

For the Commission, by the Division of
Investment Management, pursuant to
delegated authority.

Margaret H. McFarland,
Deputy Secretary.

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Investment Advisers Act of 1940
Release No. 1451 / November 15, 1994

Investment Company Act of 1940
Release No. 20698 / November 15, 1994

Securities Act of 1933
Release No. 7111 / November 15, 1994

Administrative Proceeding
File No. 3-8551

_____ :
: In the Matter of :
: :

CONCOURSE CAPITAL ASSET MANAGEMENT, INC. :
and JEFFREY J. ALEXOPULOS, :

Respondents. :
: _____ :
:

ORDER INSTITUTING
PUBLIC ADMINISTRATIVE
PROCEEDINGS, MAKING
FINDINGS AND IMPOSING
SANCTIONS

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest to institute public administrative proceedings pursuant to Sections 203(e), (f) and (k) of the Investment Advisers Act of 1940 ("Advisers Act"), Sections 9(b) and (f) of the Investment Company Act of 1940 ("Investment Company Act"), and Section 8A of the Securities Act of 1933 ("Securities Act"), against Concourse Capital Asset Management, Inc. and Jeffrey J. Alexopoulos ("Respondents").

II.

In anticipation of the institution of these administrative proceedings, Respondents have submitted an Offer of Settlement ("Offer") 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 in which the Commission is a party, Respondents consent to the entry of this Order Instituting Public Administrative Proceedings, Making Findings and Imposing Sanctions, without admitting or denying the findings set forth herein (except Paragraphs III.A.1 and 2, which are admitted), and to the entry of the findings and imposition of the sanctions set forth below.

Accordingly, it is ORDERED that administrative proceedings pursuant to Sections 203(e), (f) and (k) of the Advisers Act, Sections 9(b) and (f) of the Investment Company Act, and Section 8A of the Securities Act be, and hereby are, instituted against Concourse Capital Asset Management, Inc. and Jeffrey J. Alexopoulos.

III.

On the basis of this Order and the Offer, the Commission makes the following findings 1/:

A. Respondents

1. Concourse Capital Asset Management, Inc. ("Concourse Adviser" or "Adviser") registered as an investment adviser with the Commission on June 28, 1991. Concourse Funds, Inc. ("Concourse Fund" or the "Fund") was the Adviser's only client.

2. Jeffrey J. Alexopoulos ("Alexopoulos") was the president and a director of the Fund. He was also co-owner and president of the Adviser.

B. Formation of the Concourse Fund

Alexopoulos and an associate formed the Concourse Fund in mid-1991. The Fund was registered as a non-diversified, open-end management investment company with the Commission on August 23, 1991. The Fund's securities were registered under the Investment Company Act but not under the Securities Act. During its short period of operation, between August and December 1991, the Fund offered one series of shares, Concourse Growth and Income Fund.

Alexopoulos selected or acquiesced in the selection of certain individuals to act as directors of the Fund. These individuals included friends and acquaintances of the Fund's principals. One of these individuals was a resident of Mexico who had never heard of the Fund or its principals and never in fact functioned as a director.

The Fund's fundamental investment policies, which could not be changed without the approval of a majority of its shareholders, provided that: (1) the Fund would not invest more than 10% of its assets in restricted securities or other illiquid assets, and any such restricted securities or illiquid assets would be priced at

1/ The facts, findings, and conclusions herein and the entry of this Order are solely for the purposes of this proceeding and shall not be binding on any person or entity named in any other proceeding.

fair value as determined in good faith by the board of directors; (2) as to 50% of its assets, the Fund would not purchase securities of any one issuer if, immediately after such purchase, more than 5% of the Fund's assets would be invested in the securities of that issuer; and (3) as to the other 50% of its assets, the Fund would not invest more than 25% of its total assets in the securities of any one issuer.

The registration statement imposed a number of additional restrictions on the Fund's investments. For example, the Fund could not generally concentrate its investments in any one industry except that it could invest up to 50% of its assets in the insurance industry. The Fund could not invest more than 80% of its assets in debt securities, and it would attempt to limit the purchase of lower-rated debt securities to those having an established retail secondary market. The Fund was prohibited from entering into exchange transactions unless the securities to be exchanged for Fund shares were readily marketable, complied with the investment policies of the Fund, and had values that were readily ascertainable.

The registration statement (without its exhibits) was incorporated into the Fund's private placement offering memorandum and subsequently used to solicit potential investments in the Fund. No shareholder approval to change any of the Fund's investment policies was ever sought or obtained.

C. The Fund's Investments

The Fund made several investments during its short-lived existence that were inconsistent with the Fund's fundamental investment policies and the other restrictions specified in its registration statement. Primarily, these investments resulted from exchange transactions in which the Fund issued its shares in return for promissory notes, and valued those notes at their full face value despite their illiquid nature and the uncertain financial condition of the issuers. In the course of its operations, the Fund thus improperly valued its assets and misstated the value of its shares based thereon. It also invested more of its assets in illiquid assets than permitted by its fundamental policies and deviated from its investment policy regarding concentration of investments.

On or about September 6, 1991, the Fund entered into a transaction with a Nevada corporation controlled by Ioannis A. Koutsoubos. Koutsoubos had previously obtained fraudulently one million shares of common stock from Work Recovery, Inc. ("WRI"), a public company headquartered in Tucson, Arizona, and exchanged

250,000 of these shares for 83,540 Fund shares. 2/ The Fund valued the WRI shares at \$843,750, and until the Fund made its next investment, the WRI shares constituted nearly 100% of the Fund's assets.

On or about September 12, 1991, the Fund entered into the first of three transactions in which Fund shares were exchanged for promissory notes issued by companies that were struggling financially or that were secured by collateral of dubious, if any, value. On this occasion, Global Capitol Insurance Company ("Global Capitol") a small offshore insurance company, exchanged a \$7 million promissory note issued by its holding company parent (the "Global note"), for 813,953 Fund shares. The Global note was secured by assets that Global Capitol had supposedly assigned to its corporate parent, but the actual value and indeed the very existence of this collateral were not readily ascertainable. The Fund valued the Global note at par even though there was no reasonable basis to do so. At the time of this transaction, the Global note constituted more than 90% of the Fund's assets.

On or about October 8, 1991, Aluminum Laminating Insulation Manufacturing Co., Inc. ("ALI"), a public company headquartered in Rancho Cucamonga, California, exchanged a promissory note with a face value of \$2 million (the "ALI note") for 234,467 Fund shares. The ALI note was purportedly secured by an interest in ALI's equipment assigned to the Fund by Global Capitol. The actual value and indeed the very existence of Global Capitol's interest in ALI's equipment were far from certain. Furthermore, the collateral itself was worth far less than the face value of the note. Nevertheless, although there was no reasonable basis to do so, the Fund valued the ALI note at par for exchange purposes. The ALI note constituted more than 20% of the Fund's assets at the time that it was obtained by the Fund.

On or about November 8, 1991, the Fund exchanged a third promissory note for Fund shares. On that date, Refinery Fabricating, Inc., a two-month-old Texas company in urgent need of capital, formed Refinery Fabricating of Utah, Inc., and simultaneously caused it to issue a \$6.4 million promissory note (the "RFI Utah note") to the Fund in exchange for Fund shares purportedly worth \$6.4 million. The Fund valued the RFI Utah note at par, although there was no reasonable basis to do so given the

2/ On June 24, 1993, the Commission obtained a permanent injunction, disgorgement, civil penalties and other relief against Koutsoubos and others for violations of the registration, reporting, and antifraud provisions of the federal securities laws arising out of this transaction. SEC v. Westdon Holding & Investment, Inc., et al., 91 Civ. 7531 (S.D.N.Y.).

obligor's poor financial condition. The RFI Utah note constituted more than 40% of the Fund's assets at the time that it was obtained by the Fund.

Except for two cash infusions of insignificant amounts, the foregoing constituted substantially all of the transactions executed by the Fund during its three and one half months of operation. As a result of these transactions, the Fund's majority shareholders were the very same persons and entities who had exchanged relatively worthless securities for Fund shares. Other than as set forth above, the Fund issued no shares directly to public investors.

D. The Wind-Down of the Fund

In December 1991, the majority shareholders of the Fund removed the Fund's board of directors and the Concourse Adviser. At the same time, Alexopoulos relinquished his positions with the Fund. The Fund has remained without an investment adviser since approximately December 13, 1991.

As of March 30, 1992, the Fund's outside administrator suspended all purchases, redemptions, transfers, and other transactions in the Fund's shares, as well as the calculation of the Fund's net asset value.

E. Violations of the Fund's Fundamental Investment Policies

From the time of its first exchange transaction, when it acquired the WRI shares, the Fund contravened its fundamental policy that as to 50% of its assets, it would not invest more than 25% of its assets in the securities of one issuer. This policy was also violated when the Fund obtained two of the promissory notes in the exchange transactions described above -- the Global and RFI Utah notes.

In addition, those notes and the ALI note were restricted and illiquid securities with market values that could not be readily ascertained. Each of the three notes constituted more than 10% of the Fund's assets at the time that it was obtained by the Fund. By acquiring each note, therefore, the Fund violated its fundamental policy of not investing more than 10% of its assets in restricted securities or other illiquid assets.

With the acquisition of the Global and RFI Utah notes, moreover, the Fund violated its fundamental policy that, as to 50% of its assets, the Fund would not purchase securities of any one issuer if, immediately after such purchase, more than 5% of the Fund's assets would be invested in the securities of that issuer.

With the acquisition of the Global note, in particular, the Fund deviated from its investment policy regarding concentration of investments. The Fund's registration statement provided that the Fund would not invest more than 50% of the value of its assets in securities of companies in the insurance industry. The Global note was issued by an insurance company and constituted more than 90% of the value of the Fund's assets when it was acquired.

As one of the Fund's two active officers and as a Fund director, Alexopoulos was familiar with the Fund's registration statement and the investment policies contained therein. Moreover, as one of only two active officers of both the Fund and the Adviser, Alexopoulos was required to engage only in transactions that complied with the Fund's investment policies and restrictions.

F. The Fund Improperly Valued Its Portfolio Securities and Executed Sales and Redemptions at Prices Based Upon Incorrect Net Asset Values

Each of the promissory notes obtained by the Fund was a restricted or otherwise illiquid security whose value was not readily ascertainable. There were serious deficiencies with the collateral that supposedly secured the notes. The notes themselves were unrated, and no market quotations were readily available.

The Fund valued the restricted securities in its portfolio at their full face values for exchange purposes. Under these circumstances, such valuations caused the Fund to materially overstate the true value of its assets. The Adviser provided valuation instructions to the Fund's administrator that led to the pricing of assets at incorrect values and directed the Fund's sales and redemptions of shares based on those incorrect net asset values.

The Fund's board of directors played no part in valuing any of the securities obtained by the Fund despite the requirements of the Investment Company Act and the Fund's registration statement that the board make good faith determinations of the current value of all restricted securities. The board was not advised of the Fund's investments in such securities.

The Fund sold and redeemed its shares based on incorrect net asset values. Indeed, the net asset value of the Fund was never calculated properly. The primary assets in the Fund were illiquid securities -- unrated promissory notes issued by small companies in poor financial condition and backed by collateral of dubious value. Under these circumstances, the face values of the notes should not have been the sole basis for their valuations. Therefore, the prices at which the Fund executed sales and redemptions of Fund shares were incorrect.

It is critically important that an investment company properly value its portfolio securities. See "Codification of Financial Reporting Policies," § 404.04.a, The Problem of Valuation, Fed. Sec. L. Rep. (CCH) ¶ 73,159 (1988). Obviously, "any distortion in the valuation of a restricted security held by an investment company will distort the price at which the shares of the investment company are sold or redeemed." Id.

G. The Concourse Fund and Alexopoulos Made Material Misstatements in Documents Filed With the Commission

The Fund and Alexopoulos filed several documents with the Commission containing materially false and misleading information relating to the composition of the Fund's board of directors, the nature and value of the assets of the Fund, the method of valuing those assets, and the net asset value of the Fund's shares.

Material misstatements were made in at least four separate filings with the Commission, as follows:

A Form N-1A registration statement filed on August 23, 1991, falsely identified as a purported director an individual who, in fact, had no connection with the Fund.

The foregoing misstatement was repeated in a Form D notice of sale of securities pursuant to Regulation D under the Securities Act, filed on September 17, 1991.

A Form N-SAR semi-annual report, filed on December 2, 1991, contained the following misstatements:

- that the Fund's net assets were \$7,031,000 as of September 30, 1991, when, in fact, its actual assets were substantially less;
- that the Fund's total net asset value of shares sold as of September 30, 1991, was \$7,592,000, when, in fact, the actual total was substantially less;
- that the Fund's monthly average of net assets was \$3,159,000, when, in fact, its monthly average was substantially less;
- that the Fund's net asset value per share was \$7.98 as of September 30, 1991, when, in fact, its net asset value per share was substantially less;
- that the Fund had not invested in restricted securities during the reporting period, when, in fact, it had invested more than 90% of its assets in restricted securities; and

- that the Fund had not engaged in investments in securities of foreign issuers during the reporting period, when, in fact, it had.

A semi-annual report to shareholders, filed on December 10, 1991, misstated, among other things, that:

- the Fund would value restricted securities at fair value as determined in good faith by or under the direction of the Fund's directors, when, in fact, this was not done;
- the total assets of the Fund as of September 30, 1991, were \$7,079,957, when, in fact, the Fund's total assets were substantially less;
- the net assets of the Fund were \$7,031,171, when, in fact, its net assets were substantially less;
- the Fund's net asset value per share was \$7.98, when, in fact, its net asset value per share was substantially less; and
- the market value of the Global note in the Fund's portfolio was \$7 million, when, in fact, it was substantially less.

H. The Concourse Adviser Failed to Make Required Filings With the Commission

The Adviser's initial registration statement on Form ADV, filed on June 28, 1991, required prompt amendment to disclose a number of significant changes after the Fund ceased active operations on or about December 13, 1991. The Adviser failed to file amendments correcting information that had become inaccurate.

Among the matters that should have been disclosed in amendments to the Adviser's Form ADV were that: the contact person for the Adviser's ADV had changed; the Adviser was no longer the investment adviser to the Fund; the Adviser was no longer under common control with Concourse Capital Corporation, a registered securities broker-dealer, and no longer had arrangements that were material to its advisory business with Concourse Capital Corporation and the Fund; and Alexopoulos' associate was no longer reviewing the Fund's investment supervisory services or managing the Fund's investment advisory accounts.

After March 30, 1992, the Adviser should have disclosed that the Fund's administrator, which terminated its contract with the Concourse entities on that date, was no longer maintaining the Adviser's books and records.

Through his control of the Adviser, Alexopoulos caused these failures by the Adviser.

The Adviser was registered with the Commission in 1991, 1992, and 1993, and therefore should have filed a Form ADV-S for those fiscal years. The Adviser has never filed a Form ADV-S, although its registration has not been withdrawn, cancelled or revoked.

Alexopoulos became the Adviser's sole owner and officer on or about December 17, 1991. Alexopoulos thereafter caused the Adviser's failure to file a Form ADV-S within 90 days of the end of its fiscal year in 1991, 1992, and 1993.

I. The Concourse Fund and Alexopoulos Made False Statements in Connection With the Offer and Sale of Fund Shares

The Concourse Fund and Alexopoulos made false statements in the Fund's registration statement. These misstatements related to material facts, such as the Fund's investment policies.

For the three-month period between the time that the Fund acquired its first promissory note on or about September 12, 1991, and the time that it ceased active operations on or about December 13, 1991, the Fund invested more than 90% of its assets in debt securities. Thus, the registration statement's provision that the Fund would not invest more than 80% of its assets in debt securities was a material misstatement.

Furthermore, none of the exchange transactions entered into by the Fund met the registration statement's requirements that the securities to be exchanged for Fund shares would have readily ascertainable values, would be readily marketable, and would comply with the investment policies of the Fund. Thus, the registration statement's provisions regarding exchange transactions contained material misstatements.

The Fund's registration statement and its semi-annual report also stated that restricted securities would be valued at fair value as determined in good faith by or under the direction of the Fund's directors. In fact, the Fund's board of directors did not value or direct the valuation of any of the three promissory notes, which were restricted securities. Thus, the registration statement's provision regarding the procedure for valuation of restricted securities was a material misstatement.

Alexopoulos also made material misstatements in various offers to sell Fund shares to the public. In one such written offer in which Alexopoulos solicited the purchase of \$500,000 in Fund shares, he stated that the Fund had net assets of \$9,250,000. According to the Fund's records, the Fund's assets at the time consisted primarily of the Global note, improperly valued at its full face value of \$7 million, and ALI note, improperly valued at its full

face value of \$2 million. The combined value of the securities in the Fund's portfolio, therefore, was far less than the \$9,250,000 stated in the written offer. Alexopoulos also wrote that the Fund expected more than \$24 million in "committed subscriptions" in the next several weeks. This statement also was false.

J. Respondents' Violations

As a result of the foregoing, the Concourse Adviser willfully violated Section 204 of the Advisers Act and Rules 204-1(b)(1) and 204-1(c) thereunder. 3/ The Concourse Adviser also aided and abetted the Fund's violation of Section 13(a)(3) of the Investment Company Act and Rule 22c-1(a) thereunder. 4/

Alexopoulos willfully violated Section 34(b) of the Investment Company Act and Section 17(a) of the Securities Act, and aided and abetted the Fund's violations of Section 13(a)(3) of the Investment Company Act and Rule 22c-1(a) thereunder and the Adviser's violation of Section 204 of the Advisers Act and Rules 204-1(b)(1) and 204-1(c) thereunder. 5/

3/ Section 204 of the Advisers Act and Rule 204-1(b)(1) thereunder require that if the information contained in the responses to particular questions in the investment adviser's Form ADV or any amendment to its Form ADV becomes inaccurate in a material manner, the adviser must promptly file an amendment correcting the information. Rule 204-1(c) requires every investment adviser whose registration is effective on the last day of its fiscal year to file a Form ADV-S within 90 days unless its registration has been withdrawn, cancelled or revoked.

4/ Section 13(a)(3) of the Investment Company Act provides in part that no registered investment company may, without a vote by a majority of its outstanding voting shares, deviate from its policy in respect of concentration of investments in any particular industry or any fundamental policy stated in its registration statement. Rule 22c-1(a) under the Investment Company Act requires that no registered investment company issuing redeemable securities shall sell or redeem any such security except at a price based on its current net asset value.

5/ Section 34(b) of the Investment Company Act makes it unlawful for "any person" to make any untrue statement of a material fact in any registration statement or report filed under the Act or in any document required to be maintained under the Act. Section 17(a) of the Securities Act makes it unlawful for any person, in the offer or sale of any securities, through means of interstate commerce or the mails, to, among other things, employ any device, scheme, or artifice to defraud. Under Section 2(3) of the Securities Act, a "sale" includes every contract of sale or disposition of a security or interest in a security for value.

Aiding and abetting liability requires: (1) a securities law violation by the primary party; (2) knowledge or general awareness by the alleged aider and abettor of the primary violation and of his role in furthering it; and (3) substantial assistance by the alleged aider and abettor in the commission of the primary violation.

As co-owner and president of the Adviser throughout its active operations, Alexopoulos controlled the Adviser. Alexopoulos was also president of the Fund. Alexopoulos, therefore, owed a fiduciary duty to the Fund. In the case of fiduciaries, reckless conduct is sufficient to constitute "general awareness" for aiding and abetting liability purposes. See Armstrong v. McAlpin, 699 F.2d 79, 91 (2d Cir. 1983).

Alexopoulos participated in preparing the registration statement and in establishing the Fund's investment policies. He signed the registration statement as president of the Fund, as well as the Investment Advisory Agreement between the Fund and the Adviser under which the Adviser was required to make all investment decisions in compliance with "the objectives, policies and limitations of [the Fund] set forth in [the Fund's] Registration Statement . . . [and] all applicable laws and regulations, including, without limitation, the Investment Company Act [and] the Securities Act of 1933, as amended." Throughout the Fund's existence, Alexopoulos participated in executing the Fund's transactions.

The Adviser identified and directed each of the Fund's investments. Alexopoulos, and through him, the Adviser, had knowledge of the acts constituting the Fund's violations. Alexopoulos reviewed the Adviser's investment advisory accounts, according to the Adviser's Form ADV filed with the Commission.

Alexopoulos had knowledge of the Fund's investments, and he knew that the Fund's investments violated its fundamental investment policies, or he acted in reckless disregard of those policies when he entered into the described transactions on behalf of the Fund.

Alexopoulos knew that the daily net asset value calculations reflected the face value ascribed to the promissory notes in the Fund's portfolio. He also knew that the board of directors never made any determinations of the current value of any of the promissory notes. Moreover, as president of the Fund, he was in a position to call board meetings for that purpose but did not do so.

Alexopoulos and through him, the Adviser, also provided substantial assistance to the Fund's primary violations. Alexopoulos knowingly informed the Fund's administrator to value the promissory notes at par, even though there was no basis to support

those values. He knew or had reason to know that the issuers were in poor financial condition, that there were serious problems with the collateral securing the notes, and that these notes therefore should not have been valued at par.

IV.

The Commission has reviewed sworn financial statements of Respondent Alexopoulos and determined that he does not have the financial ability to pay an administrative penalty. The Commission may, at any time, reopen this matter solely to reconsider Alexopoulos's inability to pay an administrative penalty if the Commission obtains information from any source that the financial information Alexopoulos provided was inaccurate or incomplete in any material respect.

V.

ORDER

In view of the foregoing, it is in the public interest to impose the sanctions specified in the Offer submitted by the Concourse Adviser and Alexopoulos.

Accordingly, IT IS HEREBY ORDERED that:

A. the registration of the Concourse Adviser as an investment adviser be, and hereby is, revoked;

B. Alexopoulos cease and desist from committing or causing any violation, and committing or causing any future violation, of Sections 13(a)(3) and 34(b) of the Investment Company Act, Rule 22c-1(a) thereunder, Section 204 of the Advisers Act, Rules 204-1(b)(1) and 204-1(c) thereunder, and Section 17(a) of the Securities Act;

C. Alexopoulos be, and hereby is, barred from association with any investment company, investment adviser, broker, dealer or municipal securities dealer, provided, however, that Alexopoulos may apply to the appropriate self-regulatory agency or if there is none, to the Commission, to become associated with a broker or a dealer in a non-principal, non-proprietary, and non-supervisory capacity no sooner than five years after the date of this Order.

By the Commission.

Jonathan G. Katz
Secretary