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STATE OF CALIFORNIA
BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY
DEPARTMENT OF BUSINESS OVERSIGHT

TO: Marcia Ann Marx
RCM Capital Management
4101 East Ocean Boulevard #8
Long Beach, California 90803

DESIST AND REFRAIN ORDER

(For violations of Corporations Code sections 25210 and 25230)

The Commissioner of Business Oversight finds that:

1. At all relevant times, RCM Capital Management was a business entity of unknown type with its principal place of business at 4101 East Ocean Boulevard #8, Long Beach, California 90803. RCM Capital Management was not qualified or registered with the California Secretary of State.

2. At all relevant times, Marcia Ann Marx was an individual residing in Long Beach, California, who held herself out as the “General Partner” of RCM Capital Management.

3. The Commissioner has jurisdiction over the licensing and regulation of broker-dealers and investment advisers in California under the Corporate Securities Law of 1968 (CSL) (Corp. Code, § 25000 et seq.).

4. It is unlawful for any person to conduct business as an investment adviser in California unless the person has first applied for and secured from the Commissioner a certificate, then in effect, authorizing the person to do so or unless the person is exempt from certification. (Corp. Code, § 25230, subd. (a).)

5. “Investment adviser” means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, publishes analyses or reports concerning securities. (Corp. Code, § 25009, subd. (a).) Through its representatives or associated individuals, an investment

1 adviser makes recommendations or otherwise renders advice regarding securities, manages accounts
2 or portfolios of clients, or determines which recommendation or advice regarding securities should be
3 given. (§ 25009.5, subd. (a).)

4 6. It is unlawful for a broker-dealer to effect any transaction in, or induce or attempt to
5 induce the purchase or sale of, any security in California unless the broker-dealer has first applied for
6 and secured from the Commissioner a certificate, then in effect, authorizing that person to act in that
7 capacity or unless the person is exempt from certification. (Corp. Code, § 25210, subd. (a).)

8 7. “Broker-dealer” means any person engaged in the business of effecting transactions in
9 securities in California for the account of others or for that person’s own account. (Corp. Code,
10 § 25004, subd. (a).) “Broker-dealer” also includes a person engaged in the regular business of issuing
11 or guaranteeing options with regard to securities not of that person’s own issue. (*Ibid.*)

12 8. Beginning in or about May 2013 to at least June 2018, Marx held herself out as the
13 principal of RCM Capital Management, an investment-management firm. Marx solicited
14 contributions from multiple clients, including at least one California resident (Client), to be pooled
15 into various investment funds whose assets would be managed by Marx.

16 9. In May 2013, July 2015, and May 2016, the Client contributed a total of \$325,000.00
17 to accounts managed by Marx. Under the terms of the investment-management agreements, Marx
18 maintained custody of the Client’s funds, had full discretion to buy and sell securities with the funds,
19 and was entitled to a performance fee of 20 percent of profits.

20 10. Marx sent quarterly account statements regarding the funds’ performance to the
21 Client, along with letters in which she described investment objectives and strategies and provided
22 market analyses and forecasts.

23 11. At all relevant times, Marx and RCM Capital Management did not have certificates
24 issued by the Commissioner authorizing them to conduct business as an investment adviser in
25 California. Marx and RCM Capital Management were not exempt from the certification requirement.

26 12. At all relevant times, Marx and RCM Capital Management did not have certificates
27 issued by the Commissioner authorizing them to engage in the business of a broker-dealer in
28 California. Marx and RCM Capital Management were not exempt from the certification requirement.

1 13. Under Corporations Code section 25532, subdivision (b), if, in the opinion of the
2 Commissioner, a person has been or is acting as a broker-dealer or investment adviser or has been or
3 is engaging in broker-dealer or investment-adviser activities in violation of sections 25210, 25230, or
4 25230.1, the Commissioner “may order that person to desist and refrain from the activity until the
5 person has been appropriately licensed or the required filing has been made” under the CSL.

6 Based on the foregoing, the Commissioner is of the opinion that Marcia Ann Marx and RCM
7 Capital Management have been acting as an investment adviser and engaging in investment-adviser
8 activities without first securing from the Commissioner a certificate authorizing them to act in that
9 capacity in violation of Corporations Code section 25230, subdivision (a).

10 Accordingly, under Corporations Code section 25532, subdivision (b), Marcia Ann Marx and
11 RCM Capital Management are ordered to desist and refrain from acting as an investment adviser and
12 engaging in investment-adviser activities until they have been appropriately licensed under the CSL.

13 Further, based on the foregoing, the Commissioner is of the opinion that Marcia Ann Marx
14 and RCM Capital Management have been acting as a broker-dealer and engaging in broker-dealer
15 activities without first securing from the Commissioner a certificate authorizing them to act in that
16 capacity in violation of Corporations Code section 25210, subdivision (a).

17 Accordingly, under Corporations Code section 25532, subdivision (b), Marcia Ann Marx and
18 RCM Capital Management are ordered to desist and refrain from acting as a broker-dealer and
19 engaging in broker-dealer activities until they have been appropriately licensed under the CSL.

20 This Order is necessary, in the public interest, for the protection of consumers, and consistent
21 with the purposes, policies, and provisions of the CSL. This Order shall remain in full force and
22 effect until further order of the Commissioner.

23 Dated: April 15, 2020
24 Los Angeles, California

MANUEL P. ALVAREZ
Commissioner of Business Oversight

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26
27 By _____
MARY ANN SMITH
Deputy Commissioner
28 Enforcement Division