

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. E072003099001

TO: Department of Enforcement
NASD

RE: Capital Growth Financial, LLC, Respondent
Member
CRD No. 41040

Michael S. Jacobs, Respondent
General Securities Principal
CRD No. 1818665

Michael B. Falken, Respondent
General Securities Principal
CRD No. 862958

Pursuant to Rule 9216 of NASD Code of Procedure, Respondents submit 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 Respondents alleging violations based on the same factual findings.

Respondents understand 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 Enforcement and National Adjudicatory Council ("NAC") Review Subcommittee or Office of Disciplinary Affairs ("ODA"), 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 Respondents; and
3. If accepted:
 - a. this AWC will become part of Respondents' permanent disciplinary record and may be considered in any future actions brought by NASD or any other regulator against them;
 - b. this AWC will be made available through NASD's public disclosure program in response to public inquiries about Respondents' 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. Respondents 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 allegation in this AWC or create the impression that the AWC is without factual basis. Nothing in this provision affects Respondents' testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which NASD is not a party.

Respondents also understand that their 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:

Capital Growth Financial, LLC, ("CGF") previously known as CGF Securities, LLC, became an NASD member in October 1996. The firm conducts a general securities business. The firm's disciplinary history is as follows:

In October 2002, the Office of the North Dakota Securities Department fined the firm a total of \$18,000 in connection with allegations that the firm sold unregistered securities in the state in violation of state statutes.

In April 2003, the Office of the North Dakota Securities Department fined the firm \$4,000 for selling unregistered securities in the state in violation of state statutes.

In September 2003, the State of Florida Office of Financial Institutions fined the firm \$7,500 after finding that the firm had inadequate supervisory procedures in violation of state statutes.

In December 2003, the Office of the North Dakota Securities Department fined the firm \$5,000 based upon findings that the firm engaged in investment advisory services while not being properly registered as an investment advisory with the state in violation of state statutes.

In January 2005, the Office of the North Dakota Securities Department fined the firm \$3,000 after finding that the firm offered for sale unregistered securities in the state in violation of state statutes.

Michael S. Jacobs entered the securities industry in February 1988. He has been registered with the firm since March 1998, and is currently registered as a general securities principal and representative and as a financial and operations limited principal. Mr. Jacobs serves as the president of the firm. He has no disciplinary history.

Michael B. Falken entered the securities industry in January 1977. He has been registered with the firm since January 2003 and is currently registered as a general securities principal and representative, an options principal, a financial and operations limited principal, and as a research principal. Mr. Falken serves as the chief compliance officer of the firm. He has no disciplinary history.

I.

WAIVER OF PROCEDURAL RIGHTS

Respondents specifically and voluntarily waive the following rights granted under NASD's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against them;
- 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, Respondents specifically and voluntarily waive 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.

Respondents further specifically and voluntarily waive 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

- A. Respondents hereby accept and consent, without admitting or denying the allegations or 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:

During the period of January 2003 to August 2003, CGF, acting through Michael S. Jacobs, sold unregistered securities issued by Capital Growth Equity Fund I in violation of Section 5 of the Securities Act of 1933, in that the securities were not registered with the United States Securities and Exchange Commission. In connection with the offering of the securities, the firm used general solicitation sales techniques and sold the securities to over 35 non-accredited investors, thereby eliminating the offering from any exemption from registration. Such conduct by CGF and Jacobs violates Section 5 of the Securities Act of 1933 and NASD Conduct Rule 2110.

In connection with the sales efforts of two of the firm's registered representatives, CGF, acting through Michael B. Falken, approved the use of letters and invitations to seminars to be sent to prospective clients of the firm. The communications failed to disclose that the securities referenced were subject to a high degree of risk, failed to disclose risks specific to the securities, were misleading by being promissory of successful investment results, and otherwise made exaggerated, unwarranted or misleading statements. In addition, the representatives used a PowerPoint presentation at the seminars that was prepared and approved by Michael S. Jacobs. The presentation was misleading and inconsistent with the private placement memorandum and made other statements concerning market conditions that were without a reasonable basis. Such conduct by CGF, Jacobs and Falken violates NASD Conduct Rules 2210 and 2110.

During the period of January through August 2003, CGF, acting through Michael S. Jacobs, failed to establish, maintain, and enforce an adequate supervisory system, including written procedures, reasonably designed to achieve compliance with applicable rules and regulations relating to the sale of private offerings. Such conduct by CGF and Jacobs violates NASD Conduct Rules 3010 and 2110.

During the period of April 2002 through October 2003, CGF failed to establish anti-money laundering procedures reasonably designed to achieve compliance with Section 326 of the US PATRIOT Act and the Bank Secrecy Act (31 U.S.C. 5211, et. Seq.) and the implementing regulations promulgated thereunder by the Department of the Treasury, in violation of NASD Rules 3011 and 2110.

- B. Respondents also consent to the imposition, at a maximum, of the following sanctions:

Capital Growth Financial, LLC will be censured and fined \$45,000 (\$10,000 of which is joint and several with Michael B. Falken as discussed below).

In addition, for nine months following the acceptance of this AWC, CGF will undertake to file with NASD's Advertising Regulation Department all sales literature and advertisements, as defined by NASD Conduct Rule 2210(a), except for PowerPoint presentations used by CGF in public seminars, at least ten days prior to their first use.

The ten-day period shall commence on the date of transmission with respect to advertisements or sales literature that CGF sends by facsimile and on the day following shipment with respect to advertisements or sales literature that CGF sends by overnight delivery. After ten days, these advertisements or sales literature may be used in the absence of comments from NASD. However, at any time, upon receipt of comments from NASD on the advertisements or sales literature filed prior to use, unless notified otherwise by NASD, CGF shall take all reasonable steps to withhold or cause to be withheld the material from further publication until the changes specified by NASD have been made, and such material will be revised and re-filed ten days prior to any use, unless otherwise agreed to by NASD staff at its sole discretion.

With respect to PowerPoint presentations to be used by CGF in public seminars, CGF shall undertake, for nine months following the acceptance of this AWC, to provide a copy of its proposed PowerPoint to the NASD Advertising Regulation Department at least thirty days prior to conducting any such seminar, so as to allow the NASD Advertising Department sufficient time to review and approve the proposed public communication. In that regard, CGF agrees to not conduct any public seminar for thirty days from the date of acceptance of this AWC. However, at any time, upon receipt of comments from NASD on the proposed PowerPoint filed prior to use, unless notified otherwise by NASD, CGF shall take all reasonable steps to refrain from using such PowerPoint at any seminar until the changes specified by NASD have been made, and such PowerPoint will be revised and re-filed ten days prior to any use, unless otherwise agreed to by NASD staff at its sole discretion.

Michael S. Jacobs shall be suspended for 45 calendar days in all principal capacities, and be fined \$10,000.

Michael B. Falken shall be suspended for 10 business days in all principal capacities, and is fined \$10,000 jointly and severally with the firm (as noted above).

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

III.

OTHER MATTERS

- A. Respondents understand that they may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondents understand that they 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. Respondents agree to pay any monetary sanctions imposed on them upon notice that this AWC has been accepted and that such payments are due and payable and have attached an Election of Payment form showing the method by which they propose to pay any fine imposed.
- C. Respondents specifically and voluntarily waive any right to claim that they are unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.
- D. Respondents understand that if they are suspended from associating with any NASD member in all capacities, they become subject to a statutory disqualification as that term is defined in Section 3(a)(39) of the Securities Exchange Act of 1934, as amended. Accordingly, during that period they may not be associated with any NASD member in any capacity, including clerical or ministerial functions, during the period of the bar or suspension. (See NASD Rule 8310 and IM-8310-1.)

Respondents certify that they have read and understand all of the provisions of this AWC and have 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 them to submit it.

1/23/06
Date

Capital Growth Financial
Capital Growth Financial, LLC

By: Michael S. Jacobs
[Print Name and Title] President

Michael S. Jacobs
Michael S. Jacobs

Michael B. Falken
Michael B. Falken

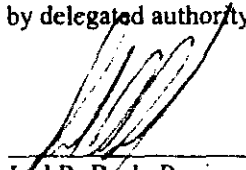
Reviewed by:

Counsel for Respondents

Accepted by NASD:

Date 2/15/2006

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



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NASD District Director

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