

**STATE OF ILLINOIS
SECRETARY OF STATE
SECURITIES DEPARTMENT**

))
IN THE MATTER OF: CHARLES J. DUSHEK,))
AND CAPITAL MANAGEMENT ASSOCIATES, INC.,))
_____))

File No. C0900465

**CONSENT ORDER OF REVOCATION
AND PROHIBITION**

TO THE RESPONDENTS: CAPITAL MANAGEMENT ASSOCIATES, INC.
(CRD #123730)
Attn: Charles J. Dushek
27 West 172 Galusha Avenue
Warrenville, Illinois 60555

CHARLES J. DUSHEK
(CRD #2120926)
27 West 172 Galusha Avenue
Warrenville, Illinois 60555

WHEREAS, Capital Management Associates, Inc. and Charles J. Dushek ("Respondents") on the 9th day of June 2015 executed a certain Stipulation to Enter Consent Order of Revocation and Prohibition (the "Stipulation"), which hereby is incorporated by reference herein.

WHEREAS; by means of the Stipulation, Respondent has admitted to the jurisdiction of the Secretary of State and service of the Amended Notice of Hearing of the Secretary of State, Securities Department, dated March 23, 2015 in this proceeding (the "Notice") and Respondents have consented to the entry of this Consent Order of Revocation and Prohibition (the "Consent Order").

WHEREAS, by means of the Stipulation, the Respondent acknowledged, without admitting or denying the truth thereof, that the following allegations contained in the Amended Notice of Hearing shall be adopted as the Secretary of State's Findings of Fact:

1. That at all relevant times, Respondent Capital Management Associates, Inc. ("CMA") was registered with the Secretary of State as an Investment Advisor in the State of Illinois pursuant to Section 8 of the Act.

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2. That at all relevant times, Respondent Dushek was registered with the Secretary of State as an Investment Advisor Representative in the State of Illinois pursuant to Section 8 of the Act.
3. That at all relevant times Respondent Dushek was both registered through and a control person of Respondent CMA, being both a direct owner and executive officer of CMA.
4. That between 2008 and 2012, Respondents placed hundreds of millions of dollars in securities trades for which the majority, the Respondents did not designate or allocate whether the trades were being purchased personally or for clients.
5. When the Respondents placed orders, they made block purchases in Respondent CMA's brokerage accounts that were later allocated to client accounts or personal accounts of the Respondents.
6. Respondents delayed allocating trades, typically waiting at least one trading day and often several days - before allocating the trades to client accounts or their own personal accounts and by that time knowing which trades were profitable.
7. The Respondents did not use order management software such as Moxy to designate, before executing the trade, the account that was placing the orders.
8. Respondent CMA placed trades through brokerage accounts maintained at Charles Schwab & Co., Inc. ("Schwab") and E*Trade Securities, LLC ("ETrade").
9. GreatBanc Trust Company ("GreatBanc") acted as custodian for Respondent CMA's client accounts and Respondent Dushek's and Dushek's family personal accounts. GreatBanc allocates the securities to client accounts based on directives from Respondents.
10. Allocating trades on the same date that the trade is placed is considered an industry standard.
11. It is considered best practices in the industry to determine trade allocations before a trade is place or immediately thereafter; for the reason as to protect against fraudulent allocation schemes such as cherry picking.
12. As early as 2011, GreatBanc warned Respondents regarding their continuous practice of late/delayed allocations, of which Respondents ignored or provided bogus excuses for the delays.

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13. Between January 12, 2011 and January 18, 2011, Respondents placed multiple trades for a total of approximately 14,600 shares of ALSK .
14. Of the aforementioned trades, Respondents allocates 5000 shares to M. Dushek, Respondent Dushek's wife and 3000 to Respondent CMA.
15. Respondents did not allocate the aforementioned trades to client or personal accounts until January 19, 2011 and/or January 20, 2011.
16. As a result of respondents' late/delayed allocations of the trades, respondents "purchased" their shares of ALSK at a price of \$9.26, \$9.27 and \$9.38 per share, whereas respondents' clients purchased shares of ALSK at a price of \$9.77, \$9.88 and \$9.9 per share during the exact same time period.
17. Respondents' late/delayed allocation or cherry picking scheme enabled Respondents to sell the same shares of ALSK stock it purchased for M. Dushek and Respondent CMA and realize trading gains.
18. Prior to May 2, 2013, Respondents filed with the State of Illinois Form ADV applications for registration of Respondent CMA, stating in the brochure that it does not "aggregate or "bunch"" its trade order with orders for other clients.
19. However, between 2008 and 2012, Respondents placed trade orders for both its clients and respondents together under the same order number or in "bunches".
20. On September 9, 2008, Respondents placed trades for shares of AMR stock for Respondent CMA, together with its other clients. These trades were "bunched" together in one order, ODA# 6012.
21. On January 12, 2011, Respondents placed trades for shares of ALSK stock for Respondent Dushek, together with respondents other clients. These trades were "bunched" together in one order, ODA# 104483.
22. On or about July 13, 2005, September 21, 2006 and November 4, 2008, Respondents filed with the State of Illinois Form ADV applications for registration of Respondent CMA indicating that Respondent "CMA does not make short term trades in any security on the same day that buy or sell transactions are done for client holdings in the same security."
23. On or about August 1, 2008, Respondents made purchases of 3000 shares of AA stock for clients of Respondent CMA. On the same day, within 15 minutes after purchasing the shares of AA stock for its clients, Respondents purchased and sold 2250 shares of AA stock for Respondent Dushek's son, Charles S. Dushek.

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24. On or about May 2, 2013, Respondents filed a subsequent Form ADV application for registration indicating that Respondent's "practice is to execute client account orders separately to eliminate any conflicts of interest between clients and proprietary and personal account trading. Our internal controls designed to prevent 'contemporaneous trading' are to wait 10 minutes after any client trade to place any trade for ourselves in the same security."
25. The activities described above, constitute the activities of an Investment Adviser and/or Investment Adviser Representative as defined in Sections 2.12 and 2.12b of the Act.
26. Section 12.F of the Illinois Securities Law of 1953, 815 ILCS 5/1 *et seq.*, states that it shall be a violation of the provisions of the Act for any person to "engage in any transaction, practice, or course of business in connection with the sale or purchase of securities which works or tends to work a fraud or deceit upon the purchaser or seller thereof."
27. Respondents CMA and Dushek engaged in a fraudulent "cherry picking" scheme whereby respondents in delaying the allocation of trades, assigned profitable trades to Respondents CMA and Dushek, as well as Respondent Dushek's family and unprofitable or less profitable trades to Respondent CMA clients.
28. Section 12.G of the Illinois Securities Law of 1953, 815 ILCS 5/1 *et seq.*, states that it shall be a violation of the provisions of the Act for any person to "obtain money or property through the sale of securities by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading."
29. Respondents failed or omitted to inform its clients that the allocation of ownership of the shares purchased was not assigned or allocated until after it was determined whether the trade was profitable.
30. Section 12.H of the Illinois Securities Law of 1953, 815 ILCS 5/1 *et seq.*, states that it shall be a violation of the provisions of the Act for any person to "sign or circulate any statement, prospectus, or other paper or document required by any provision of this Act or pertaining to any security knowing or having reasonable grounds to know any material representation therein contained to be false or untrue."
31. Respondent CMA's Form ADV applications for registration indicated in its brochure that it does not "aggregate or 'bunch'" its trade order with orders for other clients, when in fact it "bunched" the vast majority of its trade order with the orders of other clients. Additionally, Respondent CMA's Form ADV

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applications for registration indicated Respondent CMA “does not make short term trades in any security on the same day that buy or sell transactions are done for client holdings in the same security.” However, Respondents habitually traded in securities on the same day that it bought and/or sold the same securities for its clients.

32. Section 12.I of the Illinois Securities Law of 1953, 815 ILCS 5/1 *et seq.*, states that it shall be a violation of the provisions of the Act for any person to “employ any device, scheme or artifice to defraud in connection with the sale or purchase of any security, directly or indirectly.”
33. Respondents CMA and Dushek engaged in a fraudulent “cherry picking” scheme whereby respondents in delaying the allocation of trades, assigned profitable trades to Respondents CMA and Dushek, as well as Respondent Dushek’s family and unprofitable or less profitable trades to Respondent CMA clients.
34. That Section 12.J of the Act provides, *inter alia*, that it shall be a violation of the provisions of the Act for any person to “when acting as an investment adviser, investment adviser representative, or federal covered investment adviser, by any means or instrumentality, directly or indirectly: (1) To employ any device, scheme or artifice to defraud any client or prospective client; (2) To engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client; or (3) To engage in any act, practice or course of business which is fraudulent, deceptive, or manipulative.
35. That Section 8.E of the Act provides, *inter alia*, that the registration of a salesperson, investment adviser, or investment adviser representative may be denied, suspended or revoked if the Secretary of State finds that the salesperson, investment adviser, or investment adviser representative:
 - a. Has engaged in any unethical practice in connection with any security, the offer or sale of securities or in any fraudulent business practice (815 ILCS 5/8(E)(1)(b));
 - b. Has violated any provisions of this Act (815 ILCS 5/8(E)(1)(g)).

WHEREAS, by means of the Stipulation, the Respondent acknowledged, without admitting or denying the truth thereof, that the Secretary of State has adopted the following additional Finding of Fact:

36. That Section 11.E(4) of the Act provides that in addition to any other sanction or remedy contained in this subsection E, the Secretary of State, after finding

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that any provision of this Act has been violated, may impose a fine as provided by rule, regulation or order not to exceed \$10,000, for each violation of this Act, may issue an order of public censure against the violator, and may charge as costs of investigation all reasonable expenses, including attorney's fees and witness fees.

WHEREAS, by means of the Stipulation Respondent has acknowledged, while neither admitting or denying the truth thereof, that the following shall be adopted as the Secretary of State's Conclusions of Law:

- (1) Respondents Capital Management Associates, Inc. and Charles J. Dushek have violated Section 12.F, G, H, I and J of the Illinois Securities Law of 1953 (815 ILCS 5/1 *et seq.*);
- (2) Respondents Capital Management Associates, Inc. and Charles J. Dushek's registration as an Investment Adviser and/or Investment Advisor Representative in the State of Illinois is subject to revocation pursuant to Section 8.E(1)g of the Act;
- (3) Respondents Capital Management Associates, Inc. and Charles J. Dushek are subject to an order that permanently prohibiting or suspending Respondents from acting as an Investment Adviser and/or Investment Advisor Representative in the State of Illinois; and
- (4) That by virtue of the foregoing, the Respondents Capital Management Associates, Inc. and Charles J. Dushek are subject to a FINE pursuant to Section 11.E(4) of the Act.

WHEREAS, by means of Stipulation Respondents have acknowledged and agreed that the registration of Capital Management Associates, Inc. and Charles J. Dushek as an Investment Adviser and/or Investment Advisor Representative in the State of Illinois shall be revoked.

WHEREAS, by means of Stipulation Respondents have acknowledged and agreed that Capital Management Associates, Inc. and Charles J. Dushek shall be permanently prohibited from acting as an Investment Adviser and/or Investment Advisor Representative in the State of Illinois.

WHEREAS, the Secretary of State, by and through his duly authorized representative, has determined that the matter related to the aforesaid formal hearing may be dismissed without further proceedings.

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NOW THEREFORE IT SHALL BE AND IS HEREBY ORDERED THAT:

1. Capital Management Associates, Inc. registration as an Investment Representative in the State of Illinois shall be revoked.
2. Charles J. Dushek registration as an Investment Advisor Representative in the State of Illinois shall be revoked.
3. Capital Management Associates, Inc. and Charles J. Dushek shall be permanently prohibited from acting as an Investment Advisor and/or Investment Advisor Representative in the State of Illinois.
4. The Notice of Hearing and Amended Notices of Hearing in this matter are dismissed.
5. The formal hearing scheduled on this matter is hereby dismissed without further proceedings.

ENTERED: This 16th day of June 2015.



JESSE WHITE
Secretary of State
State of Illinois