

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**INVESTMENT ADVISERS ACT OF 1940**

**Release No. 4800 / October 26, 2017**

**INVESTMENT COMPANY ACT OF 1940**

**Release No. 32883 / October 26, 2017**

**SECURITIES AND EXCHANGE ACT OF 1934**

**Release No. 81951 / October 26, 2017**

**ACCOUNTING AND AUDITING ENFORCEMENT**

**Release No. 3904 / October 26, 2017**

**ADMINISTRATIVE PROCEEDING**

**File No. 3-17740**

**In the Matter of**

**AUGUSTINE CAPITAL  
MANAGEMENT, LLC (F/K/A  
AUGUSTINE CAPITAL  
MANAGEMENT, INC.), JOHN T.  
PORTER, and THOMAS F.  
DUSZYNSKI, CPA,**

**Respondents.**

**ORDER MAKING FINDINGS AND  
IMPOSING REMEDIAL SANCTIONS AND  
A CEASE-AND-DESIST ORDER  
PURSUANT TO SECTIONS 203(e), 203(f)  
AND 203(k) OF THE INVESTMENT  
ADVISERS ACT OF 1940, AND SECTION  
9(b) OF THE INVESTMENT COMPANY  
ACT OF 1940 AND INSTITUTING PUBLIC  
ADMINISTRATIVE PROCEEDINGS, AND  
IMPOSING SANCTIONS PURSUANT TO  
RULE 102(e) OF THE COMMISSION'S  
RULES OF PRACTICE AS TO THOMAS F.  
DUSZYNSKI, CPA**

**I.**

On December 20, 2016, the Securities and Exchange Commission (“Commission”) instituted proceedings pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”), and Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”) against Augustine Capital Management, LLC (f/k/a Augustine Capital Management, Inc.) (“ACM”); and pursuant to Sections 203(f) and 203(k) and Section 9(b) of the Investment Company Act against John T. Porter (“J. Porter”) and Thomas F. Duszynski, CPA (“Duszynski”) (collectively, ACM, J. Porter and Duszynski are referred to herein as the “Respondents”). Further, the Commission deems it appropriate and in the public interest that

public administrative proceedings be, and hereby are, instituted against Duszynski pursuant to Rule 102(e)(3)(i)(B) of the Commission’s Rules of Practice.<sup>1</sup>

## II.

Respondents have submitted Offers of Settlement (the “Offers”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Making Findings and Imposing Remedial Sanctions And A Cease-And-Desist Order Pursuant To Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act, and Section 9(b) of the Investment Company Act (“Order”), and Instituting Public Administrative Proceedings, and Imposing Sanctions, Pursuant to Rule 102(e) of the Commission’s Rules of Practice as to Thomas F. Duszynski, CPA, as set forth below.

## III.

On the basis of this Order and Respondents’ Offers, the Commission finds that:

### Summary

1. Respondents J. Porter and Duszynski, together with another individual, own Respondent Augustine Capital Management, LLC. ACM, in turn, acts as an investment adviser for Augustine Fund, L.P. (the “Fund”), a private fund.

2. Respondents caused the Fund to engage in conflicted transactions without disclosure to, or the consent of, the Fund’s investors. Such consent was needed because the investment adviser had a conflict of interest and therefore could not give meaningful consent on behalf of the Fund. Respondents invested in and lent money to two entities in which the ACM owners had an interest. Respondents also lent an ACM owner, Duszynski, money to fund his investment in a business venture with other ACM owners. Duszynski defaulted on the loan.

3. Respondents used nearly \$950,000 in investor funds to pay for ACM’s expenses. These expenses, which under the investment documentation provided to investors were to be borne by ACM, included virtually all of ACM’s overhead expenses – including the salaries of ACM employees. J. Porter, Duszynski and certain of their family members paid approximately

---

<sup>1</sup> Rule 102(e)(3)(i) provides, in relevant part, that:

The Commission, with due regard to the public interest and without preliminary hearing, may, by order, temporarily suspend from appearing or practicing before it any attorney, accountant . . . who has been by name:

...

(B) . . . found by the Commission in any administrative proceeding to which he or she is a party to have violated (unless the violation was found not to have been willful) or aided and abetted the violation of any provision of the Federal securities laws or of the rules and regulations thereunder.

\$362,000 of these excess expenses. The other investors in the Fund paid approximately \$585,000 of these excess expenses. Additionally, even though J. Porter and Duszynski were themselves investors in the Fund, they exempted themselves and certain of their relatives who were investors in the Fund from paying their *pro rata* shares of their salaries.

4. The offering documentation ACM gave to investors provided that classes would be formed and that an investor's holdings in the Fund would be based upon when the investor made an investment in the Fund. In practice, however, Respondents unilaterally determined which investments were allocated to which investors, and how much cash was allocated to each investor's account. Respondents thereafter periodically reallocated various investors' holdings. Respondents improperly kept investors in the dark about what investments were allocated to them, and why.

5. Respondents provided investors with account statements that did not accurately reflect the value of certain underlying investments. Respondents privately concluded that one of the Fund's investments had been rendered worthless. But the account statements for the quarter did not capture adverse developments that occurred during that timeframe. Instead, in the account statements Respondents valued the investment at what the Fund had originally paid for the investment before their determination the investment was worthless.

### **Respondents**

6. ACM is an Illinois limited liability company with its principal place of business in Chicago, Illinois. It is an unregistered investment adviser owned by J. Porter, Duszynski and another individual. It was formed in 1997 to act as the investment adviser for the Fund, and is the general partner of the Fund. J. Porter and Duszynski control ACM.

7. J. Porter, 63 years old, is a resident of Chicago, Illinois and is a one-third owner of ACM. He serves as its chief executive and chairman. He formerly was a futures trader and member of the Chicago Board of Trade. J. Porter has never been registered with the Commission in any capacity.

8. Duszynski, 62 years old, is a resident of Chicago, Illinois, and is a one-third owner of ACM, for which he served as the chief operating officer, secretary and director. Duszynski was a licensed CPA in Illinois but his status is currently inactive. Duszynski has never been registered with the Commission in any capacity.

### **Other Relevant Entity**

9. Augustine Fund, is an Illinois limited partnership formed in 1997. It operates as a private fund and it meets the definition of a Pooled Investment Vehicle under Section 206(4)-8(b) of the Advisers Act. At all relevant times, ACM managed the Fund.

## **Background**

10. In 1997, J. Porter, Duszynski and another individual formed ACM to serve as the investment adviser for a private fund they simultaneously launched, the Fund. ACM is the general partner of the Fund. J. Porter and Duszynski each hold a one-third ownership interest in ACM. J. Porter serves as ACM's chief executive officer and chairman. Duszynski was its chief operating officer. J. Porter and Duszynski handle the Fund's investment decisions and day-to-day operations. The Fund has operated continuously since 1997.

11. Between 2012 and 2015, the Fund had between 35 and 40 limited partners. During that time the net asset value of the Fund as calculated by ACM ranged between approximately \$9 million and \$14 million. The Fund is governed by a limited partnership agreement, subscription agreement and private offering memorandum ("PPM"), as amended in 1999, (collectively the "Offering Documents").

12. Since the early 2000s, the Fund has suffered a number of losses, and its investments have become increasingly illiquid.

### **Respondents Caused the Fund to Engage in Conflicted Transactions Without Disclosing the Conflict and Obtaining Consent.**

13. In late 2011 and January 2012, J. Porter and Duszynski caused the Fund to make investments totaling \$500,000 in a new trading venture, FT Investing, LLC ("FT Investing"), in which they and the other ACM owner held a significant ownership interest. The Fund had no investor advisory committee or other independent entity or person that could effectively consent to conflicted transactions. ACM never disclosed to investors that the Fund had invested in the venture, or that J. Porter and Duszynski had a significant ownership interest in it.

14. In December 2013, J. Porter and another ACM owner bought out the Fund's interest in the venture for \$400,000—causing investors to take a 20% loss on their investment. Respondents never apprised investors of this transaction, or of the conflict of interest inherent in the transaction.

15. From 2012 through 2014, the Fund made a series of undocumented loans to FT Trading, LLC ("FT Trading"), a wholly owned subsidiary of FT Investing. The loans were made to cover FT Trading's broker-dealer margin calls, which were wholly unrelated to the Fund. The Fund's internal records show that the outstanding balance on these loans reached more than \$600,000 at times. Respondents claimed the Fund received a five percent interest rate on these loans. No loan documents reflected any such arrangement.

16. Reasonable investors would have considered it important that the Fund's monies were being used to make undocumented loans, without their consent, to cover the margin calls of an entity controlled by J. Porter and Duszynski.

17. Duszynski, J. Porter, and others formed FT Investing in late 2011. In January 2012, Duszynski, with J. Porter's consent, took a \$250,000 loan from the Fund to pay for his ownership interest in the venture. ACM treated this personal loan as one of the Fund's "investments" and allocated it to a subset of investors in the Fund. Nothing in the Offering Documents permitted the Fund to use Fund assets for personal loans to the directors of ACM. Respondents never told investors about this purported investment, let alone procured the investors' consent.

18. Instead, ACM, J. Porter, and Duszynski actively concealed this loan from investors. In August 2014, three investors in the Fund requested a description of the investments they held as well as their value. Before they provided any information to the investors, Respondents struggled with how to describe the loan. An email written by J. Porter stated: "We need to discuss how to present the loan to Tom." In another email, he suggested: "We may want to make the loan to our co investor . . . due at the end of this year? That way [an Investor] will know the money is coming and will be less inclined to ask questions. Also, a co investors name should be kept private?" In response, Duszynski wrote: "As for [the loan to Duszynski], I'm not comfortable calling it something else. If we deceive them it could come back and bite us . . . . Maybe we reallocate some other stuff to the . . . just a thought." J. Porter had another idea: "Can we call it a loan to something not using your name?"

19. J. Porter prevailed, and Respondents ultimately agreed on the following verbiage, which was provided to the three investors in August 2014:

Augustine Fund formerly held an investment in FT Investing, LLC. This investment was liquidated in December 2013. When the original investment was made, the Fund also made an interest-bearing loan to one of its co-investors in FT Investing. This loan is on track to be fully repaid on its maturity date in December 2014.

20. This description was misleading because it did not reflect the conflicted nature of the loan – that is, that the loan was made to Duszynski, a director of ACM. Additionally, it misrepresented the loan's repayment status, since by then Duszynski had not begun repaying the loan.

21. Duszynski defaulted on the loan, which was to be repaid on January 3, 2015. Ten days later, he made one payment of \$163,233 on the loan. The remaining balance and interest were not paid until February 13, 2017.

22. Reasonable investors would have considered it important both that the Fund's monies were used to make a substantial personal loan to a director of the general partner without the investors' consent, and that the director defaulted on the loan.

### **Respondents Improperly Charged Investors for ACM's Expenses.**

23. The Offering Documents entitle ACM to a management fee of one percent *per annum* of the partnership's net asset value. The management fee is intended to compensate ACM for its "overhead and expenses in managing the Partnership." The PPM allows ACM to charge the Fund for "operating expenses" incurred by the Fund, a term defined by the PPM to include communication costs, brokerage commissions, legal, accounting, and auditing fees. The Offering Documents do not contemplate the Fund paying ACM's salaries, healthcare, rent, or other ACM expenses.

24. ACM nonetheless charged the Fund for *all* of ACM's expenses. Between 2012 through 2015, ACM totaled all of its expenses on a quarterly basis and deducted them as "operating expenses" from the investors' cash accounts in the Fund. Certain of these expenses were unauthorized and exceeded the one percent management fee that the Offering Documents authorized ACM to receive from the Fund.

25. ACM's purported "operating expenses" collected from the Fund included the salaries of Duszynski and two ACM employees: J. Porter's son and an administrative assistant. Additionally, Respondents made the Fund pay rent for ACM's office space and healthcare costs for J. Porter, Duszynski, the other ACM owner, J. Porter's son and ACM's administrative assistant.

26. The Fund also made transfers to J. Porter totaling more than \$373,000 even though he was not owed these amounts as either salary or a profit distribution and he did not have sufficient available cash in his account in the Fund to cover these withdrawals.

27. J. Porter and Duszynski chose not to allocate any portion of their salary expenses to themselves as limited partners or certain of their relatives who were investors in the Fund. Thus, the remaining Fund investors paid more than a *pro rata* share of J. Porter's and Duszynski's salaries.

28. In 2003, certain investors approved a salary not to exceed \$175,000 per year for J. Porter. The investors never agreed to pay the salaries of the other ACM employees.

29. Respondents failed to exercise reasonable care by overcharging the Fund by nearly \$950,000 in expenses.

### **Respondents Concealed Losses and Bankruptcies from Investors.**

30. Respondents provided investors with account statements on a quarterly basis and gave summaries to certain investors in the relevant period. The quarterly statements were titled "Partner's Investment For The Calendar Quarter" and reflected the month and year of each statement. The quarterly statements included account values as of the date of the statement. The statements were misleading because they included values that were calculated by including the original cost of investments despite the fact that the Respondents had determined certain holdings were worthless and Respondents knew that certain fund holdings were in bankruptcy.

31. Critically, that disclosure failed to incorporate Respondents' revised valuation of certain investments as a result of bankruptcies that occurred during the period covered by the account statements. In May 2013, Respondents determined that one of the Fund's investments was "worthless." In September 2013, they decided that three other investments had no value.

32. In some cases Respondents ultimately discounted the value of these investments in documents supplied to investors. But they waited more than a year after first determining the investments were worthless or were in bankruptcy before doing so.

33. In May 2013, Duszynski emailed an investor about the Fund's investment in Company A: "It appears that our remaining investment in [Company A] is worthless." He copied J. Porter on the email. Four months later, in a letter to an investors' wife, Duszynski similarly wrote: "[Company A] is a publicly traded company that has no value, and which we will be writing off this year."

34. Respondents did not write off Company A until the fourth quarter of 2014—more than *a year and a half* after they had independently concluded the investment was "worthless."

35. In September 2013, Respondents engaged in similar deception concerning three other investments. These were all investments in which Respondents had concluded that "any future recovery is doubtful," and thus internally estimated their value at zero. But Respondents failed to account for such developments in the account statements they sent investors during the relevant period. Rather, in such statements to investors Respondents used the initial cost of the investments – which they called the "book value."

36. As discussed in paragraphs 37 through 42 below, two companies in which Respondents invested on the investors' behalf went bankrupt. In communications with investors and in account statements during that timeframe, Respondents misrepresented that these investments were worth what the Fund had initially paid for them years before the bankruptcies.

37. In 1999, the Fund made an investment of approximately \$1.67 million in Company B. Thereafter, the company struggled. In November 2001, Respondents forced the company into bankruptcy. As part of the Chapter 11 reorganization, ACM assumed ownership of the company and Respondents transformed it into a publicly traded shell company. The Fund thereafter invested an additional \$1.53 million of Fund monies into the company, but to no avail. From 2004 through 2011, the company had no revenues, limited assets, and mounting liabilities.

38. Only in February 2012 did Respondents first notify the Fund's investors that Company B had been forced into bankruptcy more than a decade earlier. But even after that belated disclosure, Respondents then delayed writing off the Fund's \$3.2 million investment until the first quarter of 2014.

39. Shortly after the Fund made a debt investment of \$150,000 in Company C, its wholly owned subsidiary and sole asset filed for bankruptcy – in September 2013. Respondents knew about the bankruptcy no later than October 2013. But in ACM’s quarterly statements to investors, Respondents continued to carry Company C at the amount of the Fund’s original debt investment in the company. They did so for years.

40. In August 2014, internal emails show that Respondents came close to disclosing the bankruptcy filing to three investors who had requested a summary of their holdings in the Fund. But they ultimately omitted this information in the summary sent to investors. Rather, as of 2015, in disclosures to the investors Respondents continued valuing Company C at the cost of the Fund’s original investment in the company before the bankruptcy.

41. As a result, between the first quarter of 2012 and the fourth quarter of 2015 Respondents gave investors quarterly account statements with inflated valuations that did not accurately reflect the value of the investments.

42. Reasonable investors would have considered it important that two of the Fund’s holdings—including one that had previously made up more than 20% of the Fund’s Net Asset Value—were involved in bankruptcy proceedings, and that four other investments had no value. Reasonable investors would have also found it important that Respondents hid such information when Respondents supplied Fund investors with account statements that did not reflect the value of the investments in the wake of the bankruptcies and other events Respondents had determined impacted the value.

#### **Respondents Denied Investor Redemption Requests and Prevented Investor Exits from the Fund.**

43. The PPM states that limited partnership interests are sold in successive classes, each class invests in the same investment(s), and new investors in the Fund are put into a new class. The classes do not share in the same investments as previous classes. The PPM also states that profits and losses will be shared on a *pro rata* basis by class.

44. In practice, however, that is not the way Respondents managed the Fund. Rather, Respondents never formed classes. During the relevant period, Respondents periodically transferred the investment holdings among and between the Fund’s investors, a process they referred to as “reallocation.” They did so without the investors’ knowledge or consent.

45. In at least two instances, the reallocations prevented investors who sought to exit the Fund from doing so. In 2008 an investor requested that the Fund stop using his funds to make new investments, and to pay him any available cash in his account. The Fund maintained a cash component allocated to each investor. J. Porter agreed to this request. Nonetheless, Respondents allocated at least three new investments to this investor in 2012. Doing so used more than \$80,000 of this investor’s available cash in the Fund at that time. The full amount of that cash was returned to the investor in November of 2016.



46. In October 2012, another investor made clear to J. Porter in an email that “getting cashed out now is my number 1 objective.” J. Porter promised to try to honor the investor’s request. He copied Duszynski on his response. Rather than doing so, however, less than two weeks after he received the email, J. Porter instead directed that another investor’s share of Duszynski’s loan and Company C – one of the bankrupt companies described above – be allocated to the requesting investor in exchange for the investor’s available cash. This reallocation prevented the investor from withdrawing all his available cash from the Fund at that time. That cash has since been returned to the investor.

**J. Porter and Duszynski Were Investment Advisers, Committed Violations and Aided and Abetted and Caused ACM’s Violations.**

47. At all times, J. Porter and Duszynski managed the Fund’s investments and made all final investment decisions for the Fund. They received salaries for advising the Fund during a portion of the relevant time.

48. J. Porter and Duszynski decided and directed that: (a) Fund monies were loaned to their private venture and to Duszynski; (b) the Fund invested in J. Porter and Duszynski’s private venture; (c) all of ACM’s expenses were charged to the Fund; (d) Company C and the Duszynski loan “investment” were allocated to an investor after he directed Respondents not to make any further investments on his behalf; (e) ACM not disclose Duszynski’s receipt of a personal loan from Fund assets; (f) ACM not disclose to investors that certain companies in which the Fund had invested were impacted by bankruptcy proceedings; (g) ACM continued to value investments at the original amount invested and delayed the write-off of other investments it had determined were worthless or were in bankruptcy; and (h) Fund holdings were allocated and reallocated in a manner inconsistent with the offering documents.

49. ACM owed fiduciary duties to the Fund. As investment advisers and associated persons of the investment adviser for the Fund, J. Porter and Duszynski were also fiduciaries.

50. Respondents breached their fiduciary duties to the Fund when they caused the Fund to engage in the above described transactions with FT Investing and FT Trading and caused the Fund to make a personal loan to Duszynski.

51. Respondents sent misleading account statements and other communications to Fund investors, and engaged in other acts, practices or courses of business that were fraudulent, deceptive, or manipulative by arbitrarily reallocating investment holdings within the Fund and not returning available cash to investors who sought to exit the Fund.

**Violations**

52. As a result of the conduct described above, Respondents ACM, J. Porter and Duszynski willfully violated, Sections 206(1), 206(2), and 206(4) of the Advisers Act, and Rule 206(4)-8(a) thereunder, which prohibit fraudulent conduct by an investment adviser.

53. As a result of the conduct described above, Respondents J. Porter and Duszynski also willfully aided and abetted and caused ACM's violations of Sections 206(1), 206(2), and 206(4) of the Advisers Act and Rule 206(4)-8(a) thereunder.

#### **Undertakings**

54. Respondents ACM, J. Porter and Duszynski have each undertaken to:
- a. provide a copy of this Order via mail, email, or hand delivery to each of the Augustine Fund's limited partners within thirty (30) days of entry of this Order.
  - b. agree not to receive any portion of any monies distributed to limited partners of the Augustine Fund pursuant to this Order.

#### **IV.**

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent ACM's, Respondent J. Porter's and Respondent Duszynski's Offers.

Accordingly, pursuant to Sections 203(e) and 203(k) of the Advisers Act and Section 9(b) of the Investment Company Act against ACM; and pursuant to Sections 203(f) and 203(k) and Section 9(b) of the Investment Company Act against J. Porter and Duszynski, and pursuant to Rule 102(e)(3)(i)(B) of the Commission's Rules of Practice against Duszynski, it is hereby ORDERED that:

- A. Respondent ACM cease and desist from committing or causing any violations and any future violations of Sections 206(1), 206(2), and 206(4) of the Advisers Act and Rule 206(4)-8 promulgated thereunder.
- B. Respondent J. Porter cease and desist from committing or causing any violations and any future violations of Sections 206(1), 206(2), and 206(4) of the Advisers Act and Rule 206(4)-8 promulgated thereunder.
- C. Respondent Duszynski cease and desist from committing or causing any violations and any future violations of Sections 206(1), 206(2), and 206(4) of the Advisers Act and Rule 206(4)-8 promulgated thereunder.
- D. Respondent J. Porter be, and hereby is:  
  
barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization;

prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter;

with the right to apply for reentry after three (3) years to the appropriate self-regulatory organization, or if there is none, to the Commission.

E. Respondent Duszynski be, and hereby is:

barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization;

prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter;

with the right to apply for reentry after three (3) years to the appropriate self-regulatory organization, or if there is none, to the Commission.

F. Respondent Duszynski be, and hereby is, suspended from appearing and practicing before the Commission as an accountant.

G. Respondent ACM is censured.

H. Any reapplication for association by J. Porter or Duszynski will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondents, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

I. Respondents ACM, J. Porter and Duszynski shall within thirty (30) days of the entry of this Order, pay disgorgement of \$685,514.73, and prejudgment interest of \$42,791.38, for which Respondents are jointly and severally liable, to the Securities and Exchange Commission. If timely payment is not made, additional interest shall

accrue pursuant to SEC Rule of Practice 600, 17 C.F.R. § 201.600. Respondents shall also pay a civil money penalty as follows:

- (i) Respondent ACM shall pay a civil money penalty in the amount of \$150,000.00, consistent with the provisions of this Subsection I.
- (ii) Respondent J. Porter shall pay a civil money penalty in the amount of \$75,000.00, consistent with the provisions of this Subsection I.
- (iii) Respondent Duszynski shall pay a civil money penalty in the amount of \$50,000.00 consistent with the provisions of this Subsection I.

If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717.

Payment must be made in one of the following ways:

1. Respondent ACM may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
2. Respondent ACM may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or j
3. Respondent ACM may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center  
Accounts Receivable Branch  
HQ Bldg., Room 181, AMZ-341  
6500 South MacArthur Boulevard  
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Respondents ACM, J. Porter and Duszynski as Respondents in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Robert J. Burson, Division of Enforcement, Securities and Exchange Commission, 175 W. Jackson Boulevard, Suite 1450, Chicago, IL 60604.

J. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund is created for the disgorgement, prejudgment interest and penalties described in Paragraph I above for distribution to affected investors. No portion of the Fair Fund shall be paid to any affected investor account to which Respondents, or the wife of any Respondent, has a direct or indirect financial interest. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondents agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondents' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that they shall, within thirty (30) days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against any Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Respondent J. Porter and Respondent Duszynski, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent J. Porter and Respondent Duszynski under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Brent J. Fields  
Secretary