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

II.

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

III.

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

IV.

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

V.

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

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VI.

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

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

XI.

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

XII.

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

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

CONCLUSIONS OF LAW

I.

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

II.

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

III.

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

Based on the foregoing, and finding it in the public interest,

FINAL ORDER

It is hereby ORDERED That the investment adviser registration of Kirk Capital Management, Inc. is revoked.

AUTHORITY AND PROCEDURE

This Final Order is entered pursuant to the provisions of RCW 21.20.110(1) and is subject to the provisions of RCW 21.20.120 and Chapter 34.05 RCW. The Respondent has the right to petition the superior court for judicial review of this agency action under the provisions of 34.05 RCW. For the requirements for filing a Petition for Judicial Review, see RCW 34.05.510 and sections following.

WILLFUL VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.

DATED AND ENTERED this 9th day of April, 2009.



Michael E. Stevenson  
Administrator of Securities

Approved By:



Martin Cordell  
Financial Legal Examiner Supervisor

Presented by:



Brad Ferber  
Financial Legal Examiner