

BEFORE THE DIRECTOR OF THE DEPARTMENT OF FINANCE

OF THE STATE OF IDAHO

STATE OF IDAHO, Department of Finance,  
Securities Bureau,  
Complainant,

vs.

Western Capital Corporation,  
Nicholas Goldstein, Kent Cunningham,  
Respondents

Docket No. 2001-7-01

AGREEMENT AND ORDER

The Director of the Department of Finance has instituted an investigation into the conduct of Western Capital Corporation, its officers and others. Pursuant to said investigation, it appears to the Director that violations of the Idaho Securities Act, Idaho Code §30-1401 et seq., have occurred. The Director and the named Respondents have agreed to resolve this matter without a public hearing or court proceedings. Therefore, the Director deems it appropriate and in the public interest that this Agreement and Order be entered. Respondents consent to the entry of this Agreement and Order.

**Respondents**

1. Respondent Western Capital Corporation is a California corporation that conducts business from 8844 Olympic Blvd., 2<sup>nd</sup> Floor, Beverly Hills, California.
2. Respondent Nicholas Goldstein is a California resident and the Chief Executive Officer of Western Capital Corporation.
3. Respondent Kent Cunningham is the Chief Operating Officer of Western Capital Corporation.

### **Background**

4. Beginning on a date uncertain, but at least since May 1998, Respondents have retained at least one individual in Idaho to act as a sales agent for passive general partnership investment interests syndicated, sold and managed through Respondents. Since at least May 1998, Respondents have, through the aforementioned sales agent, offered and sold general partner investment interests issued by Western Capital Partners II & III.

5. The general partnership investment interests offered and sold in Idaho by Respondents and their agent were never registered or otherwise qualified for sale under the Idaho Securities Act.

6. The offering materials used, and the oral solicitations made, failed to provide complete disclosures regarding the investment program and its promoters. The offering materials used, and the oral solicitations made, misled prospective investors regarding the safety and liquidity of the investment interests being offered.

### **Findings of Violations**

7. The general partnership interests offered and sold are securities as defined under Idaho Code §30-1402(12).

8. The offering documents distributed to investors contained inadequate disclosure such that omissions of material fact occurred in violation of Idaho Code §30-1403(2). Respondents have violated Idaho Code §30-1403(2).

9. The offering was conducted in violation of the salesperson and securities registration provisions of the Idaho Securities Act. Respondents have violated Idaho Code §§30-1406 and 30-1416.

## Remedies

Complainant and Respondents hereby agree as follows:

1. Respondents represent that the information provided to Complainant in its investigation of this matter is accurate and complete.

2. Respondents acknowledge the Complainant's interpretation that the investment interests offered through Western Capital Corporation are securities under the Idaho Securities Act.

3. While Complainant has alleged violations of the Idaho Securities Act, Respondents neither admit nor deny that any violations have occurred.

4. Respondents agree to provide rescission to all Idaho investors that have invested in the Western Capital Partners offerings. Respondents also agree to submit their proposed rescission offering documents to the Director within thirty (30) days of the date of this Order for his review and approval in advance of the offer of rescission to Idaho investors. Said rescission offer shall be made to Idaho residents not later than sixty (60) days from the date of this Order. All persons who accept the offer of rescission shall be paid within forty-five (45) days of the date of acceptance of the rescission offer.

5. Respondents agree to not solicit any further investments in Idaho unless and until the offerings and the sales agents are properly qualified pursuant to the Idaho Securities Act.

6. Respondents agree to not claim the availability of, use, or offer or sell securities under any exemptions under the Idaho Securities Act without first obtaining the written approval of the Director. Said written notice shall be provided at least thirty (30) days in advance of the Respondents' proposed activities in Idaho.

7. Respondents agree to abide by the Idaho Securities Act. In the event that Respondents

commit violations of the Idaho Securities Act within three (3) years of the date of this Order, or fail to adhere to the terms of this Order, Respondents acknowledge that Complainant can incorporate the allegations giving rise to this Order in any future proceeding.

8. Respondents agree to pay to Complainant a fine in the amount of two thousand dollars (\$2,000.00). Said fine will be paid within thirty (30) days of the date of this Order.

9. This Agreement and Order is in lieu of civil litigation or other proceedings.

DONE AND DATED at Boise, Idaho, this 6<sup>th</sup> day of ~~January~~ <sup>February</sup>, 2000.

WESTERN CAPITAL CORPORATION

BY:

Nicholas Goldstein

NAME:

NICHOLAS GOLDSTEIN

Title:

President

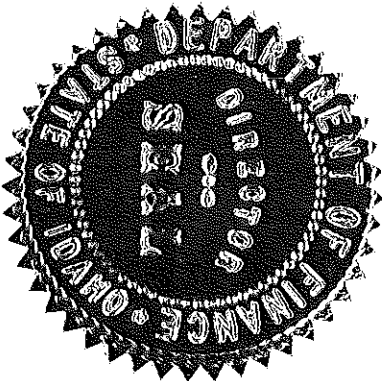
Nicholas Goldstein  
NICHOLAS GOLDSTEIN

Kent Cunningham  
KENT CUNNINGHAM

Marilyn T. Chastain  
MARILYN T. CHASTAIN  
Bureau Chief, Securities Bureau  
Department of Finance, State of Idaho

IT IS SO ORDERED This 6<sup>th</sup> day of ~~January~~ <sup>February</sup>, 2000.

Gavin M. Gee  
GAVIN M. GEE  
Director, Idaho Department of Finance



**PROOF OF SERVICE**

I HEREBY certify that I have this day served the foregoing AGREEMENT AND ORDER, Docket 2001-7-01 upon all parties of record in this proceeding, by mailing a copy thereof, properly addressed, with postage prepaid to:

Irving Einhorn  
Attorney at Law  
11900 Olympic Boulevard Ste 510  
Los Angeles CA 90064-1151

DATED At Boise, Idaho, this 7<sup>th</sup> day of February, 2001.

  
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JIM BURNS