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

**SECURITIES EXCHANGE ACT OF 1934**
**Release No. 78030 / June 10, 2016**

**ACCOUNTING AND AUDITING ENFORCEMENT**
**Release No. 3783 /June 10, 2016**

**ADMINISTRATIVE PROCEEDING**
**File No. 3-17283**

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| **In the Matter of**<br><br>**ICON CAPITAL LLC f/k/a ICON CAPITAL CORPORATION,**<br><br>**Respondent.** | **ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER** |

## I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act") against ICON Capital LLC, formerly known as ICON Capital Corporation ("Icon" or "Respondent").

## II.

In anticipation of the institution of these proceedings, Respondent has 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 to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over Respondent and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order ("Order"), as set forth below.

## III.

On the basis of this Order and Respondent's Offer, the Commission finds[1] that:

## RESPONDENT

1. **Icon** is an unregistered investment manager organized as a limited liability company ("LLC") under the laws of Delaware and based in New York, New York. Today Icon is wholly owned by ICON Investment Group, LLC, a closely held corporation. During the relevant period, Icon's primary activity was the development, marketing, sponsorship and investment management of a series of equipment leasing funds ("Icon Leasing Funds" or "Leasing Funds"), which have registered their securities offerings pursuant to the Securities Act of 1933 and whose securities are registered under Section 12(g) of the Exchange Act. Each Icon Leasing Fund was organized as a separate entity and was subject to the periodic reporting obligations of Section 13 of the Exchange Act and related rules. The Leasing Fund interests are not publicly traded.

## RELEVANT FUND ENTITIES

2. The Leasing Funds relevant to this proceeding are Icon Income Fund Nine, LLC ("Fund 9"), Icon Income Fund Ten, LLC ("Fund 10"), Icon Leasing Fund Eleven, LLC ("Fund 11"), and Icon Leasing Fund Twelve, LLC ("Fund 12"), which were formed by Icon as Delaware LLCs between 2001 and 2007. Each of the four Leasing Funds had a principal place of business in New York, New York and filed periodic reports pursuant to Section 13 of the Exchange Act. Funds 9, 10, 11 and 12 held portfolios that included, among other things, tankers and container vessels, aircraft, auto and refrigeration equipment, rail support construction equipment, and telecommunications assets. During the period at issue here, reported fund assets ranged up to $621 million (Fund 12), with reported annual net income ranging from a profit of $13 million (Fund 12) to a loss of $45 million (Fund 11), on reported annual revenues of up to $103 million (Fund 11).

## FACTS

### Overview

3. Over a number of years, Icon made accounting errors that resulted in material inaccuracies in periodic reports filed by the four Icon Leasing Funds identified above. Due to inadequate internal accounting controls and the misapplication of Generally Accepted Accounting Principles ("GAAP") in certain instances, Icon did not report accurately financial results, and had inaccuracies in books and records, for these four Leasing Funds from 2009 through 2012. Icon's accounting errors resulted in, among other things, one or more of the relevant Leasing Funds not taking certain required asset value impairments, overstating post-impairment values or overstating residual values in multiple reporting periods. As a result, there were material inaccuracies in financial statements for the relevant Leasing Funds for annual and interim periods from 2009 through 2011, and some of these inaccurate financial results also appeared in the relevant Leasing

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[1] The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Funds' periodic reports for 2012. Icon's errors resulted in overstatements of net income (or understatements of net loss) and overstated asset and Leasing Fund members' equity values in the amounts set forth herein. As detailed below, Icon was therefore a cause of violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1 and 13a-13 thereunder by the relevant Leasing Funds.[2]

## Background

4. Icon markets each Leasing Fund to investors at the Leasing Fund's inception through various broker-dealers, acquires and manages the Leasing Fund's assets, and then winds down the Leasing Fund after a set period of time. By design, the Leasing Funds have limited life spans, beginning with an offering period, followed by an operational period and then a liquidation period. Each Leasing Fund sells interests to investors only during that Leasing Fund's initial offering period, and the Leasing Fund interests are not traded thereafter in a secondary trading market, public or private. By contract, the ability of Leasing Fund investors to sell, transfer or redeem their interests during the operational and liquidation periods was limited, and all such actions were subject to Icon's approval. Each Leasing Fund typically begins filing its periodic reports after its registration statement is declared effective by the SEC (as the Leasing Funds at issue here did). Icon performs all of the accounting functions for each Leasing Fund, including the preparation of each Leasing Fund's financial statements and periodic reports.

5. During the relevant period, one of Icon's primary investment strategies for a number of the Leasing Funds, including the four Leasing Funds at issue in this proceeding, was to purchase shipping vessels and lease the vessels to commercial shipping companies. The Leasing Funds collected the rental income, as well as the sale or other proceeds from the disposal of the vessels and other Leasing Fund assets. Icon, in turn, received management and acquisition fees from each Leasing Fund, calculated on the basis of rental payments received by the Leasing Fund and acquisition prices of assets. Icon waived some or all of the management and acquisition fees and expense reimbursement payments due from three of the four Leasing Funds at issue during the relevant period.

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2 Section 13(a) of the Exchange Act requires issuers whose securities are registered with the Commission under the Exchange Act to file periodic reports with the Commission containing such information as the Commission prescribes by rule, and the information contained in such reports is required to be complete and accurate. Exchange Act Rule 13a-1 requires registrants to file annual reports on Form 10-K, and Rule 13a-13 requires issuers to file quarterly reports on Form 10-Q. Rule 12b-20 provides that these reports must contain, in addition to disclosures expressly required by the pertinent statutes and rules, such other information as is necessary to ensure that the statements made in the report are not, under the circumstances, materially misleading. Section 13(b)(2)(A) requires registrants to make and keep books, records and accounts which, in reasonable detail, accurately and fairly reflect transactions and dispositions of assets. Section 13(b)(2)(B) requires registrants to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP and to maintain accountability for assets.

6. The values of the shipping and other assets owned by the Leasing Funds, including each of the vessels described below, were recorded on each Leasing Fund's books at cost, net of accumulated depreciation. This value was referred to as the assets' "carrying value" or "net book value." Icon personnel were responsible for regularly reviewing carrying values and determining whether those values were recoverable from (*i.e.* were equaled or exceeded by) estimated future cash flows from the asset. Under GAAP, Icon was required to perform such a "recoverability test" on each asset any time there was an "indicator of impairment," such as an appraisal below book value or the renegotiation of lease terms. ASC 360-10-35-21. If the carrying value is estimated not to be recoverable, GAAP requires that an impairment loss be recorded, measured as the difference between the asset's carrying value and its fair value, with the fair value recorded as the new carrying value. ASC 360-10-35-17. Under GAAP, fair value is defined as the "price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date." ASC 820-10-20. Under GAAP, Icon was also required to evaluate the "residual" values of the Leasing Funds' assets (*i.e.* an estimate of the remaining sale or scrap values at the end of a vessel's life) and adjust residual values when necessary. ASC 360-10-35-22.

7. In early 2009, the drastic downturn in the world economy following the global financial crisis and other economic factors resulted in a significant drop in shipping lease rates and vessel sale prices. Although shipping lease rates and vessel sale prices were historically volatile, often with significant swings in both directions within relatively short periods of time, the steep downturn in the market triggered by the financial crisis did not follow historical patterns and continued unabated for years. The daily lease rates, known as "spot market rates," did not return to even the lower end of the typical range of pre-2009 levels until the end of 2014 and stayed well below recent historic lows throughout most of this period. In response to the depressed market, and after discussions with the Leasing Funds' outside auditor, Icon adopted a methodology known as the Hamburg Ship Evaluation Standard ("Hamburg Method") for certain accounting purposes in 2009.

8. The Hamburg Method was developed by members of the shipping industry in early 2009 and relies on ten-year historical average prices to estimate future lease rates and scrap values. The average prices used for the Hamburg Method are based on industry-wide averages provided by an independent research resource and adjusted both for the type and age of the specific vessel in question and for the costs and expenses associated with leasing those vessels. In addition to using those averages, the Hamburg Method uses historical ten-year averages of bond and equity premium rates in arriving at the rate at which to discount estimated future cash flows.

9. As detailed below, Icon's reliance on the Hamburg Method to make fair value determinations in situations where it possessed relevant contemporaneous market data contravened GAAP and, along with other accounting errors and internal accounting control lapses, resulted in Icon's not taking certain necessary impairments, overstating post-impairment values and overstating residual values, causing numerous material inaccuracies in the publicly filed financial statements and periodic reports for Funds 9, 10, 11 and 12 from 2009 through 2012. During this period, Icon also omitted certain disclosures required under GAAP relating to certain of the Leasing Funds' residual values and made inaccurate disclosures related to the methodology used for the Leasing Funds' equity valuation mandated under ERISA.

**Improper Impairment of the Mayon and Samar Vessels**

10. Icon erred by not taking an impairment charge with respect to two vessels owned and leased out by Funds 9, 10 and 12 (the Mayon and Samar) at the end of the Leasing Funds' 2010 fiscal year and then failing to take the appropriate impairment for both vessels in the first quarter of 2011. As a result, the recorded values of the Mayon and the Samar was overstated on the books and records of these three Leasing Funds starting as of December 31, 2010, which led to inaccuracies in periodic reports subsequently filed by the three Leasing Funds.

**Non-Impairment of the Vessels at Year End 2010**

11. The Mayon and the Samar were both scheduled to come off lease in July 2011. In November 2010, Icon received appraisals that indicated that the fair market value of each of the two vessels, on a "charter free" basis (*i.e.* calculating fair market value in the absence of whatever income-generating lease was actually in place), was $9.86 million at the time of the appraisal and $8 million as of July 2011, when the current lease was to end. These amounts were well below the carrying value of $31.2 million for each vessel and, as such, were an indicator of impairment under GAAP. Icon then conducted a recoverability analysis using assumptions of future rental income that were based on the Hamburg Method and determined that the Mayon and the Samar did not need to be impaired. However, Icon's assumptions and methodology were erroneous in at least two respects.

12. First, Icon's assumptions about future cash flow in conducting its recoverability analysis were based on the Hamburg Method's ten-year historical average, which was inconsistent with future lease rates Icon anticipated it may actually be able to obtain for the two vessels in 2011. In conducting its recoverability analysis, Icon relied on the Hamburg Method's ten-year historical average lease rate in assuming that it would be able to re-lease the Mayon and the Samar in July 2011 for three years at a daily rate of $11,267 and used that rate in its future cash flow analysis. However, Icon's own internal documentation and contemporaneous market communications with third parties (from January 2011 through the filing of the relevant Leasing Funds' Forms 10-Ks in March 2011) regarding prevailing lease rates and the remarketing of the vessels show that Icon expected that a $3,000/day lease rate for a three year lease was more likely when the vessels came off lease in July 2011.

13. Under these circumstances, GAAP required that future cash flow estimates used to test the recoverability of a long-term asset value incorporate the company's own assumptions about its use of the asset, consider all available evidence, and be reasonable in relation to the cash flow assumptions used for other corporate purposes or for developing information communicated to other parties. ASC 360-10-35-30.

14. Second, Icon also did not account correctly for certain expenses in calculating projected cash flows using the Hamburg Method. Icon typically allowed for up to an additional $2 million expense for any vessel that would require an expensive and lengthy form of mandatory periodic "dry dock" maintenance (*i.e.* when the vessel is not in service) known as a "special survey," and which party (the lessor or the lessee) would bear responsibility for such costs was factored into lease negotiations. Both GAAP and the Hamburg Method require this expense to be

included in future cash flow calculations, where applicable. However, Icon did not deduct this expense from its future cash flow calculations for the Mayon and the Samar even though both vessels were due for special surveys during the prospective lease period. Reducing future cash flows – even using $11,267 per day figure as the starting point – by the amount of this expense alone would have caused both vessels to fail the recoverability test, requiring Icon to determine the fair value of the vessels and record an impairment charge if the fair value of the vessels was less than their carrying values. In fact, in February 2011 – one month before the Forms 10-K were filed – Icon shipping personnel involved in the new lease negotiations for the two vessels realized that they had neglected to include the vessels' special survey costs when estimating projected returns on the vessels. The shipping personnel corrected this error in their work, which lowered expected returns, and the projections they prepared for their work assumed a new lease rate consistent with then current market conditions rather than the much higher $11,267 rate – sans special survey costs – that Icon accounting personnel used in the recoverability testing.

15. Using the valuation methodology that Icon employed when impairing the value of a different set of vessels in the prior year (discussed below at ¶¶ 25-29), the fair value of the Mayon and Samar vessels as of December 31, 2010 (the relevant measurement date) was approximately $13.3 million each, or approximately $18 million below the carrying value of $31.2 million per vessel.[3] Accordingly, an impairment charge of approximately $18 million each was required for the Mayon and the Samar as of December 31, 2010, for a total of $36 million. By not recording the $36 million impairment charge, Icon overstated the carrying value of the two vessels by that amount, resulting in inaccuracies in reported net income (loss) and members' equity in the Forms 10-K filed by Funds 9, 10 and 12 for the year ended December 31, 2010, which were filed in late March 2011.[4] The misstated 2010 year-end financial results for Funds 9, 10 and 12 were also reported in those Leasing Funds' Forms 10-K for the year ended December 31, 2011, which were filed in late March 2012.

**<u>Insufficient Impairment of the Vessels in the First Quarter of 2011</u>**

16. In the quarter ended March 31, 2011, Icon did cause Funds 9, 10 and 12 to take an impairment charge for the Mayon and the Samar, but the charge was insufficient under GAAP and

[3] This method starts with the vessels' appraised fair market value, which provides the vessels' "charter-free" (*i.e.*, unleased) value, and then adds to that number the net present (*i.e.* discounted) value of 100% of the existing lease rate through the end of the current lease to arrive at fair value. Here, the $13.3 million estimate of the fair value of the Mayon and the Samar vessels as of December 31, 2010 is the sum of the appraisal's current fair market value of $9.86 million and the net present value of 100% of the existing lease rate of $17,000 per day through July 23, 2011, the expiration date of the current lease. The discount rate used for the net present value calculation of the remaining lease payments was 5.48%, which is the same rate that Icon used when performing a discounted cash flow analysis to estimate the fair value of the Mayon and the Samar at March 31, 2011.

[4] The quantitative impact of the accounting errors discussed herein on each of the relevant Leasing Funds' financial statements are presented below in paragraphs 34-37 for each affected reporting period.

resulted in each vessel's recorded value still being overstated by approximately $7.5 million, which led to inaccuracies in the same three Leasing Funds' Forms 10-Q for the first quarter of 2011, which were filed in mid-May 2011.

17. In May 2011 (before the first quarter Forms 10-Q were filed), Icon signed a three-year charter for both vessels that was to begin in July 2011 and that provided for $3,900 in daily rental income, consistent with the offers it had received a few months earlier. Having now locked in a new lease rate far below the $11,267 average rate for the prior ten years, Icon conducted a cash flow analysis using the new lease rate and, as a result, the Mayon and the Samar both failed the recoverability test. Icon recorded impairment charges of approximately $11 million for each of the vessels, reducing their carrying values from $30 million to approximately $19 million. However, these impairment charges were insufficient under GAAP because Icon overestimated the vessels' fair value by using the ten-year historical average lease rate derived under the Hamburg Method rather than relevant market data in selecting the measurement inputs and using a methodology that excluded the relevant market data as inputs.

18. Under GAAP, fair value accounting requires the maximum utilization of market data and relevant, available market data cannot be disregarded.[5] In this instance, Icon had obtained appraisals of both vessels in November 2010, and these appraisals, which were based on recent sales of similar vessels, constituted relevant market data. Comparable sales data are generally considered to be observable, level 2 valuation inputs under GAAP. In addition, in March 2011, Icon had purchased two vessels similar to the Mayon and Samar, but two years newer, for $13 million each. As part of that transaction, Icon received appraisals valuing those newer vessels at $13-15 million each, well above the $9.86 million appraised value of the older Mayon and Samar vessels in November 2010 but still far below the $31.2 million values recorded for each of the older vessels on the Leasing Funds' books as of December 31, 2010, just three months earlier.

19. Nevertheless, when valuing the Mayon and the Samar in May 2011, Icon did not use the observable inputs that it had available, in the form of recent, comparable sales transactions, as its inputs. Icon incorrectly assumed that in light of the market downturn discussed above, the vessel appraisals and the comparable sales relied on by the appraisers could be disregarded, and Icon did not conduct any analysis of the circumstances pertaining to the sales on which the

[5] ASC 820-10-35-36 states that the methods used to measure fair value "shall maximize the use of relevant observable inputs and minimize the use of unobservable inputs." ASC 820 prioritizes inputs used to measure fair value into three levels based on the observability of the inputs. The highest, and generally most reliable, level of inputs – Level 1 – are "quoted prices (unadjusted) in active markets for identical assets or liabilities." ASC 820-10-35-40. Level 2 inputs are "inputs other than quoted prices included within Level 1 that are observable for the asset or liability, either directly or indirectly." ASC 820-10-35-47. Level 3 inputs, generally the least reliable, are "unobservable inputs for the asset or liability." ASC 820-10-35-52. ASC 820-10-35-53 further notes as follows: "Unobservable inputs shall be used to measure fair value *to the extent that relevant observable inputs are not available*, thereby allowing for situations in which there is little, if any market activity for the asset or liability at the measurement date [emphasis added]."

appraisals relied. Instead, as was known to the Leasing Funds' outside auditors, Icon used an unobservable input in the form of an estimated "net charter" rate, calculated using the Hamburg Method's ten-year historical average. This method resulted in a projected $11,164 per-day rate for a prospective renewal lease assumed to begin in 2014. The projected $11,164 daily rate was more than double the $3,900 per day to which Icon had just agreed in the new lease scheduled to begin in July 2011. Icon's use of this projected $11,164 rate for a prospective lease three years in the future without giving weight to the contemporaneous, and observable, market data described above – the type of data that Icon itself had recently used in determining similar vessels' fair value – was an improper use of a "Level 3" valuation input because, as noted above, GAAP mandates that "[v]aluation techniques used to measure fair value shall maximize the use of observable inputs and minimize the use of unobservable inputs." In addition, Icon's own internal contemporaneous documents and other evidence demonstrate that Icon lacked a reasonable basis for concluding that it would have actually been able to sell either the Mayon or the Samar at that time at a price near the $19 million calculated value figure yielded by its sole reliance on the "Level 3" inputs.

20. Using the methodology described above in footnote 3, which maximizes use of the observable market inputs available to Icon at the time by adding the net present value of 100% of the remaining lease payments due under the existing lease to the appraisal's current fair market value of $9.86 million, the fair value of the Mayon and the Samar vessels as of March 31, 2011 was approximately $11.8 million each. This valuation results in an impairment charge of $18.5 million per vessel, $7.5 million higher than the $11 million impairment charge taken by Icon for each vessel in the first quarter of 2011. By not recording a total impairment charge of $37 million, Icon overstated the carrying value of the two vessels by a total of approximately $15 million, resulting in inaccuracies in reported net income (loss) and members' equity in the Forms 10-Q for the quarter ended March 31, 2011 filed by Funds 9, 10 and 12. The misstated first quarter 2011 financial results for Funds 9, 10 and 12 were also reported in those Leasing Funds' Forms 10-Q for the first quarter of 2012.

**Reversal of Reduction in Estimated Residual Values of Vessels Leased to Companies A and B**

21. An additional accounting error involved Icon's failure to lower the residual values (which are an estimate of the sale or scrap values at the end of a vessel's useful life) of eight vessels owned by Funds 9, 10, 11 and 12 and leased to two separate shipping companies ("Companies A and B"), resulting in inaccuracies on those Leasing Funds' books and records and in their publicly filed financial statements for interim and annual periods from 2010 through the end of 2011.

22. In early 2010, Icon concluded that the residual values of the vessels leased to Companies A and B needed to be reduced and depreciation expense therefore needed to be increased. Icon estimated that the residual value of the vessels to the four Leasing Funds had decreased by amounts ranging from approximately $4.9 million to $11.1 million per vessel, for an aggregate reduction of $66.9 million. However, after discussions with the Leasing Funds' outside auditor, Icon reversed those reductions before filing the Leasing Funds' Forms 10-Q for the quarter ended March 31, 2010, and did not reinstate the reductions in any subsequent period, resulting in inaccuracies in each of the relevant periodic reports through the end of 2011. Based on Icon's own residual value analysis, the proposed reductions in residual values and corresponding increases in

depreciation were appropriate, and there was no reasonable basis for forgoing those adjustments from the first quarter of 2010 through the end of 2011.

23. By the beginning of 2010, charter (*i.e.,* lease) rates had been depressed for some time and recent appraisals of vessels' fair market value were coming in significantly below their carrying values, including appraisals for the vessels leased to Companies A and B, an indication under GAAP that the residual values may be too high and should be evaluated. ASC 360-10-35-22. Consequently, Icon adjusted residual values for the vessels leased to Companies A and B on the four Leasing Funds' books as of January 1, 2010 in the amounts set forth above. The financial statement impact of these adjustments would occur over time, as depreciation expense increased in order to depreciate the book value of the vessels to their new, lower residual value. Icon recorded these increases in depreciation expense, as reflected in the trial balances and drafts of the Leasing Funds' Forms 10-Q for the quarter ended March 31, 2010, which Icon provided to the Leasing Funds' outside auditor in connection with the quarterly review. Contemporaneous Icon documents and communications between Icon and the auditor indicate that Icon's accounting personnel were confident in the accuracy of the new, reduced residual values. However, after those communications with the auditor and shortly before the Forms 10-Q were filed, Icon reversed the residual value and depreciation adjustments. Neither Icon nor the auditor documented the reason or factual basis for this change or that there was even an expectation, at that time, that the residual values would recover.

24. Icon's reversal of the reduction in residual values and increase in depreciation expenses resulted in a number of inaccuracies in the four Leasing Funds' financial statements and periodic reports, as the residual values were overstated in multiple subsequent reporting periods as well. The net income (loss) and members' equity for all four Leasing Funds were misstated for each quarter of 2010 and for the year ended December 31, 2010 due to these residual value errors. The net income (loss) and members' equity for Funds 10 and 12 were also misstated for the year ended December 31, 2011 and each interim period therein due to these residual value errors. In addition, the net income (loss) and members' equity for Fund 11 was misstated for the first two quarters of 2011 due to these residual value errors. These misstated financial results were also reported in each Leasing Fund's subsequent corresponding periodic reports, as late as through year end 2012 for Funds 10 and 12.

**<u>Insufficient Impairment of Vessels Leased to Company C</u>**

25. A further accounting error involved Icon's failure to sufficiently impair the recorded value of four vessels owned by Fund 11 and leased to Company C ("Company C vessels"). Icon made an error in its impairment analysis that resulted in an overstatement of the value of the Company C vessels on Fund 11's books and records and in inaccuracies in Fund 11's publicly filed financial statements for interim and annual periods from the third quarter of 2009 through the end of 2010.

26. As of September 30, 2009, Fund 11 was carrying the Company C vessels at a value of $81.1 million on the Leasing Fund's books. In the third quarter of 2009, Company C was experiencing financial difficulties and the parties renegotiated the four leases, resulting in lower lease payments to Fund 11. Icon recognized this event as an indicator of impairment under GAAP

and further determined that Fund 11 needed to recognize an impairment loss. Ultimately, Icon impaired the Company C vessels by approximately $35.1 million and recorded their new carrying value at $46 million. However, Icon made an error in calculating the estimated fair value of the vessels, which led to an insufficient impairment and an overstatement of the recorded value for the Company C vessels.

27. To estimate the Company C vessels' fair value, Icon used the valuation method described above in paragraph 15 and used "Level 2" observable inputs from different sources. Icon had obtained independent appraisals of the Company C vessels' fair market value as part of its review of their carrying values, and Icon used one of the appraiser's fair market value estimates as an input in its valuation formula. One appraisal estimated the current fair market value of the Company C vessels ($22.1 million), and the other appraisal estimated their fair market value at the end of the existing lease term ($20.8 million), both on a "charter free" basis (*i.e.* in the absence of whatever income-generating lease was actually in place). To determine fair value, Icon added the appraiser's current fair market value estimate to Icon's own estimate of the net present value of the rental cash flows it was entitled to receive from Company C during the term of the renegotiated leases.

28. However, Icon failed to correctly calculate the net present value of the cash flows from the leases. Icon appropriately used the renegotiated lease rates and payment schedules and then meant to apply a discount rate of 8% to determine the net present value of those future payments. Icon erred, however, by using an incorrect formula when discounting cash flows in its present value calculation, resulting in an overstated present value estimate. This flawed present value calculation, recorded on the Leasing Fund's books and records and in documents provided by Icon to the Leasing Fund's auditor, resulted in a suggested impairment of $33.4 million, leading to a carrying value of $47.7 million. For reasons unrelated to the fair value analysis, Icon further impaired the vessels by another $1.7 million to a carrying value of $46 million, but despite this additional impairment, there was still an overstatement of the Company C vessels' recorded value. Applying the 8% discount rate used by Icon, a correct calculation of the sum of the net present value of the cash flows due over the course of the leases and the appraisal's current fair market value results in a fair value of approximately $43.1 million, $2.9 million less than the $46 million recorded by Icon. The impairment of the Company C vessels should therefore have been $2.9 million greater than what Icon recorded, or $38 million.

29. By not recording the required $38 million impairment charge at that time or in subsequent reporting periods, Icon overstated the carrying value of the Company C vessels by $2.9 million, resulting in a number of inaccuracies in Fund 11's financial statements and periodic reports. Due to these impairment errors, Fund 11's net income and members' equity were misstated in financial statements in its Forms 10-K for both the year ended December 31, 2009, and the year ended December 31, 2010, as well as in financial statements in its Forms 10-Q for the third quarter of 2009 and the first three quarters of 2010. These misstated financial results for Fund 11 were also reported in that Leasing Fund's subsequent corresponding periodic reports through year end 2012.

**Non-Impairment of Auto Equipment Owned by Fund 11**

30. Icon also did not impair auto parts manufacturing equipment owned by Fund 11 and leased to a French company ("Auto Equipment") at the time required by GAAP. Icon's failure to impair the Auto Equipment resulted in an overstatement in the value of the Auto Equipment of approximately $3.1 million, which led to an overstatement of Fund 11's assets and net income in its Forms 10-Q for the second and third quarters of 2010 and of 2011.

31. In early 2009, the lessee of the Auto Equipment declared bankruptcy and the Auto Equipment came under the jurisdiction of a French bankruptcy court. As a result, Icon recorded, as of December 31, 2009, an allowance for the past due balances owed by the lessee on the lease and disclosed that income from the lease would be recorded on a cash basis. Nevertheless, Icon did not impair the Auto Equipment assets at that time, even though the decision to record an allowance and to record income on a cash basis – a clear indication that Icon considered the collectability of the future lease payments to be in doubt – indicates that Icon may have had difficulty establishing that future cash flows would have been sufficient to recover the asset's value. In fact, Icon did not perform a recoverability analysis at all because it mistakenly used an incorrect (lower) book value in its impairment review. That lower net book value led Icon to conclude incorrectly that the Auto Equipment assets' estimated fair value was greater than the recorded book value and that therefore there was no indication of impairment.

32. In June 2010, Icon signed an agreement with the original lessee and a new lessee transferring the Auto Equipment to the new lessee and amending the terms of the lease to provide for lower rental payments to Fund 11. At that point, impairment was required because the reduced lease rate resulted in future cash flows that were lower than the asset's carrying value. However, Icon still did not record an impairment charge at that time because, according to Icon, the Icon personnel who executed the new lease agreement failed to provide the lease to the relevant finance and valuation personnel until February 2011.

33. Icon eventually recorded an impairment charge on the Auto Equipment for Fund 11 in the amount of approximately $3.1 million, but not until the fourth quarter of 2010. Icon's failure to record the impairment charge by the second quarter of 2010 caused Fund 11's books and records to overstate the carrying value of the Auto Equipment in the second and third quarters of 2010, resulting in inaccuracies in reported net income (loss) and members' equity in Fund 11's financial statements and interim periodic reports for the second and third quarters of 2010, including for the nine months ended September 30, 2010. These misstated financial results for Fund 11 were also reported in its Forms 10-Q for the second and third quarters of 2011.

**Impact of the Foregoing Errors on the Leasing Funds' Financial Results**

34. Fund 9's reported financial results were misstated for the relevant periods due to both Icon's failure to lower the residual values of the vessels leased to Companies A and B (the "RV" error) and by Icon's failure to properly impair the recorded value of the Mayon and Samar vessels (the "M/S" error), as follows:

| | Net Income/(Loss) Overstatement/ Understatement | Members' Equity Overstatement | Accounting Errors |
|---|---|---|---|
| **1Q2010** | 591% | 4.0% | RV |
| **2Q2010** | 259% | 8.0% | RV |
| **3Q2010** | $1.3 million → ($0.1 million) | 12.3% | RV |
| **YE2010** | $6.8 million → ($11.2 million) | 78.1% | RV, M/S |
| **1Q2011** | (42.7%) | 32.6% | M/S |

35. Fund 10's reported financial results were misstated for the relevant periods due to both the RV and M/S errors, as follows:

| | Net Income/(Loss) Overstatement/ Understatement | Members' Equity Overstatement | Accounting Errors |
|---|---|---|---|
| **1Q2010** | 101% | 1.6% | RV |
| **2Q2010** | $0.36 million → ($0.76 million) | 3.3% | RV |
| **3Q2010** | 81.4% | 5.0% | RV |
| **YE2010** | $6.2 million → ($4.2 million) | 18.9% | RV, M/S |
| **1Q2011** | (53.5%) | 10.4% | RV, M/S |
| **2Q2011** | (9.5%) | 4.4% | RV |
| **3Q2011** | 290% | 5.2% | RV |
| **YE2011** | (17.0%) | 6.2% | RV |

36. Fund 11's reported financial results statements were misstated for the relevant periods due to Icon's erroneous present value calculation with respect to the Company C vessels (the "PVC" error), Icon's failure to impair the Auto Equipment at the appropriate time (the "AE" error), and the RV error, as follows:

| | Net Income/(Loss) Overstatement/ Understatement | Members' Equity Overstatement | Accounting Errors |
|---|---|---|---|
| **3Q2009** | (5.2%) | 1.8% | PVC |
| **YE2009** | (5.2%) | 1.8% | PVC |
| **1Q2010** | (41.5%) | 3.3% | RV, PVC |
| **2Q2010** | (43.5%) | 8.5% | RV, PVC, AE |
| **3Q2010** | (11.5%) | 12.5% | RV, PVC, AE |
| **YE2010** | (49.8%) | 10.8% | RV, PVC |
| **1Q2011** | 17.1% | 10.5% | RV |
| **2Q2011** | $1.9 million → ($0.1 million) | 13% | RV |

37. Fund 12's reported financial results were misstated for the relevant periods due to both the RV and M/S errors, as follows:

| | Net Income/(Loss) Overstatement/ Understatement | Members' Equity Overstatement | Accounting Errors |
|---|---|---|---|
| **1Q2010** | 100% | 0.9% | RV |
| **2Q2010** | 78.8% | 1.2% | RV |
| **3Q2010** | 208% | 2.7% | RV |
| **YE2010** | $11.9 million → ($3.5 million) | 6.6% | RV; M/S |
| **1Q2011** | (80.8%) | 5.1% | RV; M/S |
| **2Q2011** | (44.1%) | 4.2% | RV |
| **3Q2011** | $1.47 million → ($0.06 million) | 5.1% | RV |
| **YE2011** | $2.95 million → ($3.18 million) | 5.9% | RV |

**<u>Non-Disclosure of a Material Change in Estimate</u>**

38. In the second quarter of 2009, Icon reduced its estimate of the residual value of four vessels leased by Fund 11 to Company D but failed to disclose that change in Fund 11's subsequent periodic reports, as required by GAAP. This change in estimate did not have a material impact on Fund 11's financial statement results for the second quarter of 2009, but it was expected to, and did, have a material impact on Fund 11's reported results in future periods and, under GAAP, was therefore required to be disclosed.

39. In Fund 11's Form 10-Q for the second quarter of 2009 (and subsequent periodic reports), Icon disclosed that Company D had terminated its lease for the four vessels on June 24, 2009, approximately two years before the end of the lease term. While Icon did not impair those vessels at that time, Icon reduced the residual value of the vessels by $14 million on Fund 11's books and records. Going forward, Icon projected an increase in depreciation expense of approximately $5.6 million per quarter as a result of this reduction in the estimated residual value of the vessels. Because this change in estimate was not disclosed in Fund 11's Form 10-Q for the second quarter or in subsequent periodic reports, Fund 11's financial statements for the quarter and nine months ended September 30, 2009, and the year ended December 31, 2009 did not comply with GAAP, which requires disclosure of changes that are expected to materially impact future quarters. ASC 250-10-50-4.

40. The additional $5.6 million in depreciation expense represented approximately 10.5% of the net loss for the quarter, and 23.5% for the nine months, ended September 30, 2009. The total increase in depreciation expense due to the reduction in residual value was approximately $11.2 million for the year ended December 31, 2009, which was approximately 25.5% of the loss reported for 2009 and 8% of members' equity. The disclosure was also required to have been included in Fund 11's Form 10-K for the year ended December 31, 2010, as that periodic report reiterated the financial statements at issue.

41. The reduction in the residual value estimate and the resulting impact on Fund 11's financial results was particularly relevant because residual values were a key component of the Leasing Funds' business model. The Leasing Funds' ability to achieve their anticipated rates of investment return depended in large part on Icon's ability to realize their assets' value at the end of the leases, and the possible inability to realize the estimated residual asset values was identified as a risk factor in the Leasing Funds' Forms 10-K.

**Inaccurate Disclosure of the Methodology for Calculating ERISA Valuation**

42. In addition, Icon failed to accurately disclose in multiple Forms 10-K for Funds 9, 10, 11 and 12 the methodology used to calculate the estimated value of Leasing Fund interests for ERISA reporting purposes. Under applicable rules, the Leasing Funds were required to calculate and report the estimated value of their member interests for ERISA purposes in the event that the Leasing Fund "assets were sold in an orderly liquidation as of the close of [the] fiscal year and all proceeds from such sales, without reduction for transaction costs and expenses, together with any cash held by [the Leasing Fund], were distributed to the members upon liquidation."

43. Until 2014, the relevant annual reports stated that this value was calculated as follows:

> [W]e calculated the sum of: (i) the unpaid finance lease and note receivable payments on our existing finance leases and notes receivable, discounted at the implicit yield for each such transaction; (ii) *the fair market value of our operating leases, equipment held for sale or lease, and other assets, as determined by the most recent third-party appraisals we have obtained for certain assets or our Manager's estimated values of certain other assets, as applicable*; and (iii) our cash on hand. From this amount, we then subtracted our total debt outstanding and then divided the difference by the total number of Shares outstanding [emphasis added].

44. However, Icon did not disclose in the annual reports that to determine the "fair market value" of assets for these purposes, Icon used the greater of net book value or fair market value when impairment was not taken. For example, in the 2010 Forms 10-K for Funds 9, 10, 11 and 12, Icon's ERISA methodology resulted in Icon using the $31 million net book value of the Mayon as its "fair market value" for purposes of the ERISA calculation, which was substantially below the vessel's appraised and fair values for the reasons discussed above in paragraphs 11-15.

45. Icon subsequently corrected this omission and, beginning with the year ended December 31, 2013, changed the disclosure in the Leasing Funds' Forms 10-K to expressly state that the "greater of net book value or fair market value" was used in the ERISA calculation.

## VIOLATIONS

46. By reason of the foregoing, Icon was a cause of the relevant Leasing Funds' violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and Rules 13a-1, Rule 13a-13 and 12b-20 thereunder. As described above, Funds 9, 10, 11 and 12 filed annual and quarterly reports that included financial statements that were not prepared in accordance with GAAP, as required by Regulation S-X. Those Leasing Funds also violated Section 13(b)(2)(A) by not keeping accurate books and records, and violated Section 13(b)(2)(B) by not devising and maintaining a sufficient system of internal accounting controls. As the entity that performed and was responsible for the Leasing Funds' accounting functions, including their recordkeeping and internal control functions, and for the preparation of the Leasing Funds' financial statements and periodic reports, Icon caused the Leasing Funds' violations of these financial reporting, recordkeeping and internal control provisions.

## IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Icon's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Icon cease and desist from committing or causing any violations and any future violations of Sections 13(a), 13(b)(2)(A), 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-13 thereunder.

B. Respondent shall pay a civil money penalty of $750,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). Payment shall be made in installments according to the following schedule:

- An initial payment of $150,000 due within 10 days after the entry of this Order.
- An additional payment of $85,000 due within 90 days after the entry of this Order.
- An additional payment of $85,000 due within 180 days after the entry of this Order.
- An additional payment of $85,000 due within 270 days after the entry of this Order.
- An additional payment of $85,000 due within 360 days after the entry of this Order.
- An additional payment of $85,000 due within 450 days after the entry of this Order.
- An additional payment of $85,000 due within 540 days after the entry of this Order.
- An additional payment of $90,000 due within 630 days after the entry of this Order.

C. If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of civil penalties, plus any additional interest accrued pursuant to 31 U.S.C. § 3717, shall be due and payable immediately, without further application.

D. Payment must be made in one of the following ways:

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondent 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

(3) Respondent 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

E. Payments by check or money order must be accompanied by a cover letter identifying Icon as a Respondent 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 Sanjay Wadhwa, Division of Enforcement, Securities and Exchange Commission, New York Regional Office, 200 Vesey Street, Suite 400, New York, New York 10281.

F. 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, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 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 Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order issued by the Commission in this proceeding.

By the Commission.

Brent J. Fields
Secretary