BEFORE THE
DEPARTMENT OF CORPORATIONS
STATE OF CALIFORNIA

In the Matter of THE CALIFORNIA CORPORATIONS COMMISSIONER, Complainant, v. ALL WEATHER PORTFOLIO MANAGEMENT, INC. Respondent.	File No.: 116413 OAH No.: L2006040329 L2006040330

DECISION

The attached Proposed Decision of the Administrative Law Judge dated August 7, 2006, is hereby adopted by the Commissioner of Corporations as his Decision in the above-entitled matter subject only to the following minor and technical changes pursuant to Government Code section 11517(c)(2)(C) as set forth in the accompanying Errata Sheet.

This Decision shall become effective on NOVEMBER 9, 2006.

IT IS SO ORDERED this 8th day of NOVEMBER 2006.

CALIFORNIA CORPORATIONS COMMISSIONER

Preston DuFauchard

ERRATA SHEET

(Change to Proposed Decision – All Weather Portfolio Management, Inc.)

Page 2, ¶ 2, Line 3: "Corprorate" should be "Corporate".

Page 3, Footnote 1: "260237.1" should be "260.237.1".

Page 4, 5th full paragraph, Line 1: "California Securities Law of 1968" should be "Corporate Securities Law of 1968."

Page 4, 5th full paragraph, Line 2: "advisors" should be "advisers".

Page 4, ¶ 19, Line 3: "Corporations Code section 2524" should be "Corporations Code section 25241(a)".

Page 7, ¶ 28(3), Line 3 & 4: insert "successive" after "three" and before "months".

Page 7, ¶ 28(3), Line 5: insert "of this section" after "(d)(2)" and before "have occurred".

Page 9, ¶ 3, Line 2: insert "of 1968" after "Corporate Securities Law" and before "and with departmental regulations to maintain its investment adviser certificate".

Page 9, ¶ 3, Line 5: "subdivisions (j)" should be "subdivision (j)".

Page 10, ¶ 5, Line 3: insert "of 1968" after "Corporate Securities Law" and before "and any regulation promulgated there under".

Page 10, ¶ 5, Line 5: "Commissioner" should be "commissioner".

Page 10, ¶ 5, Line 6: Delete "any" between "violated any law or" and "rule binding upon it".

State of California - Department of Corporations

BEFORE THE DEPARTMENT OF CORPORATIONS
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In the Matter of THE CALIFORNIA CORPORATIONS COMMISSIONER, Complainant, v. ALL WEATHER PORTFOLIO MANAGEMENT, INC., Respondent.	FILE NO. 116413 OAH NOS. L2006040329 L2006040330

PROPOSED DECISION

This matter was heard by Humberto Flores, Administrative Law Judge with the Office of Administrative Hearings, on July 13, 2006, in Los Angeles, California.

Nicholas Lanza, Senior Corporations Counsel, represented complainant.

Duff G. Mayer, President and Chief Executive Officer of All Weather Portfolio Management, Inc., appeared on behalf of and represented respondent.

Complainant filed two separate actions which were consolidated for hearing. In Case No. L20060040329, complainant is requesting that its "Order to Discontinue Violations Pursuant to Corporations Code Section 25249," be affirmed and become final. In Case No. L2006040330, complainant is requesting an "Order Levying Administrative Penalties" pursuant to Corporations Code section 25252.

At the outset of the hearing, respondent admitted the allegations and charges set forth in the "Statement in Support of Order to Discontinue Violations," waived his right to contest the Order to Discontinue Violations, and stipulated that said order shall become final.

Evidence was received and the matter was submitted. The Administrative Law Judge finds as follows:

FACTUAL FINDINGS

1. Respondent All Weather Portfolio Management, Inc. (All Weather) holds a valid investment adviser certificate issued by the Commissioner on August 9, 1996, pursuant to Corporations Code section 25230. The certificate is in full force and effect.

2. All Weather, a California S corporation, is an investment adviser business located at 23276 S. Pointe Drive, Suite 102, Laguna Hills, California, and is therefore subject to the Corprorate Securities Law of 1968 (Corp. Code § 25000 et seq.) Duff George Mayer (Mayer) is All Weather's president and chief executive officer, and at all relevant times acted on behalf of All Weather.

3. On March 15, 2006, Wayne Strumpfer (complainant) filed the Order to Discontinue Violations and the Notice of Intention to Issue Order Levying Administrative Penalties Pursuant to Corporations Code Section 25252 in his official capacity as Acting California Corporations Commissioner (Commissioner) of the Department of Corporations (Department).

4. Respondent filed a Notice of Defense on March 23, 2006.

5. On July 9, 2003, the Commissioner commenced a regulatory examination of All Weather to determine if All Weather was in compliance with regulations promulgated pursuant to the Corporate Securities Law of 1968.

6. The Department's examiner found during the regulatory exam that All Weather had discretionary authority and power of attorney to execute transactions in the brokerage accounts of its investment adviser clients.

7. At the time of the July 9, 2003 examination, All Weather had not prepared and maintained either monthly computations of net capitals and aggregate indebtedness, or of minimum net worth. As a result, the Department's examiner was unable to determine if All Weather, at the time of the examination, was in compliance with either the net capital requirements of California Code of Regulations, title 10, section 260.237.1, or the minimum net worth requirement of section 260.237.2.

8. All Weather failed to submit to the Department, required annual financial reports for the years 2000, 2001 and 2002.

9. On August 12, 2003, the Department sent Mayer and All Weather a regulatory letter explaining the financial record keeping deficiencies discovered during the July 9, 2003 examination, and requested that All Weather provide the Department with a response including any corrective action taken to cure the deficiencies. Mayer failed to respond. The Department sent a second letter to respondent dated October 3, 2003, requesting a response to the Department's regulatory letter. In a letter dated October 13, 2003, Mayer stated that the net capital computations had not been computed monthly because he believed that they

were required to be computed annually. He also stated that the annual financial reports were not timely filed because he understood them to be required only if the firm was not in compliance with the net capital requirement. Finally, Mayer stated that he would submit the 2001 and 2002 annual financial reports to the Department by October 31, 2003.

10. On October 17, 2003, the Department received All Weather's annual financial reports for 2001 and 2002. The Department's staff reviewed the reports and determined that All Weather had a net capital deficiency of $3,073.92 for 2001 and $5,821.64 for 2002.[1]

11. The Department informed Mayer of All Weather's net capital deficiency by letter dated December 17, 2003, and directed All Weather to submit proof that it had cured the net capital deficiency. The Department also directed All Weather to begin submitting monthly interim reports reflecting compliance with net capital requirements, pursuant to California Code of Regulations, title 10, section 260.241.2, subdivision (d)(2)(A)(1), beginning with the interim report for November 2003. In January 2004, Mayer informed a Department representative that his (Mayer's) wife had recently died, and requested an extension to file the required reports. On January 8, 2004, the Department extended the due date for the interim reports to February 1, 2004. All Weather did not comply with this deadline.

12. On May 11, 2004, the Department sent a follow-up letter requesting the interim reports and proof of corrective action to rectify the capital deficiency. On June 11, 2004, Mayer requested additional time to July 15, 2004, to provide the interim reports. However, despite these numerous requests for extensions, Mayer did not provide the Department with any reports and did not request any further extensions during the remainder of 2004.

13. On March 29, 2005, the Department directed All Weather to file a financial report for the period ending March 31, 2005. The report was to be filed no later than April 10, 2005. On April 8, 2005, Mayer faxed a request for an extension, until April 30, 2005. The Department, by letter dated April 21, 2005, granted the request and stated that no further extensions would be allowed. Mayer filed the financial reports with Department on May 5, 2005.

14. On May 5, 2005, the Department notified Mayer that it had discovered several mistakes in All Weather's calculations in its financial reports for March 31, 2005. The Department corrected the financial reports and directed All Weather to file monthly interim financial reports, pursuant to California Code of Regulations, title 10, section 260.241.2, subdivision (d)(2)(B), beginning with the report due for May 31, 2005. In a written response dated May 13, 2005, Mayer stated that he would not be able to submit the requested financial reports until May 18, 2005. In this letter, he also stated that he had deposited $5,000 of paid in capital on the date of the letter. On June 9, 2005, Mayer informed Department staff that he would submit the reports by the week of June 13, 2005.

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[1] Prior to April 3, 2003, California Code of Regulations, title 10, section 260237.1, subdivision (a)(2), required investment advisors to maintain a minimum tangible net capital of $5,000.00.

15. On June 30, 2005, Mayer submitted additional information regarding the valuation of certain assets on All Weather's balance sheet. Mayer also stated in an attached letter that he would submit an interim report by July 30, 2005, reflecting the valuation of All Weather's assets.

16. On July 27, 2005, the Department acknowledged receipt of the financial documents submitted by Mayer on June 30, 2005. However, the Department informed Mayer that the interim financial report for May 31, 2005, had not been received. The Department also directed All Weather to submit monthly interim financial reports for April through July of 2005.

17. On August 15, 2005, the Department received interim reports for April, May, June and July of 2005. All Weather did not file these interim monthly reports on a timely basis.

18. All Weather also failed to timely submit its Annual Financial Reports for the years 2003 and 2004, neither of which had been received by the Department as of 7/27/05.

RELEVANT STATUTES AND REGULATIONS

Pursuant to the California Securities Law of 1968, the Commissioner regulates the business activities of investment advisors. The following statutes and regulations are relevant to this case:

19. Corporations Code section 25241 provides that investment advisers are required to maintain books and records that are subject to examination by the Commissioner, and to file such reports as directed by the Department. Corporations Code section 2524 provides in relevant part:

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

20. California Code of Regulations, title 10, section 260.241.2, subdivision (a) requires the filing of an annual report by certain investment advisers. Subdivision (a)(2) of section 260.241.2, in effect prior to April 3, 2003, provided as follows:

> (a) General Rule. Subject to the provisions of subsection (c) of this section, . . . every licensed investment adviser subject to the provisions of Section 260.237.1[2] of

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[2] The April 3, 2003 amendment added the language "...or Section 260.237.2, as applicable."

these rules, shall file an annual financial report containing the information required by a form or forms to be supplied or approved by the Commissioner, as follows:

[¶] . . . [¶]

(2) The annual report for investment advisers shall contain a Statement of Financial Condition. Supporting schedules shall contain computations of net capitals, aggregate indebtedness and ratios required under Section 260.237.1[3] and the certificate of the accountant required under subsection (e) of Section 260.237 of these rules.

21. California Code of Regulations, title 10, section 260.241.3 requires that investment advisers maintain specific books and records. Subdivision (j) of section 260.241.3 provides as follows:

(j) Any investment adviser who is subject to the minimum financial requirements of Section 260.237.1 or Section 260.237.2, as applicable, shall, in addition to the records otherwise required under this section, maintain a record of the proof of money balances of all ledger accounts in the form of trial balances and a record of the computations of net capitals and aggregate indebtedness pursuant to Section 260.237.1 of these rules or minimum net worth pursuant to Section 260.237.2 of these rules (as of the trial balance date). The trial balances and computations shall be prepared currently at least once a month.

22. California Code of Regulations, title 10, section 260.237.1, in effect prior to April 3, 2003, contained the capital requirements for investment advisers. Subdivision (a)(2) of section 260.237.1 provided, in relevant part:

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

[¶] . . . [¶]

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

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[3] The April 3, 2003 amendment added the language, "...or minimum financial requirements required under section 260.237.2, as applicable."

23. California Code of Regulations, title 10, section 260.237.1, subdivision (c) provides, that for purposes of compliance with subdivision (a), all financial information is to be determined in accordance with generally accepted accounting principles.

24. On April 3, 2003, California Code of Regulations, title 10, section 260.237.1, subdivision (a)(2) was amended to read as follows:

> An investment adviser licensed prior to 03/01/03 may comply with either the minimum financial requirements in this section or in Section 260.237.2 until January 1, 2005, at which time this section shall become inoperative and an investment adviser shall comply with the minimum financial requirements in Section 260.237.2.
>
> (a) No investment adviser who has any power of attorney from any investment advisory client to execute transactions . . . shall permit its total aggregate indebtedness to exceed 500% of its tangible net capital or permit its current aggregate indebtedness to exceed its current net capital; and,
>
> [¶] . . . [¶]
>
> (2) If the investment adviser has any power of attorney from any investment advisory client to execute transactions and does not have regular or periodic custody or possession of any of its investment advisory clients' securities or funds, except the receipt of prepaid subscriptions for periodic publications, or other investment advisory services, it shall at all times have and maintain tangible net capital of not less than $5,000; . . . .

25. On April 3, 2003, California Code of Regulations, title 10, section 260.237.2, was added, and reads as follows:

> An investment adviser licensed prior to 03/01/03 may comply with either the minimum financial requirements in this section or in Section 260.237.1 until January 1, 2005, at which time Section 260.237.1 shall become inoperative and an investment adviser shall comply with the minimum financial requirements in this section.
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> (a) Every investment adviser who has custody of client funds or securities shall maintain at all times a minimum net worth of $35,000, and every investment adviser who has discretionary authority over client funds or securities but does not have custody of client funds or securities, shall maintain at all times a minimum net worth of $10,000.

26. California Code of Regulations, title 10, section 260.241.2, subdivisions (d)(2)(A) and (d)(2)(B) direct investment advisors to file interim reports as follows:

> (d) Interim Reports

[¶] . . . [¶]

(2)(A) Every investment adviser subject to the provisions of Section 260.237.1 of these rules shall file a report furnished or approved by the Commissioner within 15 days after:

1. its tangible net capital is reduced to less than 120% of its required tangible net capital.

2. its total aggregate indebtedness is in excess of 400 % of its tangible net capital.

(2)(B) Every investment adviser subject to the provisions of Section 260.237.2 of these rules shall file a report furnished or approved by the Commissioner within 15 days after its net worth is reduced to less than 120% of its required minimum net worth.

28. California Code of Regulations, title 10, section 260.241.2, subdivision (d)(3) provides as follows:

(3) The report required by subsections (d)(1) and (d)(2) of this section shall be as of a date within the 15 day period. Additional reports shall be filed on the same form within 10 days after each subsequent monthly accounting period until three months have elapsed during which none of the conditions specified in subsection (d)(1) or (d)(2) have occurred.

DISCUSSION

29. All Weather was given discretionary authority and power of attorney by its clients to execute transactions in brokerage accounts on behalf of said clients. As a result, All Weather was obligated to meet net capital requirements provided by California Code of Regulations, title 10, section 260.237.1, subdivision (a)(2), or the minimum net worth requirement provided by section 260.237.2, subdivision (a), and to show proof of compliance with these requirements by filing annual financial reports, in accordance with section 260.241.2, subdivision (a). All Weather was also required to prepare and maintain monthly proof of ledger account money balances and either monthly computations of net capitals and aggregate indebtedness, or monthly computations of minimum net worth, in accordance with California Code of Regulations, title 10, section 260.241.3, subdivision (j).

30. At the time of the July 9, 2003 examination, All Weather had not prepared and maintained monthly computations of net capitals and aggregate indebtedness, or of minimum net worth in violation of California Code of Regulations, title 10, section 260.241.3, subdivision (j). As a result, the Department's examiner was unable to determine if the firm, at the time of the examination, was in compliance with either the net capital requirements of section 260.237.1, or the minimum net worth requirement of section 260.237.2.

31. All Weather's failure to submit required annual financial reports for the years 2000, 2001 and 2002, was a violation of California Code of Regulations, title 10, section 260.241.2, subdivision (a).

32. All Weather's annual financial reports for 2001 and 2002, showed that All Weather had a net capital deficiency for both 2001 and 2002, in violation of California Code of Regulations, title 10, section 260.237.1, subdivision (a)(2), as that regulation read prior to April 3, 2003. The Department informed Mayer of the net capital deficiency by letter dated December 17, 2003, and directed All Weather to submit proof that it had cured deficiency and to begin submitting monthly interim reports reflecting compliance with the net capital requirements, beginning with the interim report for November 2003. After numerous requests for extensions, All Weather failed to provide the Department with requested reports. This failure to file monthly interim reports violated California Code of Regulations, title 10, section 260.241.2, subdivision (d)(2)(A)(1).

33. On August 15, 2005, in response to the Department's July 27, 2005 directive, All Weather submitted interim reports for April, May, June and July of 2005. All Weather's failure to file the May interim report within 15 days of May 31, 2005, violated California Code of Regulations, title 10, section 260.241.2, subdivision (d)(2)(B). The failure to file monthly interim reports for June and July within 10 days of the end of both respective months was a violation of California Code of Regulations, title 10, section 260.241.2, subdivision (d)(3).

34. All Weather's failure to timely submit its Annual Financial Reports for the years 2003 and 2004, constituted additional violations of California Code of Regulations, title 10, section 260.241.2, subdivision (a).

35. A prior regulatory examination of All Weather on December 2, 1998, also revealed record keeping and reporting violations, in the form of failure to prepare and maintain monthly computations of net capitals and aggregate indebtedness (Cal. Code Regs., title 10, § 260.241.3, subd. (j).), and the failure to file annual financial reports. (Cal. Code Regs., title 10, § 260.241.2, subd.(a).) In correspondence with the Department dated July 20, 1999, Mayer stated that he was aware of the regulations pertaining to section 260.241.3 and affirmed that he would comply with them. Mayer also affirmed that future annual financial reports required by section 260.241.2 would be prepared and filed in a timely manner.

36. The books, records and reporting requirements provide the Department with a regulatory mechanism to protect the public by validating the investment adviser licensee's liquidity and financial integrity on a monthly and yearly basis. In a period from 1998 through 2005, Respondent All Weather either failed to submit required financial reports to the Department, or did not submit the reports in a timely manner. These failures occurred despite the fact that the Department made numerous requests for said reports.

37. Mayer presented evidence of mitigation. Mayer's wife died in 2003, when his children were still young. However, Mayer and All Weather consistently failed to submit required financial reports over a seven year period.

LEGAL CONCLUSIONS
RE: ORDER LEVYING ADMINISTRATIVE PENALTIES

1. Corporations Code section 25252 authorizes the Commissioner to issue an order levying administrative penalties against any investment adviser for willful violations of any provision of the Corporate Securities Law and any rules promulgated thereunder. Specifically, Corporations Code section 25252 provides, in relevant part:

> The Commissioner may, after appropriate notice and opportunity for hearing, by orders, levy administrative penalties as follows:
>
> [¶] . . . [¶]
>
> (b) Any broker-dealer or investment adviser that willfully violates any provision of this division to which it is subject, or that willfully violates any rule or order adopted or issued pursuant to this division and to which it is subject, is liable for administrative penalties of not more than five thousand dollars ($5,000) for the first violation, not more than ten thousand dollars ($10,000) for the second violation, and not more than fifteen thousand dollars ($15,000) for each subsequent violation.

2. All Weather is subject to administrative penalties for willfully violating California Code of Regulations, title 10, sections 260.241.2, subdivision (a), 260.241.2, subdivisions (d)(2)(A)(1), (d)(2)(B) and (d)(3), 260.241.3, subdivision (j), and 260.237.1, subdivision (a)(2), based on Factual Findings 5 through 18 and on the Discussions section of this proposed decision..

3. All Weather, as a licensee, is obligated to comply with the provisions of the Corporate Securities Law and with departmental regulations to maintain its investment adviser certificate. The Department gave All Weather prior notice of the requirements of California Code of Regulations, title 10, sections 260.241.2, subdivision (a), and 260.241.3, subdivisions (j). All Weather continued to violate sections 260.241.2, subdivision (a) and 260.241.3, subdivision (j), despite Mayer's assurances of future compliance. Further, despite the Department's continual requests, All Weather has continually been late in submitting interim reports, in violation of section 260.241.2, subdivision (d). Evidence of mitigation has been considered. The amounts requested by complainant in his Statement in Support of Order Levying Administrative Penalties are reasonable.

4. Cause exists pursuant to Corporations Code section 25252, to order respondent All Weather to pay administrative penalties for willful violations of the Corporate Securities Law of 1968 and of the regulations as set forth in the Factual Findings, the Discussion section of this decision, and in Legal Conclusions 3 and 4.

LEGAL CONCLUSIONS
RE: ORDER TO DISCONTINUE VIOLATIONS

5. Corporations Code section 25249 authorizes the Commissioner to issue an order directing any investment adviser to discontinue any violation of any provision of the Corporate Securities Law and any regulation promulgated there under. Specifically, Corporations Code section 25249 provides as follows:

> If, after examination or investigation, the Commissioner has reasonable grounds to believe that any broker-dealer or investment adviser has violated any law or any rule binding upon it, the commissioner shall, by written order addressed to the broker-dealer or investment adviser, direct discontinuance of the violation. The order shall be effective immediately, but shall not become final except in accordance with the provisions of Section 25251.

6. Cause exists to affirm the Order to Discontinue Violations Pursuant to Corporations Code Section 25249, and for said order to become final, based on the stipulation by the parties as set forth in the introduction of this proposed decision.

ORDER

1. The request by the California Corporations Commissioner for an order levying administrative penalties is granted.

2. Respondent All Weather Portfolio Management, Inc., is hereby ordered, pursuant to Legal Conclusions 1 through 4, to pay the following administrative penalties for willful violations of the following sections of title 10 of the California Code of Regulations: $375.00 for violating section 260.241.2, subdivision (a); $375.00 for violating section 260.241.2, subdivision (d)(2)(B); and $375.00 for violating section 260.241.3, subdivision (j), for a total of $1,125.00.

3. The Order To Discontinue Violations Pursuant To Corporations Code Section 25249 issued by the Acting Commissioner of Corporations against Respondent All Weather Portfolio Management , Inc., is affirmed pursuant to Legal Conclusions 5 and 6. This Order shall become final on the effective date of this decision.

DATED: August 7, 2006

HUMBERTO FLORES
Administrative Law Judge
Office of Administrative Hearings