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7

8 Attorneys for Complainant

9 BEFORE THE DEPARTMENT OF CORPORATIONS  
10 OF THE STATE OF CALIFORNIA

11  
12 In the Matter of

) FILE NO. 923-4173

13 THE CALIFORNIA CORPORATIONS  
14 COMMISSIONER,

) ACCUSATION TO REVOKE INVESTMENT  
ADVISER CERTIFICATE OF C+ CAPITAL  
MANAGEMENT, LLC

15 Complainant,

) (CORPORATIONS CODE SECTION 25232)

16 v.

17 C+ CAPITAL MANAGEMENT, LLC,

18 Respondent.  
19  
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22 William P. Wood, the California Corporations Commissioner ("Commissioner") of the  
23 Department of Corporations ("Department") alleges and charges as follows:

24 **I. JURISDICTION AND VENUE**

25 1. This action is brought to revoke the investment adviser certificate of C+ Capital  
26 Management, LLC ("C+ Capital Management"), pursuant to Corporations Code section 25232. The  
27 Commissioner is authorized to administer and enforce the provisions of the Corporate Securities  
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1 Law of 1968 (Corp. Code, § 25000 et seq.) and the regulations promulgated thereunder (Cal. Code  
2 Regs., tit. 10, § 260.000 et seq.), pursuant to Corporations Code section 25600.

3 2. C+ Capital Management holds a valid and unrevoked investment adviser certificate  
4 issued by the Commissioner on November 28, 2000, pursuant to Corporations Code section 25230.  
5 C+ Capital Management is an investment adviser business located at 601 South Figueroa Street,  
6 Suite 3600, Los Angeles, California 90017. C+ Capital Management is a Delaware limited liability  
7 corporation. Won Charlie Yi ("Yi") is C+ Capital Management's managing member and principal  
8 owner.

9 **II. FIRST CAUSE FOR REVOCATION: FEDERAL COURT INJUNCTION ISSUED**  
10 **AGAINST RESPONDENT (CORP. CODE § 25232, SUBDIV. (c))**

11 3. Corporations Code section 25232, subdivision (c), provides as follows:

12 The commissioner may, after appropriate notice and opportunity for hearing, by order  
13 censure, deny a certificate to, or suspend for a period of not exceeding 12 months or revoke  
14 the certificate of, an investment adviser, if the commissioner finds that the censure, denial,  
15 suspension, or revocation is in the public interest and that the investment adviser, whether  
16 prior or subsequent to becoming such, or any partner, officer or director thereof or any  
17 person performing similar functions or any person directly or indirectly controlling the  
18 investment adviser, whether prior or subsequent to becoming such, or any employee of the  
19 investment adviser while so employed has done any of the following:

20 (c) Is permanently or temporarily enjoined by order, judgment, or decree of any court of  
21 competent jurisdiction from acting as an investment adviser, underwriter or broker-dealer or  
22 as an affiliated person or employee of any investment company, bank, or insurance company,  
23 or from engaging in or continuing any conduct or practice in connection with that activity, or  
24 in connection with the purchase or sale of any security.

25 4. On or about May 25, 2004, the United States Securities and Exchange Commission  
26 ("Commission") initiated a civil action in the United States District Court for the Central District of  
27 California, styled "*Securities and Exchange Commission v. C+ Capital Management, LLC, et al.*".  
28 On May 25, 2004, the Court issued a temporary restraining order enjoining C+ Capital Management  
and Yi from purchasing or selling securities in violation of antifraud provisions of the Securities  
Exchange Act of 1934, i.e., section 10(b) (15 U.S.C. § 78(j), subdiv. (b)) and Rule 10b-5 thereunder  
(17 CFR § 240.10b-5). The court also issued a temporary restraining order enjoining C+ Capital  
Management from violations of the anti-fraud sections of the federal Investment Advisers Act of

1 1940, i.e., sections 206(1) and 206(2) (15 U.S.C. §§ 80b-6(1) and (2).), and temporarily restrained  
2 Yi from aiding or abetting the foregoing violations of the Investment Advisers Act.

3 5. The federal court's temporary restraining order enjoins C+ Capital Management and  
4 Yi from engaging in fraudulent conduct in connection with investment adviser activity and from  
5 conduct involving the purchase and sale of securities. Therefore, cause exists to revoke C+ Capital  
6 Management's investment adviser certificate pursuant to Corporations Code section 25232,  
7 subdivision (c).

8 **III. SECOND CAUSE FOR REVOCATION: VIOLATION OF CORPORATIONS CODE**  
9 **SECTION 25235, SUBDIVISIONS (a) AND (b) (CORP. CODE § 25232, SUBDIV. (e))**

10 6. Corporations Code section 25232, subdivision (e), provides that the Commissioner  
11 may revoke an investment adviser certificate for any violation of the Corporate Securities Law,  
12 which is found in Title 4 of the Corporations Code, or any of its rules. Subdivision (e) of section  
13 25232 provides:

14 (e) Has willfully violated any provision of the Securities Act of 1933, the Securities  
15 Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act  
16 of 1940, the Commodity Exchange Act, or Title 4 (commencing with Section 25000),  
17 including the Franchise Investment Law, Division 5 (commencing with Section 31000), or  
18 the California Commodity Law of 1990, Division 4.5 (commencing with Section 29500), or  
19 of any rule or regulation under any of those statutes, or any order of the commissioner which  
20 is or has been necessary for the protection of any investor. (footnotes omitted.)

21 7. Corporations Code section 25235, subdivisions (a) and (b), provide as follows:

22 It is unlawful for any investment adviser, directly or indirectly, in this state:

- 23 (a) To employ any device, scheme, or artifice to defraud any client or prospective client.  
24 (b) To engage in any transaction, practice or course of business which operates or would  
25 operate as a fraud or deceit upon any client or prospective client.

26 8. In or about May 2002 and continuing through May 2004, Yi diverted funds from  
27 investment adviser clients of C+ Capital Management totaling approximately \$11 million dollars.

28 9. Yi represented to investors that he traded stocks and managed funds of other  
individuals through his company, C+ Capital Management. He also represented to investors that in  
the past, he had made profits on behalf of investors ranging from 25% - 30 % per year. The fee Yi

1 told clients that he was going to take on any profits earned in their accounts varied from 10% to  
2 20%.

3 10. Yi represented to his investment adviser clients that the funds they invested with C+  
4 Capital Management would be deposited at Carlin Equities, Corp. Yi also represented to some  
5 clients that their funds would be held in separate accounts, in their respective names, at Carlin  
6 Equities, Corp. Yi told at least one client, that Carlin Equities Corp. would also take 3% to 4% of  
7 any profit earned in the account. Yi represented that clients' funds would be used to purchase  
8 investments, including shares of stock of Pacific Union Bank. Yi represented to some clients that he  
9 would be purchasing shares of stock of Pacific Union Bank, below the price at which this stock was  
10 trading on the open market, and that the stock would increase in value once Pacific Union Bank  
11 merged with another company. Yi also promised some clients he would sell the Pacific Union Bank  
12 stock when he decided that the stock price had gone up enough. Yi had the investment adviser  
13 clients make their checks payable to "Carlin Corp." However, the clients' money was not deposited  
14 with Carlin Equities Corp. Instead, Yi deposited at least some of the investment adviser clients'  
15 money into Yi's personal bank account at Wells Fargo Bank. Additionally, Yi had some clients wire  
16 their investment funds directly to Yi's personal bank account at Wells Fargo Bank.

17 11. Yi provided investment adviser clients with fabricated account statements that  
18 appeared to be issued by Carlin Equities, Corp., and its clearing agent, Spear, Leeds & Kellogg, Inc.  
19 The monthly account statements showed false account balances and false purchases of Pacific Union  
20 Bank stock. These false account statements showed an increase in account balances that led some  
21 investment adviser clients to invest additional monies with C+ Capital Management. The account  
22 statements C+ Capital Management provided to its clients are also in a different layout and format,  
23 and contain a different account numbering system, than bona fide account statements issued by  
24 Carlin Equities Corp. The account statements provided to clients after July 1, 2003, also included a  
25 false address where Carlin Equities Corp. purportedly maintained a branch office in Beverly Hills.  
26 Additionally, one investment adviser client did sign a Customer Agreement with Spear, Leeds &  
27 Kellogg, Inc. and did receive a purported 2003 Consolidated Tax Reporting Statement and  
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1 Supporting Detail for 2003 Consolidated Forms 1099. However, Spear Leeds & Kellogg, Inc. has  
2 neither opened an account, nor issued tax documents to this client.

3 12. Carlin Equities Corp., and Spear, Leeds & Kellogg, Inc. are both licensed broker-  
4 dealers. Spear, Leeds & Kellogg, Inc. is the clearing broker on behalf of Carlin Equities Corp.  
5 These broker-dealer firms have neither opened accounts for these investors, nor have they issued  
6 account statements to these investment adviser clients of C+ Capital Management. Moreover,  
7 neither Carlin Equities Corp., nor Spear, Leeds & Kellogg, Inc. have ever maintained any accounts  
8 for C+ Capital Management. Furthermore, these broker-dealer firms have neither purchased, nor  
9 sold shares of stock of Pacific Union Bank on behalf of investment adviser clients of C+ Capital  
10 Management. In fact, Carlin Equities Corp. did not participate as a broker or dealer in any capacity  
11 or in any transactions either with any investment adviser clients of C+ Capital Management, or with  
12 C+ Capital Management.

13 13. At least four of C+ Capital Management's clients demanded return of their funds. C+  
14 Capital Management has failed to return their funds. Client attempts to speak to Yi or meet with him  
15 since early May of 2004 have all failed. Yi has not been in the office, and his office staff has stated  
16 that he has been traveling out of the state and out of the country.

17 14. Yi's misstatements and omissions of material facts, and fraudulent actions in regards  
18 to the funds given to him by the C+ Capital Management investment adviser clients, as set forth in  
19 paragraphs 8-13, *supra*, including the diversion of the client funds, the purported deposit of the client  
20 funds at Carlin Equities Corp., the purported establishment of individual accounts in the clients'  
21 names at Carlin Equities Corp., the provision of fabricated Carlin Equities Corp. account statements,  
22 the purported purchase of Pacific Union Bank stock through the Carlin Equities Corp. accounts, and  
23 the deposit of client funds into Yi's personal bank account, were transactions, practices and a course  
24 of business that operated as a fraud and a deceit upon the C+ Capital Management investment  
25 adviser clients and thus, were willful violations of Corporations Code section 25235, subdivision (b).  
26 Furthermore, Yi's repetition of these fraudulent statements, transactions, practices and course of  
27 business to multiple clients, as well as the combination of the various fraudulent statements and  
28 actions to wrongfully divert and take the client funds, was the employment of a device, scheme or

1 artifice to defraud the C+ Capital Management clients and thus were willful violations of  
2 Corporations Code section 25235, subdivision (a). Therefore, cause exists to revoke C+ Capital  
3 Management's investment adviser certificate pursuant to Corporations Code section 25232,  
4 subdivision (e).

5 **IV. THIRD CAUSE FOR REVOCATION: WILLFUL VIOLATION OF CORPORATIONS**  
6 **CODE SECTION 25241, SUBDIVISION (c) (CORP. CODE § 25232, SUBDIV. (e))**

7 15. Corporations Code section 25232, subdivision (e), provides that the Commissioner  
8 may revoke an investment adviser certificate for any violation of the Corporate Securities Law,  
9 which is found in Title 4 of the Corporations Code, or for any of its rules. Subdivision (e) of section  
10 25232 states, in relevant part:

11 (e) Has willfully violated any provision of ... Title 4 (commencing with Section 25000), ...or  
12 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. (footnotes omitted.)

13 16. Corporations Code section 25241 provides, in relevant part:

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

17 ....  
18 (c) All records referred to in this section are subject at any time and from time to time to  
19 reasonable periodic, special or other examinations by the commissioner, within or without  
20 this state, as the commissioner deems necessary or appropriate in the public interest or for the  
21 protection of investors.

22 17. On May 11, 2004, the Commissioner attempted to conduct a regulatory examination  
23 of the books and records of C+ Capital Management, pursuant to subdivision (c) of Corporations  
24 Code section 25241. However, the Commissioner's examiner was refused access to the business  
25 premises of C+ Capital Management by employees of C+ Capital Management.

26 18. This denial of access to conduct the examination was a willful violation Corporations  
27 Code section 25241, subdivision (c), and thus a violation of Title 4 of the Corporations Code.  
28 Therefore, cause exists to revoke C+ Capital Management's investment adviser certificate pursuant  
to Corporations Code section 25232, subdivision (c).

**V. FOURTH CAUSE FOR REVOCATION: WILLFUL VIOLATION OF CORPORATIONS CODE SECTION 25241 AND CALIFORNIA CODE OF REGULATIONS, TITLE 10, SECTION 260.241.2, SUBDIVISION (a) (CORP. CODE § 25232, SUBDIV. (e))**

19. Corporations Code section 25232, subdivision (e), provides that the Commissioner may revoke an investment adviser certificate for any violation of the Corporate Securities Law, which is found in Title 4 of the Corporations Code, or for any of its rules. Subdivision (e) of section 25232 provides, in relevant part:

(e) Has willfully violated any provision of ...Title 4 (commencing with Section 25000), ...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. (footnotes omitted.)

20. Corporations Code section 25241 provides, in relevant part:

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

21. California Code of Regulations, title 10, section 260.241.2, subdivision (a) requires the filing of an annual report by certain investment advisers. Prior to April 3, 2003<sup>1</sup>, California Code of Regulations, section 260.241.2, subdivision (a)(2), 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 of 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 and the certificate of the accountant required under subsection (e) of Section 260.237 of these rules.

<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.

1 22. On April 3, 2003, California Code of Regulations, section 260.241.2, subdivision  
2 (a)(2) was amended as follows:

3 (a) General Rule. Subject to the provisions of subsection (c) of this section, ...every licensed  
4 investment adviser subject to the provisions of Section 260.237.1 or Section 260.237.2, as  
5 applicable, of these rules, shall file an annual financial report containing the information  
6 required by a form or forms to be supplied or approved by the Commissioner, as follows:

7 ...  
8 (2) The annual report for investment advisers shall contain a Statement of Financial  
9 Condition. Supporting schedules shall contain computations of net capitals, aggregate  
10 indebtedness and ratios required under Section 260.237.1 or minimum financial requirements  
11 required under Section 260.237.2, as applicable, and the certificate of the accountant required  
12 under subsection (e) of Section 260.237 of these rules.

13 23. California Code of Regulations, title 10, section 260.237.1 contains the capital  
14 requirements for investment advisers. Prior to April 3, 2003, California Code of Regulations, title  
15 10, section 260.237.1, subdivision (a) provided, and presently provides, in relevant part, as follows:

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

20 ...  
21 (2) If the investment adviser has any power of attorney from any investment advisory client  
22 to execute transactions and does not have regular or periodic custody or possession of any of  
23 its investment advisory clients' securities or funds, except the receipt of prepaid subscriptions  
24 for periodic publications, or other investment advisory services, it shall at all times have and  
25 maintain tangible net capital of not less than \$5,000....

26 24. On April 3, 2003, California Code of Regulations, title 10, section 260.237.2 took  
27 effect. It provides in relevant part:

28 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.

(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.

1           25.     Subdivision (c) of California Code of Regulations, title 10, section 260.237.1  
2 provided, and currently provides, that for purposes of California Code of Regulations, title 10,  
3 section 260.237.1, subdivision (a), all financial information shall be determined in accordance with  
4 generally accepted accounting principles. Likewise, California Code of Regulations, title 10, section  
5 260.237.2, subdivision (d) provides that a licensee's net worth shall be determined by generally  
6 accepted accounting principles.

7           26.     During 2002 and 2003, C+ Capital Management had power of attorney or  
8 discretionary power to execute transactions in the brokerage accounts of its investment adviser  
9 clients. Therefore, prior to April 3, 2003, C+ Capital Management was required to meet the capital  
10 requirements provided for under California Code of Regulations, title 10, section 260.237.1,  
11 subdivision (a)(2) and to show proof of compliance with this regulation by filing annual financial  
12 reports required by section 260.241.2, subdivision (a).

13           27.     After April 3, 2003, C+ Capital Management was required to choose whether it  
14 would meet either the capital requirements provided for under California Code of Regulations, title  
15 10, section 260.237.1, subdivision (a)(2), or the net worth requirements of California Code of  
16 Regulations, title 10 section 260.237.2, subdivision (a), and to show proof of compliance by filing  
17 annual financial reports. As of May 14, 2004, C+ Capital Management has failed to submit its  
18 annual financial report for the years 2002 and 2003, in violation of Corporations Code section 25241  
19 and section 260.241.2, subdivision (a).

20           28.     The failure to submit the annual financial reports were willful violations of  
21 Corporations Code section 25241 and section 260.241.2, subdivision (a). Therefore, cause exists to  
22 revoke C+ Capital Management's investment adviser certificate pursuant to Corporations Code  
23 section 25232, subdivision (e).

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**VI. PRAYER FOR RELIEF**

WHEREFORE, based upon the foregoing, the Commissioner finds it is in the public interest to revoke the investment adviser certificate of Respondent C+ Capital Management, LLC, pursuant to Corporations Code section 25232, subdivisions (c) and (e).

Dated: May 25, 2004

WILLIAM P. WOOD  
California Corporations Commissioner

By: \_\_\_\_\_  
NICHOLAS LANZA  
Senior Corporations Counsel  
Enforcement and Legal Services Division