

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 62261 / June 10, 2010**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 3037 / June 10, 2010**

**INVESTMENT COMPANY ACT OF 1940**  
**Release No. 29296 / June 10, 2010**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-13934**

**In the Matter of**

**SAM P. DOUGLASS and**  
**ANTHONY R. MOORE,**

**Respondents.**

**ORDER INSTITUTING ADMINISTRATIVE AND  
CEASE-AND-DESIST PROCEEDINGS,  
PURSUANT TO SECTION 21C OF THE  
SECURITIES EXCHANGE ACT OF 1934,  
SECTION 203(f) OF THE INVESTMENT  
ADVISERS ACT OF 1940 and SECTION 9(b) OF  
THE INVESTMENT COMPANY ACT OF 1940**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted, pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), Section 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”) and Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”) against Sam O. Douglass (“Douglass” or “Respondent Douglass”) and Anthony R. Moore (“Moore” or “Respondent Moore”).

**II.**

After an investigation, the Division of Enforcement alleges that:

**A. Respondents**

1. **Douglass**, age 77, resides in Houston, Texas and was chairman and CEO of Equus Total Return, Inc. (“Equus” or “the Fund”), a business development company, from

September 1991 to December 2007. Douglass is an attorney licensed in Texas. He is currently an interested director for Equus.

2. **Moore**, age 63, resides in London, England and is the co-founder and CEO of Moore, Clayton & Co., Inc., an international private equity investment and advisory firm. He served as Equus's co-chairman and president from June 2005 to December 2007, and as its CEO from June 2005 to August 2007.

**B. Relevant Entities**

3. **Equus**, a Delaware corporation based in Houston, Texas, became a business development company ("BDC") on September 6, 1991. Equus trades as a closed-end fund on the New York Stock Exchange, under the symbol "EQS." Its securities are registered under Section 12(b) of the Exchange Act.

4. **Moore, Clayton & Co., Inc. ("MCC")**, is an international private equity investment and advisory firm headquartered in London with operations in many countries including the United States. Moore is one of MCC's principal shareholders.

5. **Moore Clayton Capital Advisors, Inc. ("MCCA")**, a Delaware corporation based in Houston, Texas, is wholly owned by MCC. MCCA was a Commission-registered investment adviser from July 5, 2005 to July 6, 2009, when its contract with Equus was not renewed. MCCA became Equus's investment adviser, via proxy vote, on June 30, 2005.

6. **Equus Capital Administration Company ("ECAC")**, a Utah corporation based in Houston, Texas and controlled by Moore, acted as Equus's administrator from June 30, 2005 to July 1, 2009.

7. **Equus Capital Management Corporation ("ECMC")**, a Delaware corporation based in Houston, Texas and controlled by Douglass, was a Commission-registered investment adviser from June 8, 1984 to September 29, 2005. ECMC was Equus's investment adviser and administrator from May 9, 1997 to June 30, 2005.

**C. Proposed Change in Equus's Investment Adviser**

8. In late 2004, several large Equus shareholders pressed Equus management to consider liquidating the Fund. Consequently, on January 21, 2005, Equus's board created a special committee of three independent directors to review alternatives, including hiring a new adviser.

9. About the same time, Douglass learned that Moore wanted to purchase a U.S.-based investment management company. He proposed that Moore purchase Douglass's interest in ECMC and take over as Equus's adviser. Accordingly, in January 2005, Moore and his firm, MCC, agreed to purchase Douglass's ECMC shares. Douglass then asked the special committee to consider hiring MCCA as Equus's new investment adviser.

10. On March 31, 2005, the special committee recommended that the board engage MCCA as adviser. The special committee further recommended that ECAC (MCCA's sister company) become the Fund administrator.

11. On May 5, 2005, MCC agreed to purchase Douglass's interests in ECMC for more than \$4 million. The purchase agreement was contingent on Equus shareholder and Board approval of MCCA's appointment as adviser and ECAC's appointment as administrator. As part of the agreement, MCCA agreed to purchase 27.5% of the Fund's outstanding shares.

12. Because several large Equus shareholders still favored liquidating the Fund rather than merely changing advisers, MCC agreed, as part of its purchase of Equus shares, to acquire these shareholders' stock at a negotiated price of \$9.49 per share (about \$1 per share above the market price).

#### **D. MCCA's Proposed Advisory Agreement**

13. MCCA's proposed advisory agreement with Equus provided that MCCA would receive an annual asset based fee of 2% and a performance fee equal to 20% of the Fund's realized capital gain, net of all realized capital loss and unrealized capital depreciation. This differed from Equus's agreement with ECMC, under which ECMC and its officers received stock options to incentivize their performance. Section 205 of the Advisers Act generally prohibits investment advisers from receiving performance fees. Section 205(b)(3) provides an exception for advisory contracts with BDCs if, among other things, the BDC doesn't have 'outstanding any option, warrant, or right issued' pursuant to Section 61(a)(3)(B) of the ICA, which permits BDCs to issue certain options. Therefore, to enter an advisory agreement with Equus that included a performance fee, MCCA had to purchase the outstanding options issued to ECMC and Equus employees who continued to work for the Fund after the change in advisers.

#### **E. The Proxy Statement**

14. On April 6, 2005, Equus's board approved the special committee's recommendations and authorized the filing of proxy materials recommending that shareholders approve MCCA's advisory agreement and ECAC's administration agreement. Equus filed its preliminary proxy statement on May 10, 2005, and filed its definitive proxy statement on May 27, 2005. Both proxy filings proposed to discontinue the stock option plan and to require MCCA to purchase all outstanding stock options from the Fund's officers and directors. The proposed administration agreement stated that, while MCCA was responsible for all investment professionals' expenses including salaries, ECAC may provide "significant managerial assistance to the Fund's portfolio companies." Payments to ECAC were capped at \$450,000 per year.

#### **F. Retention of Certain Employees**

15. After the special committee recommended MCCA as the new adviser, Moore told Douglass that MCCA needed to retain certain ECMC employees, especially its senior vice president ("the senior vice president"), an Equus senior vice president who located and evaluated

the companies in which Equus invested. Accordingly, Douglass began negotiating the senior vice president's retention.

16. On June 10, 2005, Douglass, through his assistant, sent the senior vice president an e-mail outlining his new compensation arrangement with MCCA. This arrangement included a 26% premium MCCA would pay for the senior vice president's stock options, which effectively priced his options at \$10.49 per share, compared to the then-current market price of \$8.30. The e-mail specifically identified the manner in which Douglass and Moore would disguise the premium. It provided that the senior vice president would receive a \$60,000 retention bonus and enter into a consulting agreement with ECAC that would compensate the senior vice president \$373,620. The consulting agreement paid the senior vice president to provide the same services as his existing employment agreement with MCCA (under which he was to receive \$220,000 per year plus bonus), meaning that he was to be paid twice for the same work.

**G. Douglass's Materially Misleading Statements in a June 22, 2005 Press Release**

17. On June 17, 2005, in the midst of the proxy solicitation, Dow Jones Newswire ran a story about Equus, highlighting the Fund's performance issues and discussing ongoing disagreements between the Fund's management and certain large shareholders about the Fund's fate. The story specifically quoted one shareholder who said that the Fund "should be shut down." The Dow Jones story also noted the proxy statement's commitment that MCCA would purchase 27.5% of Equus's outstanding shares on the public market or through "privately-arranged transactions with individual shareholders." According to the story, this raised concerns among some shareholders that not all shareholders would be given the chance to sell at a favorable price.

18. In response to the Dow Jones Newswire story, Equus issued a press release on June 22, 2005, regarding the proposed change in advisers. Douglass approved the issuance of this press release. The press release addressed, among other things, the change in adviser's incentive compensation structure and MCCA's commitment to purchase shares. To allay concerns that current Fund management would benefit from MCCA's "privately-arranged transactions" to purchase shares, Douglass stated in the press release:

"In order to adopt the new incentive compensation structure, the Fund may not have any outstanding stock options in accordance with legal requirements. To facilitate the exercise of the existing stock options held by officers and directors, Moore Clayton may buy the shares issued upon exercise of such options. **The purchase price paid for any such shares will not exceed the current market price for the shares.**" [Emphasis added.]

19. The market price for Equus shares at the time was approximately \$8.30 per share. Douglass approved this press release even though he had already negotiated an agreement whereby MCCA would pay the senior vice president a significant premium above market price for his options. This release therefore was materially misleading. Equus filed the press release

with the Commission on June 22, 2005, under cover of Form 8-K and also filed it on June 24, 2005, as definitive additional proxy materials on Schedule 14A.

#### **H. Approval of MCCA and ECAC's appointment**

20. Equus's shareholders approved MCCA as the new adviser and ECAC as the new administrator on June 30, 2005. Equus's board, at a meeting later that day, approved the contracts to appoint MCCA as Equus's new adviser and ECAC as the Fund's new administrator. In addition, that day the senior vice president and Moore signed the senior vice president's consulting agreement with MCCA and his consulting agreement with ECAC.

#### **I. Special Administrative Fee**

21. During the June 30, 2005 board meeting, Moore disclosed that ECAC had encountered \$800,000 in "unforeseen administrative expenses" relating to the adviser change and asked Equus to cover those expenses. Although not disclosed at the board meeting, a significant portion of the "unforeseen administrative expenses" was the senior vice president's compensation, which had been agreed to nearly three weeks earlier.

22. In response, Equus's board formed a special committee, consisting of three independent board directors, to examine the unforeseen administrative expenses and to determine whether the Fund should reimburse ECAC. During the special committee's review, an independent director discussed with Moore the components of the special administrative fee. Moore admitted that some of the expenses included retention bonuses for the senior vice president and others, but did not enumerate the specific amounts.

23. On August 9, 2005, upon the special committee's recommendation, Equus's board agreed to pay MCCA a one-time supplemental fee of \$535,000 (approximately 1% of the Fund's assets at the time) to reimburse "extraordinary costs that were incurred by the Management Company above what had been anticipated" with respect to the change in administrators. In effect, the Fund paid for the stock option premium paid to the senior vice president without any disclosure to the shareholders or the public.

24. Equus's CFO thereafter prepared (or assigned someone to prepare) a spreadsheet outlining the components of the fee: \$400,000 for the senior vice president's consulting agreement with ECAC; \$60,000 for the senior vice president's retention bonus; and \$75,000 of retention bonuses for other personnel.

#### **J. Equus's Subsequent Commission Filings**

25. Equus filed its second quarter 2005 Form 10-Q on August 15, 2005. Moore certified this filing, which disclosed that the Fund had reimbursed ECAC \$535,000 for unexpected costs and expenses associated with the change in administrators. The Form 10-Q, however, failed to disclose the true purposes of the special administrative fee or that the majority of the funds compensated the senior vice president.

26. On March 31, 2006, Equus filed its 2005 Form 10-K, which Moore certified. This filing also disclosed that the special administrative fee was associated with the change in administrators, but failed to disclose that the special administrative fee primarily compensated a Fund officer.

27. On April 24, 2006, Equus filed its annual proxy statement providing information about officer and director compensation in 2005. The proxy statement represented that the senior vice president received compensation of \$136,620 in 2005, consisting of realized earnings from the company's acquisition of his 198,000 stock options. This figure was materially understated because the senior vice president, in fact, received more than \$460,000 from the transaction. This misleading compensation disclosure was incorporated by reference in Equus's 2005 Form 10-K.

28. Douglass and Moore were responsible for using the senior vice president's consulting agreement to pay the senior vice president a stock-option premium. Therefore, they knew by June 2005 that, by recording the payment as an administrative expense, Equus's books and records were inaccurate. Douglass and Moore also failed to inform Equus's CFO and Equus's auditor of the true nature of the payments to the senior vice president. They both also signed false management-representation letters to the auditor for the third quarter of 2005 and for fiscal year 2005. In these letters, Douglass and Moore confirmed that Equus's financial information was fairly presented and that all material transactions were properly recorded. These representations were materially misleading in light of the senior vice president's undisclosed stock-option premium. Therefore, Douglass and Moore circumvented Equus's internal controls and lied to Equus's auditors.

#### **K. Violations**

29. As a result of the conduct described above, Douglass willfully violated:
- a. Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in connection with the purchase or sale of securities;
  - b. Section 13(b)(5) of the Exchange Act, which provides that no person shall knowingly falsify any book, record, or account of an issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act, or is required to file reports pursuant to Section 15(d) of the Exchange Act, or knowingly circumvent the registrant's system of internal accounting controls;
  - c. Rule 13b2-1 under the Exchange Act, which provides that no person shall, directly or indirectly, falsify or cause to be falsified any book, record, or account subject to Section 13(b)(2)(A) of the Exchange Act;
  - d. Rule 13b2-2(a) under the Exchange Act, which prohibits an officer or director of an issuer from, directly or indirectly: (1) making, or causing to be made, a materially false or misleading statement; or (2) omitting, or causing to be omitted, a statement of a material fact necessary to make the statements made, in light of the circumstances under which they were

made, not misleading to an accountant in connection with a required audit, or the preparation or filing of a required document or report;

e Section 14(a) of the Exchange Act and Rule 14a-9 thereunder, which required that proxy solicitations not be false or misleading, not omit to state any material fact necessary in order to make the statements therein not false or misleading, or correct any statement in earlier communications with respect to the proxy solicitation that has become false or misleading.

30. As a result of the conduct described above, Moore willfully violated:

a. Section 13(b)(5) of the Exchange Act, which provides that no person shall knowingly falsify any book, record, or account of an issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act, or is required to file reports pursuant to Section 15(d) of the Exchange Act, or knowingly circumvent the registrant's system of internal accounting controls;

b. Rule 13b2-1 under the Exchange Act, which provides that no person shall, directly or indirectly, falsify or cause to be falsified any book, record, or account subject to Section 13(b)(2)(A) of the Exchange Act;

c. Rule 13b2-2(a) under the Exchange Act, which prohibits an officer or director of an issuer from, directly or indirectly: (1) making, or causing to be made, a materially false or misleading statement; or (2) omitting, or causing to be omitted, a statement of a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading to an accountant in connection with a required audit, or the preparation or filing of a required document or report;

d. Rule 13a-14 under the Exchange Act, which required Moore, as Equus's principal executive and financial officer, to certify in each quarterly and annual report filed or submitted by Equus under Section 13(a) of the Exchange Act, that: (1) he had reviewed the report; and (2) based on his knowledge, the report did not contain any untrue statement of material fact, or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by the report;

e Section 14(a) of the Exchange Act and Rule 14a-9 thereunder, which required that proxy solicitations not be false or misleading, not omit to state any material fact necessary in order to make the statements therein not false or misleading, or correct any statement in earlier communications with respect to the proxy solicitation that has become false or misleading.

31. As a result of the conduct described above, Moore willfully aided and abetted and caused violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in connection with the purchase or sale of securities.

32. As a result of the conduct described above, Douglass willfully aided and abetted and caused violations of Section 13(a) of the Exchange Act and Rule 13a-11 thereunder, which required Equus to file information and documents as prescribed by the Commission, including current reports, and to include in those reports any material information as may be necessary to make the required statements in those reports not misleading in light of the circumstances under which the statements were made.

33. As a result of the conduct described above, Douglass and Moore willfully aided and abetted and caused violations of:

a. Section 13(a) of the Exchange Act and Rules 13a-1, 13a-13, and 12b-20 thereunder, which required Equus to file information and documents as prescribed by the Commission, including annual and quarterly reports, and to include in those reports any material information as may be necessary to make the required statements in those reports not misleading in light of the circumstances under which the statements were made;

b. Section 13(b)(2)(A) of the Exchange Act, which required Equus, as a reporting company, to make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflected its transactions and dispositions of its assets;

c. Section 13(b)(2)(B) of the Exchange Act which required Equus, as a reporting company, to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions were recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles; and

d. Section 206(1) and Section 206(2) of the Advisers Act which prohibited ECMC and MCCA from employing any device, scheme, or artifice to defraud clients or prospective clients or engage in any transaction, practice, or course of business that defrauds clients or prospective clients.

### **III.**

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative and cease-and-desist proceedings be instituted to determine:

A. Whether the allegations set forth in Section II. are true and, in connection therewith, to afford Respondents an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against Respondents pursuant to Section 9(b) of the Investment Company Act including, but not limited to, civil penalties pursuant to Section 9(d) of the Investment Company Act and whether the Respondents should be barred or suspended 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;



C. Whether, pursuant to Section 21C of the Exchange Act, Respondents should be ordered to cease and desist from committing or causing violations of and any future violations of the provisions set forth Section II.K above;

D. Whether, pursuant to Section 21C(f) of the Exchange Act, Respondent Douglass should be prohibited from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act, or that is required to file reports pursuant to Section 15(d) of the Exchange Act; and

E. What, if any, remedial action is appropriate in the public interest against Respondents pursuant to Section 203 of the Advisers Act, including, but not limited to, civil penalties pursuant to Section 203(i) of the Advisers Act and whether, pursuant to Section 203(f) of the Advisers Act, Respondents should be barred or suspended from being associated with an investment adviser.

#### IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III. hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondents fail to file the directed answer, or fail to appear at a hearing after being duly notified, the Respondents may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondents personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule

making” within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Elizabeth M. Murphy  
Secretary

## Service List

Rule 141 of the Commission's Rules of Practice provides that the Secretary, or another duly authorized officer of the Commission, shall serve a copy of the Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Section 21C of the Securities Exchange Act of 1934, Section 203(f) of the Investment Advisers Act of 1940 and Section 9(b) of the Investment Company Act of 1940 ("Order"), on the Respondents and their legal agents.

The attached Order has been sent to the following parties and other persons entitled to notice:

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