

1                                   **STATE OF CALIFORNIA**  
2                                   **BUSINESS, TRANSPORTATION AND HOUSING AGENCY**  
3                                   **DEPARTMENT OF CORPORATIONS**

4  
5 **TO:**   David G. Hurley                                   Donald J. Gallagher  
6        10 Emlim Place                                   1483 Sutter Street, Unit 518  
7        Kentfield, CA 94904                           San Francisco, CA 94109

8                                   Westbridge Capital Partners  
9                                   Westbridge Capital Partners, L.P.  
10                                  Westbridge Fund, L.P.  
11                                  333 Pine Street, Suite 204  
12                                  San Francisco, CA 94104

13                                   **DESIST AND REFRAIN ORDER**

14                                   **(For violations of sections 25110, 25210, 25230 and 25401 of the Corporations Code)**

15                                   The California Corporations Commissioner finds that:

16                                   1.       Westbridge Capital Partners is a California corporation incorporated  
17                                   in 1997 and suspended by the California Franchise Tax Board (FTB) on March 1, 2000.  
18                                   Westbridge Capital Partners, L.P. is a California limited partnership that amended its  
19                                   name to "Westbridge Fund, L.P." All entities at all relevant times were referred to by the  
20                                   names, "Westbridge Capital Partners," "Westbridge Capital" and "WCP." All the  
21                                   foregoing will hereinafter be referred to as "Westbridge" or "WCP." Westbridge  
22                                   represents itself to be in the business of providing "financial consulting" and "investment  
23                                   advice" services.

24                                   2.       Westbridge originally had its offices at 155 Montgomery Street, Suite  
25                                   1404, San Francisco, California, but was unable to pay its rent and subsequently moved  
26                                   to 435 Montgomery Street, Suite 835, San Francisco, California, where it was also  
27                                   unable to pay its rent. Westbridge now has its offices located at 333 Pine Street, Suite  
28                                   204, in San Francisco, California, where it is not current on its rent.

1           3.       At all relevant times, David G. Hurley ("Hurley"), also known as Dave  
2 Hurley, acted as the president, chief executive officer and partner of Westbridge and is  
3 a 50% owner of it.

4           4.       Donald J. Gallagher ("Gallagher "), also known as Don Gallagher, during  
5 all relevant times acted as the vice president, secretary, chief financial officer and  
6 partner of Westbridge and is a 50% owner.

7           5.       Beginning in 1997 and continuing thereafter, Westbridge, Hurley and  
8 Gallagher represented that:

9                   The typical WCP client is a going concern having been in  
10                   business for 2 or more years . . . is in a transition mode.  
11                   Transition, for example, could be defined as heading  
12                   towards an IPO and needing funds to bridge that cycle.

13           WCP represents that they will initiate "a comprehensive due diligence process . . . in  
14 order to identify the most likely investors." Westbridge, Hurley and Gallagher provided  
15 documents to potential clients, which state:

16                   Westbridge Capital Partners (WCP) is a San Francisco based  
17                   firm offering strategic positioning and financing services to  
18                   companies and individuals requiring capital infusion, typically  
19                   in amounts ranging from \$2 to 15 million. The firm is managed  
20                   by individuals with a history of identifying conventional and  
21                   non-conventional sources of funds for risk capital investment.  
22                   The sources may be individuals, institutions, corporations, and  
23                   special purpose and or venture funds . . . WCP works with its  
24                   clients to 'package' their business into attractive funding  
25                   opportunities.

26           6.       Westbridge, Hurley and Gallagher represented themselves to be  
27 "investment bankers on a smaller scale" and arranged for securities offerings to provide  
28 capital to companies. Westbridge, Hurley and Gallagher also offered financial advice  
about buying or selling securities of private companies, such as common stock of  
Maven Laboratories Inc., Western Biomedical Inc. or Woodside Biomedical Inc.  
Westbridge, Hurley and Gallagher were compensated by payment of various fees in  
exchange for providing their services as a broker-dealer and/or investment adviser.

1           7.       Additionally, Westbridge, Hurley or Gallagher, and others acting in concert or  
2 participation with them, offered or sold securities in the form of shares of common stock and  
3 evidences of indebtedness to the public. As examples, during the years 1997 to 2000,  
4 promissory notes were sold and shares of common stock of Basketball Express were  
5 offered at \$1.00 per share. These securities were offered or sold in this State in issuer  
6 transactions. The Department of Corporations has not issued a permit or other form of  
7 qualification authorizing any person to offer and sell these securities in this State.

8           8.       In connection with the offers or sales of securities, Westbridge, Hurley or  
9 Gallagher made, or caused to be made, misrepresentations and omissions of material facts  
10 in connection with the offers or sales of the securities to the public.

11                   a.       The misrepresentations of material facts include:

- 12                               (1) WCP has provided funds in amounts from \$2 to 125 million and
- 13                               (2) WCP's "entire funding process usually takes 60 to 120 days."

14                   b.       The omissions of material facts include:

- 15                               (1) Westbridge was a suspended corporation, not in good standing with
- 16                                       the California Secretary of State's Office or the California FTB;
- 17                               (2) WCP, Hurley and Gallagher were unable to pay their office rent;
- 18                               (3) Westbridge and Hurley had been defendants in several civil
- 19                                       lawsuits;
- 20                               (4) Hurley had multiple IRS and FTB liens filed against him;
- 21                               (5) Westbridge, Hurley and Gallagher were not licensed under federal
- 22                                       or California law to act either as broker-dealers or as investment
- 23                                       advisers; and
- 24                               (6) Westbridge, Hurley and Gallagher failed to comply with the
- 25                                       qualification requirements of the California Corporate Securities Law.

26       ///

27       ///

28       ///

1           9.     An investment adviser is any person who, for compensation, engages in the  
2 business of advising others, either directly or through publications or writings as to the value  
3 of securities or as to the advisability of investing in, purchasing or selling securities.

4           10.    A broker-dealer is any person who engages in the business of effecting  
5 transactions in securities in this State for the account of others or for his own account.

6           11.    The Department of Corporations has not issued a certificate authorizing  
7 Westbridge, Hurley or Gallagher to act as an investment adviser. Westbridge, Hurley or  
8 Gallagher are not exempt from the certification requirement under section 25230 of the  
9 California Corporations Code.

10          12.    The Department of Corporations has not issued a certificate authorizing  
11 Westbridge, Hurley or Gallagher to act as a broker-dealer. Westbridge, Hurley or  
12 Gallagher are not exempt from the certification requirement under section 25210 of the  
13 California Corporations Code.

14               Based upon the foregoing, the California Corporations Commissioner is of the opinion  
15 that Westbridge Capital Partners, Westbridge Capital Partners, L.P., Westbridge Fund, L.P.,  
16 David Hurley and Donald Gallagher conducted business as investment advisers without  
17 having first applied for and secured from the Commissioner a certificate, then in effect,  
18 authorizing them to act in that capacity in violation of section 25230 of the Corporate  
19 Securities Law of 1968.

20               Pursuant to section 25532 of the Corporate Securities Law of 1968, Westbridge  
21 Capital Partners, Westbridge Capital Partners, L.P., Westbridge Fund, L.P., David G. Hurley  
22 and Donald J. Gallagher are hereby ordered to desist and refrain from conducting business  
23 as an investment adviser in the State of California, unless and until certification has been  
24 made under said law or unless exempt.

25               Additionally, the California Corporations Commissioner is of the opinion that  
26 Westbridge Capital Partners, Westbridge Capital Partners, L.P., Westbridge Fund, L.P.,  
27 David G. Hurley and Donald J. Gallagher are subject to the laws regulating broker-dealers  
28 under the California Corporate Securities Law of 1968 and have effected transactions in

1 securities as broker-dealers without having first applied for and secured from the  
2 Commissioner a certificate, then in effect, authorizing these persons to act in that capacity in  
3 violation of section 25210 of the Corporate Securities Law of 1968.

4 Pursuant to section 25532 of the Corporate Securities Law of 1968, Westbridge  
5 Capital Partners, Westbridge Capital Partners, L.P., Westbridge Fund, L.P., David G. Hurley  
6 and Donald J. Gallagher are hereby ordered to desist and refrain from conducting business  
7 as a broker-dealer in the State of California, unless and until certification has been made  
8 under said law or unless exempt.

9 Further, the California Corporations Commissioner is of the opinion that the shares  
10 of common stock and evidences of indebtedness are securities subject to qualification  
11 under the California Corporate Securities Law of 1968 and are being or have been offered  
12 or sold without being qualified. Pursuant to section 25532 of the Corporate Securities Law  
13 of 1968, Westbridge Capital Partners, Westbridge Capital Partners, L.P., Westbridge Fund,  
14 L.P., David G. Hurley and Donald J. Gallagher are hereby ordered to desist and refrain  
15 from the further offer or sale in the State of California of securities in the form of shares of  
16 common stock and evidences of indebtedness, unless and until qualification has been  
17 made under said law or unless exempt. The sale of such securities is subject to  
18 qualification under said law and such securities are being or have been offered for sale  
19 without first being so qualified.

20 Lastly, the California Corporations Commissioner is of the opinion that the  
21 securities that Westbridge Capital Partners, Westbridge Capital Partners, L.P.,  
22 Westbridge Fund, L.P., David G. Hurley and Donald J. Gallagher offered or sold in this  
23 State were by means of written or oral communications which included an untrue  
24 statement of a material fact or omitted to state a material fact necessary in order to  
25 make the statements made, in the light of the circumstances under which they were  
26 made, not misleading, in violation of section 25401 of the Corporate Securities Law of  
27 1968.

28

1 Pursuant to section 25532 of the Corporate Securities Law of 1968, Westbridge  
2 Capital Partners, Westbridge Capital Partners, L.P., Westbridge Fund, L.P., David G. Hurley  
3 and Donald J. Gallagher made, or caused to be made, misrepresentations or omissions of  
4 material facts in connection with the offers or sales of securities and are hereby ordered to  
5 desist and refrain from offering or selling or buying or offering to buy any security in the  
6 State of California by means of any written or oral communication which includes an untrue  
7 statement of a material fact or omits to state a material fact necessary in order to make the  
8 statements made, in the light of the circumstances under which they were made, not  
9 misleading.

10 These Orders are necessary, in the public interest, for the protection of investors  
11 and consistent with the purposes, policies, and provisions of the Corporate Securities  
12 Law of 1968.

13  
14 Dated: May 30, 2003  
15 Los Angeles, California

16 DEMETRIOS A. BOUTRIS  
17 California Corporations Commissioner

18  
19 By \_\_\_\_\_  
20 ALAN S. WEINGER  
21 Supervising Counsel  
22 Enforcement and Legal Services  
23  
24  
25  
26  
27  
28

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

**STATE OF CALIFORNIA**  
**BUSINESS, TRANSPORTATION AND HOUSING AGENCY**  
**DEPARTMENT OF CORPORATIONS**

**TO:** David G. Hurley  
10 Emlim Place  
Kentfield, CA 94904

Donald J. Gallagher  
1483 Sutter Street, Unit 518  
San Francisco, CA 94109

San Francisco Merchant Services L.L.C  
155 Montgomery Street, Suite 1404  
435 Montgomery Street, Suite 835  
San Francisco, CA 94104

Westbridge Capital Partners  
Westbridge Capital Partners, L.P.  
Westbridge Fund, L.P.  
333 Pine Street, Suite 204  
San Francisco, CA 94104

**DESIST AND REFRAIN ORDER**  
**(For violations of sections 12200 and 22100 of the Financial Code)**

The California Corporations Commissioner finds that:

1. San Francisco Merchant Services L.L.C. (SF Merchant Services), located in San Francisco, California was formed in June 2000 to provide services to various businesses and/or clients. Its services included handling the accounts receivable and accounts payable for the 50 to 100 business clients that SF Merchant Services had during its existence. A general description of the services rendered includes an arrangement for receiving funds from a client and making necessary payments to that client's creditors in accordance with the client's instructions. SF Merchant Services obtained powers of attorney from its clients enabling them to initiate withdrawals from a client's bank account(s) for payment to a client's creditors, usually in the form of electronic funds transferred through Wells Fargo Bank or checks mailed to creditors. The client was charged and required to pay a fee to San Francisco Merchant Services in exchange for it making payments to the creditors of that client.

1           2.       Westbridge Capital Partners is a California corporation incorporated  
2 in 1997 and suspended by the California Franchise Tax Board (FTB) on March 1, 2000.  
3 Westbridge Capital Partners, L.P. is a California limited partnership that amended its  
4 name to "Westbridge Fund, L.P." All entities at all relevant times were referred to by the  
5 names, "Westbridge Capital Partners," "Westbridge Capital" and "WCP." All the  
6 foregoing will hereinafter be referred to as "Westbridge" or "WCP." Westbridge  
7 represents itself to be in the business of providing "financial consulting" and "investment  
8 advice" services. It also provides services similar to SF Merchant Services in handling  
9 the accounts payable of its business clients, including payroll.

10           3.       Westbridge originally had its offices at 155 Montgomery Street, Suite 1404,  
11 San Francisco, California, but was unable to pay its rent and subsequently moved to 435  
12 Montgomery Street, Suite 835, San Francisco, California, where it was also unable to pay  
13 its rent. Westbridge now has its offices located at 333 Pine Street, Suite 204, in San  
14 Francisco, California, where it is not current on its rent.

15           4.       At all relevant times, David G. Hurley ("Hurley"), also known as Dave Hurley,  
16 acted as the president, chief executive office and partner of Westbridge and is a 50%  
17 owner of it. Hurley was also a principal of SF Merchant Services.

18           5.       Donald J. Gallagher ("Gallagher "), also known as Don Gallagher, during all  
19 relevant times acted as the secretary, chief financial officer and partner of Westbridge and  
20 is a 50% owner. Gallagher was also a principal of SF Merchant Services.

21           6.       Beginning in 1997 and continuing thereafter, Westbridge, Hurley and  
22 Gallagher represented that they have "provided funds ranging in amounts from \$2 to 125  
23 million for projects such as . . . a bridge loan . . . refinancing of a real estate portfolio."  
24 They provided documents to clients, which state:

25                   The typical WCP client is a going concern having been in  
26                   business for 2 or more years . . . is in a transition mode.  
27                   Transition, for example, could be defined as heading towards an  
28                   IPO and needing funds to bridge that cycle.

28       ///



1 Westbridge Capital Partners (WCP) is a San Francisco based  
2 firm offering strategic positioning and financing services to  
3 companies and individuals requiring capital infusion, typically  
4 in amounts ranging from \$2 to 15 million. The firm is managed  
5 by individuals with a history of identifying conventional and  
6 non-conventional sources of funds for risk capital investment.  
7 The sources may be individuals, institutions, corporations, and  
8 special purpose and or venture funds . . . WCP works with its  
9 clients to 'package' their business into attractive funding  
10 opportunities.

11 7. From 1997 to 2003 Westbridge, Hurley and Gallagher had over 50  
12 clients. They represented themselves to the public as having successfully arranged for  
13 financing and loans to companies. In exchange for these services they received  
14 compensation consisting of various fees including, but not limited to, "retainer, expenses  
15 and success fees" and "contingency fees." Before providing these services as a finance  
16 lender or a broker, Westbridge, Hurley and Gallagher would charge fees of \$25,000 or  
17 more to "package" a client's business into an "attractive funding opportunity."  
18 Westbridge, Hurley and Gallagher represented that, "[t]he entire process usually takes  
19 60 to 120 days."

20 8. Westbridge, Hurley or Gallagher printed, displayed and distributed statements  
21 about their business and their conditions for making or negotiating loans that were false and  
22 misleading or omitted material information in violation of section 22161 of the California  
23 Finance Code.

24 a. Misleading statements include the following:

- 25 (1) WCP has provided funds in amounts from \$2 to 125 million and
- 26 (2) The entire funding process usually takes 60 to 120 days.

27 b. Material omissions of facts include the following:

- 28 (1) Westbridge, Hurley and Gallagher omitted to tell clients that  
they did not possess the assets or expertise to provide or  
arrange funding and that they had not been successful;

///

- 1 (2) Funds that clients paid as "success fees" and "contingency
- 2 fees" would not be refunded as Westbridge, Hurley and
- 3 Gallagher promised;
- 4 (3) Westbridge was a suspended corporation, not in good
- 5 standing with the California Secretary of State's Office or
- 6 the Franchise Tax Board;
- 7 (3) Westbridge, Hurley and Gallagher were unable to pay
- 8 their office rent expense;
- 9 (4) Westbridge and Hurley had been defendants in several civil
- 10 lawsuits;
- 11 (5) Hurley had multiple IRS and FTB liens filed against him;
- 12 (6) Westbridge, Hurley and Gallagher were not licensed under
- 13 California law to act as a finance lender or broker; and
- 14 (7) Westbridge, Hurley and Gallagher failed to comply with various
- 15 requirements of the California Finance Lenders Law.

16 9. The Department of Corporations has jurisdiction over and regulates proraters  
17 under the Check Sellers, Bill Payers and Proraters Law set forth in California Financial Code  
18 section 12000 et seq. California Financial Code section 12200 states:

19 No person shall engage in the business, for compensation, of  
20 selling checks, drafts, money orders, or other commercial  
21 paper serving the same purpose, or of receiving money as  
22 agent of an obligor for the purpose of paying bills, invoices, or  
23 accounts of such obligor, or acting as a prorater, nor shall any  
24 person, without direct compensation and not as an authorized  
25 agent for a utility company, accept money for the purpose of  
26 forwarding it to others in payment of utility bills, without first  
27 obtaining a license from the commissioner.

28 10. The Department of Corporations has not issued a license authorizing SF  
Merchant Services, Westbridge, Hurley or Gallagher to act as a bill payer. SF Merchant  
Services, Westbridge, Hurley and Gallagher are not within any exemption set forth in the  
California Financial Code.

1           11.    The Department of Corporations also has jurisdiction over and regulates  
2 finance lenders and brokers under the California Finance Lenders Law set forth in California  
3 Financial Code section 22000 et seq. California Financial Code section 22100 states:

4                   No person shall engage in the business of a finance lender or  
5                   broker without obtaining a license from the commissioner.

6           12.    The Department of Corporations has not issued a license authorizing  
7 Westbridge, Hurley or Gallagher to act as a finance lender or broker. Westbridge, Hurley  
8 and Gallagher are not exempt from the license requirement under section 22100 of the  
9 California Financial Code.

10           Based upon the foregoing findings, the California Corporations Commissioner is of the  
11  
12 opinion that SF Merchant Services, L.L.C., Westbridge Capital Partners, Westbridge Capital  
13 Partners, L.P., Westbridge Fund, L.P., David G. Hurley and Donald J. Gallagher have been  
14 engaging in the business of check selling, bill paying or prorating as defined in the Check  
15 Sellers, Bill Payers and Proraters Law without a license from the California Corporations  
16 Commissioner.

17           Pursuant to Financial Code section 12103, the California Corporations Commissioner  
18 hereby orders SF Merchant Services, L.L.C., Westbridge Capital Partners, Westbridge  
19 Capital Partners, L.P., Westbridge Fund, L.P., David G. Hurley and Donald J. Gallagher to  
20 desist and refrain from engaging in business as a check seller, bill payer or prorater unless  
21 and until they are licensed or exempt.

22           Additionally, the California Corporations Commissioner is also of the opinion that  
23 Westbridge Capital Partners, Westbridge Capital Partners, L.P., Westbridge Fund, L.P.,  
24 David G. Hurley and Donald J. Gallagher are subject to the California Finance Lenders Law  
25 and have engaged in business as a finance lender or broker without having first applied for  
26 and secured from the Commissioner a license, then in effect, authorizing them to act in that  
27 capacity in violation of section 22100 of the Finance Lenders Law.  
28

1 Pursuant to section 22712 of the California Financial Code, Westbridge Capital  
2 Partners, Westbridge Capital Partners, L.P., Westbridge Fund, L.P., David G. Hurley and  
3 Donald J. Gallagher are hereby ordered to desist and refrain from engaging in business as  
4 a finance lender or a broker in the State of California, unless and until a license is obtained  
5 under said law or unless exempt.

6 The California Corporations Commissioner is also of the opinion that Westbridge  
7 Capital Partners, Westbridge Capital Partners, L.P., Westbridge Fund, L.P., David G. Hurley  
8 and Donald J. Gallagher printed, displayed or distributed statements regarding their business  
9 of making or negotiating loans by means of false, misleading or deceptive statements or  
10 representations or omitted to state a material fact necessary in order to make the statements  
11 made, in the light of the circumstances under which they were made, not false, misleading or  
12 deceptive.

13 Pursuant to section 22712 of the Corporate Securities Law of 1968, Westbridge  
14 Capital Partners, Westbridge Capital Partners, L.P., Westbridge Fund, L.P., David G. Hurley  
15 and Donald J. Gallagher are hereby ordered to desist and refrain from printing, displaying  
16 and distributing any statement about their business which includes an untrue statement of a  
17 material fact that is false, misleading or deceptive or that omits material information that is  
18 necessary to make the statements not false, misleading or deceptive.

19 These Orders are necessary, in the public interest, for the protection of consumers.

20 Dated: May 30, 2003  
21 Los Angeles, California

22 DEMETRIOS A. BOUTRIS  
23 California Corporations Commissioner

24  
25 By \_\_\_\_\_  
26 ALAN S. WEINGER  
27 Supervising Counsel  
28 Enforcement and Legal Services