

**COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE SECRETARY OF THE COMMONWEALTH
SECURITIES DIVISION
ONE ASHBURTON PLACE, ROOM 1701
BOSTON, MASSACHUSETTS 02108**

_____))
IN THE MATTER OF:))
))
CAPITAL INVESTMENT GROUP, INC. AND))
ROBERT S. GRAHAM))
_____))

Docket No. E-2017-0088

CONSENT ORDER

I. PRELIMINARY STATEMENT

This Consent Order (the “Order”) is entered into by the Massachusetts Securities Division (the “Division”) and Capital Investment Group, Inc. (“CIG”) with respect to the investigation by the Enforcement Section of the Division (the “Enforcement Section”) into whether CIG’s activities and conduct violated the Massachusetts Uniform Securities Act, MASS. GEN. LAWS ch. 110A (“Act”).

On August 21, 2018, CIG submitted an Offer of Settlement (the “Offer”) to the Division. CIG admits the Statement of Facts set forth in Section VI below and the Violations of Law set forth in Section VII below, and consents solely for the purpose of these proceedings to this Order by the Division, consistent with the language and terms of the Offer, settling this investigation (Docket No. E-2017-0088).

II. JURISDICTION

1. The Division has jurisdiction over matters relating to securities, as provided for by the Act. In part, the Act authorizes the Division to regulate: 1) the offers, sales, and purchases of securities; 2) those individuals offering and/or selling securities; and 3) those individuals transacting business as investment advisers within the Commonwealth.

2. The Offer was made and this Order is entered in accordance with MASS. GEN. LAWS ch. 110A. Specifically, the acts and practices investigated by the Division took place in Massachusetts and were directed toward a Massachusetts resident while CIG was registered in Massachusetts as a broker-dealer.

III. RELEVANT TIME PERIOD

3. Except as otherwise expressly stated, the conduct of CIG, as described herein, occurred during the approximate time period of April 1, 2012 to June 13, 2014 (the "Relevant Time Period").

IV. RESPONDENT

4. Capital Investment Group, Inc. ("CIG") is a broker-dealer with headquarters in Raleigh, North Carolina. CIG has a Financial Industry Regulatory Authority ("FINRA") Central Registration Depository ("CRD") number of 14752. CIG has been registered in Massachusetts as a broker-dealer since 1992. CIG has one branch office in Massachusetts.

V. RELATED PARTIES

5. Robert S. Graham ("Graham") is a natural person and a resident of Arizona. Graham has a FINRA CRD number of 3126485 and was registered as a broker-dealer agent of CIG in Massachusetts from March 1, 2011 to June 13, 2014. Graham had two customers residing in Massachusetts, including Massachusetts Investor One, described below.

6. Green Steel, LLC ("Green Steel") is an Arizona limited liability company. Green Steel was a business venture started by Graham and several business partners, and it operated as the manager and owner of other businesses throughout the United States,

including Groveton NH1, LLC (“Groveton”) and Island Station MN1, LLC, which later became St. Paul River Walk, LLC (“Island Station” or “St. Paul”).

VI. STATEMENT OF FACTS

A. Massachusetts Investor One

7. Massachusetts Investor One is a 67 year old artist. She served as the trustee for two trusts; one for her disabled brother and one for her elderly mother.

8. Massachusetts Investor One stated to the Division that Massachusetts Investor One was first put in contact with Graham after inheriting and selling property in Port-au-Prince, Haiti. Massachusetts Investor One further stated to the Division that the resulting funds were a substantial source of income for Massachusetts Investor One, her brother, and her mother.

9. The Division’s position is that Graham understood Massachusetts Investor One had little financial experience and was responsible for the care of her disabled brother and elderly mother in addition to herself and did not have the skills needed to manage the large proceeds of the sale of the Haiti property. CIG’s New Account Forms signed by Massachusetts Investor One when she transferred an annuity to CIG indicate she had 23 years of experience with stocks, bonds, and mutual funds, and 13 years of experience with annuities.

10. Massachusetts Investor One stated to the Division that Graham was aware that because of Massachusetts Investor One’s familial situation, her risk tolerance was very low, and she required conservative investments to be made on her behalf. CIG’s New Account Forms signed by Massachusetts Investor One when she transferred an annuity to

CIG indicate her primary objective and risk tolerance was “Capital Appreciation/Growth + Moderate.”

11. Massachusetts Investor One stated to the Division that in the years following their initial meeting and prior to Graham’s registration with CIG, Massachusetts Investor One suffered substantial losses through risky investments made on Graham’s recommendation.

12. In November 2010, Graham became a registered broker dealer agent of CIG. Shortly after, Massachusetts Investor One transferred an annuity to CIG as the broker of record. In August 2013, Massachusetts Investor One also invested in various Real Estate Investment Trusts (“REITs”) on behalf of herself and the trusts. The transfer of the annuity and the REITs were the only investments carried and/or purchased through Graham’s registration with CIG.

13. Graham operated out of Phoenix, Arizona, and was also registered with an outside registered investment advisor called RG Capital during his time with CIG.

14. CIG utilized an on-site Office of Supervisory Jurisdiction (“OSJ”) who was previously affiliated with Graham and became an OSJ for CIG when Graham became a registered agent of CIG.

15. In April 2012, Graham formed Green Steel and disclosed it to CIG as an outside business activity (“OBA”) that he had acquired a 50% interest in and was investing personal capital.

16. Beginning in August 2012, and without CIG’s knowledge or approval, Graham began to solicit Massachusetts Investor One to invest in Green Steel satellite projects via promissory notes and unit interest purchases.

17. Massachusetts Investor One stated to the Division that Graham presented these investments to Massachusetts Investor One as exclusive offerings. In fact, Graham also presented these projects to other RG Capital clients.
18. The first of the investments were two promissory notes, totaling \$100,000, given to Massachusetts Investor One in August 2012.
19. The two promissory notes were given in relation to Island Station.
20. Each promissory note gave a generalized interest rate of 15% and was set to mature 6 months after issue.
21. Massachusetts Investor One has received no interest or principal payments even six years after the maturation of the notes.
22. In September 2012, Graham began to solicit individuals to invest in Groveton, an entity owned and controlled by Green Steel. Among the offering documents provided by Graham in connection with Groveton, investors received a "Unit Purchase Agreement" for the purchase of unit interests in Groveton. The Unit Purchase Agreement set forth generalized risk factors, including the potential loss of the purchaser's entire investment.
23. Graham solicited \$400,000 in investments in Groveton from Massachusetts Investor One and the trusts for which she served as trustee. Massachusetts Investor One received the Unit Purchase Agreement in connection with her investments.
24. According to CIG, Massachusetts Investor One was the only resident in the State of Massachusetts who invested in Groveton.
25. CIG became aware of Graham's activities on or about September 21, 2012, when Graham's OSJ submitted an update for Graham's OBA.

26. CIG's Chief Compliance Officer ("CCO") immediately brought his concerns to Graham's attention upon discovery, stating in an email that "[Graham] is focusing on every part of his business except increasing the business done through Capital," and that "[n]ow [Graham] wants to do a private offering on one of his own entities," and that "it is time that [Graham] finds a new [broker-dealer]."

27. CIG's CCO acknowledged that by offering interests to investors, Graham's previously-approved OBAs became private securities transactions, which CIG's CCO had not approved.

28. At the time objections were raised by CIG's CCO, Graham had already solicited investors for Groveton, and Graham continued to move forward with all aspects of the Groveton project notwithstanding the discussions with CIG about his failure to disclose the offerings or seek CIG's prior approval.

29. CIG has acknowledged it had three options upon discovery: terminate Graham, disapprove of the transaction, or review and approve the transaction after the fact.

30. CIG's CCO stated to the Division that his recommendation was to terminate Graham. However he was not involved in the final decision due to an unplanned medical absence.

31. After multiple discussions with Graham and his OSJ, CIG decided to approve the transactions after the fact, subject to liability waivers.

32. In October 2012, CIG agreed to approve the Groveton investments on the condition that Graham send a letter to investors setting forth certain disclosures and representations, and that they agree to sign it. Thereafter, Graham sent what CIG has

referred to as "Hold Harmless Letters" to Groveton investors. Each Hold Harmless Letter required that the investor confirm the following representations:

"(1) I fully understand that Groveton is an entity wholly unrelated to and unaffiliated with CIG, or any of CIG's affiliates, subsidiaries, or parent companies;

(2) I fully understand and agree that CIG did not solicit, promote, or in any way recommend my investment or interest in Groveton;

(3) I fully understand and agree that CIG has in no way profited from, nor received any compensation of any kind from, my investment in Groveton;

(4) I will hold CIG, or any of its affiliates, subsidiaries, or parent companies, harmless as to the investment performance of Groveton."

33. Graham provided a Hold Harmless Letter to Massachusetts Investor One for each of her and/or the trusts investments in Groveton, and she executed a Hold Harmless Letter for each investment in December 2012, several months after her initial investment.

34. CIG has acknowledged that under FINRA Rule 3280(c)(2), if a broker-dealer approves a transaction, then it is obligated to supervise the transaction as if it were executed on CIG's behalf.

35. CIG's due diligence of Green Steel and its shell companies was limited to a review of the offering documents and an internet search of the properties.

36. Graham and his partners mismanaged the Groveton project, eventually leading to the project's failure.

37. The Groveton property was given to one of the vendors owed substantial payments for work it had performed.

38. All of the Groveton investments made by Massachusetts Investor One on the recommendation of Graham were speculative ventures controlled by Graham or his partners and ultimately failed, and that Massachusetts Investor One lost the entirety of her investments.

39. The loss of the investments caused significant financial and personal hardship on Massachusetts Investor One.

40. Graham failed to disclose the Groveton investments to CIG prior to offering them to customers. After CIG learned of Graham's solicitation of Massachusetts Investor One and her purchase of unit interests in Groveton, CIG did not take any meaningful action to supervise Massachusetts Investor One's investment outside of requiring that Graham provide additional disclosures in the Hold Harmless Letters and confirm Massachusetts Investor One's understanding of these disclosures and her agreement to hold CIG harmless for the performance of the Groveton investments.

41. CIG failed in its duty to adequately supervise Graham with regard to Massachusetts Investor One's investments.

VII. VIOLATIONS OF LAW

Count I – Violations of MASS. GEN. LAWS ch. 110A § 204(a)(2)(J)

42. Section 204 of the Act provides in the pertinent part:

(a) the secretary may by order impose an administrative fine or censure or deny, suspend, or revoke any registration or take any other appropriate action if he finds [...] (2) the applicant or registrant [...]:

(J) has failed reasonably to supervise agents, investment advisers representatives or other employees to assure compliance with this chapter.

MASS. GEN. LAWS. ch. 110A, § 204(a)(2)(J).

43. The conduct of CIG, as described in Section VI, constitutes violations of MASS. GEN. LAWS ch. 110A, § 204(a)(2)(J).

VIII. ORDER

IT IS HEREBY ORDERED:

- A. CIG shall permanently cease and desist from further conduct in violation of the Act and Regulations;
- B. CIG is censured by the Division;
- C. CIG shall offer restitution to Massachusetts Investor One to compensate her for those losses and harm attributable to the alleged wrongdoing, subject to the following terms:
 - 1. CIG shall make a written offer of restitution to Massachusetts Investor One;
 - 2. The proposed written offer to Massachusetts Investor One to provide restitution per this Section shall not be unacceptable to the Enforcement Section, and a draft of the proposed written offer shall be provided to the Enforcement Section within fifteen (15) days of the entry of a signed Order issued pursuant to this Order;
 - 3. Within fifteen (15) days of receiving written or electronic notice that the proposed written offer of restitution is not unacceptable to the Enforcement Section, CIG shall make the written offer of restitution to Massachusetts Investor One;
 - 4. The written offer of restitution shall remain open to Massachusetts Investor One for at least ninety (90) days; and
 - 5. If Massachusetts Investor One accepts the written offer, then within fifteen

(15) days following the date that CIG makes a restitution payment to Massachusetts Investor One, CIG shall provide the Enforcement Section with a written notice and certification of the disposition of the payments made pursuant to this Section. CIG shall cooperate with requests for information and provide supporting documentation relating to the restitution payment to the Enforcement Section upon request. If Massachusetts Investor One declines to accept the written offer, which was deemed not unacceptable by the Enforcement Division, then Massachusetts Investor One's decision to decline the written offer is without prejudice to the Division's full settlement of this matter with CIG and does not affect the entry of this Order.

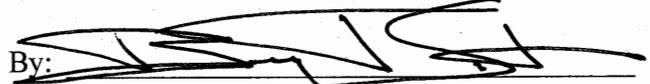
D. CIG shall conduct a comprehensive review, not unacceptable to the Enforcement Section, of CIG's policies and procedures related to the supervision of outside business activities conducted by CIG agents and/or representatives, subject to the following terms:

1. Within ninety (90) of the entry of this Order, CIG shall submit a report to the Enforcement Section containing the findings of the comprehensive review (the "Report"). The Report shall include, but not be limited to, a description of the review performed, the conclusions reached, and the recommendations for changes in or improvements to the policies and procedures of CIG, as well as a procedure for implementing the recommended changes in or improvements to those policies and procedures;

2. The Report's recommendations shall not be unacceptable to the Enforcement Section, provided that the Enforcement Section shall not unreasonably withhold its approval of those recommendations; and
 3. If the recommendations are not unacceptable to the Enforcement Section, CIG shall promptly adopt all recommendations contained in the Report.
- E. CIG shall pay an administrative fine in the amount of \$50,000 (USD) to the Commonwealth of Massachusetts in two equal installments of \$25,000, to be paid as follows: \$25,000 on or before December 1, 2018 and \$25,000 on or before March 1, 2019. In determining to resolve this matter in the manner set forth herein, and in determining the appropriate administrative fine, the Enforcement Section considered CIG's cooperation with the investigation. Payment shall be: (1) made by United States postal money order, certified check, bank cashier's check, bank money order, or wire transfer; (2) made payable to the Commonwealth of Massachusetts; and (3) either hand-delivered or mailed to One Ashburton Place, Room 1701, Boston, Massachusetts 02108, or wired per Division instructions; and (4) submitted under cover letter or other documentation that identifies the party making the payment and the docket number of the proceedings. Additionally, CIG shall provide the Enforcement Section with notice twenty-four (24) hours prior to the payment; and
- F. Upon issuance of the Order, if CIG fails to comply with any of the terms set forth in the Order, the Enforcement Section may take all appropriate action. Additionally, after a fair hearing and the issuance of an order finding that CIG has not complied with the Order, the Enforcement Section may move to have the Order declared null

and void, in whole or in part, and re-institute the associated investigation that had been brought against CIG.

**WILLIAM FRANCIS GALVIN
SECRETARY OF THE COMMONWEALTH**



By:
Bryan J. Lantagne
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Date: August 23, 2018