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Acting California Corporations Commissioner
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7
8 BEFORE THE DEPARTMENT OF CORPORATIONS
9 OF THE STATE OF CALIFORNIA

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11 In the Matter of) FILE NO. 119204
)
12 THE CALIFORNIA CORPORATIONS) STATEMENT IN SUPPORT OF ORDER TO
) DISCONTINUE VIOLATIONS PURSUANT
13 COMMISSIONER,) TO CORPORATIONS CODE SECTION 25249
) AND COMMISSIONER’S INTENTION TO
14 Complainant,) MAKE ORDER FINAL
)
15 v.) (CORPORATIONS CODE SECTION 25251)
)
16 RMC CAPITAL MANAGEMENT, INC.,)
)
17 Respondent.)
18

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

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

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

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

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

15 5. California Code of Regulations, title 10, section 260.241.2 requires the filing of an
16 annual report by certain investment advisers. Prior to April 3, 2003¹, subdivision (a)(2) of section
17 260.241.2, provided as follows:

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

22 ...

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

27 6. Prior to April 3, 2003, California Code of Regulations, title 10, section 260.237.1
28 (“section 260.237.1”) contained the capital requirements for investment advisers. Subdivision (a)(2)

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

1 of section 260.237.1 provided, in relevant part, as follows:

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

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

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

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

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

9. 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

1 Securities Law and any rules promulgated thereunder. Specifically, Corporations Code section
2 25249 provides, in relevant part:

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

8 10. Corporations Code section 25251 provides as follows:

9 (a) No order issued pursuant to Section 25249 or 25250 may become final except after
10 notice to the affected broker-dealer or investment adviser of the commissioner's intention to
11 make the order final and of the reasons for the finding. The commissioner shall also notify
12 the broker-dealer or investment adviser that upon receiving a request the matter shall be set
13 for hearing to commence within 15 business days after receipt of the request. The broker-
14 dealer or investment adviser may consent to have the hearing commence at a later date. If no
15 hearing is requested within 30 days after the mailing or service of the required notice, and
16 none is ordered by the commissioner, the order may become final without a hearing and the
17 broker-dealer or investment adviser shall immediately discontinue the practices named in the
18 order. If a hearing is requested or ordered, it shall be held in accordance with the provisions
19 of the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1
20 of Division 3 of Title 2 of the Government Code), and the commissioner shall have all of the
21 powers granted under that act. If, upon the conclusion of the hearing, it appears to the
22 commissioner that the broker-dealer or investment adviser is conducting business in an
23 unsafe and injurious manner or is violating any law of this state, or any rule binding upon it,
24 the commissioner shall make the order of discontinuance final and the broker-dealer or
25 investment adviser shall immediately discontinue the practices named in the order.

26 (b) The broker-dealer or investment adviser may within 10 days after an order is made final
27 commence an action to restrain enforcement of that order. If the enforcement of that order is
28 not enjoined within 10 days by the court in which the action is brought, the broker-dealer or
investment adviser shall comply with the order.

11. By reason of the foregoing, RMC has willfully violated California Code of
Regulations, title 10, section 260.241.2, subdivision (a), justifying the issuance of an Order to
Discontinue Violations. RMC, as a licensee, was obligated to have knowledge of, and to comply
with, the provisions of the Corporate Securities Law and the regulations thereunder to maintain its
investment adviser certificate. Furthermore, the Department had given RMC prior notice of the
requirements of California Code of Regulations, title 10, section 260.241.2, subdivision (a).

1 RMC has continued to violate this regulation, despite the Department’s actual notification and Mr.
2 Hallums’ assurances of future compliance.

3 11. Therefore, pursuant to Corporations Code section 25249, the Commissioner has
4 issued an order directing RMC to discontinue violating California Code of Regulations, title 10,
5 section 260.241.2, subdivision (a).

6 WHEREFORE, good cause showing, and pursuant to Corporations Code section 25251, the
7 California Corporations Commissioner hereby notifies RMC of his intention to make final the Order
8 to Discontinue Violations Pursuant to Corporations Code Section 25249.

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Dated: July 27, 2005

WAYNE STRUMPFER
Acting California Corporations Commissioner

By: _____
NICHOLAS LANZA
Senior Corporations Counsel
Enforcement Division