

BEFORE THE
DEPARTMENT OF CORPORATIONS
STATE OF CALIFORNIA

In the Matter of:

PAUL ZUPAN; SUZIE ZUPAN;
LATITUDE CAPITAL MANAGEMENT, INC.;
LCM HIGH INCOME FUND, LLC;
LCM STRATEGIC INCOME FUND, LLC,

Respondents.

OAH No.: 2008050496

DECISION

The attached Proposed Decision of the Administrative Law Judge of the Office of Administrative Hearings, dated September 2, 2008, is hereby adopted by the Department of Corporations as its Decision in the above-entitled matter with the following minor typographical corrections pursuant to Government Code Section 11517(c)(2)(C).

On page 10, paragraph number 39, line 13, of the Factual Findings delete "21169(a)(1) and 21169(a)(2)" and replace with "22169(a)(1) and 22169(a)(2)".

On page 11, line 2 of the Factual Findings delete "21169(a)(1)" and replace with "22169(a)(1)".

On page 20, paragraph number 1, line 4 of the Legal Conclusions delete "21169" and replace with "22169".

This Decision shall become effective on December 12, 2008.

IT IS SO ORDERED this 12th day of December 2008.

CALIFORNIA CORPORATIONS COMMISSIONER

Preston DuFauchard

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PROPOSED DECISION

Administrative Law Judge Nancy L. Rasmussen, Office of Administrative Hearings, State of California, heard this matter on July 1 and 2, 2008, in Oakland, California.

Corporations Counsel John R. Drews represented complainant Preston DuFauchard, California Corporations Commissioner.

Respondents Paul Zupan and Suzie Zupan appeared and represented themselves and respondents Latitude Capital Management, Inc., LCM High Income Fund, LLC, and LCM Strategic Income Fund, LLC.

The record was held open for submission of written argument. On July 15, 2008, complainant's closing argument was received and marked as Exhibit 28 for identification. On July 28, 2008, respondents' closing argument and a timeline supplement were received. Respondents' closing argument was marked as Exhibit J for identification. The timeline supplement was marked as Exhibit K for identification. On July 31, 2008, complainant's response to respondents' closing argument was received and marked as Exhibit 29 for identification. On July 31, 2008, the record was closed and the matter was deemed submitted for decision.

FACTUAL FINDINGS

Respondents

1. Respondent LCM High Income Fund, LLC (High Income Fund), a California corporation, is a lender/broker licensed by the California Corporations Commissioner under the California Finance Lenders Law (Fin. Code, § 22000 et seq.). High Income Fund submitted a license application on or about August 17, 2004, and license number 605-2901 was issued on November 16, 2004.

2. Respondent LCM Strategic Income Fund, LLC (Strategic Income Fund), a California corporation, is a lender/broker licensed by the California Corporations Commissioner under the California Finance Lenders Law.

License number 605-3638 was issued in February 2007.

3. Respondent Latitude Capital Management, Inc. (Latitude Capital), a California corporation, has held an investment adviser certificate issued by the Department of Corporations since June 8, 2005. Latitude Capital is the manager of High Income Fund and Strategic Income Fund.

4. Respondent Suzie Zupan is an investment advisor representative and the president and sole shareholder of Latitude Capital. She is a resident of California.

5. Respondent Paul Zupan is an investment advisor representative and a resident of California. Paul Zupan and Suzie Zupan have been married for over 17 years,

Background & Chronology

6. In October 2003, Latitude Financial, Inc., was started as a real estate loan brokerage. Suzie Zupan was licensed by the Department of Real Estate as the broker of record. Latitude Financial originated "A paper" loans as well as "hard money" loans which were financed by private investors. Paul Zupan testified that he worked as a loan processor and bookkeeper/accountant for the company. He was the primary contact for investors in trust deeds with Latitude Financial. In January 2005, the Department of Real Estate issued Paul Zupan a restricted real estate salesperson license.

7. In 2004, Suzie Zupan was licensed by the Department of Real Estate as the broker of record for Integral Financial Services, Inc., a company operated by the Zupans to service loans made by Latitude Financial.

8. In 2003, the Zupans started developing High Income Fund. Their concept was to create a mortgage pool in the form of a limited liability company (LLC) in which investors could buy individual interests. The Zupans started working with attorneys to draft an offering circular, an operating agreement and a subscription agreement.

9. A major problem to be addressed by the Zupans and their attorneys was the role of Paul Zupan in the business. Zupan is a former attorney who was convicted of two felony counts of grand theft in 1992. He was sentenced to 16 months in prison, of which he served 12 months. In 1993, Zupan resigned from the California State Bar with disciplinary charges pending. In 1997, he filed for bankruptcy.

10. Upon the advice of their attorney, the Zupans agreed that Paul Zupan would not be an officer, director or shareholder of the company managing High Income Fund, and his name would not appear in the offering circular. According to the Zupans, they decided that Paul Zupan would have a minor role in the company, with his duties being limited to bookkeeping, accounting, and communicating with clients to describe the offering circular or operating agreement.

11. On August 13, 2004, Suzie Zupan signed High Income Funds application for a lender/broker license under the California Finance Lenders Law. This application was submitted to the Department of Corporations on or about August 17, 2004. Latitude Capital was listed as manager of High Income Fund, and Suzie Zupan was listed as president of Latitude Capital. Suzie Zupan was the only person listed in the section for listing "each of the person(s) who will be in charge of the place of business." The application is required to include a Statement of Identity and Questionnaire (SIQ) completed by each person listed in that section.¹ The SIQ requires disclosure of (among other things) criminal convictions, bankruptcy filings and the discipline or surrender of a license to engage in a business. Suzie Zupan submitted her SIQ with the application. In response to a letter from the Department of Corporations regarding incomplete items, Suzie Zupan sent in additional documents on October 15, 2004, including a SIQ for Dois Brock, director of Latitude Capital.² On November 16, 2004, lender/broker license number 605-2901 was issued to High Income Fund.

12. On November 29, 2004, Suzie Zupan signed High Income Fund's application for a permit to offer and sell securities. This application was submitted to the Department of Corporations on or about December 1, 2004. Item 11 requires the applicant to list all directors and executive officers. The instructions for completing this item specify that, for each person named, any theft or felony conviction must be disclosed (among other things).³ The answer to Item 11 on High Income Fund's application referenced the response to Item 21(j), which stated that Latitude Capital was applicant's manager. Suzie Zupan was listed as the president and director of Latitude Capital, and Dois Brock was listed as a director. On or shortly before March 2, 2005, High Income Fund was issued a permit to offer and sell securities.

13. As a licensed lender/broker, High Income Fund is required to file an annual report by March 15 of each year. On or about March 1, 2005, an annual report for High

¹ The instructions for completing the application for a lender/broker license are contained in California Code of Regulations, title 10, section 1422.

² Dois Brock is in the mortgage business in Orange County, and he has known the Zupans since 1993. He agreed to be an "outside director" of Latitude Capital.

³ The instructions for completing the application for a permit to offer and sell securities are contained in California Code of Regulations, title 10, section 260.110.

Income fund was filed with the Department of Corporations. Suzie Zupan signed this report on February 24, 2005. Schedule K of the annual report is a directory of directors, officers, branch managers and any person owning or controlling 10 percent or more interest or equity securities. The instructions for completing Schedule K state: "If the person was required to be included in the initial application or in a subsequent report of a changes [*sic*] in personnel, the person should be included in this directory." High Income Fund's Schedule K listed Suzie Zupan and Dois Brock.

14. On March 2, 2005, a Form ADV - Uniform Application for Investment Advisor Registration was filed electronically for Latitude Capital.⁴ Schedule A on the ADV requires the applicant to list "direct owners and executive officers," which include "each Chief Executive Officer, Chief Financial Officer, Chief Operations Officer, Chief Legal Officer, Chief Compliance Officer . . . , director, and any other individuals with similar status or functions." For each person listed, the applicant has to fill in columns asking for information about the person's involvement with applicant. In the "Control Person" column, the applicant was instructed to "enter `Yes' if the *person* has *control* as defined in the Glossary of Terms to Form ADV." (Italics in original.) The Glossary of Terms states: "Control means the power, directly or indirectly, to direct the management or policies of a person, whether through ownership of securities, by contract, or otherwise. [¶] Each of your firm's officers, partners, or directors exercising executive responsibility (or *persons* having similar status or functions) is presumed to control your firm." (Italics in original.) On Latitude Capital's ADV, Suzie Zupan is the only person listed on Schedule A. Item 10 on the ADV asks whether any person not named in Schedule A directly or indirectly controls applicant's management or policies. The answer on Latitude Capital's ADV is "Yes," and Dois Brock is listed in the section for identifying additional control persons. Item 11 on the ADV asks for information about the disciplinary history of the applicant and all of the applicant's "advisory affiliates." The form states: "Your *advisory affiliates* are: (1) all of your current *employees*⁵ (other than *employees* performing only clerical, administrative, support or similar functions); (2) all of your officers, partners, or directors (or any *person* performing similar functions); and (3) all *persons* directly or indirectly *controlling* you or *controlled* by you." (Italics in original.) Question F under Item 11 asks: "Has an authorization to act as an attorney, accountant, or federal contractor granted to you or any *advisory affiliate* ever been revoked or suspended?" (Italics in original.) The answer on Latitude Capital's ADV is "No." The ADV was executed by Suzie Zupan as president of Latitude Capital, with an electronic signature dated February 23, 2005.

⁴ The ADV is filed online with the IARD (Investment Advisor Registration Depository) managed by FINRA (Financial Industry Regulatory Authority, formerly known as the National Association of Securities Dealers.) IARD forwards the applications of California applicants to the California Department of Corporations.

⁵ The Glossary of Terms states that the term "employee" includes "an independent contractor who performs advisory functions on your behalf."

15. Part II of the ADV, which in 2005 was filed (on paper) with the Department of Corporations, is the part of the ADV that is generally provided to clients. Part II contains the following item:

11. Review of Accounts. If applicant provides investment supervisory services, manages investment advisory accounts, or holds itself out as providing financial planning or some similarly termed services:

A. Describe below the reviews and reviewers of the accounts. **For reviews**, include their frequency, different levels, and triggering factors. **For reviewers**, include the number of reviewers, their titles and functions, instructions they receive from applicant on performing reviews, and number of accounts assigned each. [Bold in original.]

On Latitude Capital's ADV Part II, the response to this item is as follows:

Applicant manages the LCM High Income Fund, LLC, which amounts to reviewing one account. Suzie Zupan is assigned to review this account. Review consists of managing the daily review of investments, maintaining sufficient liquidity and supervising receivables (servicing is contracted out).

Part II of the ADV, in Item 6, asks the applicant to list on Schedule F the name, year of birth, and education and business background of various persons, including "each principal executive officer of applicant or each person with similar status or performing similar functions." Suzie Zupan was the only person listed on Schedule F of Latitude Capital's ADV Part II. Part II of the ADV was signed by Suzie Zupan, as president of Latitude Capital, on March 4, 2005.

16. On April 7, 2005, the Marin County Superior Court granted Paul Zupan a certificate of rehabilitation from his felony conviction.

17. On June 8, 2005, the Department of Corporations issued an investment adviser certificate to Latitude Capital.

18. On June 10, 2005, Suzie Zupan, acting as president of Latitude Capital on behalf of High Income Fund, and Paul Zupan executed an Employment Agreement which provided that Paul Zupan would serve as Financial Manager of High Income Fund, with "all of the powers and duties usually incident to the office." The agreement recited that he "has and will invest significant assets and time into the founding and development of the Company," but it is apparent it will be necessary to delay compensation." The agreement set the fair rate of compensation at not less than \$100,000 per year, but Zupan agreed to accept no compensation. Severance pay was set at \$500 per day until December 31, 2010.

19. On or about March 16, 2006, an annual report for High Income

Fund was filed with the Department of Corporations. Suzie Zupan signed this report on March 10, 2006. Schedule K of this annual report (see Finding 13) listed only Suzie Zupan.

20. On July 18, 2006, Paul Zupan electronically filed a Form U4 – Uniform Application for Securities Industry Registration or Transfer, seeking registration as an investment advisor representative for Latitude Capital.⁶ The U4 was signed electronically by Paul Zupan and by Suzie Zupan. Paul Zupan answered "Yes" to the question, "Do you have an independent contractor relationship with the above named firm [Latitude Capita]?" In response to questions about his criminal, regulatory action and financial history, Paul Zupan disclosed his 1992 grand theft conviction, his "disbarment" by the California State Bar and his bankruptcy. However, when he stated in his employment history that he had been working for Latitude Capital since February 2004, Zupan listed his position as "clerk." Stephanie Hollander, a licensing specialist from the Department of Corporations, testified that because clerks are not required to be registered as investment advisor representatives (employees performing only clerical functions are not considered advisory affiliates). Zupan's U4 would have received a low level of scrutiny. If Zupan had listed his position as operations manager, Hollander would have rejected his application because of his conviction, disbarment and bankruptcy. As it was, after passing the Series 65 examination, Zupan was issued an investment advisor representative registration in August 2006. Hollander testified that if, subsequent to issuance of the registration, Zupan's position changed from clerk to operations manager, Zupan's U4 and Latitude Capital's ADV would have to be updated to reflect his new status. This would lead to an action to revoke the registration.

21. On or about August 28, 2006, Suzie Zupan signed Strategic Income Fund's application for a permit to offer and sell securities. This application was submitted to the Department of Corporations on or about August 29, 2006. The answer to Item 11, requiring the applicant to list all directors and executive officers, referenced the response to Item 21(j), which stated that Latitude Capital was applicant's manager. Suzie Zupan was listed as the president and director of Latitude Capital, Dois Brock was listed as a director, and James Wall was listed as a director.⁷ Under Item 10 (Plan of Distribution), Paul Zupan is listed as a representative who will be selling membership interests. The application states that he "is employed by the Manager, [and] is awaiting confirmation of his U-4 application as a Registered Investment Advisor Representative." Strategic Income Fund was issued a permit to offer and sell securities. The date of issuance was not established by the evidence, although the accusation alleges that the permit was issued on or about July 5, 2007.

⁶ The U4 is filed online with the Web CRD (Central Registration Depository) managed by FINRA.

⁷ James Wall is an attorney and one of the first investors in High Income Fund. He became a director of Latitude Capital around May 2006.

22. In February 2007, lender/broker license number 605-3638 was issued to Strategic Income Fund. Although the application for this license is not in evidence, other evidence indicates that Paul Zupan was not disclosed in the application as having any involvement in the business. That would mean that Paul Zupan was not listed in the section for listing each person who will be in charge of the place of business.

23. High Income Fund issued an offering circular, dated March 29, 2007. This document states that Latitude Capital is the manager of High Income Fund. The section for "The Manager's Management Team" lists Suzie Zupan as president and director, Dois Brock as director, and James Wall as director, and sets forth the education and employment background for each person.

24. On July 27, 2007, Paul Zupan sent a letter to Hae Fields, whose husband later invested in High Income Fund, and he signed the letter as "EVP" (executive vice president) of Latitude Capital, manager of High Income Fund.

25. On August 16, 2007, Corporations Examiner Marc Valle visited the Sausalito office of Latitude Capital, High Income Fund and Strategic Income Fund to conduct a compliance examination of Latitude Capital. (Latitude Financial and Integral Financial Services, the companies licensed by the Department of Real Estate, were also operated out of that office.) The reason for Valle's visit was that the Department of Corporations had received an inquiry from the Department of Real Estate as to why Paul Zupan had been issued an investment advisor representative registration. Although Valle's examination was not routine, he performed routine procedures. Paul Zupan was the only person Valle dealt with on behalf of Latitude Capital, although Valle briefly met Suzie Zupan when he returned on August 21, 2007, to continue his examination. Paul Zupan provided Valle with the company documents he requested and answered his questions about Latitude Capital. On August 16, Valle asked Zupan to fill out an Investment Adviser Summary of Personnel form for Latitude Capital. Paul Zupan listed Suzie Zupan as president, director and 100 percent stockholder, and Dois Brock and James Wall as directors. In the last section, for "All Other Employees," Paul Zupan listed himself as operations manager. Zupan claims that he initially did not list himself on the form, but in discussing with Valle quality control and Zupan's role in the organization, Valle asked him to list himself on the form and to use a more descriptive title than clerk. Valle does not recall making this request, but he thinks it is something he would have done.

26. In reviewing bank statements for Latitude Capital's checking account, Valle found that the eight cleared checks included on the May, June and July 2007 statements had been signed by Paul Zupan. Valle reviewed all 39 of the High Income Fund client files maintained by Latitude Capital. He found that for four of the files Paul Zupan had signed the operating agreement, and in two cases the subscription agreement, on behalf of Latitude Capital as manager of High Income Fund. His signature was on documents executed in December 2005, November 2006, February 2007 (when he listed his title as "VP") and May 2007.⁸ Section 3.08 of the High Income Fund operating agreement provides that "no Member (other than a Manager who is also a Member) shall take part in the management of the Company's business, transact any business in the

Company's name or have the power to sign documents for or otherwise bind the Company." Valle reviewed files for 10 of the 37 properties held in the High Income Fund mortgage pool. These files each contained a lender servicing and equity interest agreement between Integral Financial Services and "Lender." In six of the 10 files, with agreements executed between April and June 2007, Paul Zupan had signed the agreement. In only one of the agreements is it clear on behalf of which party he was signing. In the agreement dated June 21, 2007, Paul Zupan is identified as EVP of Latitude Capital, manager of High Income Fund.

27. Valle conducted an exit interview with Paul Zupan on August 21, 2007, and informed him of the exceptions noted in his field examination. One of the exceptions was Latitude Capital's failure to comply with what Valle described as "the audited financial statements and surprise verification requirements for advisors with custody." Paul Zupan later contacted Valle by email to request additional information on the Department of Corporations' custody requirements.

28. On August 16, 2007, an amended Form ADV was filed electronically for Latitude Capital. On Schedule A, where the applicant is required to list "direct owners and executive officers," Suzie Zupan, Dois Brock and James Wall are listed, with Suzie Zupan and Dois Brock designated as control persons. Dois Brock is also listed in the section for identifying additional control persons not named in Schedule A. The answer to Question F under Item 11, asking whether "an authorization to act as an attorney, accountant, or federal contractor granted to you or any *advisory affiliate* [has] ever been revoked or suspended," is "No." (Italics in original.) The ADV was executed by Suzie Zupan as president of Latitude Capital, with an electronic signature dated August 16, 2007.

29. Part II of the amended ADV was signed by Suzie Zupan, as president of Latitude Capital, on August 17, 2007, and filed with the Department of Corporations on or about August 21, 2007. Under Item 11 (Review of Accounts), the response is as follows:

Latitude Capital Mangernent [sic], Inc., manages the LCM High Income Fund, LLC, which amounts to reviewing one account. Suzie Zupan and Paul Zupan are assigned to review this account. Review consists of managing the daily review of investments, maintaining sufficient liquidity and supervising receivables (servicing is contracted out).

⁸ Of the remaining 35 files, the documents in 18 files were signed by Suzie Zupan, and the documents in 17 files were incomplete and unsigned on behalf of Latitude Capital.

On Schedule F, for Item 6 (listing the name, year of birth, and education and business background of various persons, including "each principal executive officer of applicant or each person with similar status or performing similar functions"), Suzie Zupan and Paul Zupan are listed. Paul Zupan is identified as the Operations Officer of Latitude Capital and Latitude Financial.

30. On September 18, 2007, Latitude Capital emailed Hae Fields its September 2007 monthly update. This update contained marketing information and was signed by Paul Zupan, Vice President. Zupan wrote: "If you have any other questions, please feel free to email me directly"

31. On September 24, 2007, Suzie Zupan removed James Wall as director of Latitude Capital.

32. On October 5, 2007, Suzie Zupan, acting as president of Latitude Capital on behalf of High Income Fund, and Paul Zupan executed an Employment Agreement, to be effective January 1, 2008. This agreement provided that Paul Zupan would serve as Advisor and Financial Manager of High Income Fund, with "all of the powers and duties usually incident to the office." The agreement recited that he "has invested significant assets and time into the founding and development of the Company" and "delayed receiving compensation for services pending development of the Company," but "the Company is experiencing more difficulty in adverse market conditions" and "may not develop as quickly as anticipated." The agreement set Paul Zupan's compensation at not less than \$100,000 per year, payable in at least monthly installments, and Zupan agreed to accept this compensation. Severance pay was set at \$277.78 per day until December 31, 2010.

33. On February 5, 2008, an amended Form ADV was filed electronically for Latitude Capital. On Schedule A, where the applicant is required to list "direct owners and executive officers," Suzie Zupan and Dois Brock are listed and designated as control persons. Dois Brock is also listed in the section for identifying additional control persons not named in Schedule A. The answer to Question F under Item 11, asking whether "an authorization to act as an attorney, accountant, or federal contractor granted to you or any *advisory affiliate* [has] ever been revoked or suspended," is "No." (Italics in original.) The ADV was executed by Suzie Zupan as president of Latitude Capital, with an electronic signature dated January 14, 2008.

34. Part II of the amended ADV was signed by Suzie Zupan, as president of Latitude Capital, on January 14, 2008, and filed with the Department of Corporations on or about February 5, 2008. Aside from the execution pages, this form appears to be a copy of the one filed on or about August 21, 2007. (See Finding 28.)

35. On February 11, 2008, Corporations Examiners Annette Yeung and Angela Blais went to respondents' Sausalito office to conduct a routine regulatory examination of High Income Fund's activities as a broker/lender under the California Finance Lenders Law. The examination took six days. Paul Zupan was the primary contact person for Yeung and Blais, and he appeared to them to be in charge of the office. Yeung does recall seeing Suzie Zupan in the office for at least some time every day, and on one occasion she phoned a title company for a document Yeung requested. Paul Zupan told Blais that he was an investment advisor/manager. The closing interview, where Yeung explained their findings, was with Paul Zupan. The subsequent report of regulatory examination was sent to Paul Zupan's attention at High Income Fund.

36. On or about March 17, 2008, an annual report for High Income Fund was filed with the Department of Corporations. Paul Zupan signed this report on March 12, 2008, identifying himself as Manager. Schedule K of this annual report was incorrectly filled out, because it listed Latitude Capital instead of any individuals.

37. On or about March 17, 2008, an annual report for Strategic Income Fund was filed with the Department of Corporations. Paul Zupan signed this report on March 12, 2008, identifying himself as Manager. Schedule K of this annual report was incorrectly filled out, because it listed Latitude Capital instead of any individuals.

38. On March 26, 2008, Marc Valle returned to respondents' office to gather additional documents. This field examination was prompted by investor complaints received by the Department of Corporations. Valle was also at respondents' office on April 16 and 17, 2008. Paul Zupan was the person he dealt with, although Suzie Zupan was present for Valle 's examination meeting.

39. On May 9, 2008, complainant initiated this proceeding by issuing the following legal document:

Accusation and Statement in Support:

1. Revoking the Finance Lenders Licenses of LCM High Income Fund LLC and LCM Strategic Income Fund LLC pursuant to Financial Code section 22714.
2. Revoking Securities Permit Issued to LCM Strategic Income Fund LLC pursuant to Corporations Code section 25140(a)(1).
3. Summarily Suspending Securities Permit Issued to LCM Strategic Income Fund LLC pursuant to Corporations Code section 25143(a).
4. Barring Paul Zupan from any Position of Employment. Management or Control of any Finance Lender pursuant to Financial Code sections 21169(a)(1) and 21169(a)(2).

5. Barring Suzie Zupan from any Position of Employment, Management or Control of any Finance Lender pursuant to Financial Code section 21169(a)(1).
6. Revoking Investment Adviser Certificate of Latitude Capital Management Inc. pursuant to Corporations Code section 25232.
7. Barring Paul Zupan from any Position of Employment. Management or Control pursuant to Corporations Code section 25232.1.
8. Barring Suzie Zupan from any Position of Employment, Management or Control pursuant to Corporations Code section 25232.1.

40. On May 9, 2008, complainant issued an order summarily suspending the permit to offer and sell securities issued to Strategic Income Fund under Corporations Code section 25113. The order was effective on May 9, 2008.

Paul Zupan's Role in Latitude Capital

41. The accusation alleges that Paul Zupan was the de facto chief operating officer of Latitude Capital. High Income Fund and Strategic Income Fund, and that for all practical purposes High Income Fund and Strategic Income fund were the alter egos of Paul Zupan. As such, he should have been disclosed in the license, permit and registration applications, and his criminal conviction, attorney discipline and bankruptcy should have been disclosed. And on his U4 application, Zupan should not have listed his position at Latitude Capital as a mere clerk.

42. When the Zupans decided that Paul Zupan would not be an officer, director or shareholder of Latitude Capital, they knew he could not legally have a major role in the company and his duties must be limited. The Zupans maintain that they were careful to observe the licensing boundaries of the Department of Corporations and the Department of Real Estate, although they intended for Paul Zupan to eventually become an officer, director and shareholder. The Zupans claim that Paul Zupan's duties were limited to bookkeeping, accounting, and contact with clients in a non-advisory role (e.g., describing the offering circular or operating agreement). Also, as an information technology expert, Paul Zupan maintained the computer network and dealt with computer problems. He was the primary contact for people calling with questions about the offering circular, although the Zupans claim he gave no investment advice and did no marketing. (Suzie Zupan did not like talking with investors, who often wanted to have lengthy telephone conversations.) The Zupans assert that Suzie Zupan was responsible for Latitude Capital's marketing, none of which was done over the phone. Suzie Zupan wrote all advertising copy and Internet content, and she utilized her skills in data mining to create custom mailing lists of potential clients. She used search engine optimization to enhance the chances of potential clients

finding Latitude Capital on the Internet. Paul Zupan testified that Suzie Zupan had primary responsibility for the selection of loans for High Income Fund's portfolio, contact with borrowers, bank relations and employee oversight. He explained that his wife was responsible for all executive decisions, although he did have input into those decisions. Suzie Zupan chose to leave the office when auditors from the Department of Corporations "set up camp." because their presence disrupted productivity in the small office. During these times, she worked from home, communicating with Paul Zupan by email and instant messaging. Paul Zupan explained that after he was issued an investor adviser representative registration, he was added as a signatory to Latitude Capital's checking account, to facilitate his role as bookkeeper/accountant.

43. Regarding the June 10, 2005, Employment Agreement describing Paul Zupan as Financial Manager of High Income Fund with a compensation rate of \$100,000 per year (Finding 18), Zupan asserts that this did not describe his actual role and function in the company. This agreement, and the updated version dated October 5, 2007 (Finding 32), were intended to protect the Zupans' investment of time and money in launching High Income Fund. The Zupans are currently seeking \$216,000 in litigation to enforce these agreements.

44. The Zupans claim that Paul Zupan had no executive role in Latitude Capital and the two funds it managed (and the Employment Agreement did not mean what it said) is at odds with the picture painted by the evidence. As early as December 2005, Paul Zupan was signing the High Income Fund operating agreement on behalf of Latitude Capital, and in February 2007 he listed his title as vice president. In June and July 2007, Paul Zupan identified himself as executive vice president. After August 16, 2007, when Zupan listed his position on Marc Valle's form as operations manager, Zupan's name started appearing on amended ADV forms for Latitude Capital and on the annual reports for High Income Fund and Strategic Income Fund. Numerous High Income Fund investors testified that Paul Zupan was their only contact at the company, and he appeared to them to have management and decision-making authority. In the opinion of Josh Nevarez, CPA, who performed audit services for High Income Fund, Paul Zupan was in charge of High Income Fund from an accounting perspective. Nevarez made the following observations in a draft letter to High Income Fund, dated February 29, 2008:

We noted that the Fund's managing member and spouse are primarily responsible for all aspects of the Fund's cash cycles and accounting operations. Whenever, in the course of obtaining an understanding of a client's internal controls, we note a lack of appropriate segregation of duties, we provide various recommendations to address this issue.

However, we noted that the Fund's managing member and spouse, considering the familial relationship this presents, is not unlike a "one man shop" for purposes of internal control evaluation.

45. The evidence supports a finding that at least as of June 10, 2005, when Paul Zupan became Financial Manager of High Income Fund by the terms of the Employment Agreement, his role in Latitude Capital and High Income Fund included executive and management authority such that he should have been listed on all subsequent official applications and reports for Latitude Capital and High Income Fund (and, later, Strategic Income Fund). This is not to say that Suzie Zupan was a mere figurehead in the organization. She focused her efforts in different areas from her husband, but she also exercised executive and management authority.

46. It may well be that Paul Zupan's role before June 10, 2005, included just as much executive and managerial authority as after that date, but the evidence is insufficient to make such a finding.

Required Disclosures

47. On August 13, 2004, Suzie Zupan signed High Income Fund's application for a lender/broker license under the California Finance Lenders Law. Above her signature on the execution page was the language that she:

. . . agrees that in the event of any change of its officers, directors, or any persons named in this application, that an amendment to the application reflecting such change shall within sixty days from the date of the change, be filed with the Commissioner of Corporations setting forth the change, the effective date of the change, the names of the persons involved in the change, and a statement of the qualifications of each successor person.

After June 10, 2005, an amendment to the application should have been filed, adding Paul Zupan in the section for listing each person who will be in charge of the place of business. A SIQ completed by Paul Zupan should have accompanied the amendment.

48. The Form ADV that was filed for Latitude Capital on March 2, 2005, contains a warning on page 1 that includes the following: "You must keep this form updated by filing periodic amendments." After June 10, 2005, an amended Form ADV should have been filed to add Paul Zupan on Schedule A, with Zupan being identified as a control person. His discipline as an attorney would have had to have been disclosed on Question F under Item 11, because he was an advisory affiliate. Paul Zupan should have been included on Part II of the ADV, just

as he was on the amended Form ADV filed on August 16, 2007.

49. In the annual report for High Income Fund filed on or about March 16, 2006, Paul Zupan should have been listed on Schedule K. High Income Fund and Suzie Zupan, who signed the report, knowingly omitted a material fact in not listing him.

50. In his Form U4 filed on July 18, 2006, Paul Zupan made a knowingly false statement of a material fact when he listed his position with Latitude Capital as clerk. He should have used a job title that reflected his executive and management authority.

51. In Strategic Income Fund's application for a permit to offer and sell securities, submitted to the Department of Corporations on or about August 29, 2006, Paul Zupan should have been listed in Item 11, where all directors and executive officers were to be listed. Strategic Income Fund and Suzie Zupan, who signed the application, knowingly omitted a material fact in not listing him.

52. When Strategic Income Fund applied for the lender/broker license that was issued in February 2007, Paul Zupan should have been included in the section for listing each person who will be in charge of the place of business. A SIQ completed by Paul Zupan should have accompanied the application.

53. High Income Fund's offering circular, dated March 29, 2007, should have listed Paul Zupan in the section for "The Manager's Management Team." The failure to list Zupan is a knowing omission of a material fact.

54. In the amended Form ADV filed for Latitude Capital on August 16, 2007, Paul Zupan should have been listed on Schedule A and identified as a control person. His discipline as an attorney would have had to have been disclosed on Question F under Item 11, because he was an advisory affiliate. It was not sufficient to include Paul Zupan only on Part II of the ADV. Latitude Capital and Suzie Zupan, who signed the amended Form ADV, knowingly omitted a material fact in not listing Paul Zupan on Schedule A, and made a knowingly false statement of a material fact in answering "No" to Question F under Item 11.

55. In the amended Form ADV filed for Latitude Capital on February 5, 2008, Paul Zupan should have been listed on Schedule A and identified as a control person. His discipline as an attorney would have had to have been disclosed on Question F under Item 11, because he was an advisory affiliate. It was not sufficient to include Paul Zupan only on Part II of the ADV. Latitude Capital and Suzie Zupan, who signed the amended Form ADV, knowingly omitted a material fact in not listing Paul Zupan on Schedule A, and made a knowingly false statement of a material fact in answering "No" to Question F

under Item 11.

56. In the annual reports for High Income Fund and Strategic Income Funds filed on or about March 17, 2008, Paul Zupan and Suzie Zupan, rather than Latitude Capital, should have been listed on Schedule K. However, because Paul Zupan identified himself as Manager when he signed these reports, it does not appear that the omission of individuals from Schedule K was meant to hide Paul Zupan's involvement in the operation of these broker/lenders.

57. Paul Zupan's executive and managerial authority at Latitude Capital as of June 10, 2005, was a material fact that should have been disclosed to the Department of Corporations in all subsequent applications and reports, because his criminal convictions, attorney discipline and bankruptcy could have been the basis for denying or revoking a license, certificate, registration or permit. Furthermore, the information about Paul Zupan's role in Latitude Capital, High Income Fund and Strategic income Fund, and his criminal convictions, attorney discipline and bankruptcy, should have been available to potential investors. Most of the investors who testified at the hearing would not have invested in High Income Fund if they had known about Paul Zupan's history.

Allen Bright Transaction

58. Allen Bright is a cement mason who lives in Garden Grove, California. He had an Individual Retirement Account (IRA) in a bank account, and his wife thought he should be more aggressive in investing these funds. Bright's wife, Hae Fields, found the High Income Fund on the Internet, and on July 2, 2007, she sent an email to Latitude Capital requesting an offering circular. An offering circular was sent to Fields. Bright recalls his wife telling him she had called and talked to Paul Zupan; she was very excited about investing in the fund. (Bright was a witness at the hearing; his wife was not.) On July 27, 2007, Paul Zupan wrote a letter to Fields in which he stated: "When we spoke last month, you had mentioned that your investment capital would be available later in the summer and I just wanted to follow up some of the issues we discussed." Zupan set forth the particulars on High Income Fund and how to invest in the fund. The information he provided included the following:

The Fund distributes dividends on a monthly basis. You can either choose to receive a check once a month, or reinvest the dividends into your account.

[¶] . . . [¶]

The High Income Fund continues to yield over 11% return, 13.5% if compounding your investment. We are aware of the negative press concerning mortgage investments, but continue to perform well.

59. By September 5, 2007, Bright and Fields apparently had decided to invest Bright's IRA funds in High Income Fund. Bright's bank statement reflects a posting on that date of \$27,046.33 transferred in from the prior IRA trustee/custodian. Bright let his wife fill out the paperwork for the investment, which he signed and transmitted to Latitude Capital.⁹ Before completing the paperwork, Fields told her husband they would be getting monthly dividend checks and needed to decide where they wanted the payments to go. After talking to a representative of the IRA custodian at First Savings Bank, they decided to have the checks go there.

60. On September 18, 2007, Latitude Capital emailed Fields its September 2007 monthly update. After a discussion about the continued turmoil in the mortgage markets and the housing downturn, the update states:

SO, WHAT IS THE EFFECT ON LCM?

Most investors remain on the sidelines waiting for the credit market to settle. We have had a significant reduction in new investment in each of the Funds because of it. It is very unlikely we will hit our goals for the growing the size of the Funds for this year. Ironically, as the rest of the subprime industry is pulling back, our market is expanding. In the past month we have seen more and better loan applications than we've seen since the Fund was created. Because the institutional lenders don't have the money to do these loans, the borrowers are looking to private funds to lend them money. They are better qualified in terms of credit worthiness and security quality than what has traditionally been our client.

The yield for the High Income Fund was about 9% (simple interest) for August, and we continue to monitor our portfolio for any weakness, especially given the drought in new investment.

LCM HIGH INCOME FUND PERFORMANCE

The LCM High Income Fund paid 11.07% annualized yield for the trailing 12 months, 13.1% 12 month average if your account is compounding dividends. . . .
[¶] Had you invested \$100,000 January 1, 2005, your LCM Fund investment would [be] worth more than

\$137,000, \$20,000 more than if you had invested in a 6 month CD. . . .

We are actively seeking new investors and additional capital. We have more new loans right now than we can fund. . . . Also, your referrals are very much appreciated. Tell your friends. We, and they, will thank you.

61. On September 19, 2007, Fields sent Paul Zupan an email stating: "Per conversation on the phone this morning about my husband's IRA Rollover account, here is its custodian information." On September 21, 2007, \$25,000 was debited from Bright's account at First Savings Bank to purchase "25,000 par value @ \$1.0000 of LCM High Income Fund, LLC."

⁹ The High Income fund subscription agreement includes the following Investor Suitability questions, which Paul Zupan believes were answered "Yes" on Bright's agreement.

- My net worth (excluding home, furnishings and automobile) exceeds \$500,000.
- My net worth (as defined above) exceeds \$250,000 and my annual income exceeds \$65,000 per year.
- The amount of my investment in the Company is less than ten percent (10%) of my net worth exclusive of home, furnishings and automobile.

Bright testified that his net worth is not over \$500,000.

62. After making the investment in High Income Fund, Bright waited for a dividend payment but none showed up. The November 5, 2007 statement from High Income Fund for October 2007 showed a balance of \$25,000 and no credits to Bright's account. Sometime before November 23, 2007, Bright phoned Paul Zupan to ask why he had not received a dividend payment. Zupan told Bright the fund was not paying dividends. Bright recalls Zupan telling him things were kind of tough, and saying something like: "Well, you're the last one in, and I should probably return your money, but I have to check with other people in the fund."

63. On November 23, 2007, Paul Zupan sent the following email message to Bright:

As we discussed, we have reviewed your account for the possibility of withdrawing the assets from the LCM High Income Fund. We are unable to do that in the current situation as all withdrawals from that

account have been suspended.

However, because of the timing of your investment, we believe you intended to invest in the Strategic Income Fund as opposed to the High Income Fund as the SIF continues to pay dividends. I'm attaching the Offering Circular and Subscription Agreement for that Fund. Please complete and sign those documents and fax them back to me. We'll move the investment from the HIF to the SIF upon receiving them.

64. When Bright received this message, he thought Paul Zupan was trying to divert his money into a fund Bright had never heard of. Bright just wanted his money back so he could "start over." He phoned Zupan, got his voice mail, and left him a message asking that his money be refunded. On November 29, 2007, Paul Zupan sent an email to Bright stating: "I received your telephone message. No withdrawals are being allowed right now and such restriction will probably continue into early next year."

65. Bright got the idea, from something Paul Zupan had said, that his money had never actually been invested in High income Fund but was being held by Latitude Capital. Sometime on or before January 24, 2008, Bright left a voice mail message for Zupan in which he mentioned this. On January 24, Zupan sent an email to Bright in which he asked Bright to send him an email with his question because he did not understand the voice mail message Bright had left. On January 28, there was an email exchange between Bright and Zupan. Bright alleged that his money had not been invested in High Income Fund, and he requested that the money be returned to his IRA custodian. Zupan explained that Bright's money was invested in High Income Fund and could not be withdrawn. Bright then emailed: "You said that I'm invested in the LCM High Income Fund. I called my IRA custodian and Ms. O'Connor said that there has been no interest at all posted since October 2007." Zupan replied: "That is correct. No interest distribution has been made since your investment."

66. First Savings Bank IRA manager Susan O'Connor, who had been copied on Bright's and Zupan's emails, sent Bright the following email message later on January 28, 2008:

I talked with Paul and he indicated that no interest has been paid and once they have funds to distribute they will. There will be no back interest paid. You are in an LLC which pays out distributions as they are available, not a guaranteed monthly distribution. I asked if you were on a list to be bought out and he said you were along with others in the LLC. The LLC is a 10 year

project in which currently this is the 8th year.

67. On March 3, 2008, Paul Zupan sent an email to accountant Josh Nevarez in which he stated: "I'm going to write down all accounts [in High Income Fund] except one, which we believe came into the fund so late, that it is unfair to write it down. Allen Bright came in September. It is a 25k investment that we won't write down. Do you see any problem with it?" After Nevarez pointed out the problems with treating Bright differently than other fund investors, Zupan responded: "Well, you're right. We keep going back and forth on this one as it is not a good outcome either way. I think we're going to have to lean in the most conservative direction and write down all accounts proportionally."

68. On April 4, 2008, High Income Fund issued a statement which showed Bright's account balance to be \$16,485.35.

69. The last dividends High Income Fund investors received were paid in August 2007. Complainant alleges that the Zupans sold the High Income Fund shares to Bright in September 2007 by the omission of material information that dividends were no longer being paid. The Zupans deny this allegation. In his testimony, Paul Zupan claimed that when he spoke to Bright's wife on September 19, 2007, he told her that the High Income Fund was not paying dividends at that time, and he suggested investing in the Strategic Income Fund instead. (Zupan claimed that when Bright called him in November, he was surprised that he expected a dividend distribution.) Hae Fields was not at the hearing to testify about their conversation, but Paul Zupan's claim to have made this disclosure to her is not believable. The information about High Income Fund that Zupan emailed to Fields on July 27 and September 18 did not promise a certain interest rate or explicitly guarantee that dividends would always be paid, but the statement on July 27 that "[t]he Fund distributes dividends on a monthly basis" could be expected to lead prospective investors to believe they would receive dividends every month. The September 18 update indicates that the August dividend of 9 percent was less than the "11.07% yield for the trailing 12 months," but the overall message is that the High Income Fund is still an excellent investment. A prospective investor reading this update would have no reason to believe that the August dividend was the last dividend. One day later, on September 19, Fields gave Zupan the go-ahead on the investment of Bright's IRA funds. Nowhere is there any indication that she did so with the knowledge that the High Income Fund that had been described in such positive terms the day before would, in fact, not be generating any income at all. And if Paul Zupan had made such an unexpected disclosure, it would have been reasonable to document the disclosure and the investor's acknowledgement of it in going forward with the investment. There is no such documentation. Furthermore, Zupan's statement to Bright in November that he should probably return Bright's money, and his later attempt to exclude Bright from the High Income Fund write down, make no sense if Zupan had disclosed to Bright's wife before she made the investment that there would be

no dividends. If Bright's wife had, with full knowledge of dividends being suspended, insisted on investing her husband's money, Zupan would be entitled to feel she had assumed the risk of the negative consequences that followed. And Zupan's failure to mention in his communications with Bright and Susan O'Connor the disclosure he now claims to have made to Fields further undermines the credibility of his claim.

Because Paul Zupan's claim is rejected, it must be found that the Zupans and Latitude Capital failed to disclose to Bright (through Fields) that dividends on High Income Fund had ceased. This was material information that should have been disclosed before selling shares in the fund to Bright.

Other Matters

70. The Zupans offered as hearsay evidence affidavits from a number of clients and former employees, and from Latitude Capital director Dois Brock. They describe the Zupans as knowledgeable, honest and hardworking professionals. Several of the affiants stated they do not believe Paul Zupan was the "de facto controlling person" of Latitude Capital or that Suzie Zupan was merely the "alleged controlling person."

LEGAL CONCLUSIONS

California Finance Lenders Law Violations

1. Complainant seeks to revoke the broker/lender licenses of High Income Fund and Strategic Income Fund under Financial Code section 22714, and to bar Paul Zupan and Suzie Zupan from any position of employment, management or control of any finance lender under Financial Code section 21169. Those code sections provide, in relevant part:

22714. (a) The commissioner shall suspend or revoke any license, upon notice and reasonable opportunity to be heard, if the commissioner finds any of the following:

(1) The licensee has failed to comply with any demand, ruling, or requirement of the commissioner made pursuant to and within the authority of this division.

(2) The licensee has violated any provision of this division or any rule or regulation made by the commissioner under and within the authority of this division.

22169. (a) 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 any finance lender, broker, or any other person, if the commissioner finds either of the following:

(1) That the censure, suspension, or bar is in the public interest and that the person has committed or caused a violation of this division or rule or order of the commissioner, which violation was either known or should have been known by the person committing or causing it or has caused material damage to the finance lender, or to the public.

(2) That the person has been convicted of or pleaded nolo contendere to any crime, or has been held liable in any civil action by final judgment, or any administrative judgment by any public agency, if that crime or civil or administrative judgment involved any offense involving dishonesty, fraud, or deceit, or any other offense reasonably related to the qualifications, functions, or duties of a person engaged in the business in accordance with the provisions of this division.

2. Financial Code section 22101, subdivision (a), provides, in relevant part: "An application for a license under this division shall be in the form and contain the information that the commissioner may by rule require" Financial Code section 22108 provides:

The commissioner may by regulation require licensees to file, at the times that he or she may specify, the information that he or she may reasonably require regarding any changes in the information provided in any application filed pursuant to this division.

California Code of Regulations, title 10, section 1422, sets forth the license application form and the instructions for completing the form. The form requires the applicant to list each person who will be in charge of the place of business, and to submit a SIQ for each person listed. The execution section of the form includes the applicant's agreement to file an amendment to the application "in the event of any change of its officers, directors, or any other persons named in this application."¹⁰ California Code of Regulations, title 10, section 1409, provides, in relevant part:

A finance company shall at all times maintain on file with the Commissioner a current list of officers, directors. . . . and other persons named in the application. . . . In the event of any change, other than transfers between branch offices, in the officers, directors, or partners, or other persons named in the application, a finance company shall file with the Commissioner an amendment to the application containing the same information in relation to such new person(s) as is required in the application, within thirty days from the date of the change.

3. High Income Fund violated California Code of Regulations, title 10, sections 1409 and 1422, by failing to file an amendment to its lender/broker license application after June 10, 2005. (Finding 47.) Cause to suspend or revoke the license exists under Financial Code section 22714, subdivision (a)(1) and (a)(2).

4. Strategic Income Fund violated California Code of Regulations, title 10, section 1422, by failing to include Paul Zupan in the section of its lender/broker license application for listing each person who will be in charge of the place of business and submitting a SIQ completed by him. (Findings 22 & 52.) Cause to suspend or revoke the license exists under Financial Code section 22714, subdivision (a)(1) and (a)(2).

¹⁰ The language on the Current application differs slightly from the language on High Income Fund's August 2004 application (see Finding 46). The most significant difference is that the amendment must now be filed within 30 days of the change rather than 60 days.

5. Financial Code section 22159, subdivision (a), requires a licensee to file an annual report "giving the relevant information that the commissioner reasonably requires concerning the business and operations conducted by the licensee . . . during the preceding calendar year." High Income Fund violated this section by not listing Paul Zupan on Schedule K of the annual report filed in March 2006. (Findings 19 & 49.) Cause to suspend or revoke the license exists under Financial Code section 22714, subdivision (a)(1) and (a)(2),

6. High Income Fund and Strategic Income Fund each violated Financial Code section 22159, subdivision (a), by not listing any individuals on Schedule K of their annual reports filed in March 2008. (Findings 36, 37 & 56.) Cause to suspend or revoke each license exists under Financial Code section 22714, subdivision (a)(1) and (a)(2).

7. The violations of High Income Fund and Strategic Income Fund set forth in Conclusions 3 through 6 were committed or caused by Suzie Zupan. Cause to censure, suspend or bar her from any position of employment, management or control of any finance lender or broker exists under Financial Code section 22169, subdivision (a)(1). The censure, suspension or bar is in the public interest.

8. The violations of High income Fund and Strategic Income Fund set forth in Conclusions 3 through 6 were committed or caused by Paul Zupan, since he had executive and management authority in Latitude Capital. Cause to censure, suspend or bar him from any position of employment, management or control of any finance lender or broker exists under Financial Code section 22169, subdivision (a)(1). The censure, suspension or bar is in the public interest. Additional cause exists under Financial Code section 22169, subdivision (a)(2), by reason of Paul Zupan's 1992 conviction for grand theft. (Finding 9.) Grand theft is an offense involving dishonesty which is reasonably related to the qualifications, functions or duties of a person engaged in the finance lending business.

Allen Bright Transaction

9. Corporations Code section 25401 provides:

It is unlawful for any person to offer or sell a security

in this state or buy or offer to buy a security in this state by means of any written or oral communication which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

Latitude Capital violated this section by failing to disclose, before selling shares in High income Fund to Allen Bright, that dividends in the fund had ceased. (Finding 69.)

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Latitude Capital 's Investment Advisor Certificate

10. Complainant seeks to revoke the investor advisor certificate issued to Latitude Capital, under Corporations Code section 25232. That section provides, in relevant part:

The commissioner may, after appropriate notice and opportunity for hearing, by order censure, deny a certificate to, or suspend for a period not exceeding 12 months or revoke the certificate of, an investment adviser, if the commissioner finds that the censure, denial, suspension, 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 has done any of the following:

(a) Has willfully made or caused to be made in any application for a certificate or any report filed with the commissioner under this division, or in any proceeding before the commissioner, any statement which was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has willfully omitted to state in the application or report any material fact which is required to be stated therein.

(b) Has been either (1) convicted of or has pled nolo contendere to any felony or misdemeanor, or (2) held liable in a civil action by final judgment of a court based upon conduct showing moral turpitude, and the

commissioner finds that the felony, misdemeanor or civil action (A) involved the purchase or sale of any security, (B) arose out of the conduct of the business of a broker-dealer or investment adviser, (C) involved theft, or (D) involved the violation of Section 1341, 1342, or 1343 of Title 18 of the United States Code.

[Subd. (c) and (d) omitted.]

(e) Has willfully violated any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or Title 4 (commencing with Section 25000), including the Franchise Investment Law, Division 5 (commencing with Section 31000), or the California Commodity Law of 1990, Division 4.5 (commencing with Section 29500), 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.

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[Subd. (f) omitted.]

(g) Has aided, abetted, counseled, commanded, induced, or procured the violation by any other person of any statute or rule or regulation referred to in subdivision (e).

(h) 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

Corporations Code section 25245 provides:

It is unlawful for any person willfully to make any untrue statement of a material fact in any application, notice, or report filed with the commissioner under this part, or willfully to omit to state in any such application, notice, or report any material fact which is required to be stated therein.

11. Latitude Capital violated Corporations Code section 25245 by willfully omitting a material fact and willfully making a false statement of a material fact in the amended Forms ADV filed in August 2007 and February 2008. (Findings 28, 33, 54 & 55.) Cause to suspend or revoke Latitude Capital's investor advisor certificate exists under Corporations Code section 25232, subdivisions (a), (e) and (h).

12. Cause to suspend or revoke Latitude Capital's investor advisor certificate exists under Corporations Code section 25232, subdivision (b), by reason of Paul Zupan's 1992 conviction for grand theft. (Finding 9.)

13. Cause to suspend or revoke Latitude Capital's investor advisor certificate exists under Corporations Code section 25232, subdivisions (e) and (h), by reason of Latitude Capital's violation of Corporations Code section 25401. (Conclusion 9.)

14. Cause to suspend or revoke Latitude Capital's investor advisor certificate exists under Corporations Code section 25232, subdivision (g), by reason of Paul Zupan and Suzie Zupan aiding, abetting, inducing or procuring Latitude Capital's violation of Corporations Code sections 25245 and 25401. (Conclusions 11 & 9. respectively.)

15. With respect to Conclusions 11 through 14, suspension or revocation of Latitude Capital's investor advisor certificate is in the public interest.

Strategic Income Fund's Securities Permit

16. Complainant seeks to revoke the permit to offer and sell securities issued under Corporations Code section 25113 to Strategic Income Fund, and to uphold the May 99, 2008, order summarily suspending this permit. The authority for such actions is in Corporations Code section 25140, subdivision (a)(1), and section 25143, subdivision (a), which provide, in relevant part:

25140. (a)(1) The commissioner . . . may suspend or revoke any permit issued under Section 25113 or 25122 if he or she finds (A) that the order is in the public interest and (B) that the proposed plan of business of the issuer or the proposed issuance or sale of securities is not fair, just, or equitable, or that the issuer does not intend to transact its business fairly and honestly, or that the securities proposed to be issued or the method to be used in issuing them will tend to work a fraud upon the purchaser thereof.

25143. (a) The commissioner may by order summarily postpone or suspend the effectiveness of any qualification pending final determination of any proceeding under this chapter. . . .

Corporations Code section 25166 provides:

It is unlawful for any person willfully to make any untrue statement of a material fact in any application,

notice, or report filed with the commissioner under this part or pursuant to subdivision (b) of Section 25507, or willfully to omit to state in any such application, notice, or report any material fact which is required to be stated therein.

17. Strategic Income Fund violated Corporations Code section 25166 by failing to list Paul Zupan in Item 11 of its August 2006 application for a permit to offer and sell securities. (Finding 21 & 51.) This violation, along with the violation of Corporations Code section 25401 in the Allen Bright transaction, and the pattern of concealment of Paul Zupan's role in Latitude Capital, support a finding that Strategic Income Fund's proposed sale of securities is not fair, just or equitable, and the issuer does not intend to transact its business fairly and honestly. Cause to suspend or revoke Strategic Income Fund's securities permit exists under Corporations Code section 25140, subdivision (a)(1), and such an order is in the public interest. Cause for summarily suspending Strategic Income Fund's securities permit exists under section 25143, subdivision (a).

Barring the Zupans under Corporations Code section 25232.1

17. Complainant seeks to bar Paul Zupan and Suzie Zupan from any position of employment, management or control of any investment advisor or broker-dealer under Corporations Code section 25232.1. That code section 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 or 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 or has been convicted or any offense or held liable in any civil action specified in subdivision (b) of Section 25232. . . .

19. Cause to censure, suspend or bar Paul Zupan from any position of employment, management or control of any investment advisor or broker-dealer exists under Corporations Code section 25232.1, by reason of his having committed acts set forth in Corporations Code section 25232, subdivision (g), i.e., aiding, abetting, inducing or procuring Latitude Capital's violation of Corporations Code sections 25245 and 25401. (Conclusion 14.) Cause also exists under Corporations Code section 25232.1, by reason of Paul Zupan's

conviction of an offense specified in Corporations Code section 25232, subdivision (b). (Conclusion 12.) The censure, suspension or bar is in the public interest.

20. Cause to censure, suspend or bar Suzie Zupan from any position of employment, management or control of any investment advisor or broker-dealer exists under Corporations Code section 25232.1, by reason of his having committed acts set forth in Corporations Code section 25232, subdivision (g), i.e., aiding, abetting, inducing or procuring Latitude Capital's violation of Corporations Code sections 25245 and 25401. (Conclusion 14.) The censure, suspension or bar is in the public interest.

Other Matters

21. Although Paul Zupan may be considered by the criminal courts to be rehabilitated from his grand theft conviction, his evasion of regulatory scrutiny by failing to disclose his role in Latitude Capital raises serious concerns about his honesty and integrity. Zupan's failure to disclose a material fact in the Allen Bright transaction compounds these concerns. Suzie Zupan's complicity in concealing the nature of her husband's involvement in Latitude Capital and the funds it managed, and her apparent lack of compunction about making false statements and omissions of material facts in official documents, raise the same concerns about her. The public interest requires issuance of the order set forth below.

ORDER

1. Lender/broker license number 605-2901 issued under the California Finance Lenders Law to LCM High Income Fund, LLC, is revoked.
2. Lender/broker license number 605-3638 issued under the California Finance Lenders Law to LCM Strategic Income Fund, LLC, is revoked.
3. The permit to offer and sell securities issued to Strategic Income Fund is revoked, and the summary suspension order issued on May 9, 2008, is upheld.
4. The investment adviser certificate issued to Latitude Capital Management, Inc., is revoked.
5. Paul Zupan is barred from any position of employment, management or control of any finance lender or broker.
6. Suzie Zupan is barred from any position of employment, management or control of any finance lender or broker.
7. Paul Zupan is barred from any position of employment, management or control of any investment adviser, broker-dealer or commodity adviser.
8. Suzie Zupan is barred from any position of' employment, management or control of any investment adviser, broker-dealer or commodity adviser.

DATED: September 2, 2008

NANCY L. RASMUSSEN
Administrative Law Judge
Office of Administrative Hearings