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**STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
SECURITIES DIVISION**

IN THE MATTER OF DETERMINING
whether there has been a violation of the
Securities Act of Washington by:

Order Number S-10-274-10-CO01

CONSENT ORDER

CMG ADVISORS, LLC;
MARK J. SWENSON

Respondents.

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THE STATE OF WASHINGTON TO:

CMG Advisors, LLC (CRD #116497)
Mark J. Swenson (CRD #1287247)

Pursuant to the Securities Act of Washington, RCW 21.20, the Securities Division and Respondents CMG Advisors, LLC and Mark J. Swenson do hereby enter into this Consent Order in settlement of the matters alleged herein. Respondents neither admit nor deny the Findings of Fact and Conclusions of Law stated below.

FINDINGS OF FACT

Respondents

1. CMG Advisors, LLC (“CMG Advisors”) is a Washington limited liability company formed on February 16, 2001 with its place of business located at 1000 2nd Ave. #3950, Seattle, Washington 98104. CMG Advisors has been registered as an investment adviser in Washington since March 28, 2001. CMG Advisors has managed a series of pooled investment vehicles.

2. Mark J. Swenson (“Swenson”) is the owner and manager of CMG Advisors. Swenson has been registered with the Securities Division as an investment adviser representative of CMG Advisors

1 since March 28, 2001. He was previously registered as a securities salesperson in Washington from
2 1984 to 2000.

3 Nature of the Conduct

4 3. Between 2001 and 2009, CMG Advisors and Swenson, with his former co-owner and
5 manager of CMG Advisor, the late Steven C. Gregory (“Gregory”), offered and sold interests in a series
6 of eight pooled investment vehicles in the State of Washington: CMG Acquisition Fund I, LLC; CMG
7 Acquisition Fund II, LLC; CMG Acquisition Fund III, LLC; CMG Income Fund, LLC; CMG Income
8 Fund II, LLC; Anova Fund, LLC; CMG Special Fund, LLC; and CMG Growth Fund, LLC (collectively
9 “the Funds”).

10 4. CMG Advisors, Swenson, Gregory created and managed the Funds as an investment
11 advisor and investment adviser representatives licensed in the State of Washington. The Funds were
12 organized as limited liability companies with CMG Advisors as sole manager and a member. Investors
13 purchased member interests in the limited liability companies through private placement offerings. The
14 Funds invested in discounted REIT interests. The Funds would hold the REIT interests until the end of
15 their terms, and would distribute profits to investors during the holding period. Each investment vehicle
16 wound up within a few years.

17 5. The Securities Division considers all investors in a pooled investment vehicle to be clients
18 of the investment adviser who manages the investment vehicle. Pursuant to RCW 21.20.030 and WAC
19 460-24A-220(16), the adviser must maintain a written advisory contract with each investor. In this case,
20 the operating agreements investors signed with CMG Advisors as investors in the Funds served as their
21 advisory contracts.

1 6. These advisory contracts stated that CMG Advisors, as the manager and member of the
2 Funds, would be compensated for managing the Funds by a 2% annual fee on assets. In addition, the
3 advisory contracts provided that CMG Advisors, as the manager and member of the Funds, would
4 receive 25% to 35% of all gains once investors recouped their initial investment. In some Funds, the
5 investors were first entitled to a preferred return on their investment of 8% to 12%. The operating
6 agreements and offering materials for each Fund disclosed these fees.

7 7. An investment advisory fee based on a share of capital gains or capital appreciation is
8 known as a “performance fee.” Pursuant to RCW 21.20.030(1)(b) and WAC 460-24A-150, an
9 investment adviser may not enter into an advisory agreement with a client that includes a performance
10 fee unless the advisory client is a “qualified client” under Rule 205-3 of the Investment Advisers Act of
11 1940. At the time of the events described in this Consent Order, Rule 205-3 defined a “qualified client”
12 as a natural person or company who, when the advisory agreement was entered into, had a net worth of
13 at least \$1.5 million or at least \$750,000 invested with the investment adviser.

14 8. The Funds were profitable. Therefore, CMG Advisors, Swenson, and Gregory received
15 performance fees totaling more than \$4.0 million from the Funds. However, CMG Advisors, Swenson, and
16 Gregory did not collect information from investors to determine whether they were qualified clients.
17 According to CMG Advisors and Swenson, the majority of the clients were qualified clients; however,
18 CMG Advisors and Swenson believe that performance fees may have been collected from some clients who
19 were not qualified clients.

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21 Based upon the above Findings of Fact, the following Conclusions of Law are made:
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1 **CONCLUSIONS OF LAW**

2 1. CMG Advisors, LLC and Mark J. Swenson violated RCW 21.20.030, the unlawful acts of
3 investment advisor section of the Securities Act, because CMG Advisors and Mark J. Swenson entered
4 into investment advisory contracts which compensated CMG Advisors and Mark J. Swenson based upon
5 a share of capital gains or capital appreciation, and some of the investors in the Funds did not meet the
6 definition of “qualified client” under Rule 205-3 of the Investment Advisors Act of 1940.

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8 **CONSENT ORDER**

9 Based upon the foregoing and finding it in the public interest:

10 IT IS AGREED AND ORDERED that Respondents, CMG Advisors, LLC and Mark J. Swenson,
11 and their agents and employees, each shall cease and desist from violating RCW 21.20.030.

12 IT IS FURTHER AGREED AND ORDERED that Respondent Mark J. Swenson shall be liable for
13 and pay \$10,000 to the Securities Division before the entry of this Consent Order to cover the costs, fees,
14 and other expenses incurred by the Securities Division in its investigation of this matter.

15 IT IS FURTHER AGREED that this Consent Order is not intended to indicate that CMG Advisors,
16 LLC, Mark J. Swenson, or any of their affiliates or current or former employees, shall be subject to any
17 disqualifications contained in federal securities law, the rules and regulations thereunder, the rules and
18 regulations of self-regulatory organizations or the various states’ securities laws, including any
19 disqualifications from relying upon registration exemptions or safe harbor provisions. In addition, this
20 Consent Order is not intended to form the basis for any such disqualifications.

21 IT IS FUTURE AGREED that this Consent Order shall not disqualify CMG Advisors, LLC, Mark
22 J. Swenson, or any of their affiliates or current or former employees, from any business that they

1 otherwise are qualified or licensed to perform under applicable securities laws of the State of
2 Washington. In addition, this Consent Order is not intended to form the basis for any such
3 disqualifications.

4 IT IS FURTHER AGREED that the Securities Division has jurisdiction to enter this Order.

5 IT IS FURTHER AGREED that Respondents CMG Advisors, LLC and Mark J. Swenson hereby
6 enter into this Consent Order freely and voluntarily and with a full understanding of its terms and
7 significance.

8 IT IS FURTHER AGREED that in consideration of the foregoing Respondents CMG Advisors,
9 LLC and Mark J. Swenson waive their rights to a hearing in this matter and judicial review of this order
10 pursuant to RCW 21.20.440 and RCW 34.05.

11 SIGNED this 22nd day of February, 2012.

12 Approve for Entry by:

13 _____
14 /s/ Thomas A. Sterken, Attorney for Respondents
15 Washington State Bar Association #6965

16 Signed by:

17 _____
18 /s/ Mark J. Swenson, individually

19 Signed by:

20 CMG Advisors, LLC

21 By _____
22 /s/ Mark J. Swenson, Managing Member

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SIGNED and ENTERED this ___28th___ day of February, 2012.



WILLIAM M. BEATTY
Securities Administrator

Approved by:



Suzanne Sarason
Chief of Enforcement

Presented by:



Jill M. Vallely
Staff Attorney