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## Texas State Securities Board

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IN THE MATTER OF  
THE APPLICATIONS FOR  
THE INVESTMENT ADVISER  
REGISTRATION OF SUNDIAL CAPITAL  
MANAGEMENT, L.P. AND THE  
INVESTMENT ADVISER  
REPRESENTATIVE REGISTRATION  
OF BRIAN NERNEY

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**Order No. IC06-CAF-49**

TO: Brian Nerney, Manager  
Sundial Capital Management, L.P. (IARD No. 117461)  
2109 Shadow Ridge Drive  
Arlington, TX 76006

Brian Nerney (CRD No. 4476700)  
Sundial Capital Management, L.P.  
2109 Shadow Ridge Drive  
Arlington, TX 76006

### DISCIPLINARY ORDER

Be it remembered that Sundial Capital Management, L.P. ("Respondent Sundial"), by and through Brian Nerney, its Manager, and Brian Nerney, individually ("Respondent Nerney")(collectively "Respondents"), appeared before the Securities Commissioner of the State of Texas ("Securities Commissioner") and consented to the entry of this order ("Order") and the Findings of Fact and 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 the Respondents by The Securities Act, TEX. REV. CIV. STAT. ANN. art. 581-1 et seq. (Vernon 1964 & Supp. 2006)("Texas Securities Act"), and the Administrative Procedure Act, TEX. GOV'T CODE ANN. § 2001.001 et seq. (Vernon 2000 & Supp. 2006)("Administrative Procedure Act").
2. On or about June 20, 2005, Respondent Sundial submitted an application for registration with the Securities Commissioner as an investment adviser, which is currently pending.

3. On or about June 28, 2005, Respondent Nerney submitted an application for registration with the Securities Commissioner as an investment adviser representative of Respondent Sundial, which is currently pending.
4. Respondent Sundial was previously registered with the Securities Commissioner as an investment adviser from on or about February 5, 2002 to on or about December 31, 2002.
5. Respondent Nerney was previously registered with the Securities Commissioner as an investment adviser representative of Respondent Sundial from on or about February 5, 2002 to on or about December 31, 2002.
6. From on or about January 1, 2003 to on or about May 20, 2005, Respondent Sundial, for compensation and in Texas, engaged in the business of advising others with respect to the value of securities or to the advisability of investing in, purchasing, or selling securities.
7. From on or about January 1, 2003 to on or about May 20, 2005, Respondent Nerney, for compensation and in Texas, provided investment advice on behalf of Respondent Sundial to the clients of Respondent Sundial.
8. Section 12.B of the Texas Securities Act, prohibits a person from rendering services as an investment adviser or investment adviser representative in Texas unless the person is registered under the Texas Securities Act, submits a notice filing as provided by Section 12-1 of the Texas Securities Act, or is otherwise exempt.

#### CONCLUSIONS OF LAW

1. Respondent Sundial advised others, for compensation, with respect to the value of securities and the advisability of investing in, purchasing, or selling securities, and therefore is an "investment adviser" as the term "investment adviser" is defined by Section 4.N of the Texas Securities Act.
2. Respondent Nerney, for compensation, provided investment advice on behalf of Respondent Sundial to the clients of Respondent Sundial, and therefore is an "investment adviser representative" as the term "investment adviser representative" is defined by Section 4.P of the Texas Securities Act.
3. Respondent Sundial violated Section 12.6 of the Texas Securities Act by rendering services as an investment adviser in Texas at a time when Respondent Sundial was not registered as an investment adviser with the Securities Commissioner.

4. Respondent Nerney violated Section 12.B of the Texas Securities Act by rendering services as an investment adviser representative in Texas for Respondent Sundial at a time when Respondent Nerney was not registered as an investment adviser representative of Respondent Sundial with the Securities Commissioner.
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 registered investment adviser representative.
6. Pursuant to Section 23-1 of the Texas Securities Act, the foregoing violations constitute bases for the issuance of an order assessing an administrative fine against an investment adviser.

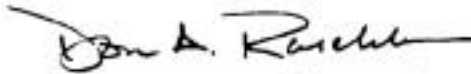
ORDER

1. It is therefore ORDERED that the investment adviser registration of Sundial Capital Management, L.P. and the investment adviser representative registration of Brian Nerney are hereby GRANTED.
2. It is further ORDERED that Sundial Capital Management, L.P. and Brian Nerney are hereby REPRIMANDED.
3. It is further ORDERED that Sundial Capital Management, L.P. is hereby ASSESSED AN ADMINISTRATIVE FINE in the amount of Five Thousand Dollars (\$5,000.00). Payment shall be made by delivery of a cashier's check to the Securities Commissioner in the amount of Five Thousand Dollars (\$5,000.00), payable to the State of Texas, contemporaneously with the delivery of this Order.

Deputy  
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SIGNED AND ENTERED BY THE SECURITIES COMMISSIONER this 24<sup>th</sup>  
day of OCTOBER, 2006.

DENISE VOIGT CRAWFORD  
Securities Commissioner

  
Deputy Securities Commissioner


Respondents:

Sundial Capital Management, L.P.



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By: Brian Nerney, Manager



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Brian Nerney, Individually

Approved as to Form:



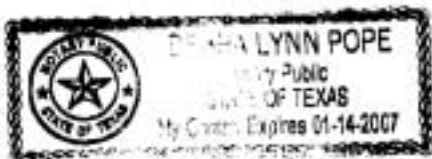
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Benette L. Zivley  
Director  
Inspections and Compliance Division


**ACKNOWLEDGMENT**

On the 9th day of October, 2006, Sundial Capital Management, L.P. ("Respondent Sundial"), by and through, Brian Nerney, its Manager, personally appeared before me, executed the foregoing Order, and acknowledges that:

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



[affix notary seal here]

  
Notary Public in and for  
the State of Texas

My commission expires on: 1-14-07

**ACKNOWLEDGMENT**

On the 9<sup>th</sup> day of October, 2006. Brian Nerney ("Respondent Nerney") personally appeared before me, executed the foregoing Order, and acknowledged that:

- 1 Respondent Nerney has read the foregoing Order;
2. Respondent Nerney has been fully advised of his rights under the Texas Securities Act and the Administrative Procedure Act;
3. Respondent Nerney 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 Nerney, by consenting to the entry of the foregoing Order, has knowingly and voluntarily waived his rights as set forth therein.



[affix notary seal here]

*Lynn Pope*  
Notary Public in and for  
the State of TEXAS

My commission expires on: 1-14-07