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7  
8 BEFORE THE DEPARTMENT OF CORPORATIONS  
9 OF THE STATE OF CALIFORNIA

10  
11 In the Matter of ) FILE NO. 119204  
 )  
12 THE CALIFORNIA CORPORATIONS ) STATEMENT IN SUPPORT OF ORDER  
13 COMMISSIONER, ) LEVYING ADMINISTRATIVE PENALTIES  
 ) PURSUANT TO CORPORATIONS CODE  
14 Complainant, ) SECTION 25252  
 )  
15 v. )  
 )  
16 RMC CAPITAL MANAGEMENT, INC., )  
 )  
17 Respondent. )

18  
19 Wayne Strumpfer, the California Corporations Commissioner ("Commissioner") of the  
20 Department of Corporations ("Department") alleges and charges as follows:

- 21 1. RMC Capital Management, Inc. ("RMC") holds a valid and unrevoked investment  
22 adviser certificate issued by the Commissioner on February 27, 1997 pursuant to Corporations Code  
23 section 25230. RMC is an investment adviser business located at 10680 Trenea Street, Suite 163,  
24 San Diego, California 92131. RMC is a corporation. Burgess N. Hallums ("Hallums") is RMC's  
25 president.  
26 2. On or about March 25, 2003, the Commissioner commenced a regulatory examination  
27 of RMC. The examination revealed violations of a regulation promulgated pursuant to the Corporate  
28 Securities Law of 1968, found at Corporations Code section 25000 et seq.

1           3.     These violations consisted of RMC's failure to file annual financial reports with the  
2 Commissioner within 60 days of the end of RMC's fiscal year (Cal Code Regs., tit 10, § 260.241.2,  
3 subdiv. (a)). RMC's fiscal year ends in December. The annual report filing requirement provides  
4 the Department with a regulatory mechanism to validate a firm's liquidity and financial integrity on a  
5 yearly basis to ensure that licensees maintain the necessary net capital for the protection of the  
6 public. RMC's failure to meet its reporting requirements prevented the Department from  
7 determining, as part of its regulatory exam, if RMC met the capital requirements imposed by the  
8 Corporate Securities Law and the regulations enacted thereunder.

9           4.     Corporations Code section 25241 provides that investment advisers are required to  
10 maintain books and records that are subject to examination by, and to file such reports as required  
11 by, the Commissioner. Corporations Code section 25241 provides, in relevant part, as follows:

12                     [E]very investment adviser licensed under Section 25230 shall make and keep  
13 accounts, correspondence, memorandums, papers, books, and other records and shall file  
14 financial and other reports as the commissioner by rule requires....

15           5.     California Code of Regulations, title 10, section 260.241.2 requires the filing of an  
16 annual report by certain investment advisers. Prior to April 3, 2003<sup>1</sup>, subdivision (a)(2) of section  
17 260.241.2, provided as follows:

18                     (a) General Rule. Subject to the provisions of subsection (c) of this section, ...every  
19 licensed investment adviser subject to the provisions of Section 260.237.1 of these rules,  
20 shall file an annual financial report containing the information required by a form or forms to  
21 be supplied or approved by the Commissioner, as follows:

22                     ...  
23                     (2) The annual report for investment advisers shall contain a Statement of Financial  
24 Condition. Supporting schedules shall contain computations of net capitals, aggregate  
25 indebtedness and ratios required under Section 260.237.1 and the certificate of the accountant  
26 required under subsection (e) of Section 260.237 of these rules.

27           6.     Prior to April 3, 2003, California Code of Regulations, title 10, section 260.237.1  
28 ("section 260.237.1") contained the capital requirements for investment advisers. Subdivision (a)(2)  
of section 260.237.1 provided, in relevant part, as follows:

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<sup>1</sup> Various provisions of the regulations were amended and became effective April 3, 2003. This action seeks administrative penalties based on violations that occurred under statutes and rules prior to the effective date of the amendments.

1 (a) No investment adviser who has any power of attorney from any investment advisory  
2 client to execute transactions . . . shall permit its total aggregate indebtedness to exceed 500%  
3 of its tangible net capital or permit its current aggregate indebtedness to exceed its current net  
capital; and,

4 ...  
5 (2) If the investment adviser has any power of attorney from any investment advisory client  
6 to execute transactions and does not have regular or periodic custody or possession of any of  
7 its investment advisory clients' securities or funds, except the receipt of prepaid subscriptions  
for periodic publications, or other investment advisory services, it shall at all times have and  
maintain tangible net capital of not less than \$5,000....

8 Subdivision (c) of section 260.237.1 provided that for purposes of section 260.237.1,  
9 subdivision (a), all financial information shall be determined in accordance with generally accepted  
10 accounting principles.

11 7. The Department's examiner found during the regulatory exam on March 25, 2003,  
12 that RMC had discretionary power to execute transactions in the brokerage accounts of its  
13 investment adviser clients. Therefore, prior to April 3, 2003, RMC was required to meet the capital  
14 requirements provided for under section 260.237.1, subdivision (a)(2), and to show proof of  
15 compliance with this regulation by filing annual financial reports, as required by California Code of  
16 Regulations, title 10, section 260.241.2, subdivision (a). At the time of the March 25, 2003  
17 examination, RMC had failed to submit its annual financial reports for the years 1999, 2000, 2001,  
18 and 2002, in violation of California Code of Regulations, title 10, section 260.241.2, subdivision (a).  
19 As a result of RMC's violation of this regulation, the Department was unable to determine, at the  
20 end of RMC's fiscal year, if the firm was in compliance with the net capital requirements of section  
21 260.237.1.

22 8. A prior regulatory examination of RMC on July 27, 1998, also revealed, in part, the  
23 failure to file an annual financial report for the year 1997. In correspondence with the Department at  
24 that time, Mr. Hallums assured the Department that RMC would not repeat the annual financial  
25 report filing violation in the future.

26 9. Corporations Code section 25252 authorizes the Commissioner to issue an order  
27 levying administrative penalties against any investment adviser for willful violations of any  
28 provision of the Corporate Securities Law and any rules promulgated thereunder. Specifically,

1 Corporations Code section 25252 provides, in relevant part:

2 The Commissioner may, after appropriate notice and opportunity for hearing, by orders, levy  
3 administrative penalties as follows:

4 ...  
5 (b) Any broker-dealer or investment adviser that willfully violates any provision of this  
6 division to which it is subject, or that willfully violates any rule or order adopted or issued  
7 pursuant to this division and to which it is subject, is liable for administrative penalties of not  
8 more than five thousand dollars (\$5,000) for the first violation, not more than ten thousand  
9 dollars (\$10,000) for the second violation, and not more than fifteen thousand dollars  
10 (\$15,000) for each subsequent violation.

11 10. By reason of the foregoing, RMC has willfully violated California Code of  
12 Regulations, title 10, section 260.241.2, subdivision (a), justifying the imposition of administrative  
13 penalties. RMC, as a licensee, was obligated to have knowledge of, and to comply with, the  
14 provisions of the Corporate Securities Law and the regulations thereunder to maintain its investment  
15 adviser certificate. Furthermore, the Department had given RMC prior notice of the requirements of  
16 California Code of Regulations, title 10, section 260.241.2, subdivision (a). RMC has continued to  
17 violate this regulation, despite the Department's actual notification and Mr. Hallums' assurances of  
18 future compliance.

19 11. Therefore, pursuant to Corporations Code section 25252, the Commissioner seeks  
20 administrative penalties for RMC's failure to file required annual financial reports, in willful  
21 violation of California Code of Regulations, title 10, section 260.241.2, subdivision (a).

22 WHEREFORE, good cause showing, and pursuant to Corporations Code section 25252, the  
23 California Corporations Commissioner prays for an order levying administrative penalties in the  
24 total amount of \$750.00, for violation of California Code of Regulations, title 10, section  
25 260.241.2, subdivision (a).

26 Dated: July 27, 2005

27 WAYNE STRUMPFER  
28 Acting California Corporations Commissioner

By: \_\_\_\_\_  
NICHOLAS LANZA  
Senior Corporations Counsel  
Enforcement Division