

STATE OF ALABAMA
ALABAMA SECURITIES COMMISSION

IN THE MATTER OF:)	
)	
CAPITAL GUARDIAN, LLC.)	
MICHAEL MCMAHAN)	ADMINISTRATIVE ORDER
)	NO. CO-2006-0046
<u>RESPONDENTS</u>)	

CONSENT ORDER

The Alabama Securities Commission ("Commission"), having the authority to administer and provide for the enforcement of all provisions of Title 8, Chapter 6, Code of Alabama 1975, the Alabama Securities Act ("Act"), upon due consideration of the subject matter hereof, and having confirmed information of the offers for sale and/or sale of securities into, within or from the state of Alabama, has determined as follows:

RESPONDENTS

1. CAPITAL GUARDIAN, LLC ("CAPITAL GUARDIAN"), is a North Carolina LLC, with a business address of 1209 E. Garrison Blvd., Gastonia, NC 28054.
2. MICHAEL MCMAHAN ("MCMAHAN"), at all times relevant, was President and Chief Compliance Officer of CAPITAL GUARDIAN , with a business address of 1209 E. Garrison Blvd., Gastonia, NC 28054.

STATEMENT OF FACTS

3. On August 25, 2006, CAPITAL GUARDIAN electronically filed a Form BD, through the National Association of Securities Dealers, Inc., Central Registration Depository ("NASD CRD"), for registration as a broker dealer in the state of Alabama.
4. On September 1, 2006, the Commission staff dispatched a letter to CAPITAL GUARDIAN which enumerated certain documentation and information required as part of

the application for registration, among which was a requirement to furnish a statement concerning any prior sales activity that had occurred in the state of Alabama. On September 1, 2006, the Commission staff issued a visitation letter to CAPITAL GUARDIAN's clearing firm, Pershing, LLC, requesting that Pershing furnish the Commission staff information regarding all securities transactions effected on behalf of Alabama investors by CAPITAL GUARDIAN.

5. On September 12, 2006, the Commission staff received a letter dated September 5, 2006, from Regulatory Compliance LLC., with an attached affidavit executed by MCMAHAN and dated September 9, 2006, attesting that CAPITAL GUARDIAN had no prior activity in Alabama.

6. On October 16, 2006, the Commission staff received securities transaction information from Pershing LLC reflecting CAPITAL GUARDIAN had fifteen (15) open accounts with eight (8) Alabama residents reflecting 132 securities transactions. The transactions occurred between June 16, 2006 and October 3, 2006.

7. On December 12, 2006, a review of the Registration files of the Commission, disclosed no record of registration or exemption from registration for CAPITAL GUARDIAN as a Broker Dealer in the state of Alabama.

8. On December 21, 2006, the Commission issued Administrative Order No. CD-2006-0046 directing RESPONDENTS to immediately cease and desist from further offers or sales of any securities into, within or from the state of Alabama.

9. On February 16, 2007, CAPITAL GUARDIAN submitted documents and information relating to the fifteen (15) accounts referenced by Pershing in Paragraph 6 above. CAPITAL GUARDIAN provided copies of four (4) investment advisory agreements between an affiliated SEC registered investment advisory firm, McMahan & Associates, and Pershing. CAPITAL GUARDIAN also provided the new account forms pertaining to the accounts of the Alabama investors. The documents established that a total of eleven (11) accounts were held by CAPITAL GUARDIAN, in various names and combinations of

names, on behalf of eight Alabama residents who are members of three families. Securities transactions occurred in the accounts of two families, resulting in commissions paid in the total amount of \$64.00.

10. In a letter to the Commission staff dated April 5, 2007, Pershing stated that Pershing's trade confirmations reflected CAPITAL GUARDIAN as the broker dealer of record and included managed (wrap) accounts in which unaffiliated third party managers (i. e. McManan & Associates) directed the trades. Pershing stated that it had a contractual agreement with CAPITAL GUARDIAN but did not have such an agreement or contract with McMahan & Associates. Pershing's affiliate, Lockwood Advisers, Inc. ("Lockwood"), federally-registered investment advisory firm specializing in providing wrap account services, had a contract with both CAPITAL GUARDIAN and McMahan & Associates. Pershing also provided a copy of the Lockwood contract which provided a wrap account platform to CAPITAL GUARDIAN and a copy of the Managed Account Command Agreement between Lockwood Advisers, Inc. and CAPITAL GUARDIAN, LLC/MCMAHAN & ASSOCIATES.

11. On April 12, 2007, the Commission provided RESPONDENTS with a copy of the procedures required to facilitate a rescission offer to the Alabama investors.

12. On May 11, 2007, RESPONDENTS provided information to the Commission that the records submitted by Pershing included trade records pertaining to both CAPITAL GUARDIAN and McMahan & Associates. The records established that 118 of the total number of trades were effected in the McMahan & Associates investment advisory accounts. The 118 trades resulted in no commissions attributable specifically to the trades effected.

13. On June 19, 2007, CAPITAL GUARDIAN offered rescission in the total amount of \$202,971.24 to the Alabama investors. CAPITAL GUARDIAN provided documentation to the Commission that the offers were rejected by the investors.

CONCLUSIONS OF LAW

14. Transacting business in the state of Alabama as a Broker Dealer or Securities Agent, without benefit of registration or exemption from registration, is a violation of Section 8-6-3(a), Code of Alabama 1975. Neither CAPITAL GUARDIAN nor MCMAHAN is registered or exempt from registration as a Broker Dealer or Securities Agent in the state of Alabama. CAPITAL GUARDIAN effected securities transactions on behalf of residents of the state of Alabama without benefit of registration in violation of the Act.

WHEREAS, RESPONDENTS admit that securities transactions were effected in the State of Alabama prior to registration, and states that the information and assertions presented to the Commission during its investigation of this matter are true and correct; that RESPONDENTS understand the Commission relied upon such information and assertions in its determination to accept this Order, and that should the information or assertions prove to be incorrect or misrepresented, the Commission may seek such other administrative, civil or criminal remedies that may be available to it under the provisions of the Act.

WHEREAS, RESPONDENTS have voluntarily waived all rights to a hearing upon entry of this Agreement and have consented to the entry of this Order, and

WHEREAS, CAPITAL GUARDIAN has, under procedures directed by the Commission, tendered offers of rescission to the Alabama residents and furnished a copy of the rejection of the rescission offers to the Commission, and

WHEREAS, CAPITAL GUARDIAN has represented to the Commission that it has taken reasonable and proper precautions designed to prevent future non-compliance with the Act, and

WHEREAS, the Commission finds this Order necessary and appropriate in the

public interest for the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act, and

WHEREAS, the Commission and RESPONDENTS desire to settle this matter as hereafter set forth and agree to the entry of this Order, and

WHEREAS, RESPONDENTS consent to the entry of this Order by the Commission as a full and complete settlement and resolution of the issues contained in this Order, and

ACCORDINGLY, IT IS HEREBY ORDERED:

1. That in accordance with Section 8-6-19(j)(1), Code of Alabama 1975, RESPONDENTS shall pay to the **state of Alabama** an administrative assessment of Four Thousand Dollars (\$4,000), and disgorge commissions of \$64.00 (totaling \$4,064.00), said funds to be tendered in certified funds contemporaneously with the entry of this Order.

2. That in accordance with Section 8-6-19(k)(1), Code of Alabama 1975, RESPONDENTS shall pay to the **Alabama Securities Commission**, as partial reimbursement for the Commission's cost for investigating this matter, the sum of Four Thousand Dollars (\$4,000), said funds to be tendered in certified funds contemporaneously with the entry of this Order.

3. That upon the entry of this Order, the Commission will make effective **RESPONDENT CAPITAL GUARDIAN's** application for registration as a **Broker Dealer** in the state of Alabama.

AGREED AND CONSENTED to on date indicated:

RESPONDENTS

CAPITAL GUARDIAN, LLC

BY: 

TITLE: Principal/Owner
DATE: 8/28/2007

MICHAEL MCMAHAN

Michael K. McMahon
DATE: 8/28/2007

APPROVED AND AGREED this 30th day of August, 2007



ALABAMA SECURITIES COMMISSION
770 Washington Avenue, Suite 570
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(334) 242-2984
BY:

Joseph P. Borg
JOSEPH P. BORG
Director