

**STATE OF ALABAMA
ALABAMA SECURITIES COMMISSION**

IN THE MATTER OF:

**WHW HOLDINGS, INC., (fka Welch Hornsby, Inc.)
CAPFINANCIAL PARTNERS, LLC
DONALD F. LUTOMSKI**

RESPONDENTS

**CONSENT ORDER
NO. CO-2026- 0006**

CONSENT ORDER

The Alabama Securities Commission, (“Commission”), having 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. **WHW HOLDINGS, INC., (“WHW”)**, formerly known as WELCH HORNSBY, INC. (CRD #104664), is an Alabama corporation located at One Commerce Street, Suite 800, Montgomery, AL 36104. On or about February 15, 2020, THE CAPFINANCIAL GROUP, LLC (“CAPFINANCIAL GROUP”) acquired substantially all of the operating assets and rights of **WHW** to conduct its existing investment advisory business. Until that time, **WHW** was registered with the Securities and Exchange Commission (since March 1988) and was notice filed in Alabama (since January 2001).

2. **CAPFINANCIAL PARTNERS, LLC, (“CAPFINANCIAL”)**, a wholly owned subsidiary of CAPFINANCIAL GROUP, is a North Carolina Limited Liability Company located at 4208 Six Forks Rd., Suite 1700, Raleigh, NC 27609. **CAPFINANCIAL** is an independent registered investment advisory firm.

3. **DONALD F. LUTOMSKI**, (“**LUTOMSKI**”), CRD #2865968, is a registered investment adviser representative whose business address was, and currently is, 2614 19th Street South, Homewood, AL 35209. **LUTOMSKI** has been registered as an investment adviser in Alabama since August 2008. He was an investment advisor for **WHW** until February 2020, at which time, following the acquisition referenced above, he became an investment advisor for **CAPFINANCIAL**.

OTHER RELATED PARTIES

4. **HUNTER RENFROE**, (“**RENFROE**”), was employed as an Alabama based real estate developer involved in renovation projects in the Birmingham, Alabama area. He owned, operated, and/or was affiliated with the following entities: Founders Station, LLC, 1006 20th Street South, LLC, Orchestra Investments, LLC and Orchestra Partners Development, LLC (collectively, the “Orchestra Companies”).

STATEMENT OF FACTS

5. From approximately March 2017 to February 2020, **LUTOMSKI**, while registered as an investment adviser for **WHW**, advised approximately twenty (20) individuals from **WHW**’s client base to invest in a series of promissory notes that were sold by the Orchestra Companies and personally guaranteed by **RENFROE**. Most of those investors were residents of Alabama. In total, those investors invested approximately \$6 million dollars in the promissory notes, which typically provided for an annual rate of return equal to 12%.

6. After **LUTOMSKI** became registered as an investment adviser for **CAPFINANCIAL**, he advised six (6) existing investors in the promissory notes to roll over their current investments into new promissory notes, and in several of those instances, the investors invested additional funds.

7. The majority of the promissory notes were carried on the books of **WHW** and later **CAPTRUST** as an asset under management for billing purposes.

8. RENFROE represented to **LUTOMSKI** that investor funds received from the sale of the promissory notes would be used to facilitate the renovation of real-estate development projects in Alabama, specifically in the Birmingham area. **LUTOMSKI** facilitated the purchase of the promissory notes, as well as communications, between his clients and RENFROE. The agreements provided to the investors were generally referred to as “Funding Agreement, Guaranty Agreement, and Promissory Note.” Further, **LUTOMSKI** provided instructions to his client investors on transmitting their funds to RENFROE.

9. **LUTOMSKI** used off-channel communications, including his personal cell phone, with both clients and RENFROE, when discussing the promissory note investments described herein. These communications were not properly archived or stored in violation of Rule 204-2(a)(7) of the Investment Advisers Act of 1940, which requires advisers to make and keep certain books and records relating to their advisory business, which includes maintaining

“originals of all written communications received and copies of all written communications sent by such investment adviser relating to (i) any recommendation made or proposed to be made and any advice given or proposed to be given.”

10. At the outset of the investment solicitation in 2017, **WHW** did not have specific policies and procedures for the evaluation of privately placed alternative investments. **WHW** relied on **LUTOMSKI** to evaluate the veracity of the promissory notes. **LUTOMSKI**’s due diligence included reviewing and considering some of the following information provided by RENFROE: financial statements, potential risks related to interest rates, and RENFROE’s experience and education.

11. **LUTOMSKI** represented to members of the Commission staff that he did not discuss RENFROE’s investment opportunity with anyone in **WHW**’s legal or compliance area.

12. Once **LUTOMSKI** became an investment adviser for **CAPFINANCIAL** in February 2020, **CAPFINANCIAL** relied on **LUTOMSKI** to evaluate the continued appropriateness of the investments.

13. In or around August 2021, RENFROE sent a letter to investors and **LUTOMSKI** indicating the interest payments would cease on the promissory notes effective August 1, 2021. The letter stated that cash flow from the portfolio was not sufficient to sustain the interest payments.

14. As of August 2021, **LUTOMSKI** knew or should have known the promissory notes issued by RENFROE were worth significantly less than the value carried on **CAPFINANCIAL**'s books and should have immediately made **CAPFINANCIAL** aware of RENFROE's default on the promissory notes.

15. On or about September 10, 2024, RENFROE filed a Chapter 7 petition for relief under the U.S. Bankruptcy laws. As of the date of this Order, the bankruptcy is still ongoing.

16. In or about September 2025, **CAPFINANCIAL** advised Commission staff that it had taken measures to refund all management fees charged to investors relating to their investments in the Orchestra Companies, from the time interest payments ceased in August 2021 going forward. In addition, **CAPFINANCIAL** informed the Commission that it had recently completed an extended review of its alternative investments program and adopted an enhanced process to govern the review and due diligence of alternative investment opportunities offered by **CAPFINANCIAL** advisers and/or regional offices. Further, **CAPFINANCIAL** advised to Commission staff that it has implemented enhanced oversight measures of **LUTOMSKI** for a minimum of one year.

17. A review of the records of the Registration Division of the Commission was conducted and revealed no record that the promissory notes issued by the Orchestra Companies and recommended by **LUTOMSKI** have been registered in any capacity with the Commission.

Further, at the time of the initial investment recommendation, contrary to the representation contained in the attorney-prepared promissory notes that the notes were exempt from registration, the promissory notes were not subject to any perfected exemption from registration.

CONCLUSIONS OF LAW

18. Pursuant to Section 8-6-2(10), Code of Alabama, 1975, the definition of a security includes any "note" or "evidence of indebtedness." The promissory notes issued by the Orchestra Companies and recommended by **LUTOMSKI** are securities under the Act.

19. Pursuant to Section 8-6-4, Code of Alabama 1975, it is unlawful for any person to offer or sell any security in Alabama unless the security is registered under the Act or an exemption from registration is applicable. During the time that he was an investment adviser for **WHW**, **LUTOMSKI** recommended investments in the promissory notes, which were not registered or subject to a perfected exemption from registration, in violation of the Act.

20. Pursuant to Section 8-6-3(j)(10), Code of Alabama, 1975, it is unlawful for a firm to fail to reasonably supervise his or her agents or employees if he or she is a dealer, or his or her investment adviser representatives or employees if he or she is an investment adviser to assure their compliance with the Act. Further, in accordance with Commission Rule 830-X-3-.13(1), every dealer, issuer, or investment adviser, and officers, directors and partners thereof, shall exercise diligent supervision over all the securities activities of its associated persons. **WHW** and **CAPFINANCIAL** failed to properly supervise **LUTOMSKI** as it relates to the Orchestra Companies, who was a registered investment adviser representative with both firms, in violation of the Act and Commission rules.

21. Pursuant to Section 8-6-3(j)(2), Code of Alabama, 1975, the Commission may, by order, bar any person from employment with any dealer or investment adviser or may limit or restrict any person from participation in any activity or function of the securities business for which registration with the Commission is required if such person has willfully violated or failed to

comply with any provision of the Act. As described above, **LUTOMSKI** violated the act by facilitating his clients' investments in the unregistered promissory notes issued by the Orchestra Companies.

22. Pursuant to Section 8-6-19(j)(1), Code of Alabama, 1975, the Commission "may by order, if it finds such order to be in the public interest, impose an administrative assessment upon any person who violates any provision of this article or any rule or order issued under" the Act.

23. Pursuant to Section 8-6-19(k)(1), Code of Alabama, 1975, the Commission "may charge, in addition to any administrative assessment, fine, penalty, remedy, or sanction imposed under this article, the actual cost of any investigation resulting from any violation of any provision of this article or any violation of any rule or order issued under this article or the actual cost of any examination made by the commission pursuant to this article, to the party or parties subject to such investigation or examination."

WHEREAS, the Commission finds this Order necessary and appropriate in public interest for the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act;

WHEREAS, the Commission and **RESPONDENTS** are desirous of settling this matter as hereafter set forth and agreed;

WHEREAS, the execution of this Consent Order in no way prejudices a cause of action by any other party that is not named within this Order;

WHEREAS, **RESPONDENTS** voluntarily waive all rights to a hearing upon entry of this Order and have consented to the entry of this Order;

WHEREAS, the Commission, in resolving this matter, has considered the remedial acts and cooperation of the **RESPONDENTS**, and

WHEREAS, **RESPONDENTS** agree that:

- a. the Statement of Facts set out hereinabove are true and correct;
- b. in agreeing to this Consent Order, the Commission relied upon the accuracy of the Statement of Facts and the information provided by **RESPONDENTS** to the Commission during its investigation, and acknowledges that the Commission may seek further civil or criminal remedies against **RESPONDENTS** available to it under the Act if the information provided by **RESPONDENTS** was materially incorrect; and
- c. **RESPONDENTS** will provide full cooperation, including but not limited to interviews, meetings, production of documents, and testimony, in any investigation, litigation, or prosecution brought by the Alabama Securities Commission and any other law enforcement authority related to the promissory notes and business described herein.

ACCORDINGLY, IT IS HEREBY ORDERED:

1. That **CAPFINANCIAL** shall ensure that the enhanced process governing the review and due diligence of alternative investment opportunities, and future improvements/updates to the same, are implemented and maintained;
2. That **LUTOMSKI** shall ensure that he complies with all rules, regulations, and procedures required of investment advisers and that he provide full cooperation in any investigation, prosecution, or litigation as stated above;
3. That in accordance with Section 8-6-19(j)(1), Code of Alabama 1975, **CAPFINANCIAL** shall pay to the state of Alabama an administrative assessment of \$40,000, said funds to be tendered within 30 days of the entry of this Order.
4. That in accordance with Section 8-6-19(j)(1), Code of Alabama 1975, **WHW** shall pay to the state of Alabama an administrative assessment of \$40,000, said funds to be tendered within 30 days of the entry of this Order.

5. That in accordance with Section 8-6-19(j)(1), Code of Alabama 1975, **LUTOMSKI** shall pay to the state of Alabama an administrative assessment of \$5,000, said funds to be tendered within 30 days of the entry of this Order.

6. That in accordance with Section 8-6-19(k)(1), Code of Alabama 1975, **LUTOMSKI** shall pay to the Alabama Securities Commission, as partial reimbursement for the Commission's cost of investigating this matter, the sum of \$5,000 said funds to be tendered within 30 days of the entry of this Order; and

7. That **CAPFINANCIAL** and **WHW** shall each pay an administrative assessment of \$10,000 to the Alabama Council on Economic Education;

8. The RESPONDENTS believe it is in their best interests to resolve the issues presented by the Commission and avoid further litigation. This Consent Order is entered into by the parties under the express agreement that all claims and allegations, past, present or future, are disputed, and this full and final resolution of the Commission's concerns shall never be treated as an admission of guilt or wrongdoing by RESPONDENTS at any time or in any manner whatsoever and shall not be offered or admitted as evidence of the truth of any matter asserted therein in any other proceeding or for any other purpose; and

9. That all parties comply with this agreement as set forth above.

AGREED AND CONSENTED to on the date indicated:



ALABAMA SECURITIES COMMISSION
445 Dexter Avenue, Suite 12000
Montgomery, AL 36104
(334) 242-2984

BY:


AMANDA SENN
Director

RESPONDENTS

CAPFINANCIAL PARTNERS, LLC



(name) Christina Markell-Bullock

Managing Director, General Counsel
(position)

DATE: 10/13/20

APPROVED AND AGREED this 13th day of October, 2020.

WHW HOLDINGS, INC.

Edward V. Lutch, Jr.
(name)

Chairman
(position)

DATE: 10.10 - 2026

APPROVED AND AGREED this 10th day of October, 2026.

DONALD F. LUTOMSKI


Donald Lutomski

DATE: 10/8/2026

APPROVED AND AGREED this 8th day of October, 2026.

Entered at Montgomery, Alabama this 23rd day of October, 2026.