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

IN THE MATTER OF DETERMINING ) Order No.: S-16-2045-17-SC01  
Whether there has been a violation of the )  
Securities Act of Washington by: ) STATEMENT OF CHARGES AND  
 ) NOTICE OF INTENT TO  
Capital Energy Group LLC; ) ENTER ORDER TO CEASE AND DESIST,  
Frank August; ) TO IMPOSE FINES,  
Cap E Oil Fund 1, LLP; ) AND TO CHARGE COSTS  
Cap E Oil Fund II, LLC; )  
Cap E Oil Fund III, LLC; )  
Cap E Oil Fund V, LLC; )  
Respondents )

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THE STATE OF WASHINGTON TO: Capital Energy Group LLC  
Frank August  
Cap E Oil Fund 1, LLP  
Cap E Oil Fund II, LLC  
Cap E Oil Fund III, LLC  
Cap E Oil Fund V, LLC

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**STATEMENT OF CHARGES**

Please take notice that the Securities Administrator of the state of Washington has reason to believe that Respondents Capital Energy Group LLC; Frank August; Cap E Oil Fund 1, LLP; Cap E Oil Fund II, LLC; Cap E Oil Fund III, LLC; and Cap E Oil Fund V, LLC have each violated the Securities Act of Washington. The Securities Administrator believes those violations justify the entry of an order against the Respondents to cease and desist from such violations and to charge costs pursuant to RCW 21.20.390, and under RCW 21.20.395 to impose fines. The Securities Administrator finds as follows:

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**TENTATIVE FINDINGS OF FACT**

**Respondents**

1. Capital Energy Group LLC (“Capital Energy”) is a Delaware limited liability company formed on October 5, 2012. Capital Energy used a business address in Austin, Texas. Capital Energy was the Managing Partner for multiple oil and gas projects in Texas and Oklahoma, as detailed below.

1 2. Frank August (“August”) is a resident of Nevada who was an independent sales representative  
2 for Capital Energy and used the title “National Sales Director” and “Executive Director.” August was the  
3 President of Franklin Spencer Group Inc., a revoked Nevada corporation formed on or about November 20,  
4 2013. August was also the President of another revoked Nevada corporation with a similar name, Franklin  
5 Spencer Group, Inc., which was formed on or about November 5, 2004.

6 3. Cap E Oil Fund 1, LLP, a/k/a Cap E Oil Fund I, LLC; a/k/a “Cap E Oil Fund #1, LLP” (“Fund  
7 1”) is a Delaware limited liability partnership formed on or about March 26, 2013.

8 4. Cap E Oil Fund II, LLC (“Fund 2”) is a Delaware limited liability company formed on or about  
9 July 1, 2014.

10 5. Cap E Oil Fund III, LLC, a/k/a “Cap E Oil Fund #3, LLC” (“Fund 3”) is a Delaware limited  
11 liability company formed on or about July 2, 2014.

12 6. Cap E Oil Fund V, LLC, a/k/a Cap E Oil Fund #5, LLC” (“Fund 5”) is a Delaware limited  
13 liability company formed on or about February 3, 2016.

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15 **Other Relevant Persons and Entities**

16 7. Cap E Oil Fund IV LLC, a/k/a Cap E Oil Fund #4, LLC” (“Fund 4”) is a Delaware limited  
17 liability company formed on or about December 30, 2014.

18 8. William J. Milles (“Milles”) was the CEO of Capital Energy. Milles resided in New Jersey.

19 9. Donald J. Lutzko (“Lutzko”) was the President of Capital Energy. Lutzko resided in Toronto,  
20 Canada.

21 **Other Securities Enforcement Actions**

22 10. On June 26, 2017, the Ohio Division of Securities issued a Notice of Intent to Issue Cease and  
23 Desist Order against Capital Energy, Fund 4, Lutzko, and Milles for violations of the Ohio Securities Act. On  
24 January 11, 2018, the Ohio Division of Securities issued an Order against Capital Energy, Fund 4, Lutzko,  
25 and Milles.

1 11. On June 29, 2017, the Securities Division of the State of Washington issued a Statement of  
2 Charges against August, Aegis Oil, LLC, and other persons and entities (Order No. S-16-1958-17-SC01) for  
3 violations of the registration and anti-fraud provisions of the Securities Act of Washington. On July 28, 2017,  
4 a Final Order was entered against August.

### 5 **Nature of the Conduct**

#### 6 *Overview*

7 12. Between approximately 2013 and 2015, Capital Energy raised more than \$450,000 from the  
8 sale of oil and gas investments to three Washington residents, including a widowed retired electrician who  
9 invested his life savings and a retired school teacher. In total, Capital Energy raised more than \$2 million  
10 from more than 60 investors around the United States, including several senior citizens. By 2016, Capital  
11 Energy stopped making payments to investors, but continued to send reassuring emails to investors through  
12 2017 and 2018.

13 13. Capital Energy and its sales representatives initially solicited Washington residents and other  
14 investors by telephone “cold calls.” Some investors had previously been solicited to invest in other oil and  
15 gas businesses associated with August or Milles, including Aegis Oil, LLC. After these initial telephone  
16 contacts, August travelled to Washington and took some investors out to dinner at restaurants near their home.  
17 Capital Energy paid referral fees to some investors, and arranged for them to speak by telephone to other  
18 prospective investors about repayments they had received on their investments.

19 14. Capital Energy encouraged investors to withdraw funds from their retirement accounts and  
20 invest the proceeds in oil and gas projects managed by Capital Energy. Capital Energy offered some investors  
21 a credit to cover penalties they incurred for making early withdrawals from their retirement accounts. For  
22 example, in February 2015, Capital Energy sent a letter to a Washington resident and stated that it would  
23 cover any tax penalties for early withdrawals from his 401(k) retirement account.  
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15. Capital Energy and August sold membership units in multiple oil and gas funds. Washington residents were sold investments in Fund 1, Fund 2, and Fund 3. In 2015, Capital Energy offered and sold investments in Fund 4 to investors in other states. In 2016, the Respondents offered an investment in Fund 5 to at least one Washington resident. The terms of the offerings are summarized below in the following table:

<b>Fund</b>	<b># Units</b>	<b>Price per Unit</b>	<b>Total Offering Amount</b>
Fund 1	52	\$49,500	\$2,574,000
Fund 2	5	\$332,000	\$1,660,000
Fund 3	40	\$58,334	\$2,330,360
Fund 4	40	\$50,334	\$2,013,360
Fund 5	45	\$49,500	\$2,227,500

16. For each offering, Capital Energy provided investors with an Executive Summary, a Partnership Agreement, a Subscription Agreement, and a Confidential Private Placement Memorandum (PPM). Some investors wired funds to a bank account in the name of the fund, while other investors sent checks to Capital Energy’s business address in Austin, Texas. After making their investment, investors later received membership certificates showing how many units they owned in the Fund that they invested in.

17. Capital Energy and August made misleading representations concerning the potential returns on the investment. Capital Energy claimed it had state-of-the-art water injection system technology and “Enhanced Oil Recovery system technology” that would be used to rework existing oil wells in Oklahoma and Texas. The Executive Summary for each Fund claimed that investors would earn enormous returns within six years of making their investment, as summarized in the table below:

<b>Fund</b>	<b>Forecasted Return on Investment</b>
Fund 1	302%
Fund 2	363%
Fund 3	258%
Fund 4	229%
Fund 5	232%

Capital Energy also included these misleading projections in the PPMs for each Fund. Capital Energy failed to provide a reasonable basis for these projected returns. The Executive Summary and PPMs included a six-year Annual Cash Flow Forecast. The Forecast for Funds 1-3 showed the price of oil (per barrel) increasing from \$105 in Year 1 to \$120 in Year 6. In fact, crude oil prices declined significantly in 2014-2015 to below \$40 per barrel. Capital Energy and August led multiple investors to believe they were guaranteed to receive a return of their investment principal, even if the price of oil declined. In truth, Capital Energy stopped making payments to investors in 2016 and claimed the “drop in oil prices . . . basically put us under.”

18. The Respondents made false and misleading statements concerning the commissions that would be paid to August and other sales representatives. The PPMs represented that units in the Funds would be “privately solicited by officers, directors, and bona fide employees” of Capital Energy who would “not receive any commissions or performance-based remuneration.” In fact, August was paid a 25% commission on the sale of investments, and his business (Franklin Spencer Group) received more than \$300,000 from Fund 3.

19. After investors made their initial investment, Capital Energy typically sent them small monthly payments by cashier’s checks or direct deposits into their bank account. These small monthly payments encouraged some investors to make additional investments with Capital Energy. For example, after investing \$40,000 in July 2014, a Washington investor periodically received a series of monthly payments in the amount of approximately \$1,035. After receiving these repayments, the Washington investor subsequently invested

1 an additional \$58,334 in 2015. Capital Energy failed to disclose to investors that, in some cases, the source  
2 of their repayments were funds from new investors, not revenue from oil production.

3 *Fund 1*

4 20. In 2013, the Respondents solicited a widowed retired electrician in Redmond, Washington  
5 (hereinafter, the “Redmond investor”) to invest in Fund 1. After an initial cold call, the Redmond investor  
6 spoke on multiple occasions to August. The Redmond investor was sent an Executive Summary, which  
7 represented that the objective of Fund 1 was to acquire interests in four producing oil wells in Frio County,  
8 Texas. The Executive Summary also stated that the Operator for the wells was Russell L. Vera of Fortune  
9 Operating Company. The Redmond investor received a letter from Capital Energy dated November 3, 2013,  
10 which represented that within six years, he would receive payments totaling at least the amount of his initial  
11 investment. Using funds from his retirement account, the Redmond investor wired nearly \$84,000 to an  
12 account in the name of Fund 1 in New Jersey. The Redmond investor incurred more than \$7,000 in surrender  
13 fees, so Capital Energy credited him with having made an investment of approximately \$91,000.

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15 21. Over the next few months, the Redmond investor began receiving small payments from Capital  
16 Energy and also received multiple phone calls about making an additional investment. In approximately  
17 March 2014, the Redmond investor withdrew the remainder of his retirement funds, and invested an additional  
18 \$32,000 in Fund 1.

19 22. In approximately July 2014, Capital Energy solicited a retired teacher in Camano Island,  
20 Washington (hereinafter, “the Camano Island investor”). Capital Energy provided the Camano Island investor  
21 with an Executive Summary for Fund 1, which represented the business objective of Fund 1 was to acquire  
22 interests in four wells in Tulsa County, Oklahoma. The offering documents provided by Capital Energy did  
23 not disclose that Fund 1’s prior business purpose related to wells in Texas or any information about why it  
24 changed its business purpose. The offering materials also failed to disclose that on February 13, 2014, the  
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Alaska Department of Commerce, Community, and Economic Development issued a Final Cease and Desist

1 Order Assessing Civil Penalties against Fortune Oil & Gas, Ltd. and Russell Vera (the Operator for Fund 1)  
2 for violations of the Alaska Securities Act. On or about July 18, 2014, the Camano Island investor invested  
3 \$40,000 in Fund 1 and later received a membership certificate.

4 *Fund 2*

5 23. In approximately 2015, Capital Energy sold an investment in Fund 2 to at least one Washington  
6 resident. According to an Executive Summary, the business objective of Fund 2 was to acquire and rework  
7 four oil wells in Guadalupe County, Texas. Capital Energy offered a total of 5 units in Fund 2 at a price of  
8 \$332,000 per unit. Investors were led to believe they would receive a return of 363% within six years.  
9 Between June and November 2015, a Washington resident wired over \$152,000 to an account in the name of  
10 Fund 2 and purchased a ½ unit.

11 *Fund 3*

12 24. Beginning in approximately 2014, Capital Energy and August began soliciting investors to  
13 invest in Fund 3. The Respondents provided investors with an Executive Summary and a PPM that was dated  
14 July 2, 2014. According to these offering materials, the business objective of Fund 3 was to acquire and  
15 rework four oil wells in Guadalupe County, Texas. In September 2015, the Camano Island investor invested  
16 \$58,334 in Fund 3 and his investment funds were deposited into a bank account in the name of Fund 3. Days  
17 after the deposit of these funds, Fund 3 paid more than \$20,000 to August's business, Franklin Spencer Group.  
18 Later that month, Fund 3 made more than a dozen payments to investors who had previously invested in Fund  
19 1 or Fund 3.

20 *Fund 5 Offer and Post-Investment Contacts*

21 25. By 2016, oil prices had declined significantly and Capital Energy ceased making payments to  
22 its investors. Nonetheless, on April 7, 2016, August solicited the Redmond investor and his partner to invest  
23 in a new offering, Fund 5. August emailed an Executive Summary, which represented that the objective of  
24 Fund 5 was to acquire working interests in multiple oil and gas wells in Oklahoma. The Executive Summary  
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1 represented that the investment was forecasted to yield a return of 232% within six years. Days later, however,  
2 August sent another email which indicated that Capital Energy had not “produced one drop of oil” and had  
3 paid investors “with capital raised from newer investors!” On April 21, 2016, August sent an email to multiple  
4 investors which stated: “Not one drop of oil ... has come out of the ground. All the postings on the website  
5 about existing production are complete lies. ... Sorry I placed you with such a lowlife company like this.”

6 26. Over the course of the next few months, Capital Energy sent multiple emails in an attempt to  
7 reassure investors. For example, in June 2016, Capital Energy sent an email to investors which stated that  
8 “Operations are moving forward” and noting that payments would be “ramping up.” In July 2016, Capital  
9 Energy sent more emails, which claimed that “Funds are starting to come in from our [Oklahoma] production”  
10 and further represented that payments would be coming “within the week” or “as soon as we get funds in.”

11 27. By September 2016, however, no payments were made and Capital Energy notified investors  
12 that it was under investigation. Capital Energy falsely claimed that the issuance of a cease and desist order  
13 against the company would force it to “stop all ongoing efforts to procure oil revenue.” Capital Energy further  
14 stated that it had had “dealings with some unscrupulous Oil Company Operators, which has cost the enterprise  
15 over one million dollars.” Capital Energy claimed it would be “moving all clients into a new offering with  
16 wells that are producing.”

17 28. On or about November 25, 2016, August solicited multiple Capital Energy investors, including  
18 at least two Washington residents. August claimed he was now involved with a new medical business that  
19 could get “all of your money back and more.” August stated that he had been waiting for 35 years “for  
20 something this good to come along” and claimed that investors could “double their money every year for at  
21 least five years.” August failed to disclose any basis for these projected returns or any information concerning  
22 the risk of the investment.

23 29. In 2017 and 2018, Capital Energy continued to send lulling emails to investors about the status  
24 of their investments and the possibility of future repayments. Capital Energy stated that the company and all  
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1 its subsidiaries had been “shut down” and that it would “move everyone” into a new business named Omega  
2 Group I Inc. (OGI). Capital Energy stated that it would be issuing shares in OGI to investors, which would  
3 purportedly create a “future potential buyout” and an “exit strategy” for investors.

#### 4 **Registration Status**

5 30. Respondent Capital Energy Group LLC is not currently registered to sell its securities in the  
6 state of Washington and has not previously been so registered, nor has it filed a claim of exemption from  
7 registration.

8 31. Cap E Oil Fund 1, LLP is not currently registered to sell its securities in the state of Washington  
9 and has not previously been so registered, nor has it filed a claim of exemption from registration.

10 32. Cap E Oil Fund II, LLC is not currently registered to sell its securities in the state of  
11 Washington and has not previously been so registered, nor has it filed a claim of exemption from registration.

12 33. Cap E Oil Fund III, LLC is not currently registered to sell its securities in the state of  
13 Washington and has not previously been so registered, nor has it filed a claim of exemption from registration.

14 34. Cap E Oil Fund V, LLC is not currently registered to sell its securities in the state of  
15 Washington and has not previously been so registered, nor has it filed a claim of exemption from registration.

16 35. Frank August is not currently registered as a securities salesperson or broker-dealer in the state  
17 of Washington and has not previously been so registered.

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

#### 21 **CONCLUSIONS OF LAW**

22 1. The offer and/or sale of the investments described above constitute the offer and/or sale of a  
23 security as defined in RCW 21.20.005(14) and (17).

24 2. Respondents Capital Energy Group LLC; Frank August; Cap E Oil Fund 1, LLP; Cap E Oil  
25 Fund II, LLC; Cap E Oil Fund III, LLC; and Cap E Oil Fund V, LLC have each violated RCW 21.20.140,

1 because, as set forth in the Tentative Findings of Fact, the Respondents offered and/or sold securities for  
2 which no registration is on file with the Securities Administrator.

3 3. Frank August has violated RCW 21.20.040 by offering and/or selling said securities while not  
4 being registered as a securities salesperson or broker-dealer in the state of Washington.

5 4. Respondents Capital Energy Group LLC; Frank August; Cap E Oil Fund 1, LLP; Cap E Oil  
6 Fund II, LLC; Cap E Oil Fund III, LLC; and Cap E Oil Fund V, LLC have each violated RCW 21.20.010,  
7 because, as set forth in the Tentative Findings of Fact, the Respondents made untrue statements of material  
8 fact or omitted to state material facts necessary to make the statements made, in light of the circumstances in  
9 which they were made, not misleading.

10 **NOTICE OF INTENT TO ORDER THE RESPONDENTS TO CEASE AND DESIST**

11 Based upon the above Tentative Findings of Fact and Conclusions of Law, the Securities  
12 Administrator intends to order, pursuant to RCW 21.20.390(1), that Respondents Capital Energy Group LLC;  
13 Frank August; Cap E Oil Fund 1, LLP; Cap E Oil Fund II, LLC; Cap E Oil Fund III, LLC; and Cap E Oil  
14 Fund V, LLC; their agents and employees each shall cease and desist from violations of RCW 21.20.010 and  
15 RCW 21.20.140, and that Respondent Frank August, his agents and employees each shall cease and desist  
16 from violations of RCW 21.20.040.

17 **NOTICE OF INTENT TO IMPOSE FINES**

18 Pursuant to RCW 21.20.395, and based upon the Tentative Findings of Fact and Conclusions of Law,  
19 the Securities Administrator intends to order that:  
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- 21 a. Respondent Capital Energy Group LLC shall be liable for and shall pay a fine of \$30,000; and  
22 b. Respondent Frank August shall be liable for and shall pay a fine of \$15,000.

23 **NOTICE OF INTENT TO CHARGE COSTS**

24 Pursuant to RCW 21.20.390, and based upon the Tentative Findings of Fact and Conclusions of Law,  
25 the Securities Administrator intends to order that Respondents Capital Energy Group LLC and Frank August

1 shall each pay the costs, fees, and other expenses incurred in the administrative investigation and hearing of  
2 this matter, in an amount not less than \$2,000.

3 **AUTHORITY AND PROCEDURE**

4 This Statement of Charges is entered pursuant to the provisions of Chapter 21.20 RCW and is subject  
5 to the provisions of Chapter 34.05 RCW. The Respondents may each make a written request for a hearing as  
6 set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING  
7 accompanying this Order. If a Respondent does not make a hearing request in the time allowed, the Securities  
8 Administrator intends to adopt the above Tentative Findings of Fact and Conclusions of Law as final and to  
9 enter a permanent order to cease and desist as to that Respondent, to impose any fines sought against that  
10 respondent, and to charge any costs sought against that Respondent.

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12 Signed and Entered this 2nd day of October 2018.

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15 \_\_\_\_\_  
16 William M. Beatty  
17 Securities Administrator

18 Approved by:

18 Presented by:

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21 \_\_\_\_\_  
22 Suzanne Sarason  
23 Chief of Enforcement

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22 Robert Kondrat  
23 Financial Legal Examiner Supervisor