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SEC ISSUES CEASE-AND-DESIST ORDER AND IMPOSES SANCTIONS FOR VIOLATION OF ANTI-FRAUD PROVISIONS UNDER THE INVESTMENT ADVISERS ACT AND FAILURE TO MAINTAIN ADEQUATE WRITTEN PROCEDURES IN CONNECTION WITH “RFP’S”

On June 6, 2006, the Securities and Exchange Commission (“SEC” or the “Commission”) entered an order (the “Order”) instituting administrative cease-and-desist proceedings and imposing remedial sanctions against CapitalWorks Investment Partners, LLC (“CapitalWorks”) and Mark J. Correnti (“Correnti”), its head of compliance, under Sections 206(2) and 206(4) of the Investment Advisers Act of 1940 (the “Advisers Act”) and Rule 206(4)-7 (the “Rule”) thereunder.

CapitalWorks is an SEC registered investment adviser based in San Diego, California and currently has approximately \$736 million in assets under management. Correnti is a principal of CapitalWorks’ parent company. Since 1999, Correnti has been Director of Client Service and Marketing, and he was head of compliance at CapitalWorks until March 2005.

Section 206(2) of the Advisers Act makes it unlawful for any investment adviser by use of the mails to engage in any activity that operates as a fraud. Similarly, Section 206(4) of the Advisers Act prohibits any investment adviser from using the mails to engage in any activity the Commission has determined to be fraudulent. The Rule requires investment advisers registered with the Commission to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder.

In June 2002, the SEC’s staff examined CapitalWorks and after the conclusion of the examination, issued a “deficiency letter” to CapitalWorks which identified various deficiencies under the Advisers Act which CapitalWorks was required to correct. However, in subsequent responses to requests for proposals (“RFPs”) from potential clients, periodic requests for information from existing clients and consultant questionnaires, CapitalWorks falsely stated that the examination did not result in any deficiencies or require any corrective action. Of the 39 RFPs, 12 requested specific information relating to regulatory audits, inspections or examinations. In 10 responses, according to the Order, CapitalWorks falsely answered that “[t]he SEC did not find any deficiencies and required no follow-up actions.” In one response, CapitalWorks falsely answered “N/A,” even though it had been subject to an examination, and in another response CapitalWorks claimed it had never been subject to a regulatory inspection. During this period, according to the Order, CapitalWorks had no written policies or procedures relating to client communications, and Correnti did not cause any to be prepared.

In August 2004, the SEC’s staff again conducted an examination of CapitalWorks. According to the Order, the staff then “informed Correnti of the false statements” that had been made in the responses. Thereafter and after October 5, 2004, the effective compliance date for the Rule, CapitalWorks issued another false response. CapitalWorks did not adopt any written procedures that addressed the violations that were found by the staff until April 2005.

In the Order, the SEC found that CapitalWorks willfully violated Sections 206(2) and 206(4) of the Advisers Act and the Rule thereunder and that Correnti aided and abetted and was “a cause” of these violations. The SEC censured CapitalWorks and Correnti and ordered them to cease and desist from further violations of these Sections and the Rule. In the Order, among other things, CapitalWorks was required, at its expense, to retain an independent consultant to conduct quarterly reviews for a two-year period of CapitalWorks’ compliance with its written policies and procedures for responding to RFPs, was required to mail a copy of the Order to each existing client and, for a period of 12 months, was required to provide a copy of the Order to all prospective clients not less than 48 hours prior to entering into any advisory contract. Finally, CapitalWorks and Correnti were ordered to pay civil money penalties in the amount of \$40,000 and \$25,000, respectively, for their roles in the violations.

The Order underscores the need for each adviser registered under the Advisers Act to review carefully all responses to RFPs and other client solicitations to assure they are fully accurate and not misleading. Each adviser should maintain detailed policies and procedures related to the preparation of such responses and solicitations reasonably designed to prevent inaccuracies and misleading statements, and the adviser’s chief compliance officer should periodically test such policies and procedures to determine whether they are functioning effectively.

Investment advisers with questions about any of these matters should contact Peter Rosenblum (pmr@foleyhoag.com) or Jeffrey Collins (jcollins@foleyhoag.com) in Foley Hoag’s Investment Management Group at (617) 832-1000.