



1 **TENTATIVE FINDINGS OF FACT**

2 **RESPONDENTS**

3 1. Capstone Investments (“Capstone”) is a broker-dealer with its principal place of business  
4 at 4660 La Jolla Village Drive, Suite 1040, San Diego, California, 92122. Capstone has been registered  
5 with the Washington State Securities Division as a broker-dealer since July 1997.

6 2. Anthony Capozza (“Capozza”) is the CEO of Capstone. Capozza has been registered with  
7 the Washington State Securities Division as a securities salesperson for Capstone since July 1997. He  
8 was also registered as a securities salesperson with First Allied Securities, Inc. from February 1997 to  
9 July 1997, Vanguard Capital from July 1994 to December 1995, and Merrill Lynch, Pierce, Fenner &  
10 Smith Inc. from January 1981 to January 1994.

11 **OTHER ENTITIES**

12 3. Family First Advanced Estate Planning is a California corporation with its principal place  
13 of business at 20121 Ventura Boulevard in Woodland Hills, California. During 2002, Family First  
14 Advanced Estate Planning had a regional office at 402 S. 333<sup>rd</sup> Street in Federal Way, Washington and  
15 was in the business of selling group legal services plans and living trusts to Washington residents.

16 4. Family First Insurance Services is a California corporation with its principal place of  
17 business at 20121 Ventura Boulevard in Woodland Hills, California. During 2002, Family First  
18 Insurance Services had a regional office at 402 S. 333<sup>rd</sup> Street in Federal Way, Washington and was in  
19 the business of selling insurance products to Washington residents.

1 NATURE OF THE CONDUCT

2 *Capstone's Use of Unregistered Salespeople*

3 5. In or around 1998 Capstone began to offer a "liquidation service" to insurance agents  
4 (hereinafter referred to as "agents") in the state of Washington. Agents were directed to refer their  
5 customers to Capstone for the sole purpose of liquidating their securities accounts. Agents were told that  
6 Capstone would not interfere with their ability to sell insurance products to customers. In fact, Capstone  
7 promised agents it would facilitate insurance sales by liquidating customers' securities and directing the  
8 proceeds towards the purchase of an insurance product. Capstone charged a 1½ percent commission of  
9 the total dollar amount of each customer's securities liquidated. As a result of this arrangement,  
10 Capstone earned commissions liquidating securities while agents earned commissions paid by the  
11 insurance company for their sale of insurance products.

12 6. Capstone, in an attempt to increase its liquidation business, conducted presentations to  
13 agents. However, most agents learned about the liquidation service from other agents.

14 7. Agents who utilized the liquidation service were assured that Capstone would neither talk  
15 a customer out of a pending purchase of an insurance product, nor make any attempt to sell securities to a  
16 customer. A booklet created for agents by Capstone described the liquidation service as follows: "We  
17 help agents...who have lost sales due to interference from competing stockbrokers and bankers. We act  
18 as your broker dealer during the ACAT process. We do not compete with you."

19 8. Agents were directed by Capstone to assist customers in the completion of forms  
20 necessary to liquidate their securities, including forms related to suitability. Agents, acting on behalf of  
21 Capstone, were responsible for gathering required customer suitability information, including but not

1 limited to age, investment objectives, marital status, education level, annual income, net worth, liquid net  
2 worth, and investment experience.

3 9. Customers referred to Capstone to liquidate their securities were sent a letter entitled  
4 “General Unsolicited Letter Authorization to Liquidate,” which they were instructed to sign and return.  
5 The letter stated in part: “I, We purchased securities outside of Capstone Investments and intend to sell  
6 these securities on my/our own initiative; these transactions are not and will not be solicited by my  
7 broker unless I notify you otherwise.”

8 10. Customers had no relationship with Capstone prior to being referred to the firm by their  
9 agent. They understood the liquidation service as a service available to them due to their relationship  
10 with their agent. Customers worked almost exclusively with their agent and had little or no contact with  
11 a Capstone registered representative throughout the liquidation process.

12 11. Capstone established relationships with at least eleven agents doing business in the state  
13 of Washington who solicited and referred customers to Capstone to liquidate their securities.

14 12. Neither Capozza nor any other Capstone registered representative discussed or verified the  
15 customer suitability information gathered by the agents. Customers who sought advice from a Capstone  
16 registered representative regarding the suitability of liquidating their securities and purchasing an  
17 insurance product were told to speak directly with their respective insurance agent.

18 *Unsuitable Investment Recommendations and Excessive Trading*

19 13. Many agents who utilized Capstone prospected customers through advertisements and/or  
20 seminars regarding estate planning. These agents then met with customers and often assisted them with  
21 establishing living trusts. In the course of establishing these trusts, agents acquired information

1 regarding a customer's investment portfolio. Agents, acting on behalf of Capstone, recommended that  
2 customers liquidate their entire portfolio through Capstone and purchase an annuity.

3 14. Many customers whose securities were liquidated were retired, living on a fixed income,  
4 and had a limited knowledge of investing. Many customers held diversified portfolios of stocks, bonds,  
5 mutual funds, or other investments prior to these liquidations. The securities liquidated typically  
6 comprised a large percentage of a customer's assets. After liquidation, many customers were placed in  
7 fixed annuities, which were subject to surrender charges, without adequate consideration of each  
8 customer's financial needs, including the need to have sufficient liquidity to meet current or future  
9 expenses.

10 15. Despite the nature of the relationship between Capstone and the agents, all securities  
11 liquidations were identified by Capstone as unsolicited trades. Following the liquidations, Capstone sent  
12 checks directly to insurance companies to complete the purchase of insurance products.

13 16. As of January 2005, Capstone had liquidated securities belonging to at least thirty-two  
14 residents of the state of Washington. The proceeds were used to purchase insurance products, primarily  
15 fixed annuities, in an amount totaling approximately \$6,000,000.

16 *Failure to Disclose*

17 17. Capstone and Capozza each failed to disclose material information to customers regarding  
18 the liquidation of their securities, including but not limited to the following: the conflict of interest  
19 created by Capstone's promise to agents to facilitate the sale of insurance products in exchange for  
20 customer referrals; and the significance of signing the "General Unsolicited Letter Authorization to  
21 Liquidate," including but not limited to how a customer's legal remedies against Capstone might be  
22 negatively affected.

*Prior Litigation History*

18. Several of the agents that utilized Capstone were affiliated with Family First Estate Planning and Family First Insurance Services. On March 19, 2004, Family First Advanced Estate Planning entered into an Assurance of Discontinuance with the Washington State Attorney General's Office in which it agreed not to engage in the business of marketing living trust documents in the state of Washington. On October 29, 2004, the Securities Administrator entered a Statement of Charges (S-02-343-03-SC01) against Family First Advanced Estate Planning, Inc. and Family First Insurance Services alleging violations of RCW 21.20.010, the anti-fraud section of the Securities Act of Washington .<sup>1</sup>

Based upon the above Tentative Findings of Fact, the following Conclusions of Law are made:

**CONCLUSIONS OF LAW**

1. The offer to liquidate and/or sale of said securities by Capstone and Anthony Capozza, as described above, constitutes the offer or sale of a security, as defined in RCW 21.20.005(10) and (12).
2. Capstone Investments and Anthony Capozza, as described above, used individuals as salespersons, as defined in RCW 21.20.005(2), who were not registered in the state of Washington, in violation of RCW 21.20.040.
3. Capstone Investments and Anthony Capozza, as described above, recommended the sale of securities by customers without reasonable grounds to believe such transactions were suitable for such customers, in violation of RCW 21.20.702.

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<sup>1</sup> As of the date this Summary Order was entered, the charges against both Family First Advanced Estate Planning, Inc. and Family First Insurance Services were still pending.



1 from violation of RCW 21.20.040 the securities salesperson registration section of the Securities Act of  
2 Washington.

3 It is further SUMMARILY ORDERED that Respondents, Capstone Investments, Anthony  
4 Capozza, their agents, employees, and affiliated entities, each cease and desist from violation of RCW  
5 21.20.702, the suitability section of the Securities Act of Washington.

6 It is further SUMMARILY ORDERED that Respondents, Capstone Investments, Anthony  
7 Capozza, their agents, employees, and affiliated entities, each cease and desist from violation of RCW  
8 21.20.035, the unlawful purchases or sales for customer accounts section of the Securities Act of  
9 Washington.

10 It is further SUMMARILY ORDERED that Respondents, Capstone Investments, Anthony  
11 Capozza, their agents, employees, and affiliated entities, each cease and desist from violation of RCW  
12 21.20.010, the anti-fraud section of the Securities Act of Washington.

13 **NOTICE OF INTENT TO SUSPEND REGISTRATION**

14 Pursuant to RCW 21.20.110(1), and based upon the above Tentative Findings of Fact and  
15 Conclusions of Law, the Securities Administrator intends to order that the broker-dealer registration of  
16 Capstone Investments be suspended.

17 **NOTICE OF INTENT TO IMPOSE FINES**

18 Pursuant to RCW 21.20.110(1) and (4) and/or RCW 21.20.395, and based upon the above  
19 Tentative Findings of Fact and Conclusions of Law, the Securities Administrator intends to order that  
20 Respondent, Capstone Investments, shall be liable for and pay a fine of \$100,000.



1 Pursuant to RCW 21.20.110(1) and (4) and/or RCW 21.20.395, and based upon the above  
2 Tentative Findings of Fact and Conclusions of Law, the Securities Administrator intends to order that  
3 Respondent, Anthony Capozza, shall be liable for and pay a fine of \$10,000.

4 **NOTICE OF INTENT TO CHARGE COSTS**

5 Pursuant to RCW 21.20.110(7) and/or RCW 21.20.390(5), and based upon the Tentative Findings  
6 of Fact and Conclusions of Law, the Securities Administrator intends to order that Respondents,  
7 Capstone Investments and Anthony Capozza, shall each be liable for and pay to the Securities Division  
8 the costs, fees, and other expenses incurred in the conduct of the administrative investigation and hearing  
9 of this matter.

10 **AUTHORITY AND PROCEDURE**

11 This Statement of Charges and Summary Order are entered pursuant to the provisions of RCW  
12 21.20.110, RCW 21.20.390, and RCW 21.20.395, and are subject to the provisions of RCW 21.20.120 and  
13 Chapter 34.05 RCW. The Respondents may make a written request for a hearing as set forth in the  
14 NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING accompanying  
15 this Order. If a Respondent does not request a hearing, the Securities Administrator intends to adopt the  
16 foregoing Tentative Findings of Fact and Conclusions of Law as final, enter a permanent cease and desist  
17 order against that Respondent, impose the fines and costs sought, and/or suspend the broker-dealer  
18 registration of that Respondent.

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20 **WILLFUL VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.**

21 DATED and ENTERED this 1<sup>st</sup> day of December, 2005.

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*Michael E. Stevenson*

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MICHAEL E. STEVENSON  
Securities Administrator

Approved by:

*Suzanne Sarason*

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Suzanne Sarason  
Chief of Compliance & Examinations

Presented by:

*Chad C. Standifer*

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Chad C. Standifer  
Senior Enforcement Attorney

*K. Reynolds*

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Kate Reynolds  
Enforcement Attorney