

**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:

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;

Respondents

Order No.: S-16-2045-18-FO02

ENTRY OF FINDINGS OF FACT AND  
CONCLUSIONS OF LAW AND  
FINAL ORDER TO CEASE AND DESIST,  
TO IMPOSE A FINE, AND  
TO CHARGE COSTS AS TO  
CAPITAL ENERGY GROUP LLC;  
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

THE STATE OF WASHINGTON TO:

Capital Energy Group LLC;  
Cap E Oil Fund 1, LLP;  
Cap E Oil Fund II, LLC;  
Cap E Oil Fund III, LLC;  
Cap E Oil Fund V, LLC;

On October 2, 2018, the Securities Administrator of the state of Washington issued Statement of Charges and Notice of Intent to Enter Order to Cease and Desist, To Impose Fines, and to Charge Costs, Order No. S-16-2045-17-SC01 (hereinafter referred to as "Statement of Charges"). The Statement of Charges, together with a Notice of Opportunity to Defend and Opportunity for Hearing, hereinafter referred to as "Notice of Opportunity for Hearing" and an Application for Adjudicative Hearing, hereinafter referred to as "Application for Hearing," were served on Capital Energy Group LLC; 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 ("Respondents") on October 17, 2018. The Notice of Opportunity for Hearing advised the Respondents that a written application for an administrative hearing on the Statement of Charges must be received within twenty days from the date of receipt of the notice. The Respondents failed to request an administrative hearing within twenty days of receipt of the Statement of Charges and Notice of Opportunity for Hearing, either on the Application for Hearing provided, or otherwise.

**FINAL ORDER  
AS TO CAPITAL ENERGY GROUP LLC;  
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**

**DEPARTMENT OF FINANCIAL INSTITUTIONS  
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PO Box 9033  
Olympia, WA 98507-9033  
360-902-8760**

1 The Securities Administrator therefore will adopt as final the following Findings of Fact and  
2 Conclusions of Law as set forth in the Statement of Charges and enter a final order against the Respondents  
3 to cease and desist from violations of the Securities Act, and to impose the fines and costs sought in the  
4 Statement of Charges.

5 The Securities Administrator makes the following Findings of Fact and Conclusions of Law:

## 6 FINDINGS OF FACT

### 7 Respondents

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

11 2. Frank August (“August”) is a resident of Nevada who was an independent sales representative  
12 for Capital Energy and used the title “National Sales Director” and “Executive Director.” August was the  
13 President of Franklin Spencer Group Inc., a revoked Nevada corporation formed on or about November 20,  
14 2013. August was also the President of another revoked Nevada corporation with a similar name, Franklin  
15 Spencer Group, Inc., which was formed on or about November 5, 2004.

16 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  
17 1”) is a Delaware limited liability partnership formed on or about March 26, 2013.

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

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

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

1 **Other Relevant Persons and Entities**

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

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

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

7 **Other Securities Enforcement Actions**

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

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

16 **Nature of the Conduct**

17 *Overview*

18 12. Between approximately 2013 and 2015, Capital Energy raised more than \$450,000 from the  
19 sale of oil and gas investments to three Washington residents, including a widowed retired electrician who  
20 invested his life savings and a retired school teacher. In total, Capital Energy raised more than \$2 million  
21 from more than 60 investors around the United States, including several senior citizens. By 2016, Capital  
22 Energy stopped making payments to investors, but continued to send reassuring emails to investors through  
23 2017 and 2018.

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

7 14. Capital Energy encouraged investors to withdraw funds from their retirement accounts and  
8 invest the proceeds in oil and gas projects managed by Capital Energy. Capital Energy offered some investors  
9 a credit to cover penalties they incurred for making early withdrawals from their retirement accounts. For  
10 example, in February 2015, Capital Energy sent a letter to a Washington resident and stated that it would  
11 cover any tax penalties for early withdrawals from his 401(k) retirement account.

12 15. Capital Energy and August sold membership units in multiple oil and gas funds. Washington  
13 residents were sold investments in Fund 1, Fund 2, and Fund 3. In 2015, Capital Energy offered and sold  
14 investments in Fund 4 to investors in other states. In 2016, the Respondents offered an investment in Fund 5  
15 to at least one Washington resident. The terms of the offerings are summarized below in the following table:

16

<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

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22 16. For each offering, Capital Energy provided investors with an Executive Summary, a  
23 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

1 checks to Capital Energy’s business address in Austin, Texas. After making their investment, investors later  
2 received membership certificates showing how many units they owned in the Fund that they invested in.

3 17. Capital Energy and August made misleading representations concerning the potential returns  
4 on the investment. Capital Energy claimed it had state-of-the-art water injection system technology and  
5 “Enhanced Oil Recovery system technology” that would be used to rework existing oil wells in Oklahoma  
6 and Texas. The Executive Summary for each Fund claimed that investors would earn enormous returns within  
7 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%

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13 Capital Energy also included these misleading projections in the PPMs for each Fund. Capital Energy failed  
14 to provide a reasonable basis for these projected returns. The Executive Summary and PPMs included a six-  
15 year Annual Cash Flow Forecast. The Forecast for Funds 1-3 showed the price of oil (per barrel) increasing  
16 from \$105 in Year 1 to \$120 in Year 6. In fact, crude oil prices declined significantly in 2014-2015 to below  
17 \$40 per barrel. Capital Energy and August led multiple investors to believe they were guaranteed to receive  
18 a return of their investment principal, even if the price of oil declined. In truth, Capital Energy stopped making  
19 payments to investors in 2016 and claimed the “drop in oil prices . . . basically put us under.”

20 18. The Respondents made false and misleading statements concerning the commissions that  
21 would be paid to August and other sales representatives. The PPMs represented that units in the Funds would  
22 be “privately solicited by officers, directors, and bona fide employees” of Capital Energy who would “not  
23 receive any commissions or performance-based remuneration.” In fact, August was paid a 25% commission

1 on the sale of investments, and his business (Franklin Spencer Group) received more than \$300,000 from  
2 Fund 3.

3 19. After investors made their initial investment, Capital Energy typically sent them small monthly  
4 payments by cashier's checks or direct deposits into their bank account. These small monthly payments  
5 encouraged some investors to make additional investments with Capital Energy. For example, after investing  
6 \$40,000 in July 2014, a Washington investor periodically received a series of monthly payments in the amount  
7 of approximately \$1,035. After receiving these repayments, the Washington investor subsequently invested  
8 an additional \$58,334 in 2015. Capital Energy failed to disclose to investors that, in some cases, the source  
9 of their repayments were funds from new investors, not revenue from oil production.

10 *Fund 1*

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

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

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1 22. In approximately July 2014, Capital Energy solicited a retired teacher in Camano Island,  
2 Washington (hereinafter, “the Camano Island investor”). Capital Energy provided the Camano Island investor  
3 with an Executive Summary for Fund 1, which represented the business objective of Fund 1 was to acquire  
4 interests in four wells in Tulsa County, Oklahoma. The offering documents provided by Capital Energy did  
5 not disclose that Fund 1’s prior business purpose related to wells in Texas or any information about why it  
6 changed its business purpose. The offering materials also failed to disclose that on February 13, 2014, the  
7 Alaska Department of Commerce, Community, and Economic Development issued a Final Cease and Desist  
8 Order Assessing Civil Penalties against Fortune Oil & Gas, Ltd. and Russell Vera (the Operator for Fund 1)  
9 for violations of the Alaska Securities Act. On or about July 18, 2014, the Camano Island investor invested  
10 \$40,000 in Fund 1 and later received a membership certificate.

11 *Fund 2*

12 23. In approximately 2015, Capital Energy sold an investment in Fund 2 to at least one Washington  
13 resident. According to an Executive Summary, the business objective of Fund 2 was to acquire and rework  
14 four oil wells in Guadalupe County, Texas. Capital Energy offered a total of 5 units in Fund 2 at a price of  
15 \$332,000 per unit. Investors were led to believe they would receive a return of 363% within six years.  
16 Between June and November 2015, a Washington resident wired over \$152,000 to an account in the name of  
17 Fund 2 and purchased a ½ unit.

18 *Fund 3*

19 24. Beginning in approximately 2014, Capital Energy and August began soliciting investors to  
20 invest in Fund 3. The Respondents provided investors with an Executive Summary and a PPM that was dated  
21 July 2, 2014. According to these offering materials, the business objective of Fund 3 was to acquire and  
22 rework four oil wells in Guadalupe County, Texas. In September 2015, the Camano Island investor invested  
23 \$58,334 in Fund 3 and his investment funds were deposited into a bank account in the name of Fund 3. Days

after the deposit of these funds, Fund 3 paid more than \$20,000 to August’s business, Franklin Spencer Group.

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1 Later that month, Fund 3 made more than a dozen payments to investors who had previously invested in Fund  
2 1 or Fund 3.

3 *Fund 5 Offer and Post-Investment Contacts*

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

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

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



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

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

#### 12 **Registration Status**

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

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

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

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

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

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

3  
4 Based upon the above Findings of Fact, the following Conclusions of Law are made:

5 **CONCLUSIONS OF LAW**

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

8 2. Respondents Capital Energy Group LLC; Cap E Oil Fund 1, LLP; Cap E Oil Fund II, LLC;  
9 Cap E Oil Fund III, LLC; and Cap E Oil Fund V, LLC have each violated RCW 21.20.140, because, as set  
10 forth in the Findings of Fact, the Respondents offered and/or sold securities for which no registration is on  
11 file with the Securities Administrator.

12 3. Respondents Capital Energy Group LLC; Cap E Oil Fund 1, LLP; Cap E Oil Fund II, LLC;  
13 Cap E Oil Fund III, LLC; and Cap E Oil Fund V, LLC has violated RCW 21.20.010, because, as set forth in  
14 the Findings of Fact, the Respondent made untrue statements of material fact or omitted to state material facts  
15 necessary to make the statements made, in light of the circumstances in which they were made, not misleading.

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

17 **FINAL ORDER**

18 IT IS HEREBY ORDERED that the Respondents Capital Energy Group LLC; Cap E Oil Fund 1, LLP;  
19 Cap E Oil Fund II, LLC; Cap E Oil Fund III, LLC; and Cap E Oil Fund V, LLC, their agents and employees  
20 each shall cease and desist from offering and/or selling securities in any manner in violation of RCW  
21 21.20.140, the section of the Securities Act of Washington requiring registration.

22 IT IS FURTHER ORDERED that the Respondent Capital Energy Group LLC; Cap E Oil Fund 1,  
23 LLP; Cap E Oil Fund II, LLC; Cap E Oil Fund III, LLC; and Cap E Oil Fund V, LLC, his agents and

1 employees each shall cease and desist from violating RCW 21.20.010, the anti-fraud section of the Securities  
2 Act of Washington.

3 IT IS FURTHER ORDERED that the Respondent Capital Energy Group LLC shall be liable for and  
4 pay a fine in the amount of \$30,000.

5 IT IS FURTHER ORDERED that the Respondent Capital Energy Group LLC shall be liable for and  
6 pay costs in the amount of \$1,000.

7 **AUTHORITY AND PROCEDURE**

8 This FINAL ORDER is entered pursuant to the provisions of RCW 21.20.390, and is subject to the  
9 provisions of RCW 21.20.440 and Chapter 34.05 RCW. Respondents have the right to petition the superior  
10 court for judicial review of this agency action under the provisions of RCW 34.05. For the requirements for  
11 Judicial Review, see RCW 34.05.510 and sections following. Pursuant to RCW 21.20.395, a certified copy  
12 of this Order may be filed in Superior Court. If so filed, the clerk shall treat the Order in the same manner as  
13 a Superior Court judgment as to the fine, and the fine may be recorded, enforced, or satisfied in like manner.

14 **WILLFUL VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.**

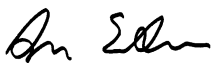
15 SIGNED and ENTERED this 13th day of November 2018.

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19 William M. Beatty  
Securities Administrator

20 Approved by:

Presented by:

21  
22 

23 

Suzanne Sarason  
Chief of Enforcement

Robert Kondrat  
Financial Legal Examiner Supervisor

**FINAL ORDER**  
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