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SECURITIES COMMISSIONER



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Mail: P.O. BOX 13167  
AUSTIN, TEXAS 78711-3167

### Texas State Securities Board

208 E. 10th Street, 5th Floor  
Austin, Texas 78701-2407  
www.ssb.state.tx.us

Phone: (512) 305-8300  
Facsimile: (512) 305-8310

IN THE MATTER OF THE APPLICATIONS FOR §  
THE INVESTMENT ADVISER REGISTRATION OF §  
KAIZEN MANAGEMENT, LP §  
AND THE INVESTMENT ADVISER §  
REPRESENTATIVE REGISTRATION OF §  
DAVID WILLIS BERRY §

Order No. IC05-SUS-22

TO: David Willis Berry  
Manager of Kaizen Capital, LLC,  
general partner of  
Kaizen Management, LP (IARD No. 124699)  
4200 Montrose Blvd., Suite 510  
Houston, Texas 77006

David Willis Berry (CRD No. 4631137)  
Kaizen Management, LP  
4200 Montrose Blvd., Suite 510  
Houston, Texas 77006

#### DISCIPLINARY ORDER

Be it remembered that Kaizen Management, LP ("Respondent Kaizen") by and through David Willis Berry, the Manager of Kaizen Capital, LLC which is the general partner of Respondent Kaizen, and David Willis Berry ("Respondent Berry"), individually (collectively "Respondents"), appeared before the Securities Commissioner of the State of Texas ("Securities Commissioner") and consented to the entry of this order ("Order"), the Undertaking incorporated by reference herein, and the Findings of Fact and the Conclusions of Law contained herein.

#### FINDINGS OF FACT

1. Respondents have waived (a) Respondents' right to notice and hearing in this matter; (b) Respondents' right to appear and present evidence in this matter; (c) Respondents' right to appeal this Order; and (d) all other procedural rights granted to Respondents by The Securities Act, TEX. REV. CIV. STAT. ANN. art. 581-1 et seq. (Vernon 1964 & Supp. 2004-2005) ("Texas Securities Act") and the Administrative Procedure Act, TEX. GOV'T CODE ANN. § 2001.001 et seq. (Vernon 2000 & Supp. 2004-2005) ("Administrative Procedure Act").

2. On or about January 31, 2003, Respondent Kaizen applied for registration with the Securities Commissioner as an investment adviser, which is currently pending.
3. On or about February 5, 2003, Respondent Berry applied for registration with the Securities Commissioner as an investment adviser representative of Respondent Kaizen, which is currently pending.
4. Pursuant to Section 12.B of the Texas Securities Act and §116.1(b)(1)(A) of the Rules and Regulations of the Texas State Securities Board ("Board Rules"), any person who renders services as an investment adviser in this state for compensation must first be registered as an investment adviser, notice-filed or otherwise exempt; and any person employed, appointed or authorized by an investment adviser to act or render services for compensation as an investment adviser representative for such investment adviser in this state must first be registered as an investment adviser representative for such investment adviser, notice-filed or otherwise exempt.
5. From on or about January 1, 2003 to the present, Respondent Kaizen, by and through Respondent Berry, for compensation in the State of Texas advised others with respect to the value of securities and/or the advisability of investing in, purchasing, or selling securities.
6. Pursuant to Section 14.A(5)(b) of the Texas Securities Act, the Securities Commissioner may reprimand an investment adviser, or deny, suspend or revoke the registration of an investment adviser, if such investment adviser is or has engaged in rendering services as an investment adviser in this state through a representative who is not registered to perform services for that investment adviser.
7. Pursuant to Section 14.A(6) of the Texas Securities Act, the Securities Commissioner may reprimand an investment adviser or investment adviser representative, or deny, suspend or revoke the registration of an investment adviser or investment adviser representative, if the investment adviser or investment adviser representative has violated any of the provisions of the Texas Securities Act or a Board Rule.
8. Pursuant to Section 23-1 of the Texas Securities Act, the Securities Commissioner may assess an administrative fine against any person found to have engaged in an act or practice that violates the Texas Securities Act or a Board Rule.
9. Respondent Kaizen and Respondent Berry believed, without receiving any notification or making any effective attempt to confirm, that they were properly registered with the Securities Commissioner as an investment adviser and an investment adviser representative, respectively, in the State of Texas.

10. Respondents have replied in a timely manner to requests by the staff of the Texas State Securities Board concerning their unregistered activity, and Respondents acknowledge the unique nature and circumstances concerning their applications for registration with the Securities Commissioner.

### CONCLUSIONS OF LAW

1. From on or about January 1, 2003 to the present Respondent Kaizen rendered services in Texas as an "investment adviser" as that term is defined by Section 4.N of the Texas Securities Act.
2. From on or about January 1, 2003 to the present Respondent Berry rendered services in Texas as an "investment adviser representative" as that term is defined by Section 4.P of the Texas Securities Act.
3. Respondent Kaizen and Respondent Berry rendered services as an investment adviser and an investment adviser representative, respectively, in violation of Section 12.B of the Texas Securities Act and §116.1(b)(1)(A) of the Board Rules.
4. The rendering of services as an investment adviser in the State of Texas by Respondent Berry on behalf of Respondent Kaizen at a time when Respondent Berry was not registered with the Securities Commissioner as an investment adviser representative of Respondent Kaizen constitutes a basis for the issuance of an order reprimanding Respondent Kaizen, pursuant to Section 14.A(5)(b) of the Texas Securities Act.
5. Pursuant to Section 14.A(6) of the Texas Securities Act, the foregoing violations constitute bases for the issuance of an order reprimanding a registered investment adviser and a registered investment adviser representative.
6. Pursuant to Section 23-1 of the Texas Securities Act, the foregoing violations of the Texas Securities Act and Board Rules constitute bases for the issuance of an order assessing an administrative fine against an investment adviser and an investment adviser representative.

### ORDER

1. It is therefore ORDERED that the registrations of Kaizen Management, LP as an investment adviser, and David Willis Berry as an investment adviser representative of Kaizen Management, LP, are hereby GRANTED.
2. It is further ORDERED that Kaizen Management, LP and David Willis Berry are hereby REPRIMANDED.
3. It is further ORDERED that the registration of Kaizen Management, LP is hereby SUSPENDED from providing services as an investment adviser within this state to any new investor or new client for the period from the date this Order is signed by the Securities Commissioner through the end of the day September 30, 2005.

In the event that the registration of Kaizen Management, LP is terminated before the end of this period, the suspension period will be tolled from the date that the registration of Kaizen Management, LP is terminated to the date when the registration of Kaizen Management, LP is effective again.

4. It is further ORDERED that Kaizen Management, LP is hereby ASSESSED AN ADMINISTRATIVE FINE in the amount of Ten Thousand Dollars (\$10,000.00). Payment shall be made by delivery of a cashier's check to the Securities Commissioner in the amount of Ten Thousand Dollars (\$10,000.00), payable to the State of Texas, contemporaneously with the delivery of this Order.
5. It is further ORDERED that David Willis Berry is hereby ASSESSED AN ADMINISTRATIVE FINE in the amount of Ten Thousand Dollars (\$10,000.00). Payment shall be made by delivery of a cashier's check to the Securities Commissioner in the amount of Ten Thousand Dollars (\$10,000.00), payable to the State of Texas, contemporaneously with the delivery of this Order.
6. It is further ORDERED that Kaizen Management, LP and David Willis Berry COMPLY with the terms of the Undertaking, incorporated by reference herein.

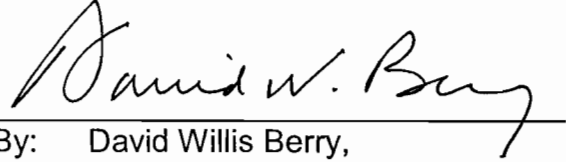
SIGNED AND ENTERED BY THE SECURITIES COMMISSIONER this 15<sup>th</sup> day of September, 2005.



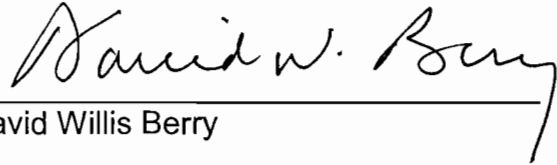
DENISE VOIGT CRAWFORD  
Securities Commissioner

Respondents:

Kaizen Management, LP



By: David Willis Berry,  
Manager of Kaizen Capital, LLC,  
general partner of  
Kaizen Management, LP



David Willis Berry

Approved as to Form:

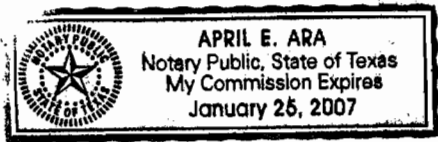


Benette L. Zivley  
Director  
Inspections and Compliance Division


**ACKNOWLEDGMENT**

On the 12<sup>th</sup> day of SEPTEMBER 2005, Kaizen Management, LP ("Respondent Kaizen"), by and through David Willis Berry, the Manager of Kaizen Capital, LLC which is the general partner of Respondent Kaizen, appeared before me, executed the foregoing Order and Undertaking, and acknowledged that:

1. David Willis Berry is duly authorized to enter into the foregoing Order on behalf of Respondent Kaizen;
2. David Willis Berry has read the foregoing Order;
3. Respondent Kaizen has been fully advised of its rights under the Texas Securities Act and the Administrative Procedure Act;
4. Respondent Kaizen knowingly and voluntarily consents to the entry of the foregoing Order, and the Findings of Fact and Conclusions of Law contained herein; and
5. Respondent Kaizen, by consenting to the entry of the foregoing Order, has knowingly and voluntarily waived its rights as set forth therein.



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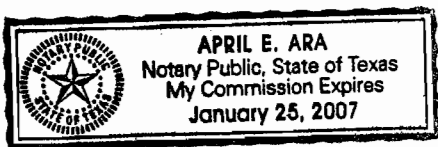
  
\_\_\_\_\_  
Notary Public in and for  
The State of TEXAS

My commission expires on: 1-25-2007

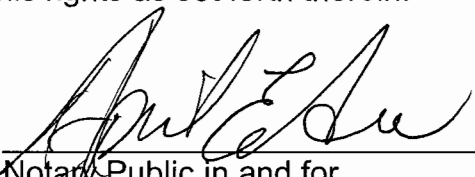
**ACKNOWLEDGMENT**

On the 12<sup>th</sup> day of SEPTEMBER, 2005, David Willis Berry ("Respondent Berry") personally appeared before me, executed the foregoing Order, and acknowledged that:

1. Respondent Berry has read the foregoing Order;
2. Respondent Berry has been fully advised of his rights under the Texas Securities Act and the Administrative Procedure Act;
3. Respondent Berry knowingly and voluntarily consents to the entry of the foregoing Order, and the Findings of Fact and Conclusions of Law contained therein; and
4. Respondent Berry, by consenting to the entry of the foregoing Order, has knowingly and voluntarily waived his rights as set forth therein.



[affix notary seal here]

  
\_\_\_\_\_  
Notary Public in and for  
The State of TEXAS

My commission expires on: 1-25-2007