

1 PRESTON DuFAUCHARD
California Corporations Commissioner
2 WAYNE STRUMPFER
Deputy Commissioner
3 ALAN S. WEINGER (CA Bar No. 86717)
Supervising Attorney
4 NICHOLAS LANZA (CA Bar No.124721)
Senior Corporations Counsel
5 320 W. Fourth Street, Suite 750
Los Angeles, CA 90013
6 Tel: 1(888) 877-5379, ask for: (213) 576-7189
7 Fax: (213) 576-7181
Attorneys for Complainant

9
10 BEFORE THE DEPARTMENT OF CORPORATIONS
11 OF THE STATE OF CALIFORNIA

12	In the Matter of	)	CASE NO.
13)	
14	THE CALIFORNIA CORPORATIONS	)	FILE NO. 41400
15	COMMISSIONER,)	
16	Complainant,	)	ACCUSATION AND STATEMENT IN
17	v.	)	SUPPORT RE INTENT TO ISSUE ORDERS:
18	CAPSTONE INVESTMENTS AND	)	1. SUSPENDING CAPSTONE
19	ANTHONY CAPOZZA,	)	INVESTMENTS' BROKER-DEALER AND
20	Respondents.	)	INVESTMENT ADVISER CERTIFICATES
21		)	PURSUANT TO CORPORATIONS CODE
22		)	SECTIONS 25212 and 25232;
23		)	2. SUSPENDING ANTHONY CAPOZZA
24		)	FROM ANY POSITION OF EMPLOYMENT,
25		)	MANAGEMENT OR CONTROL OF ANY
26		)	BROKER DEALER OR INVESTMENT
27		)	ADVISER. PURSUANT TO CORPORATIONS
28		)	CODE SECTION 25213;
		)	3. MAKING ORDER TO DISCONTINUE
		)	VIOLATIONS PURSUANT TO
		)	CORPORATIONS CODE SECTION 25249
		)	FINAL;
		)	4. LEVYING ADMINISTRATIVE
		)	PENALTIES PURSUANT TO
		)	CORPORATIONS CODE SECTIONS 25252;
		)	AND
		)	5. FOR ANCILLARY RELIEF PURSUANT
		)	TO CORPORATIONS CODE SECTION 25254.

1 Preston DuFauchard, the California Corporations Commissioner ("Commissioner") of the
2 Department of Corporations ("Department") alleges and charges as follows:

3 **I. JURISDICTION AND VENUE**

4 1. The Commissioner is authorized to administer and enforce the provisions of the
5 Corporate Securities Law of 1968 (Corp. Code, § 25000 et seq.) and the regulations promulgated
6 thereunder (Cal. Code Regs., tit. 10, § 260.000 et seq.), pursuant to Corporations Code section
7 25600.

8 2. Capstone Investments ("Capstone") holds a valid and unrevoked broker-dealer
9 certificate issued by the Commissioner pursuant to Corporations Code section 25210 on May 5,
10 1997. CAPSTONE also holds a valid and unrevoked investment adviser certificate issued by the
11 Commissioner pursuant to Corporations Code section 25230 on February 11, 1999. Anthony
12 Capozza is the Chief Executive Officer of Capstone. Steven Capozza is Capstone's President and
13 Chief Compliance Officer.

14 3. Capstone's principal place of business is 4660 La Jolla Village Drive, Suite 1040, San
15 Diego, CA 92122. Pursuant to Government Code section 11508, venue for administrative
16 adjudication is proper in the County of San Diego.

17 **II. STATEMENT OF FACTS**

18 4. Capstone is organized as a private corporation and is owned by Anthony Capozza,
19 Steven Capozza and Ann Louise Capozza. Capstone is a full service broker-dealer. Approximately
20 eighty percent of Capstone's revenues are generated from commissions for securities transactions
21 effected on behalf of institutional investors such as investment advisers and hedge funds that direct
22 transactions to Capstone.

23 5. A portion of Capstone's business involves a liquidation service that it provides to its
24 clients that are referred to it by insurance agents. In the liquidation service, Capstone gathers and
25 sells all or a portion of the client's securities holdings and sends that money to an insurance
26 company to purchase an insurance investment product that has been sold to the client by an
27 insurance agent. Between January 2000 and December 2003, Capstone liquidated 1,477 client
28 securities accounts and generated approximately \$887,836 in commissions and fees.

1 6. Capstone actively sought liquidation business from insurance agents who were
2 involved in the sale of insurance investment products such as annuities. Capstone knew that these
3 insurance agents were not licensed to conduct securities transactions and therefore, needed the
4 services of a licensed broker-dealer, such as Capstone, to effect the sale of the client's securities in
5 order for the client to have the money to purchase the insurance investment products. Capstone
6 solicited this business from insurance agents by various methods, including telephone calls to, and
7 seminars for, insurance agents who were selling annuity products to their customers.

8 7. The vast majority of insurance agents solicited by Capstone were employed by or were
9 associated with Family First Insurance Services, Inc. ("Family First") On or about March 22, 2001,
10 Capstone and Family First entered into a "Confidentiality and Non-Competition Agreement"
11 regarding Family First's referral of clients for liquidation services. On February 10, 2005, the
12 California Attorney General, on his own behalf and on behalf of the California Insurance
13 Commissioner, filed a lawsuit in the Los Angeles County Superior Court against Family First and
14 others, styled *The People of the State of California v. Family First Advanced Estate Planning, et al.*
15 This lawsuit alleges numerous violations of the Business and Professions Code and the Insurance
16 Code against Family First for its actions in connection with the sale of annuities to the public. The
17 case is presently pending.

18 8. Capstone provided the insurance agents interested in Capstone's liquidation services
19 with an instructional booklet titled "Rapid Transfer Guidebook." ("Guidebook.") The Guidebook,
20 among other things, provides background information about Capstone, a detailed description of
21 Capstone's liquidation service, and step by step instructions for the insurance agents to assist their
22 clients in filling out Capstone's liquidation service forms. Some of the language in the Guidebook
23 describes Capstone's role in relationship to the insurance agents and the clients, indicating that
24 Capstone was primarily concerned with the well being of the insurance agents, not with the well
25 being of the Capstone clients. For example, on page one of the Guidebook, in a section titled
26 "Capstone Investment Overview," it states, in part, the following:

27 "... Our services are designed to assist insurance professionals and their clients with
28 the complex process of transferring and liquidating assets in order to purchase insurance

1 products. We help agents who lack the expertise and resources to handle the ACAT process
2 themselves, or who have lost sales due to interference from competing stockbrokers and
3 bankers. We act as your broker dealer during the ACAT process. We do not compete with
4 you. Our job is to help make the transfer and liquidation process go as smoothly and quickly
as possible. (Emphasis added.)

5 9. The Guidebook gives further details on how the liquidation process worked and
6 demonstrates the active role of the insurance salesperson in introducing the client to Capstone and
7 assisting them with the technical portions of the liquidation process. For example, the Guidebook
8 contains a series of forms with instructions for their completion and examples of blank forms and
9 properly completed forms. These forms included a “Client Referral Transmittal,” an “Asset Transfer
10 Directive,” and an “Agency Client Information.” The forms contained information normally
11 collected by a broker-dealer when opening a new brokerage account, such as the client’s personal
12 information, annual income, net worth, education and number of dependants. The forms also
13 indicated which specific securities were to be liquidated by Capstone, and the total amount that was
14 to be forwarded to an annuity company for purchase of the annuity. The insurance agent was to
15 assist their client in completing these forms and then forward them to Capstone for processing.

16 10. Although Capstone fielded calls from the clients pertaining to the liquidation process
17 itself, it refused to answer the client’s questions about the appropriateness of selling their securities
18 or purchasing the annuities. Capstone referred questions such as these back to the clients’ insurance
19 agents.

20 11. After the liquidation process was complete, the client’s investment portfolio consisted
21 either completely or partially of annuity products. However, these annuities were often an
22 unsuitable and unfavorable investment.

23 12. Capstone collected various fees and charges from the liquidation service clients
24 referred to it by the insurance agents. For example, Capstone stated in the Guidebook that it was
25 charging one and a half percent of the value of stock it liquidated, plus ticket charges. For
26 liquidation of bonds, Capstone charged two points, i.e., \$20 per \$1000 bond. For mutual funds,
27 Capstone charged \$100 per fund, plus ticket charges. However, Capstone often charged its
28 liquidation clients significantly higher charges than those set forth in the Guidebook. Capstone did

1 not disclose to the liquidation clients that these charges were higher than those set forth in the
2 Guidebook.

3 13. Capstone made other material misrepresentations and omissions in connection with
4 the liquidation program. These misrepresentations and omissions included, without necessarily
5 being limited to, failing to disclose its agreement not to interfere with Family First's annuity sales,
6 failing to disclose its conflicts of interest with its duty to its clients, misrepresentations and
7 omissions regarding one of the documents it required its clients to sign, the "General Unsolicited
8 Letter—Authorization to Liquidate," failing to disclose that the insurance agents were not licensed
9 investment advisers, and failing to disclose that the portfolio liquidations could be handled by the
10 clients' existing broker-dealers or by other broker-dealers.

11 14. In the vast majority of the sales made pursuant to the liquidation program, Anthony
12 Capozza was the salesperson of record. Capstone failed to supervise Capozza to prevent the
13 numerous violations of the Corporate Securities Law of 1968 alleged herein.

14 15. Capstone's liquidation program was carefully crafted to deprive its participants of
15 two important protections afforded them under California law. The first of these, the broker-dealer's
16 fiduciary duty to warn a client when an unsolicited transaction is unsuitable, arises in certain
17 situations where the client has a direct and personal relationship with the broker-dealer. By acting in
18 a manner utilizing insurance agents that discouraged Capstone's liquidation clients from consulting
19 their existing broker-dealer, Capstone prevented the existing broker-dealers from possibly advising
20 their client that the sale of their securities to fund the annuity was an unsuitable transaction.
21 Capstone circumvented the second broker-dealer protection, that the broker-dealer not recommend a
22 securities transaction without having reasonable grounds to believe that the recommendation was not
23 unsuitable. Capstone simply made no suitability analysis or recommendation. Capstone claimed
24 that since the Family First agent made the recommendation, these were unsolicited transactions, and
25 Capstone was not required to make any suitability determination.

26 16. Capstone's clients have been doubly victimized by Capstone's eager promotion of its
27 liquidation program. Not only did Capstone sell securities portfolios that the clients might have been
28 better off not selling, but Capstone also allowed the insurance agents, such as Family First, to wreck

1 tremendous havoc on the clients by selling them annuity products that were often wholly
2 inappropriate for their investment needs. Unfortunately, Capstone found it much easier, and far
3 more profitable, to hide behind the fiction that because the sales of the securities were unsolicited
4 sales, Capstone had no duty to speak and inform its clients of the true impact of their transactions.

5 **III. FIRST CAUSE FOR DISCIPLINE—VIOLATIONS OF CORPORATIONS CODE**
6 **SECTION 25216, SUBDIVISION (a)**

7 17. Corporations Code section 25216, subdivision (a), provides as follows:

8 (a) No broker-dealer or agent shall effect any transaction in, or induce or attempt to
9 induce the purchase or sale of, any security in this state by means of any manipulative,
10 deceptive or other fraudulent scheme, device or contrivance. The commissioner shall, for the
11 purposes of this subdivision, by rule define such schemes, devices or contrivances as are
12 manipulative, deceptive or otherwise fraudulent.

13 18. California Code of Regulations, title 10, section 260.216, provides as follows:

14 The phrase “manipulative, deceptive or other fraudulent scheme, device, or
15 contrivance,” as used in subdivision (a) of Section 25216 of the Code is hereby defined to
16 include:

17 (a) Any act, practice, or course of business which operates or would operate as a
18 fraud or deceit upon any person; and

19 (b) Any untrue statement of a material fact and any omission to state a material fact
20 necessary in order to make the statements made, in the light of the circumstances under
21 which they are made, not misleading, if the person making the statement or omission knows
22 or has reasonable grounds to believe that it is untrue or misleading.

23 19. In offering to sell and selling the securities in the clients’ portfolios, Respondents
24 Capstone and Anthony Capozza effected transactions in, or induced or attempted to induce sales of
25 securities by means of a manipulative, deceptive and fraudulent scheme, within the meaning of
26 Corporations Code section 25216, subdivision (a). Respondents made or directed the making of
27 untrue statements of material facts to the liquidation program clients. Respondents also, in offering
28 to sell and selling the securities in the clients’ portfolios, omitted or directed the omission of material
facts to some or all of the liquidation program clients. These misrepresentations and omissions
included, without necessarily being limited to, the following:

1 A. Failing to disclose that Capstone had promised the Family First agents that it would
2 not interfere with the sale of annuities to the Capstone liquidation program clients, and was
3 facilitating the sale of the annuities, regardless of whether the sale of the client’s securities and the
4 purchase of the annuities was in the client’s best interests;

5 B. Failing to disclose that Capstone had held itself out to the insurance agents as the
6 broker-dealer for the insurance agents, thus creating an inherent conflict of interest in Capstone’s
7 duties as a broker-dealer to its liquidation clients.

8 C. Misrepresentations and omissions in relation to a document that it provided to clients
9 to complete and execute, the “General Unsolicited Letter—Authorization to Liquidate,” as follows:

10 1. Representing that the letter itself was unsolicited, when Capstone provided the
11 letter to the clients and required it be completed as part of the liquidation process;

12 2. Failing to disclose to the clients the legal ramifications of an unsolicited
13 authorization to liquidate, and why it might not be in the clients best interests to make an unsolicited
14 request to liquidate;

15 3. Failing to disclose that Capstone had solicited the Family First agents for the
16 liquidation referral business.

17 D. Failing to disclose that the insurance agents, to whom Capstone referred the
18 liquidation clients back to with any securities-related questions regarding the sale of their securities,
19 including the suitability of the sale of their securities, were not licensed by the Corporations
20 Commissioner to give advice regarding securities in California.

21 E. Failing to disclose that the sale of the clients’ securities could be handled by the
22 clients’ existing broker-dealers, or by broker-dealers other than Capstone.

23 F. Failing to disclose that the commissions and fees charged the liquidation clients
24 sometimes exceeded the 1.5 percent per stock transaction commission charge rate that Capstone
25 represented to the insurance agents in the Guidebook.

26 20. Respondents’ misrepresentations and omissions were acts, practices and a course of
27 business within the meaning of California Code of Regulations, title 10, section 260.216, subdivision
28 (a). Respondents’ misrepresentations and omissions were also untrue statements and omissions of

1 material facts within the meaning of California Code of Regulations, title 10, section 260.216,
2 subdivision (b). Respondents' misrepresentations and omissions were thus a manipulative,
3 deceptive or other fraudulent scheme, device or contrivance, within the meaning of Corporations
4 Code section 25216, subdivision (a).

5 21. Respondents effected transactions in, or induced or attempted to induce the purchase
6 or sale of securities in "in this state" of California within the meaning of Corporations Code section
7 25008.

8 22. Respondents' misrepresentations and omissions were thus willful violations of
9 Corporations Code section 25216, subdivision (a). Therefore, cause exists to discipline
10 Respondents, as more fully set forth herein.

11 **IV. SECOND CAUSE FOR DISCIPLINE--VIOLATIONS OF CORPORATIONS CODE**
12 **SECTION 25401**

13 23. Corporations Code section 25401 provides as follows:

14 It is unlawful for any person to offer or sell a security in this state or buy or offer to
15 buy a security in this state by means of any written or oral communication which includes an
16 untrue statement of a material fact or omits to state a material fact necessary in order to make
17 the statements made, in the light of the circumstances under which they were made, not
18 misleading.

19 24. In offering to sell and selling the securities in the clients' portfolios, Respondents
20 Capstone and Anthony Capozza made or directed the making of untrue statements of material facts
21 to the liquidation program clients. Respondents also, in offering to sell and selling the securities in
22 the clients' portfolios, omitted or directed the omission of material facts to some or all of the
23 liquidation program clients. These misrepresentations and omissions included, without necessarily
24 being limited to, the following:

25 A. Failing to disclose that Capstone had promised the Family First agents that it would
26 not interfere with the sale of annuities to the Capstone liquidation program clients, and was
27 facilitating the sale of the annuities, regardless of whether the sale of the client's securities and the
28 purchase of the annuities was in the client's best interests;

1 B. Failing to disclose that Capstone had held itself out to the insurance agents as the
2 broker-dealer for the insurance agents, thus creating an inherent conflict of interest in Capstone’s
3 duties as a broker-dealer to its liquidation clients.

4 C. Misrepresentations and omissions in relation to a document that it provided to clients
5 to complete and execute, the “General Unsolicited Letter—Authorization to Liquidate,” as follows:

6 1. Representing that the letter itself was unsolicited, when Capstone provided the
7 letter to the clients and required it be completed as part of the liquidation process;

8 2. Failing to disclose to the clients the legal ramifications of an unsolicited
9 authorization to liquidate, and why it might not be in the clients best interests to make an unsolicited
10 request to liquidate;

11 3. Failing to disclose that Capstone had solicited the Family First agents for the
12 liquidation referral business.

13 D. Failing to disclose that the insurance agents, to whom Capstone referred the
14 liquidation clients back to with any securities-related questions regarding the sale of their securities,
15 including the suitability of the sale of their securities, were not licensed by the Corporations
16 Commissioner to give advice regarding securities in California.

17 E. Failing to disclose that the sale of the clients’ securities could be handled by the
18 clients’ existing broker-dealers, or by broker-dealers other than Capstone.

19 F. Failing to disclose that the commissions and fees charged the liquidation clients
20 sometimes exceeded the 1.5 percent per stock transaction commission charge rate that Capstone
21 represented to the insurance agents in the Guidebook.

22 25. Respondents’ misstatements and omissions referred to herein were of “material facts”
23 within the meaning of Corporations Code Section 25401.

24 26. Respondents offered and sold “securities,” within the meaning of Corporations Code
25 section 25019, by means of misrepresentations and omissions of material facts.

26 27. All of Respondents’ misrepresentations or omissions of material facts took place “in
27 this state” of California within the meaning of Corporations Code section 25008.

28

1 28. Respondents' misrepresentations and omissions were willful violations of
2 Corporations Code section 25401. Therefore, cause exists to discipline Respondents, as more fully
3 set forth herein.

4 **V. THIRD CAUSE FOR DISCIPLINE—VIOLATIONS OF CALIFORNIA CODE OF**
5 **REGULATIONS, TITLE 10, SECTION 260.218.2**

6 29. California Code of Regulations, title 10, section 260.218.2 provides as follows:

7 Any broker-dealer and any agent employed by such a broker-dealer who recommends
8 to a customer the purchase, sale or exchange of any security shall have reasonable grounds to
9 believe that the recommendation is not unsuitable for such customer on the basis of
10 information furnished by such customer after reasonable inquiry concerning the customer's
investment objectives, financial situation and needs, and any other information known by
such broker-dealer or agent.

11 30. California Corporations Code section 25403, subdivision (c) provides as follows:

12 (c) It shall be unlawful for any person directly or indirectly to do any act or thing
13 which would be unlawful for that person to do under any provision of this division or any
14 rule or order thereunder through or by any other person.

15 31. As previously discussed, Capstone solicited liquidation program business from
16 insurance agents. Capstone was aware that the insurance agents recommended that their clients sell
17 their securities in order to raise funds to buy insurance investment products. The insurance agents
18 then not only referred their clients to Capstone for the actual liquidation, but also assisted their
19 clients in filling out forms to be used by Capstone to open new client accounts and to otherwise
20 assist Capstone in the liquidation process. Capstone's liquidation program business was dependent
21 upon the insurance agents' recommendation that the clients sell their securities, and that Capstone,
22 not the clients' existing broker-dealer, perform the liquidation.

23 32. Capstone made no analysis of the liquidating client's securities portfolio to determine
24 whether there were reasonable grounds to believe that the recommendation was not unsuitable.
25 Capstone did not make a reasonable inquiry to determine the client's investment objectives, financial
26 situation and needs, and other important suitability information. Capstone merely liquidated the
27 securities as directed by the client.
28

1 33. In those instances where the client had questions as to whether it was appropriate to
2 sell the security, or to purchase the insurance investment product, Capstone would refuse to discuss
3 the issue with the client. Instead, Capstone would refer the client back to the insurance agent for
4 discussion of this issue.

5 34. By soliciting liquidation program clients from the insurance agents, Capstone
6 indirectly recommended through or by another person, within the meaning of Corporations Code
7 section 25403, subdivision (c), that the clients sell their securities.

8 35. Capstone indirectly made the recommendation to sell the securities through the
9 insurance agents, without having a reasonable basis to believe that the recommendations were not
10 unsuitable, and thus violated California Code of Regulations, title 10, section 260.218.2. Therefore,
11 cause exists to discipline Respondents, as more fully set forth herein.

12 **VI. FOURTH CAUSE FOR DISCIPLINE—VIOLATIONS OF CALIFORNIA CODE OF**
13 **REGULATIONS, TITLE 10, SECTION 260.218.4**

14 36. California Code of Regulations, title 10, section 260.218.4, subdivision (c)(2),
15 provides as follows:

16 (c) As part of the responsibility under this rule, every broker-dealer shall establish,
17 maintain and enforce written procedures, a copy of which shall be kept in each business
18 office, which shall set forth the procedures adopted by the broker-dealer to comply with the
19 following duties imposed by this section, and shall state at which business office or offices
20 the broker-dealer keeps and maintains the records required by Section 260.218.5 of these
21 rules.

22 ...
23 (2) The frequent examination of all customer accounts to detect and prevent
24 irregularities or abuses;

25 37. Anthony Capozza was the broker of record for virtually all of the sales of securities
26 made in the liquidation program. Greta Morgan was the Compliance Officer and was responsible for
27 approving the transactions in the liquidation program. Capstone was responsible for enforcing
28 Anthony Capozza's compliance with Capstone's policies and procedures manual.

 38. In supervising Anthony Capozza, Capstone failed to enforce written procedures to
comply with the duties imposed by California Code of Regulations, title 10, Section 260.218.4,
subdivision(c)(2). Capstone failed to detect and prevent irregularities and abuses in the liquidation

1 program customer accounts, in the form of violations of law relating to: (1) the effecting of
2 transactions in securities by means of a manipulative, deceptive or other fraudulent scheme, device
3 or contrivance (Corp. Code, § 25216, subd. (a)), (2) the misrepresentations or omissions in the sale
4 of the clients' securities (Corp.Code, § 25401), and (3) the recommendation to sell securities without
5 reasonable grounds to believe that the recommendation is not unsuitable (Cal. Code Reg., title 10, §
6 260.218.2).

7 39. In failing to enforce written procedures to comply with the duties imposed by
8 California Code of Regulations, title 10, section 260.218.4, Capstone violated California Code of
9 Regulations, title 10, section 260.218.4, subdivision (c)(2). Therefore, cause exists to discipline
10 Respondents, as more fully set forth herein.

11 **VII. CAUSE EXISTS TO SUSPEND CAPSTONE'S BROKER-DEALER AND INVESTMENT**
12 **ADVISER CERTIFICATES**

13 40. Corporations Code section 25212, subdivision (e), provides in relevant part, as
14 follows:

15 The commissioner may, after appropriate notice and opportunity for hearing, by
16 order censure, deny a certificate to, suspend for a period not exceeding 12 months
17 or revoke the certificate of, any broker-dealer if the commissioner finds that the
18 censure, denial, suspension, or revocation is in the public interest and that the broker-
19 dealer, whether prior or subsequent to becoming a broker-dealer, or any partner,
20 officer, director, or branch manager of the broker-dealer, whether prior or
21 subsequent to becoming associated with the broker-dealer, or any person directly or
22 indirectly controlling the broker-dealer, whether prior or subsequent to becoming
23 such, or any agent employed by the broker-dealer while so employed has done any of
24 the following:

25 (e) Has willfully violated any provision of . . . or Title 4 (commencing with
26 Section 25000)... or of any rule or regulation under any of those statutes....

27 41. Corporations Code section 25232, subdivision (e), provides in relevant part, as
28 follows:

The commissioner may, after appropriate notice and opportunity for hearing, by
order censure, deny a certificate to, suspend for a period not exceeding 12 months
or revoke the certificate of, any investment adviser if the commissioner finds that the
censure, denial, suspension, or revocation is in the public interest and that the investment
adviser, whether prior or subsequent to becoming such, or any partner,

1 officer or director thereof, or any person performing similar functions or any person directly
2 or indirectly controlling the investment adviser, whether prior or subsequent to becoming
3 such, or any employee of the investment adviser while so employed has done any of
the following:

4 (e) Has willfully violated any provision of . . . or Title 4 (commencing with Section
5 25000)... or of any rule or regulation under any of those statutes....

6 42. As previously discussed, *supra*, Capstone has willfully violated Corporations Code
7 section 25216, subdivision (a), Corporations Code section 25401, California Code of Regulations,
8 title 10, section 260.218.2, and California Code of Regulations section 260.218.4, subdivision (c)(2).
9 Wherefore, the California Corporations Commissioner finds it is in the public interest to suspend the
10 broker-dealer and investment adviser certificates of Capstone Investments, pursuant to Corporations
11 Code sections 25212, subdivision (e) and 25232, subdivision (e), as more fully set forth in the Prayer
12 for Relief, herein.

13 **VIII. CAUSE EXISTS TO SUSPEND ANTHONY CAPOZZA FROM ANY POSITION OF**
14 **EMPLOYMENT, MANAGEMENT OR CONTROL OF ANY BROKER-DEALER OR**
INVESTMENT ADVISER

15 43. Corporations Code section 25213 provides, in relevant part:

16 The commissioner may, after appropriate notice and opportunity for hearing, by order
17 censure, or suspend for a period not exceeding 12 months, or deny or bar from any
18 position of employment, management or control of any broker-dealer or investment
19 adviser, any officer, director, partner, agent, employee of, or person performing
20 similar functions for, a broker-dealer, or any other person, if the commissioner finds that the
censure, suspension, denial or bar is in the public interest and that the person has
committed any act or omission enumerated in subdivision...(e)...of Section
25212....

21 44. Subdivision (e) of Corporations Code section 25212 provides, in relevant part:

22 (e) Has willfully violated any provision of . . . or Title 4 (commencing with Section
23 25000)... or of any rule or regulation under any of those statutes, or any order of the
24 commissioner which is or has been necessary for the protection of any investor.

25 45. As previously discussed, *supra*, Anthony Capozza has willfully violated Corporations
26 Code section 25401, Corporations Code section 25216, subdivision (a), and California Code of
27 Regulations, title 10, section 260.218.2. Wherefore, the California Corporations Commissioner
28 finds it is in the public interest to suspend Anthony Capozza from any position of employment,

1 management or control of any broker-dealer or investment adviser, as more fully set forth in the
2 Prayer for Relief, herein.

3 **IX. CAUSE EXISTS TO ORDER CAPSTONE TO DISCONTINUE VIOLATIONS**

4 46. Corporations Code section 25249 authorizes the Commissioner to issue an order
5 directing any broker-dealer or investment adviser to discontinue any violation of any provision of the
6 Corporate Securities Law and any rules promulgated thereunder. Specifically, Corporations Code
7 section 25249 provides, in relevant part:

8 If, after examination or investigation, the commissioner has reasonable grounds to
9 believe that any broker-dealer or investment adviser has violated any law or rule binding
10 upon it, the commissioner shall, by written order addressed to the broker-dealer or
11 investment adviser, direct the discontinuance of the violation. The order shall be effective
12 immediately, but shall not become final except in accordance with the provisions of Section
13 25251.

14 47. Corporations Code section 25251 provides as follows:

15 (a) No order issued pursuant to Section 25249 or 25250 may become final except after
16 notice to the affected broker-dealer or investment adviser of the commissioner's intention to
17 make the order final and of the reasons for the finding. The commissioner shall also notify
18 the broker-dealer or investment adviser that upon receiving a request the matter shall be set
19 for hearing to commence within 15 business days after receipt of the request. The broker-
20 dealer or investment adviser may consent to have the hearing commence at a later date. If no
21 hearing is requested within 30 days after the mailing or service of the required notice, and
22 none is ordered by the commissioner, the order may become final without a hearing and the
23 broker-dealer or investment adviser shall immediately discontinue the practices named in the
24 order. If a hearing is requested or ordered, it shall be held in accordance with the provisions
25 of the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1
26 of Division 3 of Title 2 of the Government Code), and the commissioner shall have all of the
27 powers granted under that act. If, upon the conclusion of the hearing, it appears to the
28 commissioner that the broker-dealer or investment adviser is conducting business in an
unsafe and injurious manner or is violating any law of this state, or any rule binding upon it,
the commissioner shall make the order of discontinuance final and the broker-dealer or
investment adviser shall immediately discontinue the practices named in the order.

(b) The broker-dealer or investment adviser may within 10 days after an order is made
final commence an action to restrain enforcement of that order. If the enforcement of that
order is not enjoined within 10 days by the court in which the action is brought, the broker-
dealer or investment adviser shall comply with the order.

1 48. As previously discussed, *supra*, Capstone has violated Corporations Code section
2 25216, subdivision (a), Corporations Code section 25401, California Code of Regulations, title 10,
3 section 260.218.2, and California Code of Regulations section 260.218.4, subdivision (c)(2),
4 justifying the issuance of an Order to Discontinue Violations. Capstone, as a licensee, was obligated
5 to have knowledge of, and to comply with, the provisions of the Corporate Securities Law and the
6 regulations thereunder to maintain its broker dealer and investment adviser certificates.

7 49. Therefore, pursuant to Corporations Code section 25249, the Commissioner has
8 issued an Order to Discontinue Violations Pursuant to Corporations Code section 25249, directing
9 Capstone to discontinue violations of Corporations Code section 25216, subdivision (a),
10 Corporations Code section 25401, California Code of Regulations, title 10, section 260.218.2, and
11 California Code of Regulations, title 10, section 260.218.4, subdivision (c)(2). The Commissioner
12 intends to make the Order to Discontinue Violations final, as set forth more fully in the Prayer for
13 Relief.

14 **X. CAUSE EXISTS TO ORDER CAPSTONE AND ANTHONY CAPOZZA TO PAY**
15 **ADMINISTRATIVE PENALTIES**

16 50. Corporations Code section 25252 provides, in relevant part, as follows:

17 The Commissioner may, after appropriate notice and opportunity for hearing,
18 by orders, levy administrative penalties as follows:

19 (a) Any person subject to this division, other than a broker-dealer or an
20 investment adviser, who willfully violates any provision of this division, or who
21 willfully violates any rule or order adopted or issued pursuant to this division, is
22 liable for administrative penalties of not more than one thousand dollars (\$1,000) for
the first violation, and not more than two thousand five hundred dollars (\$2,500) for
each subsequent violation.

23 (b) Any broker-dealer or investment adviser that willfully violates any
24 provision of this division to which it is subject, or that willfully violates any
25 rule or order adopted or issued pursuant to this division and to which it is
26 subject, is liable for administrative penalties of not more than five thousand
27 dollars (\$5,000) for the first violation, not more than ten thousand dollars
(\$10,000) for the second violation, and not more than fifteen thousand
dollars (\$15,000) for each subsequent violation . . .

28 ...

1 (d) The administrative penalties available to the commissioner pursuant to this section
2 are not exclusive, and may be sought and employed in any combination with civil, criminal,
3 and other administrative remedies deemed advisable by the commissioner to enforce the
provisions of this division

4 51. As previously discussed, *supra*, Capstone and Anthony Capozza have willfully
5 violated Corporations Code section 25216, subdivision (a), Corporations Code section 25401, and
6 California Code of Regulations, title 10, section 260.218.2. Furthermore, Capstone has also
7 willfully violated California Code of Regulations section 260.218.4, subdivision (c)(2). These
8 violations justify the issuance of an Order Levying Administrative Penalties against both
9 Respondents. Therefore, the Commissioner seeks administrative penalties against Capstone and
10 Anthony Capozza, as more fully set forth in the Prayer for Relief.

11 **XI. CAUSE EXISTS TO AWARD THE COMMISSIONER ANCILLARY RELIEF**

12 52. Corporations Code section 25254, states in relevant part, as follows:

13 (a) If the commissioner determines it is in the public interest, the
14 commissioner may include in any administrative action brought under this
15 part a claim for ancillary relief, including, but not limited to, a claim for
16 restitution or disgorgement or damages on behalf of the persons injured by the
17 act or practice constituting the subject matter of the action, and the
administrative law judge shall have jurisdiction to award additional relief.

18 (b) In an administrative action brought under this part, the commissioner is entitled to
19 recover costs, which in the discretion of the administrative law judge may include an amount
20 representing reasonable attorney's fees and investigative expenses for the services rendered,
for deposit into the State Corporations Fund for the use of the Department of Corporations.

21 53. Capstone's clients have been injured by Capstone's violations of law, as
22 demonstrated herein. Pursuant to Corporations Code section 25254, subdivision (a), Capstone's
23 clients are entitled to relief, including restitution or disgorgement of the commission charges and
24 other fees paid to Capstone between 2000 and 2004, and to other ancillary relief. Furthermore,
25 pursuant to Corporations Code section 25254, subdivision (b) the Commissioner is entitled to
26 recover his costs in prosecuting this action.

1 54. Therefore, the Commissioner finds it is in the public interest to include in this action a
2 claim for ancillary relief, and a claim for recovery of costs, as more fully set forth in the Prayer for
3 Relief.

4 **PRAYER FOR RELIEF**

5 **WHEREFORE**, good cause showing, the California Corporations Commissioner prays for
6 relief, as follows:

7 1. For an order, pursuant to Corporations Code section 25212, suspending Capstone
8 Investments' broker-dealer certificate for a period of twelve months. During this period, Capstone
9 will not be allowed to accept new broker-dealer business, but will be permitted to continue servicing
10 existing client accounts.

11 2. For an order, pursuant to Corporations Code section 25232, suspending Capstone
12 Investments' investment adviser certificate for a period of twelve months. During this period,
13 Capstone will not be allowed to accept new investment adviser business, but will be permitted to
14 continue servicing existing client accounts.

15 3. For an order, pursuant to Corporations Code section 25213, suspending Anthony
16 Capozza from any position of employment, management or control of any broker-dealer or
17 investment adviser for a period of twelve months.

18 4. For an order, pursuant to Corporations Code section 25251, making final the
19 Order to Discontinue Violations Pursuant to Corporations Code Section 25249 issued to
20 Capstone Investments.

21 5. For an order, pursuant to Corporations Code Section 25252, levying
22 administrative penalties against Respondents, as follows:

23 (a) Capstone Investments, \$500,000, for 1,477 violations of Corporations Code
24 section 25216, subdivision (a), Corporations Code section 25401, California Code of
25 Regulations, title 10, section 260.218.2 and California Code of Regulations section 260.218.4,
26 subdivision (c)(2).

1 (b) Anthony Capozza, \$200,000, for 1,477 violations of Corporations Code section
2 25216, subdivision (a), Corporations Code section 25401, and California Code of Regulations,
3 title 10, section 260.218.2.

4 6. For an order, pursuant to Corporations Code section 25254, subdivisions (a) and
5 (b), granting ancillary relief, as follows:

6 (a) Disgorgement of commissions and other fees collected by Capstone Investments
7 in the course of its liquidation program of at least \$887,836, or more, according to proof, and
8 interest in an amount according to proof.

9 (b) Recovery of the Commissioner's costs, including investigative expenses and
10 reasonable attorney's fees incurred in the investigation and prosecution of this action, according
11 to proof.

12 (c) Requiring Capstone to inform all current clients in writing of any final orders of
13 suspension issued by the Commissioner in this case.

14 (d) Such additional relief as the administrative law judge considers just.

15 Dated: October 11, 2006
16 Los Angeles, California

PRESTON DuFAUCHARD
California Corporations Commissioner

17 By: _____
18 NICHOLAS LANZA
19 Senior Corporations Counsel
20 Enforcement Division
21
22
23
24
25
26
27
28