

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO.

20050002401-01

TO: Department of Market Regulation
NASD

RE: Capital Growth Financial, LLC ("CGFL"), Respondent
Broker-Dealer
CRD No. 41040

RECEIVED

2007 APR 16 P 2:38

MARKET REGULATION

Pursuant to Rule 9216 of NASD Code of Procedure, Capital Growth Financial, LLC (the "firm") submits this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described in Part II below. This AWC is submitted on the condition that, if accepted, NASD will not bring any future actions against the firm alleging violations based on the same factual findings.

The firm understands that:

1. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by NASD's Department of Market Regulation and National Adjudicatory Council ("NAC") Review Subcommittee or Office of Disciplinary Affairs, pursuant to NASD Rule 9216;
2. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against the firm; and
3. If accepted:
 - a. this AWC will become part of the firm's permanent disciplinary record and may be considered in any future actions brought by NASD or any other regulator against the firm;
 - b. this AWC will be made available through NASD's public disclosure program in response to public inquiries about the firm's disciplinary record;
 - c. NASD may make a public announcement concerning this agreement and the subject matter thereof in accordance with NASD Rule 8310 and IM-8310-2; and
 - d. the firm may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. Nothing in

this provision affects the firm's testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which NASD is not a party.

The firm also understands that its experience in the securities industry and disciplinary history may be factors that will be considered in deciding whether to accept this AWC. That experience and history are as follows:

The firm has been a member of NASD since October 18, 1996, and its registration remains in effect. The firm has no relevant disciplinary history.

I.

WAIVER OF PROCEDURAL RIGHTS

The firm specifically and voluntarily waives the following rights granted under NASD's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against the firm;
- B. To be notified of the Formal Complaint and have the opportunity to answer the allegations in writing;
- C. To defend against the allegations in a disciplinary hearing before a hearing panel, to have a written record of the hearing made and to have a written decision issued; and
- D. To appeal any such decision to the NAC and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, the firm specifically and voluntarily waives any right to claim bias or prejudgment of the General Counsel, the NAC, or any member of the NAC, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including acceptance or rejection of this AWC.

The firm further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of Rule 9143 or the separation of functions prohibitions of Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

II.

ACCEPTANCE AND CONSENT

In Matter 20050002401, the TRACE Team of the Department of Market Regulation conducted a regulatory sweep of the firm to identify trades in TRACE eligible securities in which a reporting firm may have entered an incorrect time of execution during the period October 1, 2004 through December 31, 2004 (the "Review Period"). The violations contained herein are a result of this review.

- A. The firm hereby accepts and consents, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of NASD, or to which NASD is a party, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by NASD:
1. During the Review Period, the firm failed to report to TRACE the correct time of trade execution for 121 transactions in TRACE-eligible securities. The conduct described in this paragraph constitutes separate and distinct violations of NASD Marketplace Rule 6230(c)(8).
 2. During the Review Period, the firm failed to show the correct time of execution on the memorandum of 119 brokerage orders. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 17a-3 and NASD Conduct Rule 3110.
 3. During the Review Period, the firm failed to report to TRACE 68 transactions in TRACE-eligible securities executed on a business day during TRACE system hours within 30 minutes of the time of execution. The conduct described in this paragraph constitutes separate and distinct violations of NASD Marketplace Rule 6230(a).
- B. The firm also consents to the imposition, at a maximum, of the following sanctions:
- A censure and a fine of \$10,000, consisting of \$5,000 for the violations of NASD Marketplace Rule 6230 and \$5,000 for the violations of SEC Rule 17a-3.**

The sanctions imposed herein shall be effective on a date set by NASD staff.

III.

OTHER MATTERS

- A. The firm understands that the firm may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The firm understands that the firm may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by NASD, nor does it reflect the views of NASD or its staff.
- B. The firm agrees to pay any monetary sanctions imposed on the firm upon notice that this AWC has been accepted and that such payments are due and payable and has attached an Election of Payment form showing the method by which the firm proposes to pay any fine imposed.
- C. The firm specifically and voluntarily waives any right to claim that the firm is unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.

The firm certifies that the firm has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it, and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein, has been made to induce the firm to submit it.

4/10/07
Date

Capital Growth Financial, LLC

By: Michael S. Jacobs
Name: Michael S. Jacobs

Title: President

Reviewed by:

Counsel for Respondent

Accepted by NASD:

5/14/07
Date

Thomas R. Gira
Thomas R. Gira
Executive Vice President and Deputy
Department of Market Regulation

Signed on behalf of the Director of
ODA, by delegated authority