

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 64218 / April 6, 2011

INVESTMENT COMPANY ACT OF 1940
Release No. 29624 / April 6, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-14324

In the Matter of

**Capital Financial Services,
Inc. and Brian W. Boppre**

Respondents.

**ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS PURSUANT
TO SECTIONS 15(b) AND 21C OF THE
SECURITIES EXCHANGE ACT OF
1934, AND SECTION 9(b) OF THE
INVESTMENT COMPANY ACT OF
1940**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) and Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”) against Capital Financial Services, Inc. (“Capital Financial”) and Brian W. Boppre (“Boppre”) (collectively “Respondents”).

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Capital Financial is a wholly owned subsidiary of Capital Financial Holdings, Inc., and has been registered with the Commission and a member of the NASD (now FINRA) since 1980. Capital Financial operates as a general securities broker-dealer and is headquartered in Minot, North Dakota. Capital Financial has a network of

approximately 273 offices housing over 332 registered representatives. The majority of Capital Financial's revenue is generated from the sale of mutual funds, variable insurance products, and private placements.

2. Boppre, age 47, was the president and a registered principal at Capital Financial until July 2010. Boppre resides in Minot, North Dakota.

B. OTHER RELEVANT ENTITIES AND INDIVIDUALS

1. Provident Royalties, LLC ("Provident") was a Delaware limited liability company with its principal offices in Dallas, Texas. Provident purportedly invested in oil and gas extraction interests through a group of 23 affiliated entities (collectively the "Provident Rule 506 Entities"). Provident is a beneficial owner in each of the Provident Rule 506 Entities. On June 22, 2009, Provident and 26 affiliated entities filed a voluntary petition for Chapter 11 bankruptcy in the United States Bankruptcy Court for the Northern District of Texas. Provident is currently in receivership

2. Provident Asset Management, LLC ("PAM") was a Delaware limited liability company which was registered with the Commission as a broker-dealer since March 9, 2004. PAM was the managing broker-dealer for the Provident offerings and exclusively sold the Provident Rule 506 Entity offerings. Capital Financial entered into a selling agreement with PAM for each Provident offering. FINRA expelled PAM from membership on March 18, 2010. PAM is currently in receivership.

3. Provident Rule 506 Entities ("Provident offerings") were a series of companies which have effected private placements claiming exemption from registration of the offered securities under Rule 506 of Regulation D. The offerings sold by Capital Financial included the following companies: Provident Energy 1, LP; Provident Energy 2, LP; Provident Energy 3, LP; Shale Royalties II, Inc.; Shale Royalties 3, LLC; Shale Royalties 4, Inc.; Shale Royalties 5, Inc.; Shale Royalties 6, Inc.; Shale Royalties 7, Inc.; Shale Royalties 9, Inc.; Shale Royalties 12, Inc.; Shale Royalties 14, Inc.; Shale Royalties 17, Inc.; Shale Royalties 18, Inc. The entities are headquartered in Provident's offices in Dallas, Texas. All the Provident Entities are controlled by a court-appointed receiver.

4. Jeffrey A. Lindsey, age 47, was a senior vice president and due diligence officer at Capital Financial until June 15, 2010. Lindsey resides in Libertyville, Illinois.

C. FAILURE TO CONDUCT A REASONABLE INVESTIGATION OF THE PROVIDENT OFFERINGS

1. From at least September 2006 through January 2009, Capital Financial marketed and sold Provident preferred stock and limited partnership interests in a series of 14 private placements. The Provident offerings each claimed an exemption from

registration of its offering pursuant to Rule 506 of Regulation D of the federal securities laws. The Provident offerings designated as Shale Royalties, Inc., numbered II through 18, offered two series of non-convertible redeemable cumulative preferred stock, while the offerings designated as Provident Energy, LP, numbered 1 through 3 offered limited partnership interests. The promised return on the Provident offerings was between 15%-18% per year depending on the term.

2. Provident Royalties' purported business plan included the acquisition of a combination of producing and non-producing sub-surface oil and gas mineral interests, working interests and real property located within the United States. According to the Provident offerings' Private Placement Memoranda ("PPM"), selling broker-dealers were paid commissions ranging from 5% to 9%. The sales commission varied by the offering, and by share class, with the longer term, Class A share class, paying a larger sales commission. Each PPM, with the exception of Provident Energy 1 and Provident Energy 3, disclosed that the selling broker-dealer would be paid a 1% due diligence fee in addition to the sales commission.

3. Although a portion of the proceeds of the Provident offerings were used for the acquisition and development of oil and gas activities, millions of dollars of investor funds were transferred from the later Provident offerings' bank accounts to the Provident Royalties' operating account and then used for undisclosed and, often, undocumented loans to earlier Provident offerings. The loan proceeds were then used to pay dividends and returns of capital to investors in earlier Provident offerings in a classic Ponzi scheme.

4. Capital Financial's due diligence process was run by Boppre and Lindsey. Boppre was responsible for reviewing new offerings and had the authority to approve the Provident offerings for Capital Financial.

5. Capital Financial was first introduced to Provident during the summer of 2006 by Darren Gibson ("Gibson"), a Provident wholesaler employed by PAM. Gibson provided Lindsey with a Provident PPM and other offering materials. Lindsey had no experience or background in the oil and gas industry.

6. On August 24, 2006, PAM paid Lindsey's expenses to conduct an on-site "due diligence" visit to Provident's Dallas offices. While at Provident, Lindsey met with Provident's principals, Gibson, various Provident land men, and a Provident geologist. The meeting consisted of a presentation of Provident's business plan, followed by a question and answer session. Lindsey also took a tour of the Provident offices. Lindsey did not receive any financial information or review any of the books or records of Provident during his visit. Boppre reviewed the materials provided to Capital Financial by Provident.

7. On September 20, 2006, Capital Financial signed its first selling agreement with PAM for Shale Royalties, II ("Shale II"). Lindsey and Boppre approved Shale II based on the offering materials received from PAM, Lindsey's on-site visit, and

the knowledge that other broker-dealers were selling the Provident offerings. Although Boppre and Lindsey eventually approved fourteen Provident offerings for sale by Capital Financial, Lindsey only visited Provident on two occasions.

8. Capital Financial never conducted independent verification of any of the offering materials provided by Provident. Capital Financial also never received audited or even unaudited financial statements for any of the Provident offerings. The only financial information Capital Financial received regarding Provident was an unaudited consolidated balance sheet review. However, even the unaudited consolidated balance sheet reviews were not included in the materials Capital Financial received until Shale Royalties 9. Capital Financial received this limited financial information after it approved the sale of the Provident offerings covered in those reports.

9. As each Provident offering became fully subscribed, Capital Financial signed selling agreements with PAM for later Provident offerings. In total, Capital Financial sold fourteen different Provident offerings between September 2006 and January 26, 2009 when Provident suspended sales. Lindsey and Boppre approved each Provident offering for sale by Capital Financial registered representatives.

10. Capital Financial registered representatives placed approximately 1,087 Provident trades for roughly \$63,000,000. Capital Financial was typically paid an 8% sales commission plus a 1% due diligence fee on the amount of subscription proceeds. This resulted in Capital Financial receiving over \$5,000,000 in sales commissions, and over \$600,000 in due diligence fees on the Provident offerings.

11. Capital Financial's due diligence process for each successive Provident offering was similar to the process for Shale II. For each new Provident offering, Capital Financial received a due diligence packet from PAM. The packet typically contained: a lead broker-dealer bio, certificate of insurance, PPM, certificate of incorporation, corporate bylaws, prior activities, escrow agreement, investor subscription agreement, managing broker-dealer agreement, soliciting broker-dealer agreement, Form D, news articles, general industry geology reports regarding U.S. shale plays, sample mineral deed, and contact information. Lindsey did not visit Provident before approving each successive Provident offering. Capital Financial did not receive information from any other source before approving any Provident offering.

12. To assist with promoting the Provident offerings, PAM retained the third-party due diligence law firm Mick & Associates, PC ("Mick") to draft a third-party due diligence report ("Mick report") on each Provident offering. Provident paid all fees for the due diligence reports. Upon request, Mick reports were provided at no cost to Capital Financial. Mick reports were available on all Provident offerings.

13. Capital Financial's due diligence process did not require a Mick report or any other third-party due diligence prior to approving a Provident offering. Capital Financial only requested Mick reports on eight of the fourteen offerings it sold, and all eight of those Mick reports were requested by Capital Financial only after it had already

approved and started selling the offering. Boppre did not review any Mick reports prior to approving Provident offerings for sale by Capital Financial.

14. The PPM's for all of the Provident offerings disclosed that the selling broker-dealer would receive a due diligence fee of 1%. However, Capital Financial failed to disclose to investors that it did not spend any of the 1% due diligence fee conducting due diligence. Although it received over \$600,000 for due diligence fees on the fourteen Provident offerings, Capital Financial incurred no due diligence expenses. At no time did Capital Financial hire independent counsel, an accounting firm, contact third parties regarding Provident's business, or hire consultants to review the Provident offerings.

15. Along with failing to conduct any meaningful due diligence with respect to the Provident offerings, Capital Financial also ignored significant red flags raised by Mick. The Mick reports beginning with Shale Royalties 9 issued in March 2008 raised concerns about Provident. The Shale Royalties 9 report highlighted Provident's lack of audited financial statements, and raised questions regarding conflicts of interest. The Mick report noted that the earlier Provident offerings were collectively reporting a net operating loss and the limited financial information lacked transparency.

16. Capital Financial failed to question these red flags brought up in the Mick reports with either Provident or Mick. After receiving the Shale 9 Mick report, Capital Financial sold an additional \$32,000,000 of the Provident offerings. Capital Financial received and purportedly reviewed Mick reports for Shale Royalties 12 and Shale Royalties 18. Both reports raised the same red flags, only emphasizing those concerns by bolding or underlining the type. Although the Mick reports raised concerns about the Provident offerings, Capital Financial failed to provide its registered representatives with copies of these reports.

17. Capital Financial's due diligence responsibility was heightened by the fact that Provident was a relatively new company, Provident's management had very little experience in the oil and gas industry, Provident failed to produce audited or unaudited financial statements, and before Capital Financial entered into a sales agreement for the first time with Provident, Provident had only effected two prior offerings, both beginning in July 2006 involving a combined total of ten investors. Also, Provident paid a high dividend, and was a very risky investment.

18. Capital Financial failed to disclose to customers that although it was collecting a due diligence fee, it was not conducting due diligence. Customers believed that Capital Financial had thoroughly vetted the Provident offerings, and that Capital Financial was collecting a fee for the purpose of actually conducting due diligence before offering the securities to the public. Failure to disclose to its customers that it was collecting hundreds of thousands of dollars in due diligence fees while failing to conduct any due diligence constitutes a material omission.

19. Lindsey and Boppre knew that the Provident offering materials stated that selling broker-dealers would receive a 1% fee to pay for due diligence. This disclosure to investors suggested that Capital Financial conducted independent due diligence in approving the Provident offerings as appropriate to sell to Capital Financial customers. However, Capital Financial did not perform any independent due diligence.

20. Lindsey and Boppre knew Capital Financial failed to perform adequate due diligence before approving Provident for sale. Lindsey and Boppre knew they were relying exclusively on Provident for doing their due diligence. Instead, Lindsey and Boppre allowed Capital Financial registered representatives to pass on false representations to customers that Capital Financial was conducting due diligence on each Provident offering. Customers were not told that although Capital Financial was paid over \$630,000 in due diligence fees, it conducted no independent due diligence.

21. Lindsey and Boppre acted at least with severe recklessness. The duty to investigate was heightened by the fact that Provident was a relatively new company operated by individuals with little or no experience in the field of oil and gas, lacked audited financial statements, and promised high returns. Lindsey and Boppre approved Provident offerings without obtaining third-party Mick reports, and failed to question red flags brought to their attention through the few Mick reports received.

D. VIOLATIONS

1. As a result of the conduct described above, Respondents committed violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in the offer and sale of securities and in connection with the purchase or sale of securities

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative and cease-and-desist proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondents an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against Boppre pursuant to Section 15(b)(6) of the Exchange Act and 9(b) of the Investment Company Act, including, but not limited to, disgorgement and civil penalties pursuant to Section 21B of the Exchange Act;

C. What, if any, remedial action is appropriate in the public interest against Capital Financial pursuant to Section 15(b)(4) of the Exchange Act including, but not limited to, disgorgement and civil penalties pursuant to Section 21B of the Exchange Act;

D. Whether, pursuant to Section 21C of the Exchange Act Respondents should be ordered to cease and desist from committing or causing violations of and any future violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondents fail to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondents may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondents personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Elizabeth M. Murphy
Secretary

Service List

Rule 141 of the Commission's Rules of Practice provides that the Secretary, or another duly authorized officer of the Commission, shall serve a copy of the Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934, and Section 9(b) of the Investment Company Act of 1940 ("Order") on the Respondents and their legal agent.

The attached Order has been sent to the following parties and other persons entitled to notice:

Honorable Brenda P. Murray
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