

**Before the Enforcement Division of the Securities and Exchange Commission**

**In the Matter of CapWealth Advisors, LLC**

SEC File No. A-03907-A

**SUPPLEMENTAL WELLS SUBMISSION OF CAPWEALTH ADVISORS, LLC**

August 14, 2020

Bradley J. Bondi  
Sara E. Ortiz  
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1990 K Street, N.W., Suite 950  
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*Attorneys for CapWealth Advisors, LLC*

CapWealth Advisors, LLC (“CapWealth”) submitted a Wells submission on June 15, 2020. The crux of that submission was that CapWealth did *not* violate Section 206 of the Investment Advisers Act because, *inter alia*, it did not receive any income associated with 12b-1 fees because it offset those fees from the advisory fee owed by the client. In other words, unlike every adviser that the SEC has charged, CapWealth did not benefit in any way from its receipt of 12b-1 fees, and its clients did not suffer any financial detriment. Therefore, CapWealth had no conflict of interest it had a legal duty to disclose. That said, as CapWealth explained in its Wells submission, its clients were well-aware from direct communications with CapWealth’s advisors that their advisory fee was being discounted by the approximate amount of 12b-1 fees that CapWealth would receive. Instead of merely refunding the 12b-1 fees (which would have had the same net effect on CapWealth), CapWealth used those fees to offset the client’s advisory fee in order to provide an important tax benefit to the client: As explained by Professor Jonathan Macey in his expert report, because 12b-1 fees are fully deductible whereas advisory fees are not, having a client first pay the 12b-1 fees and then having the amount of the advisory fee reduced by an offsetting amount preserved the deductibility of the 12b-1 fees. (Macey Expert Report at ¶ 42).

CapWealth now submits this supplemental Wells submission in response to the Staff’s recent *ex post facto* canvassing of CapWealth’s advisory clients purportedly to test the veracity of certain evidence presented in CapWealth’s Wells Submission filed June 15, 2020. Specifically, the Staff indicated that it sought to determine whether clients were aware that CapWealth received 12b-1 fees in connection with the purchase of shares of mutual funds and whether clients were aware that CapWealth discounted its standard 1% advisory fee to such clients to account for the receipt of the 12b-1 fees. However, the Staff has been aware of the existence of the discounted advisory fee since at least February 20, 2020, and was aware of which clients received a discounted

advisory fee and the amount of each discounted fee by the time it completed testimony of CapWealth's principals on May 19, 2020. In other words, CapWealth's June 15, 2020 Wells submission did not provide the Staff with any new information regarding the existence of, the amount of, or the identities of, the clients who received the discounted advisory fee.

As discussed below, Staff's unorthodox approach of contacting multiple CapWealth clients *after* CapWealth filed its Well submission might naturally beg the question of an outside observer whether these efforts could be a tactic (1) to pressure CapWealth and its principals into settling this matter by publicizing the SEC's confidential investigation to clients, or (2) to gather post-Wells information to bolster the Staff's rushed and ill-conceived enforcement action without the benefit of allowing CapWealth to respond. *See* CapWealth's July 20, July 30, and July 31, 2020 letters to the Staff. Regardless of the Staff's motives, which we will assume here were appropriate, CapWealth is entitled to respond on the substance. Hence, CapWealth respectfully submits this supplemental Wells submission, so the Commission has the benefit of a response to the Staff's post-Wells investigation.

**A. The Staff Was Aware That CapWealth Discounted Its 1% Advisory Fee for Clients Who Paid 12b-1 Fees *Well Before* CapWealth Submitted Its Wells Submission.**

As an initial matter, CapWealth advised the Staff at the commencement of the investigation that CapWealth routinely discounted its standard 1% advisory fees to clients whose portfolios included investments in classes of mutual funds which paid CapWealth 12b-1 fees. On February 20, 2020, in response to the SEC's document subpoena, CapWealth advised the Staff in writing:

It was the normal and ordinary practice at CapWealth when determining fees for clients to consider all fees that the client would pay including 12b1 fees. It was the normal and ordinary practice to discount advisory fees to accommodate the inclusion of 12b1 mutual fund class shares. Thus, we have removed all accounts where such consideration was incorporated into the advisory fee.

*See* Appendix 1 at 11.

Otherwise stated, three weeks after the Commission's January 28, 2020, Formal Investigative Order and four months *before* CapWealth filed its Wells submission, the Staff knew of CapWealth's position that it—not its clients—absorbed the cost of the 12b-1 fees through a discount of its standard advisory fee.

Moreover, the testimony Staff elicited from CapWealth and its advisers on April 30, 2020, May 1, 2020, and May 19, 2020, corroborated the information CapWealth provided on February 20, 2020. CapWealth's Chief Executive Officer, Phoebe Venable, testified:

Q. When CapWealth chose, let's say, F1 share classes for example for its clients that had 12b-1 fees in a fund that also had lower cost share classes that didn't have 12b-1 fees, did that selection of the higher cost share class violate this [best execution] policy?

A. No.

Q. Why is that?

A. Not in our situation. Because we had made concessions on the fee for the client to take into consideration that we were receiving the 12b-1 fee.

(Venable dep. 132)

Timothy Murphy, CapWealth's Managing Director of Wealth Management, similarly testified:

Q. Did you ever negotiate anything lower than these specific tiers as we see listed here in Exhibit Number 6?

A. Yes.

Q. Tell me about situations when you would negotiate a lower management fee than what we see listed in the exhibit.

A. If a client -- sometimes they ask for -- for, you know, a discount of some sort. *And if there were situations where there were 12b-1s, you often would discount that.*

Q. How much of a discount would you offer in light of 12b-1 fees?

A. Typically 25 -- 25 percent.

(Murphy dep. 116)(emphasis added)

Timothy Pagliara, CapWealth's Founder, Chairman and Chief Investment Officer, testified:

Q. Did you ever make any discounts for clients in terms of the advisory fee in light of 12b-1 fees you were receiving for mutual fund investments?

A. Yes.

Q. Tell us about that process and how you would have calculated or determined a [sic] advisory fee discount in light of 12b-1 fees.

A. For example, I've got one client that has \$10 million invested with me. They actually operate off of a discount from our fee schedule.

And then, they have four children. Each of their four children now ha[s] at least two children. So, you have four and eight's 12. That client individually has four different accounts. They've got a trust account, they've got two joint accounts -- they actually had more than that. They have a SEP account and they have an individual retirement account.

And then each of the children and each of the grandchildren have a separate trust account that receives gifting money that funds an irrevocable life insurance trust. And each one of those accounts is set up differently. So, those accounts -- those -- the children's accounts and the trust accounts and the grandchildren's accounts, and I think we're up to maybe 15 or 20 at this point, *none of those are subject to the advisory fee*. They hold a variety of mutual funds from American Funds Group.

And *those accounts at that time would have been F1 shares so that we were receiving a 25 basis point trail* for administering those accounts and providing services to those accounts.

(Pagliara dep. 91-92.)(emphasis added)

Furthermore, on March 3, 2020, CapWealth produced in native format a spreadsheet to the Staff (Bates No. CW000856.xls) categorizing and totaling the discounts CapWealth provided to clients on accounts that included the payment of 12b-1 fees.

Accordingly, prior to the Staff's May 15, 2020 Wells notices, CapWealth and its advisers had provided the Staff with detailed information regarding the discounts CapWealth provided to its advisory clients to offset the firm's receipt of 12b-1 fees. Yet, the Staff made no effort to test or verify this information through interviews of CapWealth's clients. It was only *after* CapWealth made a Wells submission that wholly undermined the conclusions set out in the Staff's Wells notices that the Staff sought to contact CapWealth's clients. This *ex post facto* attempt to justify the improvident and rushed conclusions set out in the Wells notices is unnecessary and improper.

**B. CapWealth's Clients Have Confirmed That They Were Aware That Their Advisory Fees Were Discounted and That CapWealth Received 12b-1 Fees.**

In any event, the investors whom the Staff contacted have provided no evidence to support the claims made in the Wells notices. The Staff, for example, interviewed [REDACTED], whose adviser is Timothy R. Murphy. Mr. [REDACTED] has been an advisory client of Mr. Murphy for more than fourteen years. Mr. [REDACTED] has submitted the enclosed declaration refuting the SEC's theories. ([REDACTED] Decl. ¶ 1)(Appendix 2) Mr. [REDACTED] confirmed that he has met in person with Mr. Murphy on many occasions over the years to discuss, among other things, his investment objectives, his investment portfolio, and the fees Mr. Murphy and CapWealth receive for their services. (*Id.* ¶ 2) Although Mr. [REDACTED] does not now recall with specificity what Mr. Murphy explained to him over a decade ago regarding the source or amount of CapWealth's fees, he is aware that his account includes mutual funds and that Mr. Murphy and CapWealth provided to him a discount of 40% off its standard 1% advisory fee. (*Id.* ¶¶ 3-5) Mr. [REDACTED] further confirmed that he has no reason to doubt that Mr. Murphy explained to him CapWealth's receipt of 12b-1 fees or that CapWealth reduced his advisory fee to account for CapWealth's receipt of such fees, if Mr. Murphy recalls that such a discussion occurred. (*Id.* ¶ 6) Mr. [REDACTED] always has found Mr. Murphy to be honest and trustworthy and is completely satisfied with his relationship with Mr. Murphy and

CapWealth.<sup>1</sup> (*Id.* ¶¶ 6, 7)

The Staff's interview with ██████████ likewise yielded nothing to rebut the evidence CapWealth has submitted regarding its disclosures to its clients and the discounted advisory fees it charges. Like Mr. ██████████ Mr. ██████████ has been an advisory client of Mr. Murphy for more than ten years. (██████████ Decl. ¶ 1)(Appendix 3) Mr. ██████████ explained that he has met in person with Mr. Murphy on many occasions over the years and specifically recalls having discussed 12b-1 fees with Mr. Murphy. (*Id.* ¶ 3) He also recalls discussing and agreeing with Mr. Murphy that he would pay a discounted annual advisory fee to CapWealth of .75%, or 75 basis points. (*Id.* ¶ 4) Mr. ██████████ is aware of the fees CapWealth charges, aware of the discounts he receives, and is satisfied with his relationship with Mr. Murphy and CapWealth in all respects. (*Id.* ¶ 5) His testimony further corroborates the veracity of the evidence CapWealth has submitted. Indeed, it confirms the accuracy of Mr. Murphy's May 19, 2020, testimony that clients who pay 12b-1 fees typically receive a 25% discount off CapWealth's standard advisory fee. (Murphy dep. 116)

**C. The Staff's Outreach Has Been Distressing to CapWealth's Elderly Investors.**

The Staff also saw fit to attempt to seek to interview at least two (2) elderly investors who have Timothy Pagliara as their investment adviser. One such investor, ██████████, is an 87-year old retiree in failing health who has appointed her daughter, ██████████, as her attorney-in-fact pursuant to a durable power of attorney. Mrs. ██████████ was so alarmed by the letter

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<sup>1</sup> Significantly, the disclosures CapWealth routinely provides to its clients in-person are precisely the form of disclosure that Chairman Clayton has publicly acknowledged to be the most valuable to an investor. *See*, e.g. <https://www.youtube.com/watch?v=talDyeUwsWE>. Chairman Clayton appropriately encourages investors to engage in such discussions with their investment advisers and to ask questions about the fees advisors receive. (*Id.*) Nowhere does Chairman Clayton advise investors to search out such information in a Form ADV or mutual fund prospectus. As Professor Macey has previously opined in his expert report in this matter, and as the record otherwise demonstrates, very few investors ever read a Form ADV.

she received from Staff that her daughter had to travel to her home to check on her medical condition. Although Mrs. [REDACTED] is not medically able to provide evidence, the record reflects that CapWealth has always and in all respects acted to protect her financial interests.<sup>2</sup>

Likewise, the Staff attempted to interview 79-year-old, [REDACTED] [REDACTED], another long-term advisory client of CapWealth and Mr. Pagliara. Ms. [REDACTED] was referred to Mr. Pagliara by another CapWealth client. She has a single account with CapWealth yet presented a complex problem related to her fiancé. He had a severe stroke before they were to be married, and she cared for him at her home. He had little resources for expensive long-term care. Ms. [REDACTED] provided all his care and most of his financial support until his death several years after she met with Mr. Pagliara. She opened her account in early 2003 with approximately \$300,000, half of which constitutes unrealized gains. Her GIPS compliant performance through 8.6.20, net of all fees, is 7.96%

Ms. [REDACTED] declined to speak with Ms. Basinger. She was upset by the tone of the Staff's letter and called Mr. Pagliara when she received it. She advised Mr. Pagliara that she was happy with CapWealth's services and that she vaguely recalled speaking with Mr. Pagliara about 12b-1 fees. She also commented that she has always appreciated Mr. Pagliara's advice and counsel and appreciated having CapWealth as her investment adviser.

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<sup>2</sup> Mr. Pagliara has provided a significant level of service to Mrs. [REDACTED] over the years. Mrs. [REDACTED] accounts include the [REDACTED] [REDACTED] Revocable Trust, the [REDACTED] [REDACTED] IRA, the [REDACTED] [REDACTED] Family Irrevocable Trust, and the [REDACTED] [REDACTED] Q-Tip Trust. Mrs. [REDACTED] trust assets presented a complex set of financial challenges. Her husband, [REDACTED] [REDACTED] died on April 7, 1988. Mr. Pagliara began working with Mrs. [REDACTED] in 1991. He advised her on all four accounts even though he received an advisory fee that covered only two of the accounts. He provided advice on her trust accounts for over ten years. In early 2002, Mr. Pagliara assisted her in moving the Trust Accounts from Bank of America to Cumberland Trust Co. He also became the investment manager on these accounts, a role he has to this day. Over time, Mr. Pagliara and CapWealth began to work closely with Mrs. [REDACTED] daughter, [REDACTED] [REDACTED] and her corporate Trustee. The Staff's efforts to interfere with the harmony of the relationship Mr. Pagliara has had with Mrs. [REDACTED] and her family for nearly 30 years do it no credit.



**D. As a Matter of Law, CapWealth Had No Conflict of Interest to Disclose and Did Not Violate Section 206.**

Section 206 of the Investment Advisers Act is premised on the disclosure or avoidance of conflicts of interest. Yet, there can be no conflict of interest where no client was harmed, and no investment adviser received a benefit. That is precisely the situation here. As described above and in the Wells submission to the Staff, clients benefitted from CapWealth's discounting of their advisory fees by the approximate amount of 12b-1 fees, and CapWealth did not benefit in any way, shape, or form from its receipt of 12b-1 fees. Even putting aside all the direct and meaningful disclosures to the clients described above and in our Wells Submission, there is no conflict of interest as a matter of law to disclose and thus no violation of Section 206.

In an *ad hominin* attack on defense counsel, Staff accused defense counsel of being "disingenuous" in our initial Wells submission when saying that CapWealth discounted the advisory fees by the expected amount of 12b-1 fees. The Staff is flatly wrong. Counsel has been fully and entirely transparent with Staff throughout this matter as the record clearly demonstrates.

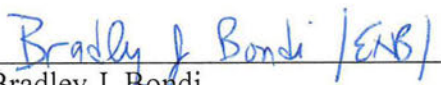
**E. Conclusion.**

In the You Tube video cited *supra*, Chairman Clayton ended his remarks by leaving the viewer with what he considers the most important question any investor should ask their investment advisor, "*How much of my money is going to fees and costs and how much of it is going to work for me?*" CapWealth, Tim Pagliara, Tim Murphy and their associates answer that question to the best of their ability every day. They provide state of the art reporting; have extensive dialogue with clients about costs; and tell clients every quarter what their returns are after costs.

CapWealth also provides to its clients services beyond the investment management services outlined above. Such services include CapWealth's annual women's educational events,

client review meetings, tax planning, and lifestyle budgeting. CapWealth holds an annual luncheon called "State of the Union." It educates children and grandchildren at its annual money camp. It deals with the complex issues of required minimum distributions from retirement accounts. It has on staff a paid outside consultant who gives seminars on Social Security. It makes a consultant available to help clients with the annual choice's clients make with Medicare part D. It has sponsored seminars to help clients deal with the grief over the loss of a loved one and issues related to caring for aging parents. CapWealth provides these holistic services to its clients in a family environment focused upon the challenges clients face in an uncertain world. It is this holistic service model that distinguishes CapWealth from its peers. To paraphrase Oscar Wilde, the SEC's 12b-1 investigation has focus on the price of everything and the value of nothing.

For these reasons, CapWealth respectfully renews its request for a closing letter or an immediate meeting with the Co-Directors of enforcement. The investigation is over and needs to be closed or submitted to the Commission.

  
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Nashville, TN 37219

*Attorneys for CapWealth Advisors, LLC*

# APPENDIX 1

**Phoebe Venable**

President & Chief Executive Officer

February 20, 2020

**VIA EMAIL**

Brian M. Basinger, Senior Counsel  
ENF-CPU  
U.S. Securities and Exchange Commission  
100 F St., N.E., Mailstop 5973  
Washington, DC 20549-5973

**Re: In the Matter of CapWealth Advisors, LLC (A-3907)**

Dear Mr. Basinger:

Please accept this letter and its attachments to serve as CapWealth Advisors, LLC's ("CWA") official response to the U.S. Securities and Exchange Commission's ("SEC") request for additional information dated January 14, 2020.

Per the request, CWA does believe that it has met its obligation under the document request. CWA has carefully and thoroughly searched and captured all items that were requested by the SEC in its January 14, 2020 request for production of documents. In addition to the attached responses, please allow the answers below to represent our responses to the narrative request contained in the letter itself:

- Phoebe Venable, Ryan Hitt and Alana Bolan searched for documents
- Gino Bulso, Timothy Pagliara, Phoebe Venable, Ryan Hitt and Alana Bolan reviewed documents found to determine whether they were responsive
- INTL FCStone (f/k/a Sterne Agee) and Schwab are the custodians that were searched
- Computer files, intranet server files, work emails are the sources that were searched
- 12b1, 12b-1, F1, F2, F3, commissions, conversion, mutual fund trails are terms that were used to identify responsive documents

(615) 778-0740  
(877) 262-2650  
Fax (615) 778-0750

CapWealthAdvisors.com

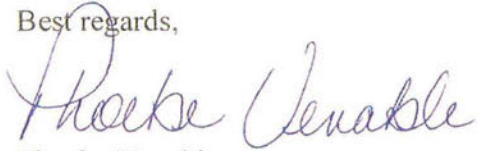
3000 Meridian Blvd. Suite 250

Franklin, TN 37067  
{00137873.DOCX / ver: }

- Leader, Bulso & Nolan, PLC assisted with the data collected
- INTL FCStone was contacted to obtain responsive documents
- The original documents are maintained and stored on CWA's server. The email server uses Microsoft Cloud and the servers are backed up offsite via Barracuda.

All responses and document responses to the request are attached.

Best regards,

A handwritten signature in blue ink that reads "Phoebe Venable". The signature is written in a cursive style with a large initial "P".

Phoebe Venable

Attachments: List of Documents Produced  
Narrative  
Response to Request for Documents

[FOR DOMESTIC U.S. RECORDS]

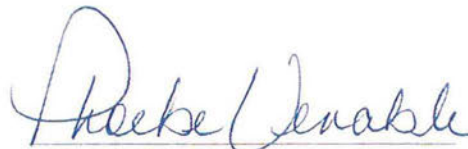
**DECLARATION OF CAPWEALTH ADVISORS, LLC  
CERTIFYING RECORDS OF REGULARLY CONDUCTED  
BUSINESS ACTIVITY**

I, the undersigned, Phoebe Venable, pursuant to 28 U.S.C. § 1746, declare that:

1. I am employed by CapWealth Advisors, LLC as Chief Executive Officer and by reason of my position am authorized and qualified to make this declaration. I am familiar with CapWealth Advisors, LLC's ("CWA") record keeping practices, business practices, flows and how CWA conducts business on a micro and macro level.
2. I further certify that the documents submitted herewith and stamped CW000001-CW001450 are true copies of records that were:
  - (a) made at or near the time of the occurrence of the matters set forth therein, by, or from information transmitted by, a person with knowledge of those matters;
  - (b) kept in the course of regularly conducted business activity; and
  - (c) made by the regularly conducted business activity as a regular practice.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 20, 2020.

  
Phoebe Venable

ATTACHMENT A FOR  
SECURITIES AND EXCHANGE  
COMMISSION REQUEST  
DATED  
January 14, 2020

In the Matter of CapWealth Advisors, LLC (A-3907)

**C. Documents to be Preserved and Produced**

For the time period **January 1, 2015 to Present** ("Relevant Period"), immediately preserve and produce (with production occurring **no later than Friday, February 21, 2020**) all of the following Documents within the possession, custody or control of CapWealth Advisors, LLC (hereinafter, "CapWealth"):

1. Documents sufficient to identify all investment advisory representatives ("IARs") at CapWealth during the Relevant Period, including:
  - a. Full Name;
    - Timothy Pagliara
    - Timothy Murphy
    - Phoebe Venable
    - John Lueken
    - Mark Willoughby
    - Traci Olive
    - Ryan Hitt
    - Alana Bolan
    - Michelle Jordan
    - Chris Burger
    - Hunter Yarbrough
    - Jennifer Pagliara
  - b. Office Address;
    - 3000 Meridian Blvd, Ste 250, Franklin, TN 37069
  - c. Any IAR code(s) or other internal identifying number(s) for each IAR (including any codes used for splitting fees or commissions related to client accounts); and
    - Sterne Agee had a numbering system to identify reps as follows:

Rep Timothy Pagliara:

1S01 Managed Discretionary Advisory  
2S01 Brokerage  
3S01 Managed Non-Discretionary Advisory  
4S01 Brokerage Employee

Rep: Mark Willoughby

1S02 Managed Discretionary Advisory  
2S02 Brokerage  
3S02 Managed Non-Discretionary Advisory

Rep Timothy Murphy

1S03 Managed Discretionary Advisory  
2S03 Brokerage  
3S03 Managed Non-Discretionary Advisory

d. Work email address(es) of each IAR;

- [tpagliara@capwealthgroup.com](mailto:tpagliara@capwealthgroup.com)
- [tmurphy@capwealthgroup.com](mailto:tmurphy@capwealthgroup.com)
- [pvenable@capwealthgroup.com](mailto:pvenable@capwealthgroup.com)
- [tolive@capwealthgroup.com](mailto:tolive@capwealthgroup.com)
- [rhitt@capwealthgroup.com](mailto:rhitt@capwealthgroup.com)
- [abolan@capwealthgroup.com](mailto:abolan@capwealthgroup.com)
- [hyarbrough@capwealthgroup.com](mailto:hyarbrough@capwealthgroup.com)
- [jpagliara@capwealthgroup.com](mailto:jpagliara@capwealthgroup.com)
- Mark Willoughby, John Lueken, Chris Burger and Michelle Jordan are no longer employed at CapWealth.

Attached as Bates Nos. CW000005 - CW000019 is an IARD system report for each year during the relevant period which reflects all associated investment advisory representatives.

2. Any and all Form ADV Part 2B Brochure Supplements used during the Relevant Period by IARs identified above in Request No. 1;

Attached as "Request 2 – ADV Part 2B Brochure Supplements", Bates Nos. CW000022 - CW000125.

3. An organizational chart, listing, at a minimum, the individuals (**current and former**) who worked at CapWealth during the Relevant Period and their position titles and the dates they held those titles, including, but not limited to, the Chairman, the President, the Chief Executive Officer, the Chief



Compliance Officer and the Chief Financial Officer;

**Attached as CW001435.**

4. All Clearing Agreements during the Relevant Period between CapWealth and any clearing broker-dealer;

**Clearing Agreements between CWA and Charles Schwab and Pershing have been previously produced. The Clearing Agreement between Sterne Agee & Leach, Inc. ("Sterne Agee") is attached as "Response 4 – Sterne Clearing Agreement". Once Sterne Agee became INTL FCStone, CWA continued operating under the same Clearing Agreement it had originally entered into with Sterne Agee with the exception of an addendum attached hereto as CW0000126 - CW001413.**

5. All revenue-sharing agreements during the Relevant Period between CapWealth and any other entity, including, but not limited to, revenue-sharing with any clearing broker-dealer;

**CapWealth did not have any revenue sharing agreements during the Relevant Period.**

6. All client investment management agreements, asset management agreements or advisory contracts for all CapWealth advisory programs during the Relevant Period;

**In August 2019 after our SEC onsite audit, we revised our Investment Management Agreement (IMA). The new IMA and all prior versions were previously produced and submitted.**

**Each CapWealth client is assigned a review month and part of the review process includes verifying the client has executed the latest version of our IMA. We are using this process to move all clients to the new IMA.**

7. All CapWealth compliance policies and procedures during the Relevant Period, including, but not limited to, policies concerning conflicts of interest, mutual fund share class selection, best execution and the fiduciary duty owed to advisory clients, as well as the firm's Code of Ethics;

**The current Policies and Procedures manual and Code of Ethics, as revised in August 2019 post our SEC audit, is attached. All prior versions during the Relevant Period have been previously produced.**

8. All communications during the Relevant Period (including e-mails, letters and other correspondence) concerning 12b-1 fees, trailing fees or mutual fund share class selection, including, but not limited to, internal communications at the firm and external communications with clients and/or any clearing broker-dealer;

**In addition to the communications that were produced and provided previously, we are attaching all emails and these documents are attached as "CW000737 - CW000990.**

9. All communications during the Relevant Period (including e-mails, letters and other correspondence) concerning the conversion of advisory clients' investments from mutual fund share classes with 12b-1 fees to lower-cost share classes, including, but not limited to, internal communications at the firm and external communications with clients and/or any clearing broker-dealer;

Please reference the document production for #8 above in response to this request.

10. All documents during the Relevant Period (including notices, letters, brochures or other correspondence) concerning CapWealth's advisory account "administrative fee," including, but not limited to, documents concerning the increase of the fee from \$200 annually to \$300 annually and how the increase was communicated to new clients who came to firm in 2018 or 2019;

All clients received a letter from CapWealth in November 2017 notifying them that CapWealth was changing our fee schedule which included raising the annual administrative fee from \$200 per year to \$300 per year.

New clients who came to the firm in 2018 and 2019 (before the omission of the admin fee on our ADV was discovered) were informed about the administrative fee at least three times.

1. Each prospective client receives a package of information about CapWealth that includes our fee schedule.
2. During the sales process, the admin fee would be discussed with the prospect. It is our practice to make sure all prospects understand three things in the sales process – our investment process, what services we provide and how much we charge.
3. When a new account is opened, the client receives a copy of the fee schedule. CapWealth's client services staff uses an "Account Opening Checklist" when preparing the needed paperwork to open a new account and that list includes providing the client with a copy of the fee schedule. New clients also receive a copy of all paperwork they sign to open their account(s) and any fee discounts or waivers are noted on Schedule A of the IMA.

CapWealth's admin fee is designed to recoup the cost of reporting. A typical client relationship will have multiple accounts. For example, a client may have a joint account, an individual account, an IRA and ROTH IRA. In this typical example, one or two of these accounts are likely to be very small relative to the total relationship. In this typical example, it is highly unlikely that all four accounts will be charged the admin fee in addition to the advisory fee.

The two commonly negotiated fee arrangements for our clients with multiple accounts are:

only charge one account in the household an admin fee and waive the

admin fees on the other accounts in the household, or

waive the advisory fee on the small accounts in the household and only charge those accounts the admin fee.

CapWealth uses its discretion to tailor the fees to the client situation.

We previously produced and provided the November 2017 letters that were sent to all CapWealth clients describing our fee increase including the increase of the admin fee from \$200 per year (billed quarterly) to \$300 per year. We are providing with this response the following additional documents:

2018 Fee Schedule

2019 Fee Schedule

2018 Prospect Information

2019 Prospect information

CapWealth Review Onboarding Closing Accounts

Please note: In 2018 CapWealth changed its branding logo and colors. We updated our prospect information and fee schedule. The only change from the 2018 Fee Schedule to the 2019 Fee Schedule is the updated logo and color.

11. Documents sufficient to identify how much CapWealth (and/or any affiliated broker-dealer) received in compensation from: (i) 12b-1 fees during the Relevant Period; (ii) any revenue-sharing agreements during the Relevant Period; and (iii) any margin loan revenue during the Relevant Period (**NOTE: Each sub-category should be produced separately and not lumped together**);

Please refer to documents attached in the folder "11 & 12 Clearing Statements", Bates Nos. CW001071 - CW001299.

Note there are clearing statements for months in 2018 after CapWealth Investment Services closed. There were a small number of accounts, both brokerage and advisory, that did not respond to our request to move to Schwab. INTL FCStone continued to send statements to us reflecting activity on those accounts, but we did not receive the commission income for those final months of 2018.

The Clearing Statements include 12b-1 fees and any margin revenue on the same spreadsheet but the categories are reported separately and not lumped together.

Sterne Agee mailed paper clearing statements to our office until January 2017 when they began electronic delivery. Scanned copies of the clearing statements are provided for 2015 and 2016.

12. Documents sufficient to identify how much each CapWealth IAR (whether as a CapWealth IAR or a registered representative of an affiliated broker-dealer) personally received in compensation from: (i) 12b-1 fees during the Relevant Period; (ii) any revenue-sharing agreements during the Relevant Period; and (iii)

any margin loan revenue during the Relevant Period (**NOTE: Each sub-category should be produced separately and not lumped together**);

Please refer to documents attached in the folder "11 & 12 Clearing Statements", Bates Nos. CW001071 - CW001299.

We do not have a breakdown of margin loan revenue during the relevant period based on IAR.

13. All communications with, or communications concerning, CapWealth advisory clients during the Relevant Period involving changes in client account advisory fees and/or account administrative fees, including, but not limited to, letters or emails to clients about the administrative fee;

**This document has previously been produced.**

14. Documents sufficient to identify how CapWealth calculated the advisory management fee for client accounts during the Relevant Period, including the basis used for calculating such fees;

CapWealth uses Advent APX for our back-office platform and Advent Revenue Center for billing. Advent Revenue Center is a software program that connects to Advent APX. A full description of Revenue Center is attached as CW001376 - CW001377.

15. Documents sufficient to explain how CapWealth calculated the margin loan revenue that it received from clients' margin loans, including, but not limited to, any agreement between CapWealth and its clients concerning margin loans; and

CapWealth's affiliated broker dealer, CapWealth Investment Services (CWIS) did not calculate margin loan revenue. CWIS was an introducing broker dealer for Sterne Agee/INTL FCStone. The margin loan revenue was always calculated by Sterne Agee/INTL FCStone. In our response to questions #11 and #12, we provided copies of the clearing statements which provide detail on the margin loan revenue calculations.

16. Documents sufficient to identify (**an Excel document is preferred**) all 12b-1 fees incurred by CapWealth advisory clients during the Relevant Period. Such an Excel document should contain one 12b-1 fee transaction per row and include at a minimum: (i) the IAR code on the account of each transaction; (ii) the client account number for each transaction; (iii) the date of the 12b-1 fee incurred in the transaction; (iv) the *mutual fund* name; (v) the mutual fund *share class* name; (vi) the share class symbol; (vii) the fee type incurred (clarify whether it is a 12b-1 fee, or something else); (viii) the client's full name; (ix) the dollar amount of 12b-1 fees incurred for each transaction; (x) any ticket charges incurred for the transactions; (xi) the party responsible for paying the ticket charges; (xii) the broker-dealer for the account; and (xiii) the CapWealth Investment Services registered representative on the account, if applicable.

All fee types are 12b1 fees. The first two digits of the rep code (column C) reflects whether the account was a 1S, 2S, 3S, 4S and the last two digits reflect the representative that the account belonged to with Timothy Pagliara being 01 and Timothy Murphy being 03. See our response to question #1, part (c) for the complete list of rep codes.

For remaining responses to this request, please see documents contained in attached CW001393 - CW001434 and CW001436 - CW001450.

As a regular course of business, CapWealth did not receive from Sterne Agee/INTL reports that details 12b1 revenue by account. When the SEC auditors requested this level of detail, we were able to obtain the detail from Sterne Agee/INTL for 2017 and 2018. Upon receipt of this current request, we asked Sterne Agee/INTL for the data for 2015 and 2016. They were able to provide 2016 but not 2015. Please see the attached email from Don Exner. We have attached a PDF copy of this email for easy reference but you will also find this email in our email discovery in its native file format.

All 12b1 data as it was received is in the folder titled "12b1 Raw". This data file did not include the account name. This data also reflects the Sterne/INTL account number. The account names were added to advisory accounts only (1S and 3S accounts) and the client's new Schwab account number was added. The resulting files are titled 12b1 Revenue Detail for each year. Both "Account Numbers APX All" and "INTL Account Numbers APX" can be used as a cross reference to match account numbers to their respective client accounts.

The workbook titled "Summary CapWealth 12b1 Sterne" contains both a detail and a summary of all 12b1 fees incurred by CapWealth clients during the relevant period. Since INTL did not have the detail for 2015, we compiled the totals from our 2015 spreadsheet titled "SAL Commission Allocation – 2015".

Contained in the "Summary CapWealth 12b1 Sterne" workbook, on the Grand Totals page, is a breakdown of fees based on billing parameters. This was done in a "survivor" style where each column took additional accounts out based on whether they met the parameter being used for that specific instance. Here is a breakdown of the columns and their supporting spreadsheets, sorted by year:

Total (ALL) – All 12b1 fees incurred by all clients of CWA and CWIS.

After 2S and 4S – All 2S and 4S (LP and 40) accounts have been removed as these are brokerage accounts.

All Zero Balance – The clients who were not billed a management fee (had a zero balance for advisory fees) have been removed. The breakdown of this is in the workbooks titled "Q1-Q4 RC" found in the folders for each respective year.

Below Tier and < \$10K– Accounts paying a flat fee of 75 bps or less have been removed and accounts with mutual fund positions of less than \$10,000 have been removed. Worksheets titled “12b1 Additional Deductions” shows the breakdown for this parameter for each respective year.

Discounted Accounts – Accounts billed at full tier with a discount that made their total management fee 75bps or less have been removed. “Discounted Accounts” shows the breakdown for this parameter for each respective year.

Fee < or = 75bps – Accounts were removed that had other discounts that resulted in the total fee rate being less than 75 bps. “Billing Analysis” shows the breakdown for these parameters for each respective year.

It was the normal and ordinary practice at CapWealth when determining fees for clients to consider all fees that the client would pay including 12b1 fees. It was the normal and ordinary practice to discount advisory fees to accommodate the inclusion of 12b1 mutual fund class shares. Thus, we have removed all accounts where such consideration was incorporated into the advisory fee.

## APPENDIX 2

**Before the Enforcement Division of the Securities and Exchange Commission**

**In the Matter of CapWealth Advisors, LLC**

SEC File No. A-03907-A

**DECLARATION OF [REDACTED]**

[REDACTED] states as follows from his own personal knowledge:

1. I am an advisory client of CapWealth Advisors, LLC ("CapWealth"). Timothy R. Murphy has served as my investment adviser for more than fourteen years.
2. I have met in person with Mr. Murphy on many occasions over the years to discuss, among other things, my investment objectives, my investment portfolio, and the fees Mr. Murphy and CapWealth receive for their services.
3. I do not now recall everything Mr. Murphy has explained to me over the years regarding the source of those fees or the amount of those fees.
4. I do know that Mr. Murphy and CapWealth have extended to me a discount of 40% off its standard advisory fee.
5. I also know that my portfolio includes investments in mutual funds.
6. If Mr. Murphy were to state that he explained to me that CapWealth received fees called "12b-1" fees from mutual fund companies and that the advisory fee CapWealth charges me has been reduced to account for CapWealth's receipt of such



fees, I would have no reason to doubt the accuracy of his statement and would have every reason to believe that it is accurate.

7. I have always found Mr. Murphy to be completely honest and trustworthy in my dealings with him.

8. I am completely satisfied with my relationship with, and the advisory and other fees charged by, Mr. Murphy and CapWealth.

I declare under penalty of perjury that the foregoing is true and correct.

Executed August 12, 2020, at Brentwood, Tennessee.

[REDACTED]

## APPENDIX 3

**Before the Enforcement Division of the Securities and Exchange Commission**

**In the Matter of CapWealth Advisors, LLC**

SEC File No. A-03907-A

**DECLARATION OF** [REDACTED]

[REDACTED] states as follows from his own personal knowledge:

1. I am an advisory client of CapWealth Advisors, LLC (“CapWealth”). Timothy R. Murphy has served as my investment adviser for more than ten years.
2. I have met in person with Mr. Murphy on many occasions over the years. We have discussed, among other things, my investments and the fees Mr. Murphy and CapWealth receive for their services.
3. Although I do not now recall everything Mr. Murphy has explained to me regarding the fees CapWealth receives for its services, I do recall having discussed 12b-1 fees with Mr. Murphy. I do not recall the details of that discussion.
4. I also recall discussing with Mr. Murphy the discount that I receive from CapWealth’s standard advisory fee. Mr. Murphy and I agreed that that I would pay an annual advisory fee of .75%.

5. I am satisfied with my relationship with Mr. Murphy and CapWealth, satisfied with the fees I am charged for their services, and satisfied with the investment results I have achieved at CapWealth.

I declare under penalty of perjury that the foregoing is true and correct.

Executed August 13, 2020, at Franklin, Tennessee.

