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**STATE OF WASHINGTON  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
SECURITIES DIVISION**

IN THE MATTER OF DETERMINING  
Whether there has been a violation  
of the Securities Act of Washington by:

Kirk Capital Management Inc.

Respondent

S-08-370-08-TO01

SUMMARY ORDER SUSPENDING INVESTMENT  
ADVISER REGISTRATION

9 THE STATE OF WASHINGTON TO: Annette M. Kirk, Compliance Manager  
10 Kirk Capital Management, Inc.  
11 11690 SE Hilltop Court  
12 Portland, Oregon 97086-7106

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**STATEMENT OF CHARGES**

Please take notice that the Securities Administrator of the State of Washington has reason to believe that Respondent, Kirk Capital Management, Inc., has violated the Securities Act of Washington and that the entry of an order of the Securities Administrator under RCW 21.20.110 to suspend the effectiveness of its current registration as an investment adviser is justified. The Securities Administrator finds that delay in ordering the suspension of the respondent's current registration would be hazardous to the investors and to the public and that this Order should be entered immediately. The Securities Administrator finds as follows:

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**TENTATIVE FINDINGS OF FACT**

I.

Kirk Capital Management, Inc. ("Kirk Capital") is a corporation organized under the laws of Oregon with its principal place of business at 11690 SE Hilltop Court; Portland, Oregon 97086. Annette M. Kirk is the Secretary and Compliance Manager of Kirk Capital. Brian Kirk is the CEO and registered agent of Kirk

SUMMARY ORDER REVOKING  
INVESTMENT ADVISER REGISTRATION

1 Capital with a listed address of 11690 SE Hilltop Ct; Portland, OR 97086. The fiscal year end for Kirk Capital  
2 is December 31.

3 II.

4 Kirk Capital is currently registered as an investment adviser with the Securities Division pursuant to RCW  
5 21.20.040 under file number 30002636. That registration expires on December 31, 2008. The file number of  
6 Kirk Capital in the Investment Adviser Registration Depository (“IARD”) is 0134226.

7 III.

8 Annette Marie Kirk and Brian Lee Kirk are currently licensed as investment adviser representatives for  
9 Kirk Capital pursuant to RCW 21.20.040 under Central Registration Depository (“CRD”) file numbers  
10 4464132 and 4068382, respectively.

11 IV.

12 In accordance with WAC 460-24A-060, each investment adviser registered with the Securities Division is  
13 required to file a balance sheet prepared in accordance with generally accepted accounting principles as of the  
14 end of its fiscal year not more than ninety days after the end of its fiscal year.

15 V.

16 In accordance with WAC 460-24A-205, each investment adviser registered with the Securities Division is  
17 required to file an updated Form ADV with the IARD within ninety days of the end of its fiscal year.

18 VI.

19 During a recent review, the Securities Division discovered that the most recent balance sheet submitted by  
20 Kirk Capital to the Securities Division is a draft balance sheet dated December 31, 2006 and that the most  
21 recent Form ADV filed with the IARD was filed on February 21, 2007.  
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VII.

On January 11, 2008, the Securities Division sent a memorandum to all investment advisers registered in the State of Washington with a fiscal year end in December reminding them of the requirement to submit a fiscal year-end balance sheet prepared in accordance with generally accepted accounting principles.

VIII.

On August 13, 2008, the Securities Division sent an e-mail message to Annette Marie Kirk at Kirk Capital indicating that the last updated Form ADV filed with the IARD was filed on February 21, 2007 and that an annual updated Form ADV must be filed on IARD within 90 days of the end of its fiscal year.

IX.

On October 6, 2008, the Securities Division sent an e-mail message to Kirk Capital reminding Kirk Capital that the Division had not yet received a balance sheet for its last fiscal year end as required by WAC 460-24A-060 and asking for confirmation that Kirk Capital had filed an updated Form ADV with IARD. That message indicated that the attempts of the Securities Division to contact Kirk Capital regarding these issues have been unsuccessful and that failure to submit the required items may result in a referral to the exams and/or enforcement units for review.

X.

On October 13, 2008 at approximately 2:27 p.m., Faith Anderson, a financial legal examiner with the Securities Division, called Kirk Capital to speak to Annette Marie Kirk concerning the need to file a balance sheet dated December 31, 2007. Although Annette Marie Kirk was unavailable according to the female who answered the telephone, Faith Anderson informed the female who answered the telephone that the Securities Division intended to suspend the registration of Kirk Capital if we did not receive a balance sheet dated

1 December 31, 2007 by the close of business the next day. That same day, Faith Anderson called again to Kirk  
2 Capital at approximately 3:30 p.m. and left a similar voicemail message.

3 XI.

4 As of the date of this order, Kirk Capital has not submitted a balance sheet for the year ended December  
5 31, 2007 or any later period and has not filed an update to its Form ADV on IARD since February 21, 2007.

6 XII.

7 The Securities Administrator finds that the continued registration of Kirk Capital as an investment adviser  
8 as described in the above Tentative Findings of Fact presents a threat to the investing public.

9 Based upon the above Tentative Findings of Fact, the following Conclusions of Law are made:

10 CONCLUSIONS OF LAW

11 I.

12 Kirk Capital has willfully violated WAC 460-24A-060 because it has not filed a balance sheet prepared in  
13 accordance with generally accepted accounting principles dated December 31, 2007 or later.

14 II.

15 Kirk Capital has willfully violated WAC 460-24A-205 because it has not filed an updated Form ADV with  
16 the IARD since February 21, 2007.

17 III.

18 The willful violations of WAC 460-24A-060 and 460-24A-205 constitute grounds for the entry of an order  
19 suspending the registration of Kirk Capital as an investment adviser under RCW 21.20.110(1)(b).

20 IV.

21 The Securities Administrator finds that an emergency exists, that the continued violations of WAC 460-  
22 24A-060 and 460-24A-205, constitute a threat to the investing public, and that a summary order suspending  
23 registration is in the public interest and necessary for the protection of the investing public.

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**SUMMARY ORDER**

Based on the foregoing, NOW, THEREFORE, IT IS HEREBY SUMMARILY ORDERED That the current investment adviser registration of Kirk Capital Management, Inc. is suspended.

The Division may continue its investigation of Respondent and its agents and affiliates and may take additional enforcement action under the Washington Securities Act as the investigation warrants.

**AUTHORITY AND PROCEDURE**

This Order is entered pursuant to the provisions of RCW 21.20.110 and is subject to the provisions of Chapter 34.05 RCW. Kirk Capital Management, Inc. may make a written request for a hearing as set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING accompanying this order.

If the Respondent does not timely request a hearing, the Securities Administrator intends to adopt the above Tentative Findings of Fact and Conclusions of Law as final and make the Summary Order Suspending the Investment Adviser Registration permanent as to the Respondent.

WILLFUL VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.

DATED AND ENTERED this 1st day of December, 2008.



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Michael E. Stevenson  
Administrator of Securities

Approved By:

Presented by:



Martin Cordell  
Chief of Enforcement



Brad Ferber  
Financial Legal Examiner