

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES AND EXCHANGE ACT OF 1934
Release No. 85340 / March 18, 2019

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 APPROVING PLAN OF
DISTRIBUTION

On December 20, 2016, the Commission issued an Order Instituting Cease-and-Desist Proceedings Pursuant to Sections 203(e), 203(f), 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 ACM; and pursuant to Sections 203(f) and 203(k) and Section 9(b) of the Investment Company Act against Porter and Duszynski.¹ The Commission alleged, among other things, that Respondents J. Porter and Duszynski, together with Brian D. Porter, and ACM, in turn, acted as an investment adviser for the Fund. The Respondents caused the Fund to engage in conflicted transactions without disclosure to, or the consent of, the Fund’s investors. 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 that later failed, saddling the Fund and its investors with the resulting losses. Respondents also collected nearly \$1 million in investor funds by charging the Fund for ACM’s expenses. Respondents also provided investors with account statements that did not accurately reflect the market value of the underlying investments.

On October 26, 2017, the Commission issued an 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 (the “Order”).² The Order found, among other things, that Respondents caused the Fund to engage in conflicted transactions without disclosure to, or the consent of, the Fund’s investors; that the

¹ Advisers Act Rel. 4800 (Oct. 26, 2017).

² Advisers Act Rel. No. 4800 (Oct. 26, 2017).

Respondents invested in and lent money to two entities in which the ACM owners had an interest (the entities are FT Investing LLC, which resulted in a \$100,000 loss³ to investors, and FT Trading, LLC, where Respondents made a series of undocumented loans) and that Respondents also lent \$250,000 to Duszynski to fund his investment in a business venture and that Duszynski defaulted on the loan; that Respondents used nearly \$950,000 in investor funds to pay for ACM's expenses; that Respondents unilaterally determined which investments were allocated to which investors rather than basing their determination on the time when those investments were made into the Fund as discussed in the Fund's offering documentation; and that Respondents provided investors with account statements that did not accurately reflect the value of certain underlying investments, which were overly inflated as those investments were bankrupt or worthless investments, that resulted in investors overpaying advisory fees.⁴ In addition, the Fund made transfers to Porter totaling more than \$373,000 even though Porter 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.

Among other things, the Order required the Respondents to pay, jointly and severally, disgorgement of \$685,514.73 and prejudgment interest of \$42,791.38. The Order further required ACM, Porter, and Duszynski to pay civil money penalties in the amount of \$150,000.00, \$75,000.00, and \$50,000.00, respectively. The Order created a Fair Fund pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002 for the funds paid by the Respondents (the "Fair Fund").

The Fair Fund is subject to the continuing jurisdiction and control of the Commission and the Fair Fund has been deposited at the United States Department of Treasury's Bureau of Fiscal Services ("BFS") for investment. Other than potential interest income from the BFS investment, the Commission does not anticipate that the Fair Fund will receive additional funds.

On November 29, 2018, the Commission published a Notice of Proposed Plan of Distribution and Opportunity for Comment ("Notice")⁵ pursuant to Rule 1103 of the Commission's Rules on Fair Fund and Disgorgement Plans.⁶ The Notice advised interested parties that they could obtain a copy of the proposed Plan of Distribution ("Plan") from the Commission's public website at <http://www.sec.gov/litigation/fairfundlist.htm> or by submitting a written request to Michael S. Lim, Esq., United States Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-5876.

The Notice also advised that all persons desiring to comment on the Plan could submit their comments, in writing, no later than thirty (30) days from the publication of the Notice (1) to the Office of the Secretary, United States Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090; (2) by using the Commission's Internet comment form

³ According to investigative staff, Respondents had invested \$500,000 in FT Investing, LLC, which then invested in PIPEs (Private Investment in Public Equity). Because the PIPEs did not perform well, Respondents liquidated the investments in FT Investing, LLC, and the loss to investors was \$100,000.

⁴ Respondents ultimately reimbursed the funds for the loans made to FT Trading and Duszynski and thus there is no investor harm attributed to those loans in the Plan.

⁵ Exchange Act Release No. 84675 (Nov. 29, 2018).

⁶ 17 C.F.R. § 201.1103.

(<http://www.sec.gov/litigation/admin.shtml>); or (3) by sending an e-mail to rule-comments@sec.gov. The Commission received no comments on the Plan during the comment period.

The Fair Fund is comprised of the amounts of disgorgement (\$685,514.73), prejudgment interest (\$42,791.38), and civil money penalties (\$275,000) paid by the Respondents to the Commission. As set forth in the Plan, the methodology allocates the Net Fair Fund⁷ according to each Eligible Investor's Net Harm Amount, calculated as the sum of each Eligible Investor's FT Investing LLC Amount, Inflation Expense Amount, NAV Expense Amount, and/or Porter Withdrawal Amount.

The Division of Enforcement now requests that the Commission approve the Plan.

Accordingly, it is hereby ORDERED, pursuant to Rule 1104 of the Commission's Rules on Fair Fund and Disgorgement Plans,⁸ that the Plan is approved.

For the Commission, by its Secretary, pursuant to delegated authority.

Vanessa A. Countryman
Acting Secretary

⁷ All capitalized terms used herein but not defined shall have the same meanings ascribed to them in the Plan.

⁸ 17 C.F.R. § 201.1104.