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9 BEFORE THE DEPARTMENT OF CORPORATIONS
10 OF THE STATE OF CALIFORNIA
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12 In the Matter of)
13 THE CALIFORNIA CORPORATIONS)
14 COMMISSIONER,)
15 Complainant,)
16 v.)
17 KRITTIBAS RAY,)
RAY PACIFIC ASSET MANAGEMENT, INC.,)
18 RAY PACIFIC ASSET MANAGEMENT, LLC)
19 Respondent.)
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CASE NO.
ACCUSATION RE INTENT TO ISSUE ORDER:
1. REVOKING THE INVESTMENT ADVISER CERTIFICATES OF RAY PACIFIC ASSET MANAGEMENT, INC., AND RAY PACIFIC ASSET MANAGEMENT, LLC.
2. BARRING KRITTIBAS RAY, RAY PACIFIC ASSET MANAGEMENT, INC., AND RAY PACIFIC ASSET MANAGEMENT, LLC, FROM ANY POSITION OF EMPLOYMENT, MANAGEMENT OR CONTROL OF ANY BROKER DEALER, INVESTMENT ADVISER, OR COMMODITY ADVISER;

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

3 **I. JURISDICTION AND VENUE**

4 1. The Commissioner is authorized to administer and enforce the provisions of the
5 Corporate Securities Law of 1968 (Corp. Code, § 25000 et seq.) and the regulations promulgated
6 thereunder (Cal. Code Regs., tit. 10, § 260.000 et seq.), pursuant to Corporations Code section
7 25600. Regulations will hereinafter be cited in the following style: "10 CCR 260.000".

8 2. KRITTIBAS RAY (hereafter "RAY") is a registered agent holding CRD #3039388 in the
9 Central Records Depository. He has operated RAY PACIFIC ASSET MANAGEMENT, INC.
10 (hereafter "RP, Inc."), an investment adviser firm (CRD#144659) first licensed on July 29, 2008 and
11 doing business at 100 Pine St., Suite 500, San Francisco, California. He has also operated RAY
12 PACIFIC ASSET MANAGEMENT, LLC (hereafter "RP, LLC") an investment adviser firm
13 (CRD#147303) first licensed on August 1, 2008 and doing business at the same location. Pursuant
14 to Government Code section 11508, venue for administrative adjudication is proper in Oakland,
15 California. RAY is the owner of both firms.

16 3. RAY has also been a registered representative employed or affiliated with White Pacific
17 Securities, Inc. ("White Pacific") a licensed broker-dealer firm (CRD#42505), which also does
18 business at the 100 Pine Street location in San Francisco. RAY was terminated from White Pacific
19 on September 27, 2010.

20 **II. STATEMENT OF FACTS**

21 4. At various times beginning in May 2010, RP, Inc. and RP, LLC were subjects of
22 examination by employees of the Department of Corporations ("DOC") pursuant to the authority
23 granted to the DOC by Corporations Code section 25241.

24 5. As a manager and owner of RP, LLC, RAY established a pooled investment fund called
25 Ray Pacific Global Opportunities Fund, LP ("RP Global"). According to the Confidential Offering
26 Memorandum ("Memorandum") for RP Global, the general partner of this limited partnership is RP,
27 LLC. The Memorandum holds out RP, LLC as a registered investment adviser in California, and
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1 represents that this general partner will be “solely responsible for the Partnership’s investing
2 activities.”

3 6. Under the terms of the Memorandum, RP, LLC (an investment adviser firm) is to be paid
4 a quarterly management fee of 0.50% (2% per annum) of each limited partner’s capital account. In
5 addition, the Memorandum provides for a Performance Allocation to the General Partner (RP, LLC)
6 of the net profits of the fund.

7 7. RAY and RP, Inc. (an investment adviser firm) have issued securities in the form of
8 promissory notes to various persons, including persons who are investors and limited partners of RP
9 Global, the pooled investment fund described in Paragraph 5. When questioned regarding this
10 practice of borrowing money from investment adviser clients, RAY responded that he expected
11 clients to refer him more investors if he owed them money. That is, RAY believed that a lending
12 client would be inclined to send him additional investors to make it more likely that he would be
13 able to repay the loan.

14 8. RAY represented in writing to DOC examiners that he had taken loans from at least three
15 clients (as described in Paragraph 7 above.) However, RAY was unable to provide any
16 documentation of loans in response to DOC request.

17 9. When requested by a limited partner investor in RP Global to return or redeem invested
18 funds, he refused to do so, in spite of the fact that the Memorandum for RP Global and the Limited
19 Partnership Agreement (“Agreement”) provide for withdrawals upon proper request according to a
20 timeline provided in the Agreement.

21 10. Despite providing a list to DOC examiners of 5 limited partners in RP Global, RAY was
22 only able to provide one subscription agreement and investor questionnaire.

23 11. When he received funds on at least one occasion from an investor for investment in RP
24 Global, RAY deposited the funds not in an account in the name of RP LLC, but rather into an
25 account in the name of RP, Inc., an entity that is not the manager of RP Global and is not otherwise
26 associated with it. Within several days thereafter, RAY made a \$40,000.00 cash withdrawal from
27 the RP, Inc. account, and a wire transfer of \$9,600.00 from the same account to his mother in India.
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1 12. RAY provided information regarding only two bank accounts for the investment adviser
2 entities (RP, Inc. and RP, LLC.) In fact, there are at least two more accounts not provided by RAY
3 to DOC examiners.

4 13. RAY represented in writing to DOC examiners that he does not have current net capital
5 computations, balance sheets, income statements, general ledgers, or bank reconciliation statements.
6 He has told DOC examiners that he does not have audited reports of the investment adviser
7 businesses.

8 14. The investments adviser businesses, RP, Inc., and RP, LLC, have not made annual
9 updating statements with the Investment Adviser Registration Depository (“IARD”) as required.
10 Furthermore, neither entity reported to IARD that it has custody of client funds as defined by law.

11 15. The investment adviser businesses, RP, Inc., and RP, LLC, have not filed annual
12 financial reports with the DOC as required by 10 CCR 260.241.2.

13 16. The investment adviser businesses, RP, Inc., and RP, LLC, have failed to pay renewal
14 fees as required by law.

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16 **III. STATUTORY BASES FOR REVOCATION AND BAR**

17 17. Corporations Code section 25009 provides, in pertinent part:

18 (g) “Investment adviser” means any person who, for compensation,
19 engages in the business of advising others, either directly or
20 through publications or writings, as to the value of securities or as
21 to the advisability of investing in, purchasing or selling
22 securities....

23 18. Corporations Code section 25232 provides, in pertinent part:

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

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(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. . .

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

19. Corporations Code section 25232.1 provides, in pertinent 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...

IV. SPECIFIC STATUTORY VIOLATIONS

Below are outlined the particular statutes and regulations that respondents have violated, which violations justify license revocation and bar.

Borrowing from Clients

20. Corporations Code section 25238 provides as follows:

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

21. 10 CCR 260.238(f), one of the rules promulgated by the Commissioner under the above authority, provides as follows:

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

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(f) Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the adviser, or a financial institution engaged in the business of loaning funds or securities.

22. By issuing promissory notes to the investors in the fund to which he acts as investment adviser (see Paragraph 7 above), RAY and RP LLC are violating 10 CCR 260.238, which are in turn grounds to revoke under section 25232 (e) and (g). His statements to examiners establish that this is a practice specifically designed to stimulate referrals of more business, so that lenders will be more likely to be repaid.

Refusal to Return Funds

23. Corporations Code section 25235 provides in pertinent part as follows:

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

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

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

(d) To engage in any act, practice, or course of business which is fraudulent, deceptive, or manipulative. The commissioner shall, for the purpose of this subdivision, by rule define and prescribe means reasonably designed to prevent such acts, practices, and courses of business as are fraudulent, deceptive, or manipulative....

24. By refusing to return funds requested by at least one investor (see Paragraph 9), respondents are in violation of this provision of Title 4, another ground to revoke under section 25232 (e) and (g).

25. By depositing money from investors in RP Global in an account unrelated to that fund or to its investment adviser (RP, LLC), RAY and RP, Inc. are in further violation of section 25235, which is therefore also a ground to revoke under section 25232. See Paragraph 11.

Books and Records Violations

26. Corporations Code section 25241 provides in pertinent part as follows:

(a) Every broker-dealer and every investment adviser

1 licensed under Section 25230 shall make and keep accounts,
2 correspondence, memorandums, papers, books, and other records and
3 shall file financial and other reports as the commissioner by rule
4 requires, subject to the limitations of Section 15(h) of the
5 Securities Exchange Act of 1934 with respect to broker-dealers and
6 Section 222 of the Investment Advisers Act of 1940 with respect to
7 investment advisers.

8 (b) All records so required shall be preserved for the time
9 specified in the rule.

10 (c) All records referred to in this section are subject at any
11 time and from time to time to reasonable periodic, special, or other
12 examinations by the commissioner, within or without this state, as
13 the commissioner deems necessary or appropriate in the public
14 interest or for the protection of investors.

15 27. 10 CCR 260.241.3 provides in pertinent part as follows:

16 (a) Every licensed investment adviser shall make and keep true,
17 accurate and current the following books and records relating to such
18 person's investment advisory business:

19 (1) A journal or journals, including cash receipts and
20 disbursements records, and any other records of original entry
21 forming the basis of entries in any ledger.

22 (2) General and auxiliary ledgers (or other comparable records)
23 reflecting asset, liability, reserve, capital, income and expense
24 accounts....

25 (4) All check books, bank statements, cancelled checks and
26 cash reconciliations of the investment adviser....

27 (6) All trial balances, financial statements, worksheets that
28 contain computations of minimum financial requirements
required under Section 260.237.2, of these rules, and internal
audit working papers relating to the business of such
investment adviser....

29 28. In response to requests from DOC examiners, RAY was not able to provide all
30 subscription agreements and investor questionnaires for RP Global (Paragraph 10); RAY was unable
31 to provide documentation of the loans from clients, which he admitted existed (Paragraph 8); RAY
32 provided information regarding only some, but not all, of the bank accounts of the investment
33 adviser entities (Paragraph 12); and RAY told examiners that he does not have numerous other
34 financial records, including current net capital computations, balance sheets, income statements,
35 general ledgers, or bank reconciliation statements. All these failures are violations of 10 CCR
36 260.241.3, above, and therefore all grounds to revoke under section 25232.

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Reporting Violations

29. 10 CCR 260.241.2 provides in pertinent part as follows:

(a) General Rule. Subject to the provisions of subsection (c) of this section, every licensed broker-dealer, and every licensed investment adviser subject to the provisions of Section 260.237.2 of these rules, shall file an annual financial report, as follows:...

(2) The annual report for an investment adviser shall contain a balance sheet, income statement, and computations of the minimum financial requirements required under Section 260.237.2 of these rules.

(3) The financial statements included in the annual report shall be prepared in accordance with generally accepted accounting principles and shall be audited by either an independent certified public accountant or independent public accountant; provided, however, the financial statements need not be audited if:

The broker-dealer or investment adviser has not held or accepted custody of funds and securities for or owed money or securities to customers or clients during the period covered by the report; and ...

(B) if the licensee is an investment adviser, the investment adviser only has discretionary authority over client funds or securities, the investment adviser has taken only limited powers of attorney to execute transactions on behalf of its clients, or the investment adviser does not accept prepayment of more than \$500 per client for more than six months in advance;....

(4) The report shall be filed not more than 90 days after the investment adviser or broker-dealer's fiscal year end.

30. RAY and the investment adviser entities have not filed annual financial reports with the DOC as required (Paragraph 15). RAY told DOC examiners that he does not have audited financial statements for the investment adviser entities (Paragraph 13) These are violations of 10 CCR 260.241.2 and grounds to revoke under section 25232.

10 CCR 260.241.4(e) provides as follows:

(e) A licensed investment adviser shall file an annual updating amendment, in accordance with the instruction in Form ADV, with IARD in accordance with its procedures for transmission to the Commissioner within ninety (90) days of the end of the investment adviser's fiscal year.

1 31. Neither RP, Inc. nor RP, LLC has filed annual updating statements with IARD as
2 required (Paragraph 14), in violation of 10 CCR 260.241.4 (another ground to revoke under section
3 25232.)

4 Failure to Pay Fees

5 32. Corporations Code section 25608 provides in pertinent part as follows:

6 (a) The commissioner shall charge and collect the fees fixed
7 in this section and Section 25608.1. All fees charged and collected
8 under this section and Section 25608.1 shall be transmitted to the
9 Treasurer at least weekly, accompanied by a detailed statement
10 thereof and shall be credited to the State Corporations Fund....

11 (q) (1) Except as provided for in paragraph (2), the fee for
12 filing an application for an investment adviser under Section 25231
13 is one hundred twenty-five dollars (\$125), and payment of this amount
14 shall keep the certificate, if granted, in effect during the
15 calendar year during which it is granted. Every investment adviser
16 who has secured from the commissioner a certificate shall, in order
17 to keep the certificate in effect for an additional period, pay a
18 renewal fee of one hundred twenty-five dollars (\$125) on or before
19 the 31st day of December.

20 (2) Paragraph (1) shall not apply to a broker-dealer licensed
21 under Section 25210.

22 33. RP, Inc. and RP, LLC have failed to pay such renewal fess and are in violation of section
23 25608, another ground to revoke under section 25232 (Paragraph 16).

24 34. The Commissioner has established that RAY and the respondent investment advisers
25 have violated statutes and regulations regarding borrowing from clients and return of requested
26 funds; they have not kept the books and records required of an investment adviser; they have not
27 filed the reports required by law; and they have not paid the renewal fees required. RAY and RP,
28 Inc. and RP, LLC have demonstrated an utter disregard for the laws and regulations designed for the
protection of the investing public.

PRAYER FOR RELIEF

WHEREFORE, based on the foregoing, the California Corporations Commissioner finds
that it is in the public interest to revoke the investment adviser certificates of RAY PACIFIC ASSET
MANAGEMENT, INC., and RAY PACIFIC ASSET MANAGEMENT, LLC pursuant to

1 Corporations Code section 25232 for willful acts committed as specified in Corporations Code
2 section 25232(e) and (h), and to bar KRITTIBAS RAY, RAY PACIFIC ASSET MANAGEMENT,
3 INC., and RAY PACIFIC ASSET MANAGEMENT, LLC from any position of employment,
4 management or control of any investment adviser, broker-dealer or commodity adviser pursuant to
5 Corporations Code section 25232.1 for willful acts committed as specified in Corporations Code
6 section 25232(e):

7 **WHEREFORE**, the Commissioner prays for:

8 1. An order revoking the investment adviser certificates of RAY PACIFIC ASSET
9 MANAGEMENT, INC., and RAY PACIFIC ASSET MANAGEMENT, LLC;

10 2. An order barring Respondent KRITTIBAS RAY, RAY PACIFIC ASSET
11 MANAGEMENT, INC., and RAY PACIFIC ASSET MANAGEMENT, LLC from any position of
12 employment, management or control of any broker-dealer, investment adviser, or commodity
13 adviser.

14 Dated: December 9, 2010
15 San Francisco, California

PRESTON DuFAUCHARD
California Corporations Commissioner

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17 By: _____

DOUGLAS M. GOODING
Senior Corporations Counsel
Enforcement Division

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