Angeles, California

PRESTON DuFAUCHARD  
California Corporations Commissioner

By: \_\_\_\_\_  
BLAINE A. NOBLETT  
Corporations Counsel  
Enforcement Division