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9 Attorneys for Complainant

10 BEFORE THE DEPARTMENT OF CORPORATIONS  
11 OF THE STATE OF CALIFORNIA  
12

13	In the Matter of	)	CASE NO.
14		)	
15	THE CALIFORNIA CORPORATIONS	)	FILE NO. 923-3308
16	COMMISSIONER,	)	
17	Complainant,	)	STATEMENT IN SUPPORT OF ORDER TO
18		)	DISCONTINUE VIOLATIONS PURSUANT
19	v.	)	TO CORPORATIONS CODE SECTION 25249
20	MELVIN A. DE LA MOTTE, JR., DBA DE LA	)	AND COMMISSIONER'S INTENTION TO
21	MOTTE INVESTMENT SERVICES,	)	MAKE ORDER FINAL
22	Respondent.	)	

23 William P. Wood, the California Corporations Commissioner ("Commissioner") of the  
24 Department of Corporations ("Department") alleges and charges as follows:

25 1. Melvin A. De La Motte, Jr., dba De La Motte Investment Services ("De La Motte")  
26 holds a valid and unrevoked investment adviser certificate issued by the Commissioner pursuant to  
27 Corporations Code section 25230 on June 19, 1996. De La Motte's investment adviser business is  
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1 located at 1239 Higuera Street, San Luis Obispo, California 93401. De La Motte is a sole  
2 proprietorship that is owned by Melvin A. De La Motte, Jr.

3 2. On or about June 9, 2003, the Department commenced a regulatory examination of De  
4 La Motte's investment adviser business. The examination revealed violations of the books and  
5 records provisions of the Corporate Securities Law of 1968, Corporations Code section 25000 et  
6 seq., and the regulations thereunder found at California Code of Regulations, title 10, section  
7 260.000 et seq.

8 3. These violations consisted of De La Motte's failure to keep true, accurate and current  
9 books and records, including: 1) failing to maintain a general ledger accounting system; and 2)  
10 failing to file its annual financial reports. The books and records requirements provide the  
11 Department with a regulatory mechanism to validate a firm's liquidity and financial integrity on a  
12 monthly basis to ensure that licensees maintain the necessary net capital for the protection of the  
13 public. De La Motte's failure to keep true, accurate and current books and records prevents the  
14 Department from determining as part of its regulatory examination, if it meets the capital  
15 requirements imposed by the Corporations Code and the regulations enacted thereunder.

16 4. Corporations Code section 25241 provides that investment advisers are required to  
17 maintain books and records that are subject to examinations by the Commissioner. Section 25241  
18 provided, in relevant part, as follows:

19 [E]very investment adviser licensed under Section 25230 shall make and keep such accounts,  
20 correspondence, memoranda, papers, books, and other records and shall file such financial  
21 and other reports as the commissioner by rule requires, subject to the limitations of . . .  
22 Section 222 of the Investment Advisers Act of 1940 with respect to investment advisers. All  
23 records so required shall be preserved for the time specified in the rule. All records referred  
24 to in this section are subject at any time and from time to time to such reasonable periodic,  
special, or other examinations by the commissioner, within or without this state, as the  
commissioner deems necessary or appropriate in the public interest or for the protection of  
investors.

25 5. California Code of Regulations, title 10, section 260.241.3 sets forth the specific books  
26 and records, which are required to be maintained by investment advisers. Specifically, subdivision  
27 (a)(2) of section 260.241.3 provides as follows:  
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1 (a) Every licensed investment adviser shall make and keep true, accurate and current the  
2 following books and records relating to such person's investment advisory business:

3 (2) General and auxiliary ledgers (or other comparable records) reflecting asset, liability,  
4 reserve, capital, income and expense accounts.

5 6. The Department's examiner found during the regulatory examination on June 9,  
6 2003, that De La Motte did not maintain a general ledger accounting system. De La Motte,  
7 therefore, failed to maintain a general ledger in violation of California Code of Regulations, title 10,  
8 section 260.241.3, subdivision (a)(2).

9 7. California Code of Regulations, title 10, section 260.241.2, subdivision (a) requires the  
10 filing of an annual report by certain investment advisers. Prior to April 3, 2003<sup>1</sup>, California Code of  
11 Regulations, section 260.241.2, subdivision (a)(2), provided as follows:

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

16 ...  
17 (2) The annual report for investment advisers shall contain a Statement of Financial  
18 Condition. Supporting schedules shall contain computations of net capitals, aggregate  
19 indebtedness and ratios required under Section 260.237.1 and the certificate of the accountant  
20 required under subsection (e) of Section 260.237 of these rules.

21 8. California Code of Regulations, title 10, section 260.237.1 contains the alternative  
22 minimum capital requirements for investment advisers. California Code of Regulations, title 10,  
23 section 260.237.1, subdivision (a)(2) provided, and presently provides, in relevant part, as follows:

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

28 ...  
(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

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<sup>1</sup> Various provisions of the California Code of Regulations were amended and became effective April 3, 2003. This action seeks an administrative order based on violations that occurred under statutes and rules in effect both prior and subsequent to the effective date of the amendments. 3

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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....

9. Subdivision (c) of California Code of Regulations, title 10, section 260.237.1 provided, and currently provides, that for purposes of California Code of Regulations, title 10, section 260.237.1, subdivision (a), all financial information shall be determined in accordance with generally accepted accounting principles. Likewise, California Code of Regulations, title 10, section 260.237.2, subdivision (d) provides that a licensee's net worth shall be determined by generally accepted accounting principles.

10. De La Motte has power of attorney or discretionary power to execute transactions in the brokerage accounts of its investment adviser clients. Therefore, prior to April 3, 2003, De La Motte was required to meet the capital requirements provided for under California Code of Regulations, title 10, section 260.237.1, subdivision (a)(2) and to show proof of compliance with this regulation by filing annual financial reports required by section 260.241.2, subdivision (a).

11. As of June 9, 2003, De La Motte has failed to submit its annual financial report for the years 1999 through 2002, in violation California Code of Regulations section 260.241.2, subdivision (a).

12. On July 9, 2003, the Department sent De La Motte a regulatory letter notifying it of the various violations discovered during the June 2003 examination conducted pursuant to Corporations Code section 25241, including violations of California Code of Regulations, title 10, sections 260. 241.3, subdivision (a)(2), and 260.241.2, subdivision (a). The Department's letter also requested that De La Motte confirm that proper books, records and reports would be maintained in the future, and requested that De La Motte submit specific records. The Department requested that De La Motte provide the following: 1) A description of the accounting system established to comply with the law, an affirmation that the system will be posted on at least a monthly basis and that a written record of net capital will be prepared each month and maintained as a business record; and 2) Confirmation that De La Motte would file all future annual financial reports timely and include the financial reports for the years ending 2001 and 2002 with an explanation of why the reports have not been filed since our last regulatory letter notifying it of this requirement.

1           13. In a letter dated August 26, 2003, De La Motte responded to the Department's letter  
2 and confirmed that it had installed Quickbooks so that in the future it could comply with California  
3 Code of Regulations, title 10, section 260.241.3, subdivision (a)(2). De La Motte also confirmed  
4 that it would file annual reports as required by law so that it could comply with California Code of  
5 Regulations, title 10, section 260.241.2, subdivision (a).

6           14. A prior regulatory examination of De La Motte conducted by the Department in  
7 1998 revealed similar books and records violations to those that were found in the 2003 exam.

8           15. As a result of the Department's 1998 examination, a regulatory letter was sent on  
9 October 19, 1998, notifying De La Motte of its failure to maintain true, accurate and current books  
10 and records in violation of California Code of Regulations, title 10, sections 260.241.3, subdivision  
11 (a)(2) and 260.241.2, subdivision (a). During this exam, it was revealed that De La Motte failed to  
12 maintain a general ledger account as required and failed to file its annual financial reports. In this  
13 1998 letter, the Department requested that De La Motte confirm that a general ledger has been  
14 established and that in the future annual financial reports would be filed. In letters dated November  
15 25, 1998, and August 3, 1999, in response to the Department's requests in regulatory letters, De La  
16 Motte confirmed that it had established an accounting system and would maintain it to comply with  
17 California Code of Regulations, title 10, section 260.241.3, subdivision (a)(2), and that it would  
18 submit its annual financial reports to comply with 260.241.2, subdivision (a). Notwithstanding these  
19 assurances, De La Motte continued to violate these regulations.

20           16. Corporations Code section 25249, which became effective January 1, 1999, authorizes  
21 the Commissioner to issue an order directing any broker-dealer or investment adviser to discontinue  
22 any violation of the Corporations Code and any rules promulgated thereunder. Specifically,  
23 Corporations Code section 25249 provides, in relevant part:

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

1 17. Corporations Code section 25251 provides:

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

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

27 By reason of the foregoing, De La Motte has violated California Code of Regulations, title 10,  
28 sections 260.241.2, subdivision (a), and 260.241.3, subdivision (a)(2), justifying the issuance of an  
Order to Discontinue Violations. De La Motte, as a licensee, was obligated to have knowledge of,  
and to comply with, the provisions of the Corporations Code and the regulations thereunder to  
maintain its investment adviser certificate.

18. De La Motte has violated California Code of Regulations, title 10, section 260.241.3,  
subdivision (a)(2) by failing to properly maintain a general ledger and California Code of  
Regulations, title 10, section 260.241.2, subdivision (a) by failing to file annual financial reports for  
years 1999 through 2002.

19. Therefore, pursuant to Corporations Code section 25249, the Commissioner intends to

1 issue an order directing De La Motte to discontinue violating California Code of Regulations, title  
2 10, sections 260.241.2, subdivision (a), and 260.241.3, subdivision (a)(2).

3 WHEREFORE, good cause showing, and pursuant to Corporations Code section 25251, the  
4 California Corporations Commissioner hereby notifies De La Motte of his intention to make final the  
5 Order to Discontinue Violations Pursuant to Corporations Code Section 25249 issued on February  
6 14, 2005.

7 Dated: February 14, 2005

WILLIAM P. WOOD  
California Corporations Commissioner

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9 By: \_\_\_\_\_  
10 MICHELLE LIPTON  
11 Corporations Counsel  
12 Enforcement and Legal Services Division  
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