

1 3. At all relevant times, Cap E Oil Fund II, LLC (“Cap E Fund II”) is and was a Delaware
2 limited liability company formed on July 1, 2014, with its principal place of business in Austin,
3 Texas.

4 4. At all relevant times, Cap E Oil Fund III, LLC (“Cap E Fund III”) is and was a Delaware
5 limited liability company formed on July 2, 2014, with its principal place of business in Austin,
6 Texas.

7 5. At all relevant times, Cap E Oil Fund IV, LLC (“Cap E Fund IV”) is and was a Delaware
8 limited liability company formed on December 30, 2014, with its principal place of business in
9 Austin, Texas.

10 6. At all relevant times, Cap E Oil Fund V, LLC (“Cap E Fund V”) is and was a Delaware
11 limited liability company formed on February 3, 2016, with its principal place of business in Austin,
12 Texas.

13 7. At all relevant times, William J. Milles Jr. (“Milles”) is and was the Chief Executive Officer
14 (“CEO”) and managing member of Capital Energy.

15 8. At all relevant times, Donald J. Lutzko (“Lutzko”) is and was the President and managing
16 member of Capital Energy.

17 9. At all relevant times, Frank August (August) was the “Executive Director” for sales and a
18 sales representative for Capital Energy.

19 10. At all relevant times, Capital Energy served as the sole Managing General Partner for all Cap
20 E Funds I-V.

21 11. Beginning at least as early as 2013, Capital Energy, Cap E Fund I-V, Milles, Lutzko, and
22 August offered and sold securities - investment contracts in the form of general and limited
23 partnerships in various oil production projects. Capital Energy and its sales representatives solicited
24 investors nationwide for investments into the five separate Cap E oil funds. Investors could purchase
25 shares, referred to as “units”, including half or full units, tied to a particular Cap E fund. After
26 investing, investors would receive a membership certificate detailing the dollar amount paid for the
27 unit and the particular Cap E fund they invested in.
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1 12. Capital Energy touted that their business plan was to acquire and rework various wells in
2 Oklahoma and Texas which were situated on existing and developed oil fields expanding over
3 hundreds of acres, and that at least four of these existing wells had produced thousands of barrels of
4 oil and would continue to produce thousands more.

5 13. Capital Energy further stated they used state-of-the-art technology including water injection to
6 increase pressure in existing wells to increase the amount of oil recovered from these wells.

7 14. August began soliciting investors in 2013. August sold approximately \$2.5 million worth of
8 various oil fund investments to 22 investors, including at least 1 California resident. August was paid
9 more than \$600,000 in commissions, as high as 25% of each sale. These Commissions were not
10 disclosed to investors. In July and November of 2015, the California resident purchased 1 full unit
11 and 1 half unit in Cap E Fund III and IV, investing approximately \$60,000 total.

12 15. In connection with the offer and sale of these securities, Capital Energy, Milles, Lutzko, and
13 August made misleading representations and/or omissions to investors, including but not limited to:

14 a) failing to disclose previous regulatory actions issued against entities related to the
15 investments;¹

16 b) that the projected return on investment for Cap E Fund III was 258% and Cap E Fund IV
17 was 229%;

18 c) that investors would receive a “guaranteed monthly return” on their initial investment.

19 16. In fact, the California investor received initial payments of between \$2,000-\$3,000 paid
20 monthly, but those payments stopped at the end of 2015 and the investor was never paid back his
21 principal investment money, nor did he receive any return on investment as promised.

22 Based on the foregoing findings, the Acting Commissioner is of the opinion that Capital
23 Energy Group, LLC, Cap E Funds I-V, William J. Milles Jr., Donald J. Lutzko, and Frank August are
24 not registered to sell securities in the state of California and are subject to qualification under the
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27 ¹ Capital Energy acquired leasing for its Texas operations from Fortune Oil and Gas, Ltd. (Fortune). Fortune and its
28 President, Russell Vera (Vera), were the subject of previous regulatory actions issued in 2014 by the California
Department of Business Oversight and Alaska Department of Commerce, Community, and Economic Development’s
Division of Banking and Securities. The actions ordered Fortune and Vera to Desist and Refrain from offering or selling
securities without registration or exemption. Capital Energy omitted to tell investors about these actions against Fortune
or Vera.

1 Corporate Securities Law of 1968. The oil securities offered or sold through Capital Energy Group,
2 LLC, Cap E Funds I-V, William J. Milles Jr., Donald J. Lutzko, and Frank August were done so
3 without first being qualified in violation of Corporations Code section 25110.

4 Pursuant to Corporations Code section 25532, Capital Energy Group, LLC, Cap E Funds I-V,
5 William J. Milles Jr., Donald J. Lutzko, and Frank August are ordered to desist and refrain from the
6 further offer and sale of securities in California, including but not limited to, oil securities, unless and
7 until qualification has been made under the Corporate Securities Law of 1968, or unless exempt.

8 Further, the Acting Commissioner is of the opinion that the oil securities were offered or sold
9 by independent contractors, operating as a broker-dealers effecting securities transactions, without
10 having first applied for and secured from the Commissioner a certificate authorizing them to act in
11 that capacity, in violation of section 25210 of the Corporate Securities Law of 1968, or without fully
12 complying with an exemption.

13 Pursuant to Corporations Code section 25532, Capital Energy Group, LLC, Cap E Funds I-V,
14 William J. Milles Jr., Donald J. Lutzko, and Frank August are ordered to desist and refrain from the
15 further offer or sale of securities by independent contractors, operating as broker-dealers, unless and
16 until having first applied for and securing from the Commissioner a certificate authorizing them to act
17 in that capacity under the Corporate Securities Law of 1968, or unless exempt.

18 In addition, the Commissioner is of the opinion that Capital Energy Group, LLC, Cap E
19 Funds I-V, William J. Milles Jr., Donald J. Lutzko, and Frank August offered or sold securities in this
20 State by means of written or oral communications which included untrue statements of material facts
21 or omitted to state a material fact necessary in order to make the statements made, in light of the
22 circumstances under which they were made, not misleading, in violation of Corporations Code
23 section 25401.

24 Pursuant to Corporations Code section 25532, Capital Energy Group, LLC, Cap E Funds I-V,
25 William J. Milles Jr., Donald J. Lutzko, and Frank August are hereby ordered to desist and refrain
26 from offering or selling any security in the State of California, including but not limited to, oil
27 securities, by means of any written or oral communication which includes an untrue statement of a
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1 material fact or omits to state a material fact necessary in order to make the statements made, in light
2 of the circumstances under which they were made, not misleading.

3 Moreover, the Acting Commissioner is of the opinion that William J. Milles Jr. and Donald J.
4 Lutzko directly or indirectly knowingly controlled and induced or substantially assisted other agents
5 to violate the provisions of the Corporation Code, within the meaning of Corporations Code section
6 25403.

7 This order is necessary, in the public interest, for the protection of investors and consistent
8 with the purposes, policies, and provisions of the Corporate Securities Law of 1968.

9 Dated: September 21, 2021

CHRISTOPHER S. SHULTZ
Acting Commissioner of Financial Protection and Innovation

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By: _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

